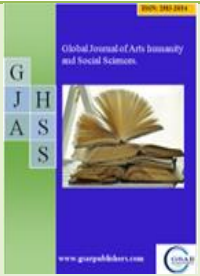


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AN IMPLEMENTATION OF LIMITED LIABILITY SINGLE SHAREHOLDER COMPANY IN TANZANIA: EXAMINATION OF LAWS AND PRACTICE

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Abstract

This article examines the laws governing implementation of limited liability single shareholder company in Tanzania. It was established in Tanzania since 2012 after companies Act being amended to include single shareholder company. its implementation depends on the regulation made by the minister responsible. Regulation which was made in 2014 require registrar to establish register for single shareholder company in Tanzania which are never established. There some challenges which encounter it delay which including economic reason, administrative challenges, lack of political will as well as legal challenges. It also recommended in this article different action to be taken in order to ensure immediate implementation.

Key words: Company, single Shareholder Company, Limited liability company, Implementation of the Laws

INTRODUCTION

For a long time ago, there are different mode of doing business in the world. Among of the mode is registered companies as a Morden business association where is formed and registered as a favorable mode of doing business in the world. The company is incorporated according to the laws, rules, regulation, process and procedure which are expressly stipulated.

Single shareholder company is the new mode of establishing and running a company business mode in the world. The old mode of running a company mode is more than one shareholder or more than one person company depending on the legal system of a certain state.¹ The name company itself reflect the concept of an association of more than one person with the same objective or purpose of doing business.² However in the business venture and

the development of science and technology in the world, the transformation of how to govern the company business occurred hence one person company.

Single person company allow an individual to own a company as a mode of doing business without facing statutory requirement of including other people in his or her business. This kind of business is now practiced in different countries in the world for long time. Tanzania is not practiced even though in 2012 the Parliament passed the laws to allow and govern single shareholder company in Tanzania.

COMPANY

This is also known as corporate or legal person. According to the provision of section 2³ define a company to mean a company formed and registered for investment, trade, or commercial activities under Companies Act. Company also defined to mean an entity formed by the legal procedures stipulated by the laws

¹ Salah Mohammed (et al) (2023), Sigle Shareholder Company in Africa, America and Australia: A Comparative analysis, SRIWIJAYA Law Review, University of Malaysia P. 48

²<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.etymonline.com/word/company>

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Accessed on 19/08/2024 at 13:28

³ The Companies Act CAP 212 R.E 2023



governing company affairs. Normally a company is group of people join together for the common aim or objectives. It can be commercial, non-commercial, or industrial enterprises. A company can be formed by one or more than one person depending on the legal framework of a certain state.⁴ Once a company is incorporated became a legal person separate from its shareholder, capable to own properties, inter into contractual relationship including taking loan from financial institutions, with perpetual succession and having a common seal of the company.⁵

SHAREHOLDER

Shareholders are the owner of the company by way of sharers or any other mode stipulated or prescribed by the laws. Shareholder own assets and liability of the company on the basis of the shares contributed.⁶ Shareholders can be natural or artificial person. Shareholder either natural or artificial person own a company or financial interest in a company in terms of shares. The concept of shareholder in the company discussed in the same line with the concept of legal personal separation. This is the principle which draw a separation between owner of the company and company itself. The only way in which a person who own a company can control the company is through right vested to him by way of shares.⁷

A person became a shareholder after a company be incorporated and shares by any legal means which can be by way distribution, gift or buy it from the company. shareholder is not necessarily be the subscriber of the Memorandum and article of Association as the document used to form and run the activities of the company, instead a shareholder remains a member of the company. a person became legal shareholder or member after a legal process are followed as prescribed by the law.

A subscriber who also is the member of the company are the one who involve in the formation of the company and sign the constitution of the company. section 3⁸ provide that any two or more-person subscribing their name to the Memorandum and Article of association may form a company save a single person

⁴ Janet Dine, (2001), *Company Law* 3rd Ed, New York, Palgrave Pp. 2-4

⁵ See the case of Union Bank of Nigeria PLC Vs. F.E Orharhuge (2000) 2 NWLR 495

⁶ Anner Marie, (2020) Shareholder Theory: Encyclopedia of Sustainable Management Springer Nature, Ulster University available

at https://www.researchgate.net/publication/340620401_Shareholder_TheoryShareholder_Value.

⁷ Julian D Velaso, (2008), Shareholder Ownership and Primacy Vol 3, University of Bucaramanga P 23. Available at ResearchGate.

https://www.researchgate.net/publication/228170259_Shareholder_Ownership_and_Primacy.

⁸ The Companies Act No 212 of 2002 as amended from time to time

under limited liability single shareholder company. section 24(1)⁹ provide that any subscriber of the Memorandum of Association and article of association agree to be a member of the company and his or her name shall inter in the register of the member of the company. section 24 (2)¹⁰ provide that any other person according to the procedural stipulated by the law agree his other name to be registered in the register of the company became a member of the company.

SINGLE SHAREHOLDER COMPANY

From an ordinary concept, the company shall be formed by more than one person. However there established new concept which is single shareholder company in which only one person allowed to form a company. single shareholder company have a limited liability either by guarantee or by share in which all shares are belong to the single person and not more than one person as other companies are registered. The limitation of the member of company is only one member, and in case there an additional of the member, the status of the company changes automatic from single shareholder company to private or public company depending on the circumstances. Also, legal requirement on the management of the companies which are applicable to the company having more than one shareholder is not the same as the single shareholder company where a single person can also be a company director without necessitated to have a company secretary. The important character of this type of company is owned by only one individual.

Doctrine of separate legal personality are also applicable to the single company shareholder. Assert of the company and liability of the company can never shift to the foot of the shareholder due to the reason that he the sole shareholder of the company.

LAWS GOVERNING SINGLE SHAREHOLDER COMPANY IN TANZANIA

Constitution of United Republic of Tanzania, 1977 as Amended from Time to Time

Tanzania gets its current constitution in 1977 which have several amendments. The Tanzania Constitution among other character, it has had constitutional supremacy character.¹¹ The constitutional supremacy requires that all laws of the land to get it legitimacy from the constitution. According to the provision of Article 22 provide for right to work. However, constitution is silent on the definition of what is work. According to **ryner**¹² define work to mean

“Work, n. 1. Physical and mental exertion to attain an end, esp. as controlled by and for the benefit of an employer; Labor.”

⁹ *ibid*

¹⁰ *ibid*

¹¹ Article 64 (5) of the Constitution of United Republic of Tanzania, 1977

¹² Blacks Laws Dictionary

From this definition a person to establish a company is amount to work with intention of getting benefit from that work.

According to the provision of article 24¹³ provide right to own property in Tanzania. In other word constitution provide right and protection to own property. The constitution is silent on what amount to property. According to **ryner**¹⁴ define property to mean

“In its widest sense, property includes all a person's legal rights, of whatever description. A man's property is all that is h i s in law”

According to Elizabeth A. Martin¹⁵

“Anything that can be owned. A distinction is made between **real** property and **personal property** and between **tangible property** (that which has a physical existence,) and **intangible property** (choses in action, including intellectual property, and incorporeal hereditaments).”

From this definition borrowed from law dictionaries comprise shares as intellectual property protected under the provision of article 24 of the constitution. Therefore, it is from these provisions of the Constitution where other laws governing single shareholder company in Tanzania including Companies act get its legitimacy to operate and govern company business in Tanzania. Article 8 (1) (b)¹⁶ require government to ensure welfare of the people as the primary responsibility. Among of the welfare of the people in Tanzania is to ensure every person has favourable environment to generate wealth by doing business including company business. Furthermore, Constitution under Article 9 (e)¹⁷ emphasize promotion and development of Tanzanians economy through different ways including establishment of limited liability single shareholder company as a way in which everyone get an opportunity to participate on it.¹⁸

The Companies Act CAP 212 R.E 2023

This is important law in Tanzania as far as companies is concerned. Is the law used govern and supervise companies in Tanzania. among of the area which are governed are ownership of the company, formation, registration, maintenance, management as well as winding up of the companies. It managed to establish different type of companies in Tanzania as provided under section 3¹⁹ which are public limited companies, private limited companies, limited liability single shareholder companies as well as companies limited by shares and companies limited by guarantee.

The provision of section 28,²⁰ establish limited liability single shareholder company in Tanzania, in which single person is allowed to form a company. Furthermore, the requirement on

registration of this kind of companies shall fill up the names of the member and full address of the members shall appear on document used on registration clearly. Also, identification and statement which show that a company will be formed by one member only shall also clearly appeared on the document used in the registration including memorandum of association.

In case a company need to increase number from one person to more than one person company shall meet the criteria stated under the Companies act and Regulation govern Limited Liability single shareholder company. The provision of section 28 (3)²¹ requires the name and address of the new member to be entered into the records of registrar of members of the company. The laws further requires that the information relating to the name and address of the person who was a only member on that company, statement that a company are no longer limited liability single shareholder company as well as the information of the time which the event has occurred.

The provision of section 189,²² provide for the management of the company in which a company director is the person who manage day to day activities of the company. The laws allow limited liability single shareholder company to be managed and controlled by one director, unlike public and private limited companies where directors shall be two. Limited liability single shareholder company is not mandatory to have a company secretary like a private and public limited liability company. Regardless of this standards on running a company the law does prohibit appointment of company secretary in single shareholder company.

Laws governing limited liability single shareholder company governing also winding up process as a stage which make the company ended. According to the provision of section 278²³ provides that District or Resident Magistrate Court has power and original jurisdiction to deal with winding up or liquidation process of the company in case of a single shareholder company. To ensure implementation of the limited liability u single shareholder company, Minister responsible for trade make as provided under section 28(5)²⁴ which govern all aspect including ownership perspective, registration process, operation of the company, management and winding up process.

The Companies (Limited Liability Single Shareholder) Regulation G.N No 129 of 2014

This is the specific regulation which was established by the minister responsible for trade under the provision of section 28(5) and 278.²⁵ This regulation was made in order to enable implementation of limited liability single shareholder company which was established since 2012 discussed previously. The regulation is governing different aspect as far as limited liability

¹³ Constitution of United Republic of Tanzania,1977

¹⁴ Blacks Laws Dictionary

¹⁵ Oxford Law Dictionary

¹⁶ The Constitution of United Republic of Tanzania, 1977

¹⁷ ibid

¹⁸ Article 22 (1) ibid

¹⁹ The Companies Act Cap 212 R.E 2023

²⁰ The Companies Act CAP 212 R.E 2023.

²¹ ibid

²² ibid

²³ ibid

²⁴ ibid

²⁵ ibid

single shareholder is concerned. For instances it governs registration process in which it requires registration to be done on prescribed form No LLSSC A and B. These forms are used to fill important and necessary information concerning company and promoters or subscribers. Currently companies are registered electronically.²⁶

Other documents which are used on the process of company registration of LLSSC is memorandum of Association which shall be signed by the subscriber and printed in Swahili and English language before filed to the registrar of companies. The regulation also requires the words limited liability single shareholder company to appear soon after the end of the name of the company, for the purpose of notify the general public that the company is owned by the single person.²⁷

The regulation also governs the issue of corporate governance, operation, and management. According to the regulation 6²⁸ mandated that on the management of the company to have two officers, which among of them should be a company director. The second officer may either be a company secretary which is not a mandatory position, or a nominee director or alternate director. Regulation 6 (2)²⁹ director of the company has the duty to appoint company secretary and determine his remuneration. On the appointment of company secretary is important to adhere standard of appointing company secretary on private and public company in order to have strong company management.³⁰

upon death of the company shareholder in which at the time of his death was also a company director, a company secretary or alternate director or nominee director shall manage and control a company until the process transfer of shares and ownership is settled.³¹ In Tanzania private or public company is prohibited to change or reduce their number of shareholder to minimum of one person for the aim of form single shareholder company. However, it is allowed for single shareholder company to increase its member to form private or public company upon following prescribed procedures and requirement.³²

Meetings on the company is taken as the life of the company in which all decision of company are made. Different resolution is made on the meetings on different issues and aspect concerning the company management an operation as well as to make a company ended. On the limited liability single shareholder company shareholder meeting can be done by a single person compare to other form of company which quorum shall meet depending on the

number of shareholders who are eligible to attend on the company meetings.³³

Regulation 16³⁴ require registrar of companies to establish register for limited liability single shareholder company as a way to ensure its implementation. Since single shareholder company is not legally recognized as private company in Tanzania need to be handled in its own way. The function of the registrar of companies among others is to ensure maintenances and keep register of limited liability single shareholder company in Tanzania.

The Aspect Limited Liability single shareholder Company in Other Jurisdictions

Limited liability single shareholder company is not only established in Tanzania but also in another jurisdiction like Kenya and South Africa. Therefore, for the purpose of this article is considered as a benchmark jurisdiction to Tanzania.

Limited Liability Single Shareholder in South Africa

In south Africa, Companies are governed by the companies Act³⁵ and its regulations. Different type of companies is allowed and operated within South Africa including one personal company or single shareholder company in other words. Single shareholder company in South Africa is recognized and treated as a private company, in which all provisions govern private companies with more than one company also bind the same, save for few provisions which apply only to the single shareholder company.³⁶ On the ownership structure single shareholder company should have only one person who is allowed to subscribe memorandum of incorporation.³⁷

On the management of the company in South Africa, private companies is allowed to have one director in the management of the company. But it is not legally prohibited to have more than one company director depending on the structure and arrangement of the company.³⁸ Every company should have board of director which is important stakeholder on corporate governance structure. It held to coordinate relationship between owner of the company and management of the company activities as well as to supervise and control the company activities to ensure it comply with all legal requirement.³⁹

Laws governing companies in south Africa emphasize much on transparency, accountability, and integrity a important principle of corporate governance, which shall be adhered by all companies in South Africa.⁴⁰ Auditing is among of the mandatory requirement

²⁶ Regulation 3 of The Companies (Limited Liability Single Shareholder) Regulation G.N No 129 of 2014.

²⁷ Regulation 4 ibid

²⁸ ibid

²⁹ ibid

³⁰ Regulation 6 ibid

³¹ Regulation 13 ibid

³² Regulation 7 ibid

³³ Regulation 9 ibid

³⁴ Ibid

³⁵ No 71 of 2008

³⁶ See section 13 (1) of the Companies Act No 71 of 2008

³⁷ See section 14 and 15 of the Companies Act No 71 of 2008

³⁸ Section 57(3) and 66 (2) ibid

³⁹ Section 66 of the Companies Act No 71 of 2008

⁴⁰ Part C of the Chapter 2 of the Companies Act No 71 of 2008

which enhance and ensure principle of accountability and transparency is adhered within the company operated in South Africa⁴¹ Therefore, the laws governing and specifically limited liability single shareholder company is more adequate compared to that of Tanzania especially on the area of company registration and corporate governance.

Single Shareholder Company in Kenya

Kenya is among of the state which establishes and implement single shareholder company as a way of running a company and business. Laws of Kenya which govern company affairs do not establish single shareholder company as a special kind of companies. It termed as private company where required number of members of the company shall be one person up to fifty people as maximum number of the members of the company.⁴² On the process of forming a private company which include single shareholder company it need one person to subscribe a memorandum of company or incorporation by submitting all required information concerning company and its shareholders in the prescribed form.⁴³

Procedures and requirement are the same for company registration. Different documents which are required when a single shareholder company are registered are the same with registration of other private company. A registrar of companies is not allowed to register a company if is not comply with all legal requirement as required by the law. Day to day management of the company require a minimum number of single director or more depend on the capacity, structure, and arrangement of the company.

Adequacy of the Laws Governing Limited Liability Single Shareholder Company in Tanzania

As discussed before in Tanzania there are different laws governing single shareholder company which include companies Act and its regulations. These laws are not clear and complete because it lacks some important features on registration as well as corporate governance structure. The stage of Registration and incorporation of company which make a company came into existence is important area to be governed properly. Laws shall provide all important and necessary requirement in order to enable every one to access it without obstacles. For instances the provision of section 3⁴⁴ provide for kind of companies which can be incorporated and also some preliminary requirement for company registration or formation. Among of the them are an individual shall subscribe his name on the memorandum of association depending on the type of companies intended to be registered.

The Provision of section 3 (4) and 15⁴⁵ provide that on the registration process information like date of birth or date of incorporation of registration, nationality, country of Residence, residential address or an address of registered office, national identification Number, tax identification Number, and any required information by the registrar of companies to be filed in order to accomplish the process. There several documents which are used in the process of registration of limited liability single shareholder company. Among of those documents includes Memorandum of association which shall be required to be signed by subscriber as well as containe all information concerning the company and shareholder. other documents include LLSSC Form No 14a and 14b⁴⁶ which are containing information of the first director, first secretary and registered office should also fill to the office of company registrar. The significance of this information especially on the registration process is to ensure legal compliance, identification purposes as well as to ensure transparency and accountability as a basis of corporate governance.⁴⁷

To maintain and keep record of companies is expensive, therefore laws requires that any person intended to form a company to pay registration fee as a way to contribute the expenses used by the government or established authority to keep records of those companies. In Tanzania also laws requires that a person who need to register limited liability Single shareholder company, to pay registration or incorporation fee on amount which will be described by the minister responsible for trade.⁴⁸

Challenges Facing the Implementation the Legal Framework Governing Limited Liability Single Shareholder Company in Tanzania

Laws governing Limited Liability single shareholder company in Tanzania face several challenges which hinder the efforts of its implementation. Those challenges are categorized in to major challenges which are legal challenges, administrative challenges, lack of political will as well as social challenges or lack of clear information concerning limited liability single shareholder company to both officers of the office of registrar of companies and community in general.

Legal Challenges

⁴⁵ See Section 3(1), and 15 of The Companies Act CAP 212 R.E 2023 read together with Regulation 4 of the Companies (Limited Liability Single Shareholder Company) Regulation G.N No. 129 of 2014

⁴⁶ See Regulation 3(2) (a) read together with Schedule of the Companies (Limited Liability Single Shareholder Company) Regulation G.N No. 129 of 2014

⁴⁷ WATSON Richard, (2024) *What are Legal requirement for Company Incorporation*, Hong Kong, Peninsular Corporation Limited. P17

⁴⁸ Regulation 5 of the Companies (Limited Liability Single Shareholder Company) Regulation G.N No. 129 of 2014

⁴¹ Section 84 (1) (c) ibid

⁴² Section 9 of the Companies Act CAP 486 R.E 2022

⁴³ Section 11 of the Companies Act CAP 486 R.E 2022

⁴⁴ The Companies Act CAP 212 R.E 2023



The laws governing limited liability single shareholder company experience legal lacuna. The basis of this legal gap emanated from both Companies Act as well as regulations govern single shareholder company. The laws make single shareholder company as a unique type of company different from private company. It further requires specific laws to be made in order to manage the said type of companies. Regulation was made but it does not cover all aspect of company, both on registration procedures and requirement, corporate governance, and creditors protection. The power of registrar of companies to implement single shareholder company is affected hence delay for more than ten years since its establishment.

This affects the power of the registrar to establish the register for single shareholder company. Some area like management of companies is not well covered by failure to ensure all principle of corporate governance including transparency, accountability, integrity, and responsibility are included in the regulation in order to ensure management are proper and effective as well as they comply with legal requirement. The nature of legal framework governs single shareholder company in Tanzania allow a single person o hold almost all managerial power in the company something which may affect the implementation of the principle of corporate governance as well as affect the extent in which a company comply with its objective of establishment.

Administrative Challenges

Registrar of Companies in Tanzania is the head of the BRELA as an executive agency established to implement different enacted laws concerning companies' affairs. Has mandated to implement laws governing limited liability single shareholder company under provision of regulation 16.⁴⁹ The provide that registrar shall establishing register for limited liability single shareholder company as to enable its practicability of this kind of company within Tanzania jurisdiction. Furth more Registrar of Companies is chief administrative officer who according to the laws is the person who supposed to take administrative action to enable establishment register for single shareholder company, the modality of registration, any further document than that mention in the laws and platform which enable access for registration.

However, since the enactment of the laws governing single shareholder company registrar of company is never establish the said laws something which was taken as administrative weakness. Furth more the minister responsible who is the chief supervisor of all institution and department work under the ministry of trade as well as implementor of the trade and business policy in Tanzania was never take further action to ensure or pressurize the establishment of the said laws since 2014 after regulation was made. This administrative action is important because it helps to fulfil the objective of these laws.

Recommendations

Government should take all necessary means to ensure implementation limited liability single shareholder company in Tanzania by correcting the discovered challenges including provide support to the office of registrar of companies like financial support as well as skilled human resources which are able to deal with limited liability single shareholder company. Furthermore government through minister responsible should enacting new regulation which will cover all important aspect especially on registration procedures, corporate governance as well as creditors protections.

Legislature is also recommended to amend Companies Act particularly on the area concerning limited liability single shareholder company to include procedures for registration, if the Limited liability single shareholder is private company, principle of corporate governance as well as how creditors will be protected in case the company under liquidation or winding up. South Africa Mode of running limited liability single shareholder company is the best mode to be adopted in Tanzania legal regime because it creates an easiest to especially on the management of the company, registration as well as creditors protection

Registrar of Companies in which according to the laws is responsible to ensure implementation of the laws governing company affairs including limited liability single shareholder company to take extreme and immediate administrative action to ensure implementation of the said laws. Registrar of companies should clearly establish practical procedures for company registration which every person intended to establish single shareholder company can refer to.

⁴⁹ The Companies (Limited Liability Single Shareholder Company) Regulation G.N No 129 of 2014