journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Expanding the Scope of Business Activities under the Companies and Allied Matters Act: One- Person Companies and Partnerships in Focus

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Abstract

The Companies and Allied Matters Act, 2020 repealed and replaced the Companies and Allied Matters Act, 1990. Before its repeal, the latter recognized private and public companies limited by shares, co-operative societies and businesses registered under businesses names as the only vehicles for business activities. The companies and Allied Matters Act, 2020 came along with new vehicles, namely, One-Person private Company limited by shares, limited liability and limited Partnerships. The addition of these new vehicles into the corpus of Nigeria's company and commercial laws and the retention of existing ones are rightly in our view, meant to align the range of entrepreneurial activities with global best practices.

Key Words: Companies and Allied Matters Act, Company Law, One-Person Company, Partnership

1. Introduction

Nigeria operates a free and liberal enterprise economy where participation is open to all shade of entrepreneurs with government regulating the conduct of all players including it. The recent amendment to some tax legislations by the Finance Act 2019 and the repeal of the Companies and Allied Mattes Act, 1990 are steps taken by the federal government to further consolidate the gains made so far at integrating the economy into the global network. Hitherto, the regulation and management of profit-oriented entities under the repealed Companies and Allied Matters Act 1990 was restricted to private and public companies, registered business names and to a lesser extent, partnerships. The Companies and Allied Matters Act 2020 (CAMA 2020) has expanded the scope and options for carrying out business activities to the next level. Our aim here is to examine the extent of the applications of these new business concepts under the Companies and Allied Matters

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Act, 2020[1] and where appropriate, make comparison with similar concepts under the Indian Companies Act.

2. Sole Proprietor, Partnership and Registration of Business Names

The Sole proprietor and partnership forms of business activity predate CAMA 2020 and indeed other company and commercial legislations. They have been existing as units of business activities for a long time and probably started with the beginning of commerce. They are certainly the precursors to the concept of the One Person Company. Limited liability and limited partnerships and are the simplest forms of business activity known to majority of participants in the informal sector of the economy. Due to the informal nature of these forms of business activities, it is difficult to give a precise figure as to their numbers or type of businesses being undertaken. They largely thrive in unregulated turf, with the proprietor as their own bosses, and to some extent, laws unto themselves.[2] Notwithstanding, these forms of business activities are in some cases required to comply with provisions of some laws so as to enable such companies carry on with their businesses without hindrance. For example, CAMA 2020 requires any individual, partnership or company having a place of business in Nigeria and carrying on business under a business name to be registered in the case of a partnership, if:

a) the name does not consist of the true surname of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames;

(b) in the case of an individual, the name does not consist of his true surname without any addition other than his true forenames or the initials thereof; or

(c) in the case of a company, whether or not registered under this Act, the name does not consist of its corporate name without any addition.[3]

The registration of business name does not however change the character of the sole proprietor or the partnership. In *Domingo v The Queen*[4] the Supreme Court rationalized the essence of a registered business name thus:

[1]The Act was signed into Law by the President of the Federal Republic of Nigeria on 7 August 2020

[2]Small and Medium Scale Enterprises Development Agency of Nigeria Act, 2003 (SMEDAN).ss 8 & 9. The Agency coordinates and assist individuals and partners engaged in small and medium scale enterprises(SMSE) to scale up their activities. See https://smedan.gov.ng/who-we-are/ accessed 28/08/20

[3]S.814(1) CAMA 2020

[4](1963) LPELR 15448(SC) Per BRETT J.S.C(Pp. 11-13, paras. E-A)

> "... The law does not prohibit anyone from carrying on business either alone or in partnership with others under a name assumed for that purpose, but in order to enable persons doing business with the individual or partnership to discover who the person or persons behind the name are, the law requires these particulars to be registered, and the true names of the individual or the partners have to be shown in all trade catalogues, trade circulars and business letters sent out under the registered name."

Generally, the registration of a business name does not give the owners or the business name a legal personality; it can therefore not sue or be sued unless specifically permitted by law or rules of court[5]. It has now been settled that under the Federal High Court (Civil Procedure) Rules, an individual or a partnership carrying on business has the capacity to sue or be sued in its name.[6] As a corollary, a registrable business name that is not registered can, notwithstanding its non-registration, enforce a contract. In *Ogunmefun v Nigeria Airways Ltd*[7], the High Court of Lagos State, held that although the plaintiff conducted business under the name of "Alasela & Sons" without evidence that same had been registered under the Business Names Act, 1961 [CAMA 2020 Part E], the failure to register the business name rendered him liable to penalties, without making the contract entered into illegal or unenforceable unless the statute so provides. he registration of business name is sometimes wrongly equated with registration of business premises. While the registration of business name applies to business names under Part E of CAMA 2020, a federal statute, the registration of business premises on the other hand is a state law which requires individuals, partners and companies to register the premises in which they carry on their businesses. For example, the registration of Business Premises Law, Yobe State[8] requires owners of business premises to register annually. The law defines business premises to mean: "the premises on which any business is carried on whether situated within or without a building or other structure and whether fenced or unfenced."[9] In *MTN v Delta State*

[5] For example, Order 9 r26(1) of the Federal (High Court) Civil Procedure Rules, 2019 provides as follows "Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firm, if any, of which they were partners when the cause of action arose". And Order 9r 36 states "Any person carrying business within the jurisdiction in the name or such other than his own name may be sued in such name or style as if it were a firm name..."; similar provisions are replicated in the High Court (Civil Procedure) Rules of some States of the federation.

[6] *Iyke Medical Mechandise v Pfizer Inc*. (2001) 10NWLR pt 722 p.540; see note 44

[7] 1979 Nigerian Commercial Law Reports (NCLR) p112 @113

[8] Cap. 119, The Laws of Yobe State of Nigeria, 1994

[9] S.2 Registration of Business Premises Law, Cap.119, The Laws of Yobe State 1994; cf with the Business Premises Licensing and Taxation Law, Cap.19 Laws of Jigawa State of Nigeria, 199. The latter did not define business premises. It only defines Business Concern to include a company established under the Companies and Allied Matters Act, a firm or a sole corporate. Under this law, it can be assumed that business premises would exclude businesses not sited within a building or structure.

Government (Ministry of Commerce and Industry),[10] the question whether the Appellant's telecommunication masts installed in different places are located in premises within the meaning of the Registration of Business Premises Law of Delta State, 1995 came up for determination. The Court of Appeal held that the premises did not qualify as a business premises. In the words of the Court:

> …it is nothing more than network facilities installed at specified locations by communication outfits for the purpose of enhancement or facilitation of the services they provide to their customers from their various business centres... I cannot but agree with the stance of the learned counsel for the Appellant that to hold that a Telecommunications Mast is a business premises is akin to holding that an electricity transmission pole or electricity transformer is a business premises to be registered with a fee and renewable annually by all the private electricity transmission and distribution companies without regard to the fact that they also have offices in almost all the towns and cities from where they operate their businesses. On this premise and having regard to the Respondent's claim wherein the Appellant's seven Telecommunication Masts are described as business of "Communication services through site stations constructed in Isoko South Local Government Area of Delta State, I cannot but hold that the said Telecommunication Mast locations is not a business premises within the contemplation of the Delta State Registration of Business Premises (Amendment) Edict 1995 to warrant a demand for registration and renewal as per the Respondent's claim in the Revenue Court and this also robs the said Court of the competence on jurisdiction to entertain the action."

The difference between registration of business name and business premises is therefore obvious. It has to be emphasized that registration of business names under CAMA, 2020 is not mandatory unless that individual, firm or company uses a name or names other than their true names or forenames or initials thereof. However, the registration of business premises on which every company, firm or individual carries on business is mandatory. Thus, a sole proprietor, partnerships and companies must in

[10](2018) LPELR 44158-(CA)Per Samuel Chukwudumebi Oseji ,J.C.A (Pp. 27-29, paras. A-E).
Cf definition of premises in *Nasr & Anor v Bouari*(1969) LPELR-25557 (SC)- as used in the Rent Control (Lagos) Amendment Act, 1965 "... Section 1(4) of the Act defines premises as follows- "(4) "Premises" for the purpose of this section, and where used elsewhere in this Act or any enactment amended by this Act unless the context otherwise requires, means "a building of any description occupied or used by persons for living or sleeping or other lawful purposes, as the case may be, whether or not at any time it is also occupied or used under any tenancy as a shop or a store, and the expression includes any room or other part of a building of not less than one hundred square feet of floor space separately let or sublet as the case may be, for any such purpose." Per Lewis ,J.S.C (Pp. 4-6, para. D)

all cases register their business premises whether such businesses are carried on under a registered business name or not,[11] and whether such businesses are carried in a place of residence, a designated commercial area or by the road side or the sedentary or semi-sedentary umbrella type of business.

It may be pointed out that the registration of both business names and business premises are sources of revenue for the federal and State governments that would, if properly harnessed, augment their dwindling income from oil revenue. Perhaps, it is partly in line with this that the Federal Government of Nigeria launched the survival fund program[12] aimed at supporting and protecting businesses from the effects of Covid- 19 pandemic, while at the same time getting those businesses registered and captured in the tax net.

At the same time, the National Bureau of Statistics with assistance from the World Bank has commenced the process of implementing the National Business Sample Census (2020) which will cover premises with fixed structure and location, shops in residential areas, markets shops, etc. While kiosks and shops under the umbrella are exclude from the census.[13]We however see no reason why kiosks and shops under the umbrella should not be included, since some state business premises registration laws consider premises occupied by such businesses as premises and therefore subject to registration[14] and are also liable to payment of one form of tax/levy or the other.

3. The Company Limited by Shares

The CAMA 2020 like its predecessor recognizes companies limited by shares as vehicles for business activities. Section 21(1) states among other things, that an incorporated company may be a company-

(a) having the liability of its members limited by the memorandum of association to the amount, if any, unpaid on the shares respectively held by them (a company limited by guarantee); or

(c) not having any limit on the liability of its members (an unlimited company).

[11]S. 4(1) Registration of Business Premises Law, Cap.119, The Laws of Yobe State, 1994' s.2 defines business to include any trade, industry or profession and any occupation carried on for profit but does not include farming, except such types or classes of farming as the Registrar may specify as being registrable as a business, having regard to the nature, scale and presumed income of such farming business;

[12]https://survivalfund.ng/ accessed 27/09/20

[13]https://nairametrics.com/2020/09/28/after-22-years-nbs-is-set-to-commence-national-business-sample-census/accessed 29/09/20

[14]See notes 10 and 11

(2) A company of any of these types may either be a private company or a public company.[15]

The vast majority of formal business activities are clustered around private companies limited by shares. The limitation of liability and perpetual succession among other things makes them more attractive than sole proprietorship or partnership forms of business activities. The need for limited liability companies as a business vehicle is accentuated by the requirement of certain legislations which require business vehicles to be incorporated as companies. For example, the Nigerian Investment Promotion Commission Act [16](NIPC) requires foreigners to incorporate companies limited by shares as vehicles for engaging in business activities. Section 17 of the NIPC Act provides that "Except as provided in section 18 and subject to the NIPC Act, a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria."[17]Section 19(1) further goes on to provide that an enterprise in which foreign participation is permitted under section 17 of this Act, "shall not commence business, except it is incorporated or registered under the CAMA 2020." Section 20(4) CAMA 2020 on the other hand provides that "Subject to the provisions of any enactment regulating the rights and capacity of aliens to undertake or participate in trade or business, an alien or a foreign company may join in forming a company."[18] A community reading of section17 of the NIPC Act, section 78, and 20(4) of CAMA 2020 is to the effect that an enterprise in which foreign participation is permitted shall not commence business unless it is incorporated or registered in accordance with the provisions of the laws regulating the formation of companies and other laws enabling a foreigner in that behalf.

As indicated above, the dominant vehicles for business activities for both foreign and local entrepreneur is private company limited by shares. Whether the introduction of one-person company will turn the tide is left to be seen. Suffice it to say that, while a foreigner may also register and run a business under a business name, it would however be difficult for such a foreigner to transact business with Ministries, Departments and Agencies of government (MDAs) on the strength of a registered business name. Therefore, it is one

[15]Companies referred to in s.21(b) cannot engage in businesses, they are rather incorporated for promotion of arts, science, commerce, sports etc. It is therefore outside the scope of this article.
[16]Cap.N117 Laws of the Federation of Nigeria, 2004
[17] Cap. N117 Laws of the Federation of Nigeria, 2004
[18]S.78(1) CAMA 2020; However, where a foreign company was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, it shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act. Any failure to comply with s.78(1) would render transactions entered by the company void.[18]

thing for a foreigner to register a business name and it is yet another for the registered business to be accorded necessary recognition for the purposes of official transactions. It may be added that the NIPC Act applies to Nigerians as well, however, in principle; there is no express requirement that a Nigerian must incorporate a company for the purposes of participating in any business activity. Be that as it may, most government establishments would for obvious reasons prefer to deal with incorporated companies than with sole proprietors or partnerships.

3.1 The Concept of the One-Person Company

Section 18(2) of CAMA 2020 provides that "Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies." A one-person company can be incorporated just in the same way as any private company except as to the minimum number of members and directors.[19] Perhaps, the rationale for including a one-Person company in CAMA 2020 is to encourage a sole proprietor or partners to migrate from the informal to the formal sector of the economy while at the same time allowing some flexibility in the running and management of the company. Such flexibility includes exempting one-person company from holding annual general meeting.[20]

Unfortunately, beyond the flexibility, CAMA 2020 did not make it simpler to register and has not sufficiently distinguished a one-person company from the normal or traditional private company. It is significant to note that a one-person company has a soul of a sole proprietor and a spirit of a limited liability company with the advantages of a legal personality and perpetual succession;[21] it is a hybrid of some sort. While a member of a one-person company just like the sole proprietor can be the sole director and member, he could also be the managing director and employee of the company at the same time as in the *locus classicus* case of *Lee v Lees Air Faming Ltd*[22] in which the Privy Council held:

[19] s.271 exempts small companies from having minimum of two directors. If one-person company is the same with a small company or part of a small company, then the person who is the sole member can also double as director. Cf. s.237(1) which exempts small company or any company having a single shareholder from holding annual general meetings. Under this section, a small company is not necessarily the same with a company having a "single shareholder" or a "one person' company.

[20] S.266(1) CAMA 2020

[21] S.42 CAMA 2020 provides "As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the powers and performing all functions of an incorporated company including the power to hold land, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act"

[22] [1960] 3 All ER 420, [1960] 3 WLR 758, [1961] AC 12, [1960] UKPC 33

> It is well established that the mere fact that someone is a director of a company is no impediment to his entering into a contract to serve the company. If, then, it be accepted that the respondent company was a legal entity their Lordships see no reason to challenge the validity of any contractual obligations which were created between the company and the deceased... There appears to be no great difficulty in holding that a man acting in one capacity can make a contract with himself in another capacity. The company and the deceased were separate legal entities.

Although CAMA 2020 created the concept of One-person company, it however failed to correspondingly define it, unlike the position under the Indian Companies Act.[23] It rather defines a private company--of which one-person company is--as a company which is stated in its memorandum of association to be a private company.[24] The one-person company is also required to end its name with the world Limited/Ltd just as is the case with other private companies.[25] Under the Indian Companies Act, such a company shall indicate below its name the words 'one person company' so as to distinguish it from the other type of private company.

Fundamentally, CAMA 2020 has not specifically stated what would happen in case a one-person company with only a member who is also a director dies or becomes incapacitated. Though the shares of such a member would devolve onto his legal representative by way of transmission just as in the case with shares of other members or shareholders of a company,[26] it is however desirable to make provision similar to that under the Indian Companies Act, namely, that a member of a one -person company must indicate in the memorandum of association the name of the person who shall replace him in the event of the death or incapacity. Be that as it may, the introduction of a private one-person company as a business vehicle will certainly change the trajectory for business activities. However, one-person company should exclusively be reserved for Nigerian citizens as allowing foreigners to also incorporate such companies may lead to abuse.

3.2 Limited Liability Partnership

Partnership is another means through which businesses are carried on. The Partnership Act, 1890 and the partnership laws of states regulate partnership relationship. The first and arguably the only state that has provisions for limited liability partnerships is Lagos State.

[23]S.2(62) of the Indian Companies Act defines a One Person company as a company that has only one person as its member.
[24]S.22(1) CAMA 2020; s.394 CAMA categorizes certain private companies as small companies for purposes of financial statements. The Act has not defined a small company either.
[25]S.29(1) & (5) CAMA 2020
[26]See s.139 which provides that the shares or other interest of a member in a company are personal property transferrable in the manner provided in the articles of association; ss179-180 CAMA 2020

The Lagos State Partnership Law[27] include among other things, the registration of limited liability partnerships. The Snag of this law is that, such a partnership relationship is recognized and limited to Lagos state. However, with the passing of CAMA 2020, the provisions relating to limited liability and limited partnerships would now apply to the whole country, including, Lagos State.

Secion19 (2) CAMA 2020 states that no association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act[28], or is formed in pursuance of some other enactments in force in Nigeria. It therefore follows that the general partnership as a vehicle for business activity between not less than two and not more than twenty persons is recognized and protected under CAMA 2020. It has been part of Nigeria's commercial life for quite some time. However, with the introduction of limited liability partnership and limited partnerships by CAMA 2020, under parts C and D respectively, the scope of vehicles for business activity is broadened and can now accommodate others that were shut out of the system over the years.

Section 746 espouses the nature of limited liability partnership as follows: A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from the partners. When registered, a limited liability partnership will have the same consequences as those of a registered company with perpetual succession,[29] juristic/ legal personality,[30] with power to acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible;[31] and if it decides to have one, have a common seal[32] and do and suffer such other acts and things as bodies corporate may lawfully do and suffer.[33]

In a limited liability partnership, the obligation of a partnership does not extend to acts of a partner for acts done without or beyond the scope of authority of the partner and to acts

[27]Cap.P1, Laws of Lagos State, 2015
[28]The exception to this is are
a) any co-operative society registered under the provisions of any enactment in force in Nigeria; or
(b) any partnership for the purpose of carrying on practice -
(i) as legal practitioners, by persons each of whom is a legal practitioner, or
(ii) as accountants by persons each of whom is entitled by law to practise as an accountant
[29]S.746(2) CAMA 2020
[30]S.756(a) CAMA 2020
[31]S.756) (b) CAMA 2020
[32]S.756(c)CAMA 2020
[33]S.756(d)CAMA 2020

in which the person being dealt with knows that the partner has no authority.[34]However, a limited liability partnership is liable if a partner of the limited liability partnership is liable to any person as a result of a wrongful act or omission on the part of the partner in the course of the business of the limited liability partnership or with its authority[35] arising in contract or otherwise.[36] CAMA 2020 has made the limited liability partnership vicariously liable for acts of the partners in contract or tort. It is arguable if the partnership will be liable for crimes committed by the partner in the course of the business of the partnership.[37] However, a partner will be liable for his own wrongful act or omission, and such a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.[38]

The liability of a partnership extends to credit obtained by a person who holds himself out or permits to be represented as a partner, whether orally, in writing or by conduct, and the partnership is liable to any person who has on the faith of the representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person giving credit.

The limitation of liability of partners under a limited liability partnership highlighted above is however not absolute. It therefore follows that where an act is carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership except where it is established by the limited liability partnership that the act was carried out without the knowledge or the authority of the limited liability partnership.[39]

In addition, Where any business is carried on with such intent defraud or for fraudulent purposes, every person who was knowingly a party to the carrying on of the business to defraud creditors of the limited liability partnership or for fraudulent purposes will be liable on conviction to imprisonment for a term which may extend to two years or a fine as the court deems fit or to both.

[34]Ss766(1)(a) &(b) CAMA 2020
[35]S.766(2) CAMA 2020
[36]S.766(3); s.767 CAMA 2020
[37]S.769(1)CAMA 2020
[38]S.767(2) CAMA 2020
[39]S.769(1) CAMA 2020

Hitherto, the absence of the law on limited liability partnership has circumscribed the space for economic activities especially foreign investors who may have been familiar with such business vehicles in their home countries. It is perhaps in realization of this fact that CAMA 2020 made provisions for limited liability partnership registered outside Nigeria prior to the coming into effect of CAMA 2020 to immediately take steps to incorporate it as a separate entity in Nigeria or seek exemption from the requirements of local incorporation.[40] This is also the case with foreign companies wishing to carry on business in Nigeria. The consequence for failure to register or seek exemption from registration for companies and limited liability partnership is to make all transactions entered into by those entities null and void.[41]

It is apparent from the forgoing that the limited liability partnership is a company by virtue of incorporation under CAMA 2020 and at the same time a partnership by virtue of the Partnership Act, it has elements of both and are governed by the Partnership Act1890, subject to the provisions of CAMA 2020.

3.3 Limited Partnership

The provisions regulating limited partnership are contained in Part D CAMA 2020. The two are not treated under the same part perhaps due to the different consequences that follow their registration. It may also be due to the fact that the provisions regulating the formation and management of limited partnerships are different from those of limited liability partnerships. Section 795(1) CAMA 2020 pegs the number of members of limited partners to 20, thus, reinforcing section19(1) CAMA. The implication of these two sections read together is to make any association of more than 20 persons carrying out business for profit except those exempted liable to penalty.[42] Therefore, the minimum number of partners in a limited partnership is 2 and the maximum is 20 members.

A partnership of more than 20 members must register as a company in order for it to legally carry on business for profit. It is however difficult for the Corporate Affairs Commission to trace or tract an association with members in excess of 20 because of lack of documentation of the activities of such associations and most importantly, weak oversight functions of the Corporate Affairs Commission. Be that as it may, limited partnership unlike the limited liability partnership is not separate from the partners, it does not have legal personality, consequently, it cannot also acquire, hold or dispose of property as is the case with companies and limited liability partnerships, and it can however sue or be sued

[40]S.788(1)(2)CAMA 2020
[41]S.78(1) CAMA 2020;(2018) 3NWLR pt. 1606 p.332
Citec Int'l Estates ltd v E. Int'l Inc.& Associates @364 paras. B-E
[42]S.19(20) &(3) CAMA 2020

in its name.[43]In *Dairo v Registered Trustees of the Anglican Diocese of Lagos*[44], the supreme court held that where an association of persons is unincorporated, it does not have the legal status of a juristic person.

Consequently, a limited partnership can sue only by a representative action.[45]It is therefore not different from general partnership. Debts and obligations of the limited partnership whenever incurred by a limited partnership shall be borne by the general partner; with the limited partner being liable to the extent of the amount contributed or agreed to be contributed. However, there is nothing wrong if one or more partners agree to indemnify the others against loss.[46]

4. Significant Control and Substantial Share Holding Disclosure Requirements for Companies and Limited Partnerships

Apart from incorporating companies as business vehicles such as discussed above, an entrepreneur has other options of participating in a business activity through acquisition of shares or interest in any company or limited liability partnership.[47]A brief remark on disclosure requirements as it relates to companies and limited liability partnerships for direct, as well as, portfolio investments is necessary at this point.

The acquisition of shares or other interest in a company or limited liability partnership may sometime result into the person or company acquiring those shares or interest to have significant influence or control in the management of the company or partnership. In such a case, a person with significant control over the company must indicate to the company in writing within seven days of acquiring such a control, the particulars of such control.[48]And the company after receiving or coming into possession of the information required from the person having that significant control, shall, not later than one month from the receipt

[43]*Monier Construction Co.Ltd v Azubuike* (1990) LPELR-1910(SC) The decision of the Supreme Court was based on Order IV r 6 of High Court (Civil Procedure) Law of Imo State.
"…. Rule 6 of Order IV of the High Court Rules of the former Eastern Nigeria applicable in Imo State High Court of Justice which says:
"Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose; and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise as the court may direct. "Per AGBAJE ,J.S.C (P. 17, paras. B-E)
[44](2018)1NWLR pt.1599 p.62@90paras.B-C.
[45]cfNotes 5&6; the case of Dairo can only apply where no law or rule of court, such as that of the Federal High Court exists.
[46]*Ugoji v Uzouku* (1972) LPELR- 3323, per Fatayi-Williams(JSC) p.13 paras A-c)
[47]For example, S.21 of the NIPC Act provides thata foreign enterprise may buy the shares of any Nigerian enterprise in any convertible foreign currency
[48]S.119 CAMA 2020

of the information or any change therein, notify the Corporate Affairs Commission of that information provided that a company shall in every annual return, disclose the information required under section119 (1) in respect of the year for which the return is made.[49] Similarly, a person with significant control over a limited liability partnership is required to indicate the particulars of such control in writing to the partnership within seven days of becoming such a person under circumstances as those for companies under section119(1).[50]

In the case of a public company a person who is a substantial shareholder is required to give notice in writing to the company stating his name, address and full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.[51] A person is said to be a substantial shareholder in a public company if he holds himself or by his nominee, shares in the company which entitle him to exercise at least 5% of the unrestricted voting rights at any general meeting of the company.[52] Such a substantial shareholder is required to give notice to the company within 14 days after he becomes aware that he is a substantial shareholder and he shall similarly do so after ceasing to be a substantial shareholder in the company. The word significant control has not been defined by CAMA 2020, yet, a company is expected to maintain a register of persons with significant control and notify the Commission with the relevant particulars thereof.[53]

While registration by a substantial shareholder applies to public companies, registration by a person having significant control appears to apply to private companies and limited liability partnerships. However, section119 (1) appears to point to the contrary. Section 119(1) provides:

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[49]S.119(2) CAMA 2020

[50]See s.791(1) CAMA 2020; similar provisionsfor beneficial ownership Register can be found in Limited liability Company Act, 2016 and partnerships registered under the Partnership Act 1902 of Bermuda which came into effect in 2019.

[51]S.120(1) CAMA 2020

[52]S.120(2) CAMA 2020

[53]Regulating interest or beneficialownerships in companies through registration is becoming a feature of company laws of many countries In Africa, Kenya has recently amended its Companies Act 2015 by requiring companies to maintain a register of beneficial owners and to submit copies of the register to the Registrar of Companies under the Companies (Beneficial Ownership Information) Regulations, 2020. A beneficial owner under Kenya's companies Act mean any natural person who (1) either directly or indirectly holds at least 10% of the issued shares of the company(2) exercises at least 10% of the voting rights in the company(3) holds the right to appoint or remove a director of the company or (4) exercises "significant influence or control" over the company; Significant influence or control has been defined to mean participating in the finances and financial policies of a company without necessarily having full control over them. The privacy of such beneficial owners is protected under the Data Protection Act, 2019, subject to the overriding requirement pf the law.

> Notwithstanding the provisions of section 120, every person with significant control over a company shall, within seven days of becoming such a person, indicate to the company in writing the particulars of such control.

S.120 on the other hand states:

> "A person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name, address and full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder".

The use of the word notwithstanding in section 119 implies that registration of particulars of significant control also applies to private companies. This would mean that significant control is different from substantial shareholding, both of whose particulars are in any case required to be registered by the Corporate Affairs Commission. In the absence of a definition of significant control by CAMA 2020, it will be difficult to assess the extent of control that would warrant compliance with section119.

By comparison, the Indian Companies (Significant Beneficial Ownership) Amendment Rules, 2019 defines significant influence and control to mean the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is {sic}not control or joint control of those policies. A reporting company means a company required to comply with section 90 of the Act, and control having the same meaning as ascribed to it in section 2 (27) of the Companies Act 2013 respectively, i.e. the right to appoint majority of directors or control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of the shareholding or management rights or shareholders agreements or voting agreements or in any other manner.[54]

Significant beneficial owner under the Indian Companies Act is akin to substantial shareholding under section121 of CAMA 2020. The former defines it to mean any individual, acting alone or together with others (including trusts and persons resident outside India), who –

i. holds beneficial interests, of not less than 25% or such other prescribed percentage, in the shares of the Relevant Company; or

[54]https://taxguru.in/company-law/significant-beneficial-ownership-companies-act-2013.html#:~:text=Control%20has%20the%20same%20meaning,virtue%20of%20the%20shareholding%20or visited, 26/09/2020.

ii. holds the right to exercise, or the actual exercising of significant influence or control over the Relevant Company.

Every significant beneficial owner is required to make a declaration to the company ("**Relevant Company"**), specifying the nature of her interest and other particulars, in the prescribed manner. However, the Companies (Significant Beneficial Owner) Amendment Rules 2019 ("the SBO Amendment Rules") has further amended the definition of "significant beneficial owner".

Under Rule 2 of the amended Rules, "Significant Beneficial Owne**r**" with respect to a company now means an individual acting alone or together, or through one or more persons or trust, possess any one or more of the following rights or entitlements in such reporting company namely:

i. Holds indirectly or together with any direct holdings not less than 10% of the shares;
ii. Holds indirectly or together with any direct holdings not less than 10% of the voting rights in the shares;
iii. Has the right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in any financial year, through indirect holdings alone or together with direct holdings;
iv. Has the right to exercise or actually exercises significant influence or control, in any manner other than through direct holdings.

Substantial shareholding or significant control of a company could arise by subscribing to shares, allotment, transfer or transmission. Whatever the method of acquisition of interests, it is now mandatory to disclose such fact to the company and the Corporate Affairs Commission.

It is clear from the forgoing that S.90 Indian Companies Act as modified by the Substantial Business Owners Rules is in *pari materia* with s.119 and 120 of CAMA 2020 and both are meant to serve the same purpose, namely promoting probity, transparency and accountability in the implementation of beneficial ownership information disclosure of corporate interest. This will undoubtedly assist in combating money laundering and other financial crimes associated with management and operation of companies. However, there is the urgent need for the Corporate Affairs Commission to come up with regulations defining and aligning scope of significant control with substantial shareholding and for other purposes connected with part C CAMA 2020.

5. Conclusion

Reforms undertaken by the Federal Government in company and commercial laws which culminated into the enactment of CAMA 2020 will certainly improve ease of doing business in Nigeria as it would improve its ranking on the World Bank index on ease of doing business. The addition of one-person company, limited liability and limited partnerships into the basket though overdue, one could however argue that Nigeria is only playing catch-up at this point in time as it has not broken new grounds or provided lessons for other jurisdictions. This notwithstanding, the new business vehicles will no doubt allow flow of more business activities and consequently, registration of more business vehicles. Ultimately, it will be a win-win situation for Nigeria from the commercial/ investment as well as tax perspectives. However, there is the need for the Corporate Affairs Commission to come up with regulations that will enable the business community leverage on the new vehicles especially, the one-person company. The one-person company variously referred to as single member or Shareholder Company or small company in CAMA need to be appropriately defined and perhaps also have a separate regime regulating its management. On the whole, CAMA 2020 is a welcome development, it has created another door for economic activities and entrepreneurs only need to give it a push to open it.