



Challenges to good corporate governance for the one-person company in Nigeria

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Abstract

The objective of this study is to examine the challenges to good corporate governance for the one-person company (OPC) in Nigeria and to proffer solutions on the way forward. As a form of business organisation, the OPC was introduced in Nigeria via the Companies and Allied Matters Act, 2020, thus making it possible for anyone of full age to incorporate and run a company as a single member, without the necessity of having to do so in conjunction with other persons. As in many countries of the world, OPCs in Nigeria have proved very useful for promoting entrepreneurial effort, as well as the development of Micro, Small and Medium Enterprises. Indeed, OPCs offer enormous advantages, which underlies the need to harness the possibilities inherent in them. In terms of quick decision-making, the concentration of executive and supervisory authority in the sole director holds some advantages; nevertheless, vesting too much corporate powers in one person may lead to abuses such as incomplete disclosures and other forms of infractions that are antithetical to the principles of corporate governance. In the light of the foregoing, this article, which is based on the doctrinal method of research, calls for a simple system of governance that will cater for the peculiarities of the OPC. In sustaining the culture of corporate governance, it is recommended that interventions by state authorities or non-governmental agencies may take the form of programmes that support capacity building. Moreover, considering the positive impact of this type of enterprise in the Nigerian economy, institutions like the Corporate Affairs Commission (CAC) and other regulatory bodies are enjoined to devote platforms for promoting the establishment of internal controls among OPCs, as this is a requisite condition for maintaining financial discipline, curtailing fraud and managing growth.

Keywords: Companies and allied matters act (CAMA); corporate governance; ease of doing business; Nigeria; one-person company (OPC)

Introduction

As a form of business organisation, “the one-person company”^[1] is a term used to describe a private company, incorporated with an individual as its only member.^[2] It is wholly owned by one person, who in the words of Dahila Hakim, is “...not to be [held] liable for the company’s obligations unless within the allocated share capital”^[3] The OPC, introduced in Nigeria by the Companies and Allied Matters Act of 2020 caters for small investors. With the recognition of this new type of entity under the Act, opportunities have opened up for the “Micro, Small and Medium Enterprises (MSMEs),” which were hitherto registrable as business names only, to upgrade as OPCs by opting for incorporation.^[4] A typical example of the benefit which accrues from incorporation is that once a business is registered as a company, it becomes a separate person from its owners and thus, “has the capacity to enjoy legal rights and is subjected to legal duties which do not coincide with that of its members.”^[5]

Owing to the fact however, that OPCs, in the words of Harpreet Kaur, tend to “provide more flexibility with less compliance,”^[6] the privileges offered by the status of incorporation may sometimes be abused, particularly with reference to the establishment of proper controls. This and other factors examined here constitute challenges to good corporate governance.

Observably, little attention has been devoted to the governance of OPCs by previous researchers. In fact, most discussions on the subject of corporate governance is centred on large-scale companies and the big corporations. The pertinent question for us, which this paper seeks to

resolve therefore, is whether small investors like the One-Person Company can equally benefit from the practice of corporate governance. Simply put, is corporate governance relevant for today’s OPC in Nigeria?

Bob Tricker, reputed to be the first person to use the title, “corporate governance,” provides what is considered an appropriate answer for our study: “If management is about running business, governance is about seeing that it is run properly.”^[7] Tricker also proceeded to state that, “All companies need governing as well as managing.”^[8] To this end, disregard for corporate governance, has proved to be the bane of many corporate businesses. In the United States for example, the 2001 collapse of the energy company, Enron, and the subsequent failure, in 2002, of MCI Communications Company,^[9] which culminated to the adoption of Sarbanes-Oxley Act,^[10] are significant developments that underlie the need for corporate governance.

With regard to the Nigerian experience, Adekoya observes as follows: “The subject of good corporate governance became prominent after the ...dismissal of the board of directors of eight Nigerian banks in 2009 by the Central Bank of Nigeria.”^[11]

Against this background, our study looks at the concept of corporate governance as it applies to the OPC in Nigeria. The work proceeds to examine how the features of sole ownership, high flexibility and less compliance, together with other factors within the OPC setup, may constitute a challenge to good corporate governance. In the final analysis, the work makes suggestions on the way forward.

Before delving into the crux of the topic, it is crucial to emphasise that the Companies and Allied Matters of 2020 which gave legal recognition to the OPC in Nigeria, is one of the mechanisms introduced by the government to facilitate the Ease of Doing Business (EDB). Equally notable is that since the publication of the World Bank 2023 global EDB index, in which Nigeria was ranked 131 among 190 economies, the country has undertaken further reforms to encourage foreign and domestic investments.^[12] This includes the passage of the Business Facilitation (Miscellaneous Provisions) Act of 2023.

Material and Methods

In analysing the challenges to good corporate governance for the one-person company (OPC) in Nigeria, this research paper relies on the doctrinal method, a technique which involves the appraisal of legal rules, principles and doctrines through the application of reasoning, using data collected for primary and secondary sources.

The primary sources consulted are statutes and case law, while the secondary data are mainly books, journals, periodicals and web-based materials.

Analysis and Discussion

Stakeholders of the OPC

Businesses may differ in certain respects, yet they are all associated with the common feature known as “stakeholders.” In the words of R. Edward Freeman, the term refers to “...any group or individual who can affect or is affected by the achievement of the organization’s objectives.”^[13]

With the one-person company (OPC), the sole owner of the business and other persons who have a direct link with the organisation, such as employees are known as the primary stakeholders. However, there are other persons or groups, who do not have a direct relationship with the organisation but may affect or be affected by the actions and outcomes of the company’s business. These category of persons, known as external stakeholders include, customers, regulators, the local community and the media. As much as the primary stakeholders, they also constitute an important aspect of the company’s existence.

The different stakeholders identified above have their respective roles in the governance of the company. What then is corporate governance? According to the UK Cadbury Report, published in 1992 after the collapse of Maxwell Communications Plc., the term refers to “the system by which companies are directed and controlled.”^[14] It consists of the internal and external control mechanisms for ensuring that the organs of a company act in accordance with the law, while also balancing the competing interests of stakeholders.

Flowing from the values of corporate governance, it is no longer possible for companies to exist solely for the purpose of making profits in order to satisfy its shareholders while on the other hand, neglecting the overall interest and development of the community.

In this regard, the principles of corporate governance prescribe the roles and responsibilities of persons who occupy significant positions in a company, while also emphasising the need for such persons to perform their roles effectively, in a bid to reduce conflict of interest amongst stakeholders. Ultimately, the structures of corporate governance are critical for instilling the virtues of

transparency, accountability, credibility and integrity in a business organisation. By extension, the system of corporate governance is aimed at forestalling corporate abuse and failure.^[15]

Peculiarities of the One-Person Company

It must be acknowledged that the One-Person Company differs remarkably from large companies and public enterprises. This trait is reflected in many areas such as formality of operations and the delegation of decision making functions. For instance, the single member of the OPC operates as the key personnel. He may hold multiple positions ranging from director, Chief Executive Officer, senior manager and so on. However, such feature is not obtainable in large corporations, such as public companies and multinationals.^[16] Thus, the Enterprise Resource Planning (ERP)^[17] systems, required by large corporations and multinationals, for accounting, management, financial reporting and other organisational processes, may not fit into the sphere of a business unit like the OPC.

Beyond that, OPCs are often anchored on the vision of the sole member and the progress of the business is highly influenced by this fact. This is usually not the case in dispersed ownership. In essence, the distinctive challenges which may arise from the governance of the One-Person Company, calls for attention and “specific governance practices,” as noted by the International Finance Corporation.^[18]

Admittedly, a significant trait which flows directly from sole ownership, as prevalent in the One-Person Company is that of ease in decision making, since the owner of the company exercises the powers resident in the Board without the need to call a shareholders’ meeting or obtain approval from anyone else. While this attribute holds some advantages, it may provide the background for the business owner to resort to incomplete disclosures in the preparation of financial records, annual reports or other information necessary for the consumption of external stakeholders.

Besides, the convergence of executive, supervisory and decision-making authority in one person may prove fatal for the business where the owner, lacks the competence, expertise or skills required to govern or maintain business growth. In essence, the role of corporate governance is to ensure that a balance is always maintained between the conflicting interests of the company and those of the other stakeholders.

The OPC as a Mechanism for Promoting the Ease of Doing Business (EDB) in Nigeria

As earlier observed, OPCs were introduced to encourage entrepreneurial spirit and the development of SMEs in Nigeria. As shown by the result of a survey jointly carried out by SMEDAN (Small and Medium Enterprises Agency of Nigeria) and the Nigerian Bureau of Statistics, in 2021, the local business environment is highly populated by SMEs. Statistics in this regard show that SMEs contribute “nearly 50 % of the country’s GDP ... [while also] account[ing] for over 80% of employment in the country...”^[19]

Indeed, Udechukwu had described SMEs as the “the main engine of economic growth and a major factor in promoting private sector development...”^[20] In the words of Osayi Olile, SMEs are the “backbone of the Nigerian economy.”^[21]

Notwithstanding the reputation of being the hub of Nigeria's economy, SMEs, under the repealed 2004 CAMA of Nigeria, were constrained from operating as registered companies due to procedural formalities which, among other factors, required that the legal minimum number of persons needed to form a company shall not be less than two. This situation was a huge barrier in promoting the ease of doing business. It thus, became desirable to remove the drawbacks by amending the legal framework and paving way for the emergence of the One-Person Company. In terms of business facilitation, OPCs, as described by Harpreet Kaur, "provide more flexibility with less compliance."^[22]

A critical examination of the One-Person Company reveals a number of features which make it an ideal venture in Nigeria. These include as follows:

1. Quick Decision-Making

The membership structure of the OPC allows for quick decision-making. Besides, the one-person company is exempted from holding annual general meetings.^[23] Hence, valuable time is saved and costs are reduced.

2. Simple Formation Procedure

CAMA 2020 provides an easy procedure for the filing of incorporation documents. Previously, incorporation documents were required to be filed by lawyers and other specific accredited professionals. This requirement has now been abolished and the director/ applicant of an OPC or his agent is permitted to file a statement of compliance instead.^[24]

3. Share Capital Requirements for OPCs

The minimum capital requirement of an OPC, being a private company, is merely N 100, 000 (one hundred thousand naira),^[25] which is well within the specification for Small scale enterprises in Nigeria.

4. Simple Board Structure/ Management

The OPC maintains a simple structure in terms of board composition and management. As previously noted, it has a director, who does not require the approval of any person or committee before taking decisions on behalf of the company.

Similarly, persons who may occupy positions of authority as officers, executives or management committees of the company may be drawn from family members, relatives and friends of the sole member and other persons whose commitment to the growth of the organisation are known to the owner.

Besides, it is not mandatory for an OPC to have a secretary or independent directors. In terms of the keeping of records, the OPC is not mandated to keep and maintain the minutes book,^[26] neither is it mandatorily required to have a secretary or to maintain the register of secretaries. All these are cost-saving.

With reference to formation of contract by the company, procurement of common seal is not mandatory for the OPC. The company can authenticate its documents by means other than the common seal.^[27] This has further broken down the barriers of formality.

5. Exemptions relating to the appointment of Auditors and Filing of modified Financial Statements

OPCs operating within the context of "small companies" as recognised under section 394 CAMA of 2020 are only required to file modified financial statements. This procedure, exempts them from filing a profit and loss account and by extension, the balance sheet of the company. Small companies also exempted from the requirement of appointing auditors at their Annual General Meetings, in order to have their annual financial records audited.^[28] In terms of cutting costs, this attribute offers enormous advantage, particularly at the developmental stage of the company.

OPCs and the System of Corporate Governance Regime in Nigeria

Undeniably, corporate governance is important to all forms of business organisations, irrespective of size or maturity. It is however, necessary to reiterate that the framework suitable for large companies may not fit the size or purpose of a One-Person Company. Hence, there is need to tailor the process of governance to accommodate the peculiarities of the OPC.

Indeed, as observed by Nadaf and Navi,

The structures and processes for corporate governance are not universally same in all countries. [Accordingly] ... different countries have adopted different structures and processes in governing their companies depending on the suitability of the social culture, economic environment, government policy, capital and money market systems, etc.^[29]

In line with the above assertion, different roles exist for the various stakeholders. As noted above, the sole director of the OPC, who is responsible for the overall management of the business has the greatest influence in the organisation. Together with his management team or those who serve as his assistants in running the business, he should create rules and controls, set clear organisational goals as well as maintain a system of compensation that drives the culture of loyalty and excellence among employees.^[30]

As part of their responsibilities in the corporate governance system, employees required to carry out the plans of the organisation in line with goals and objectives of the company. Ill-motivated staff may have negative impact on the productivity of the organisation.

The media is another stakeholder that is worth mentioning. Indeed, the media has been identified as an agent for shaping public opinion and for correcting social ills. Media coverage of information relating to corporate governance will therefore go a long way in instilling the values of corporate governance.^[31]

On the whole, the corporate governance regime in Nigeria is characterised by a combination of legal and regulatory framework. Some aspects of the system have general application, while others are sector-based and thus, apply to specific sectors of the economy. The Companies and Allied Matters Act of 2020, for instance, provides the general framework for the various types of companies that can be incorporated in Nigeria, including the disclosure requirements, capital and membership structure, as well as the role and powers of company organs. It follows that OPCs, being privately owned, do not offer their shares publicly. This implies that the shares of the one-person

company are not regulated by the Investments and Securities Act.

Other laws that have general application to corporate governance include the Money Laundering (Prevention and Prohibition) Act, of 2022, the Proceeds of Crime (Recovery and Management), Act of 2022, etc.

A number of regulatory bodies are also involved in the corporate governance environment of Nigeria. The list includes the Corporate affairs Commission and the Federal Inland Revenue Service, to mention a few.

Ultimately, corporate governance is hinged on a number of principles which ensures accountability, responsibility and transparency to the shareholder and other stakeholders.^[32] The principles considered to be most relevant for OPCs domiciled in Nigeria are briefly examined below:

a. Accountability

Governance is the key element for business competition, survival and growth. OPCs are no exception. In the long run, governance enables the company to develop tools to improve performance, check fraud and ultimately, forestall failure.

As observed by the International Finance Corporation, in its SMEs Fact Sheet, published in 2019, "simple internal controls, when properly designed, help prevent fraud and allow for more accurate financial reporting and planning."^[33] Conversely, a poor control system may promote financial indiscipline, enabling the owner of an OPC to divert business loans to support ostentatious living. Based on the foregoing, banks and providers of business loans are more attracted to companies with good track record of governance.

b. Responsibility

Being the key personnel of the organisation, the sole member of the OPC is responsible for oversight functions. He may however, be assisted by other persons but the buck ends at his table. In navigating the company therefore, he must strike a balance between the interests of the company and that of other stakeholders such as employees, regulatory agencies, suppliers of raw materials, the local community and institutional financiers of the organisation, such as banks.

c. Transparency

The Board, as composed by the sole member is required to make accurate and timely information about matters ranging from financial information, conflict of interests and risks.

As noted by Prachi Juneja,

"The processes of proper disclosure and transparency are to be followed so as to provide regulators, the general public and other stakeholders with precise and accurate information about the financial, operational and other aspects of the company."^[34]

In the pursuit of transparency, OPCs as with all companies in Nigeria, are thus required to keep proper accounting records. The relevance of such records are two-fold: Firstly, It is to ascertain the financial position of the company and secondly, to aid the director in preparing the company's financial statements, particularly in ensuring compliance with the form and content prescribed under the CAMA.^[35]

The Act further states that accounting records shall contain daily entries of a company's income and expenses, the specific items involved in such transaction, together with a

record of the assets and liabilities of the company.^[36] It is equally provided that where the business of a company involves dealing in goods, the accounting records shall contain a statement of stocks held at the end of the year, as well as, the goods sold and purchased, other than those sold by retail trade.^[37]

In terms of outcome, corporate governance violations may involve a wrong or criminal violation. In any case, the governance regime ensures that appropriate sanctions are meted out as each circumstance may demand.

Corporate Governance Challenges for the One-man Company in Nigeria

Despite the prospects it offers, the adoption of good corporate governance has sometimes been confronted by stiff resistance. Three major obstacles may account for this: Firstly, the dearth or absence of persons with good governance skills. Secondly, in a developing country like Nigeria, many OPCs may not afford the budget requirement for retaining the services of experts in good governance. Thirdly and equally worrisome, many OPCs owners may simply lack awareness on the relevance of good corporate governance.^[38]

In view of the points canvassed above, some OPCs may lack internal control mechanisms and this will definitely have a bearing on the quality of corporate governance in place. Where, for instance, there is poor accounting record without a clear demarcation between the funds of the business and the sole member, financial indiscipline and misappropriation may creep in. In the end, organisational goals will be adversely affected and that may signal the collapse of the business.

The convergence of executive and supervisory functions on the sole owner in some instances may prove detrimental to the future of the business. Where he lacks the skills to maintain a management style that is supportive of good governance, the company will suffer adverse consequences.

Suggestions

Relevant agencies such as the media, SMEDAN (Small and Medium Enterprises Agency of Nigeria), the Corporate Affairs Commission as well as non-governmental organisations should consider enlightenment programmes to support capacity building, particularly in the area of corporate governance.

OPCs are also encouraged to establish internal controls to manage risks, as this is required for maintaining financial discipline, curtailing frauds and managing growth.

Furthermore, where an OPC can afford it, the company should engage the services of professionals for advice and support on corporate governance.

While it is not mandatory for OPCs to engage the services of a secretary or keep certain records such as minutes book and the record of secretaries, it is however, suggested that secretarial functions and other administrative mechanisms which support good governance should be maintained.

Conclusion

OPCs, like other business organisations with duties and responsibilities towards stakeholders must embrace the tenets of good corporate governance. Maintaining a balance between the conflicting interests of stakeholders is key for the continued existence of a company. To achieve this, proper controls are inevitable.

The principles of responsibility, transparency and accountability are the hallmarks of governance. As highlighted above, these values are major determinants of public perception and the sustainability of business. On the whole, bad governance will likely expose a company to civil actions or prosecutions and this may lead to the collapse of the company.

References

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8. *Ibid.*
9. Formerly known as WorldCom Inc.
10. It is hereby noted that the “Sarbanes-Oxley Act” derives its name from its sponsors: Senator Paul Sarbanes (D-Md.) and Representative Michael G. Oxley (R-Ohio) – See for instance: Will Kenton, “Sabarnes-Oxley Act: What it Does to Protect Investors,” last modified May 2022, accessed October 4, 2023, <https://www.investopedia.com/terms/s/sarbanesoxleyact.asp>
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25. *Ibid.*, s. 27 (2) (a)
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