

ONE SHAREHOLDER COMPANY IN TANZANIA: GENERAL OVERVIEW AND CHALLENGES

INTRODUCTION

From common law perspectives, a company has been known as an association of persons with common agenda to carry on certain business. The word “company” has its origin in the old French military term “*compaignie*” meaning “*a body of soldiers*” (Harper Douglas” Online Etymology Dictionary). It also means a companion or an association of persons with an object of carrying on certain business.

From this standpoint, one may argue that there cannot be a company formed by one person. However, due to challenges in our business society, it is no longer necessary, in several jurisdictions, for a company to be an association of two or more persons. Today in Tanzania, as it is in the UK, USA, China, Pakistan and India, a company maybe formed by one person. A person therefore, associate by himself to form a limited liability company same like a company with two or more persons.

THE POSITION IN TANZANIA

Company law in Tanzania is a product of common law of England. The prevailing company law system was introduced in Tanzania in 1932 by the adoption of the Companies Ordinance Cap.212 which was repealed and replaced by the Companies Act, Act No. 12 of 2002. The 2002 Act did not bring any new changes as to company establishment and set ups. Most of the changes were related to company management and administration.

In 2012, the Companies Act. No. 12 of 2012 was amended to introduce, as an addition to the existing company setup, a new one shareholder company. The amendment was brought in by the Business Law

(Miscellaneous Amendments) Act No. 3 of 2012 whereby its sections 18 extends the meaning of the word company by amending section 3 of the Companies Act, to include a “single shareholder company formed by an individual”. The amending law also introduced a new Section 26A to the Companies Act whose subsection (1) provides that a limited liability single shareholder company shall be formed by one member. It is by virtue of this section company set up, structure and management considered to have been modified.

WHAT ARE THE FACTORS BEHIND THIS IMPROVEMENT?

The reason that was given by the Minister for trade affairs when presenting the Bill to the Parliament in 2011 is that the government wanted to encourage corporatization of business and entrepreneurship by enabling business persons who wanted to venture into corporate world singularly to be able to do so. Therefore, the passing off the amendments to the Companies Act, brought hope for budding entrepreneurs.

WHO MAY SET – UP A ONE SHAREHOLDER COMPANY?

Any person who is of the age of majority, who is not undischarged bankruptcy or disqualified director may set up a one Shareholder Company. Currently, it is not a requirement that a person setting up the company must be a citizen or resident in Tanzania. Therefore, this is an opportunity for national and foreigner entrepreneurs who prefer to work alone or do not require business partners to set up their corporations in Tanzania. The process of setting up a one shareholder company is still considered the same as for a private limited company unless otherwise modified by long waited regulations to regulate the business of one shareholder company.¹

¹ Note that under Section 26A (5) of the Companies Act, Cap 212 R.E 2002, The Minister Responsible for Trade Affairs is required to make regulations for set up and management of a Single Shareholder Company.

CAN A ONE SHAREHOLDER COMPANY BE CHANGED TO AN ORDINARY PRIVATE LIMITED LIABILITY COMPANY WITH MULTIPLE SHAREHOLDERS?

By virtue of section 26A (3) of the Companies Act Cap.212 R.E 2002, a single Shareholder Company may be changed to an Ordinary Limited liability Company by admission of new Shareholders. After the number of shareholders has been increased from one to two or more, the company shall cease to be a single Shareholder Company. The Company is required to notify the Registrar of such changes.

WHAT IS THE PRIMARY ADVANTAGE OF ONE SHAREHOLDER COMPANY?

One Shareholder company is a hybrid structure where it combines most of the benefits of sole proprietorship and a company form of business. It has only one person as a member who will act in the capacity of a director as well as a shareholder. Thus, it does away with the hassles of finding the right kind of co-partners for starting a business as a registered entity. The best part is that legal and financial liability is limited to company and not the member.

THE CHALLENGES IN TANZANIA

The Companies Act Cap.212 R.E 2002 is silent in many areas which are vital to the management and administration of a single Shareholder Company. Section 26A (5) empowers the Minister responsible for trade to make regulations and rules concerning setting up, management and administration of a one Shareholder Company. It is important to note that the said subsection does not oblige the minister to make those regulations. The word used in the statute is "MAY" make regulations. This means that regulations are made "at the will" of the Minister.

The Companies Act Cap 212 was amended on 15th June, 2012 when the President assented the Business Laws (Miscellaneous Amendments) Bill. It

is almost seven years now no regulations have been made and there are no indicators as to when they will be made available. In the absence of these regulations it is impractical to establish a single Shareholder Company in Tanzania. Thus, the objectives of the amendments cannot be realized.

There are important matters that need to be addressed in the regulations (Articles) of the single Shareholder Company. These matters are as follows:-

- (i) What will happen if the founding Shareholder dies or is mentally incapacitated? In the absence of regulations to address a remedy to this effect means that the continual existence (perpetual succession) of the company will depend on the life of its founding shareholder. This will be a great departure from one of the grand principles of company law.

The position in India is that since the company is owned by a single person, he must nominate someone to take charge of it in case of his death or inability. This is a condition precedent for registration. The nominee must give his consent in writing which has to be filed with the Registrar at the time of filing an application for registration of the company. On demise of the original shareholder/director the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.

- (ii) Another important matter which needs to be addressed is about appointment of director or directors. How does a shareholder appoint director(s) of the company? Can he appoint himself a director to the company? If so how? Is he required to file resolutions with the Registrar or not? These questions are supposed to be answered by the regulations governing one shareholder company.

(iii) Another disturbing issue is whether a single shareholder company is still obliged to hold Annual General Meetings etc. In other countries such as India, the law grant exemptions to such companies from holding AGMs, though records and documents are to be maintained.

(iv) My fourth comment is whether it is still reasonable to allow every person to establish a company without defining the limits in terms of number of companies one person may establish? or without defining the limit of capital requirements. These are vital matters to be addressed by regulations otherwise there will be loopholes that may be used by individual persons to avoid or even evade tax. The position in other countries has been made very clear. For example in China, one person is allowed to apply for opening a limited company with a minimum capital of 1,000,000 Yuan and a person is barred from opening a second company of the same kind.

CONCLUSION AND RECOMMENDATIONS

The absence of regulations for one Shareholder Company makes it impossible to establish and operate such type of company in Tanzania. The problem starts with the drafting of Section 26A (5) which pose the establishment of said regulation at the will of the minister. However come what may, in order to be able to practice what is provided for by section 26A (1) of the Companies Act Cap 212 R.E 2002, the enactment of regulation to give effect of the said section is inevitable. Otherwise the amendments made to the Companies Act are worthless.

It is also my recommendations that the regulations that are to be enacted should provide a single shareholder company with a simpler legal regime through exemptions, so that the single entrepreneur is not compelled to filter away time, energy and resources on procedural matters. Adequate safeguards in case of death or disability of the shareholder should be provided through appointment of another individual as a nominee director as is being practiced

in India and other countries. These regulations should also address issues of whether a single member can form a company without any limit on the paid up capital or some ceiling. It is also important for the law to be specific on whether or not one shareholder company may be formed by any person without regard to his citizenship or residence.

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