

Formation and Management of a Single Member Company in Uganda.

1.0 Introduction.

A single member company herein after referred to as “SMC” is defined as a private company limited by shares or by guarantee, which is incorporated with one member, or whose membership is reduced to one personⁱ. This is a new development as the Company Act Cap 110 did not provide for it, it was impossible for an individual to form a company as a minimum number of persons were two membersⁱⁱ. In essence, a single member company is a sole proprietor doing business with the kind of protection granted to shareholders in a limited liability company. It operates like any private company in all respects. A single person, be it individual (natural person) or corporate (artificial entity) may register a company as sole member and shareholderⁱⁱⁱ.

The need for reform was instigated by a number of arguments; for example, the Company Act 2006 (United Kingdom) upon which the Ugandan company law is based adopted the formation of a SMC, more so, with the changes and developments in Ugandan business trends, more people and entities leaned more towards starting sole proprietorships than the usual private entities. These businesses equally contribute to the development of the country as much as other companies do but were being held back by the legal requirements of Company law. There was therefore the need for reform to allow the formation of single member companies.

2.0 Formation.

A SMC is regulated by the Companies (single member) regulations 2016 (herein after referred to as the regulations) and the Company Act of 2012. Section four thereof provides that any one or two persons may for lawful purposes form a company by subscribing their names to the memorandum of association or registering the company as provided under the Companies Act. As a first step, the persons to desiring to form a SMC must reserve a name with the registrar of companies, within the Directorate of Business Registration at the Uganda Registration Services Bureau (URSB)^{iv}. Every single member must add the initials “SMC LTD” or the words Single Member Company Limited at the end of its name. The Memorandum and Articles of Association (MEMARTS) must be submitted with the forms to the Registrar. These forms are found at the URSB website or offices which include, Form 18, Form 20, Form s.18, Form A1. The MEMARTS must state the objectives, share capital and other details in regard to shares of the company; Regulation 5 provides that the MEMARTS shall with necessary modifications take form enshrined in Table B of the Second Schedule to the Companies Act 2012. The requisite fees must be paid in the bank before filing these documents and it’s upon this that the Registrar then issues a Certificate of Incorporation.

3.0 Operation Framework of a Singe Member Company

A single member company is regulated by the Company (Single Member) Regulations of 2016 and SMC is a sole proprietorship doing business with the kind of protection enjoyed by shareholders in a limited liability company. These include insulation from attachment in case of any liability arising from the company.

Holding of Meetings: There are different types of meetings, these include general meetings and annual general meetings, and a single member company is required to hold these meetings like any other private company. At times, general meetings can be dispensed with at the discretion of the single member, but the reports, accounts and other activities that take place during these meetings must be prepared in writing and forwarded to the member and Registrar within 3 days^v. Meetings are required for matters like appointment or removal of auditors, secretary, director etc.

The registrar can also direct the holding of meetings if they deem it necessary in a SMC. Annual General Meetings can also be dispensed with but the decision shall have an effect for a year but shall not affect any liability already incurred by reason of default in holding an AGM. An auditor or single member can request the holding of the AGM with notice to the company. The provisions of the Company Act 2012 apply to the holding of these meetings, these include notices to convene the meeting, resolutions, and the timelines within which these should be done and registered with the registrar. If a sole member makes a decision without holding a meeting, this decision should be notified to the company in writing^{vi}.

Appointment of Directors: Under regulation 6, beside the single member, two directors must be appointed, that is a nominee director and alternate nominee director who can carry out the duties of the single member in case of death or absence of the single member respectively. These two have specific duties which include managing the affairs of the company in case of death of the sole member until the transfer of shares to the legal heirs of the single member. The second duty is to inform the Registrar of the death of the single member, provide particulars of the legal heirs and in case of any impediments reports the circumstances seeking directions within 15 days after the death of a single member. They are also responsible for calling the general meeting of members to elect directors. The provisions of the Act on appointment, duties, removal and transactions involving directors apply to SMC.

Company secretary: Section 187 of the Act requires every company to appoint a secretary. S. 187(3) and Regulation 9 of the First schedule provide that a SMC may appoint a company secretary. Section 188 forbids a sole member/director from being a secretary. It's not mandatory for a SMC to appoint a secretary, but in case of appointment, Regulation 12 provides that the Registrar must be notified of the appointment of the secretary. A secretary in a SMC has similar duties like any other private company spelled out in the Companies Act of 2012.

Shares and share capital: Under the Companies Act, a SMC can transfer or allot shares on either the death of the single member, operation of law, or the SMC converting into a

private company not being a single member company. All these are done through passing special resolutions and alter the articles accordingly and notify the registrar respectively. Regulation 3 of the First schedule requires that if shares are transferred to more than one person, the SMC then becomes a private company after passing of a special resolution to that effect.

SMC converting to a private company: Under Regulation 5 of the First Schedule, a SMC can be converted into a private company not being a single member and file a notice in writing with the registrar within a specified time from the time of passing the resolution and a private company can also convert into a SMC upon all shares being transferred to a sole person.

Accounts: Regulation 11 of the First Schedule provides that the director shall cause to be kept proper and duly edited books of accounts in accordance with the Act to be laid before the company in a general meeting. Auditors must be appointed and perform their duties in accordance with the Act.

Lifting of Corporate Veil: This goes hand in hand with who bears liability in a SMC, the single member as a director is availed the protection of limited liability doctrine where the company is liable in case of any liability. Even if the assets of the company are insufficient to cover the debts of the company, the creditors of a company are not able to request the sole member to assume the liabilities incurred by the company. The whole idea of lifting the corporate veil is to protect creditors from the abuse of directors hiding under the protection of the company. The nature of a SMC where all shares are in the hands of one person is risky and dangerous if anything goes wrong.

Section 20 of the Act provides that the High Court may, where a company or its directors are involved in acts including tax evasion, fraud lift the corporate veil. This a stipulation that did not exist in the previous Companies Act and marks the codification of common law rules that apply to lifting the veil and which have been variously implemented by Ugandan courts. This means that just like any other private company, if a sole member abuses his power and misuses the assets of the company for his own benefit, the veil will

be pierced and the member or board of directors will be liable to the creditors. This principle was emphasised in the case of *Salomon vs Salomon & Co. Ltd* [1897] AC 22^{vii}.

4.0 Advantages and Challenges of a Single Member Company

Advantages: The advantages of a SMC are almost similar to those of a private limited liability company; they include;

- Limited liability protection for the sole member where the assets of the company are separate from those of the sole member.
- The existence of the company does not cease on the death of the sole member.
- There may be additional tax benefits in setting up a SMC because limited liability companies are subject to lower corporation tax.
- SMC can dispense with the holding of general and annual general meetings as long as the reports and accounts are forwarded to the sole member.
- Due to the existence of one member, decisions are made faster, notices, resolutions, are passed and applied faster compared to other companies. This is because the sole member has full control over how the business is operated hence able to make independent decisions without having to deal with shareholder fall backs.

Challenges:

- The informal nature of a sole proprietorship makes it harder for the company to obtain credit, raise equity capital, and establish a value for the business than if it was an organised corporation with a board of directors, shareholders who are all legally responsible for the business, institutions like banks are most likely to consider fully structured entities where risk is distributed among owners than where everything lies on a sole member.
- Due to the sole nature of membership, if the sole member is for example out of the country, it may be hard to get documents signed and registered on time.
- Access to foreign direct investment may be a challenge as the sole ownership structure of a SMC may not be viable for foreign investors who usually want control along with lasting interest in an entity.

- Lifting of the corporate veil may also pose a challenge as the courts may be tempted to invoke this rule easily despite the fact that a SMC cannot be treated as alter ego of sole owner.

ⁱ A Practical Guide to Company Law and Practice in Uganda. Nelson Nerima.

ⁱⁱ Section 3 of the Company Act Cap 110.

ⁱⁱⁱ Paul L. Davies, Gower and Davies' Principles of Modern Company Law

^{iv} The Company (Single Member) Regulations 2016

^v Regulation 7 of the First Schedule of the Single Member Regulations 2016.

^{vi} See Regulations 6 and 7 of the First schedule of the 2016 Regulations.

^{vii} [1897] AC 22

Lilies Leaf Chambers, Ground Floor, Wing 1B,
Plot 2B3, Kyambogo Drive - Off Martyr's Way,
Minister's Village, Ntinda, Kampala.
P. O. Box 28946, Kampala
Tel: +256 414 668596
Email: info@franktumusimeadvocates.com
Website: www.franktumusimeadvocates.com