



ISSN Print: 2541-5298  
ISSN Online: 2541-6464

# SRIWIJAYA Law Review

**Editorial Office:** Faculty of Law, Sriwijaya University  
Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.  
Phone: +62711-580063 Fax: +62711-581179  
E-mail: sriwijalayalawreview@unsri.ac.id| sriwijalayalawreview@gmail.com  
Website: <http://journal.fh.unsri.ac.id/index.php/sriwijalayalawreview>

## Single Shareholder Company in Africa, America and Australia: A Comparative Analysis

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| Article  | Abstract  |
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| <p><b>Keywords:</b><br/><b>Africa; America; Australia; Business control; Comparative analysis; One Person Company; Single Person Company.</b></p> <p><b>Article History:</b><br/>Received: Sep 14, 2022;<br/>Reviewed: Jan 4, 2023;<br/>Accepted: Jan 6, 2023;<br/>Published: Jan 31, 2023.</p> <p><b>DOI:</b><br/>10.28946/slrev.Vol7.Iss1.2142.pp47-61</p> | <p>Single Person Companies (SPCs), known as One-Person Companies (OPCs), are a revolutionary concept and a new invention in the field of international company law. This study aims to investigate the meaning of OPC and how it is used in three different continents, namely Africa, America, and Australia, focusing on legal entity, OPC incorporation process, minimum share capital, nominee appointment, and OPC conversion. The researchers used the doctrinal data collection method to study relevant journals, articles, books, papers, and internet sources. When choosing the sample States, the researchers use the Gross Domestic Products (GDPs) as a methodological yardstick. According to the findings, only a natural person may form an OPC in some jurisdictions, such as Caledonia and New Zealand. The ability of both natural and legal persons to incorporate OPC has been made explicit in nations including South Africa, Nigeria, Algeria, and Argentina. The outcome further illustrates that in nations like the USA and Caledonia, only citizens of such nations or individuals who are residents of New Zealand are eligible to incorporate OPC. The minimum share capital for creating an OPC should be reasonable to enable the lower class to establish OPC and fully control the business.</p> |

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### INTRODUCTION

The Concept of OPC was first introduced in England in the famous case of *Salomon v. Salomon*<sup>1</sup> which was later codified in 1925. Since then, OPC has become widespread in countries like the USA, China, Singapore, EU countries, Qatar and India.<sup>2</sup>

<sup>1</sup> House of Lord, Appeal Court (1897) AC 22.

<sup>2</sup> Amin M, "One Person Company: Challenges and Prospect in the World Today," *Zenith International Journal of Multidisciplinary Research*, 2018, 174.

Contrary to the traditional practice of corporations, wherein at least two members are statutorily necessary for its establishment, a One Person Company (OPC), also known as a Single Person Company (SPC), is a modern type of company founded by one person, the only shareholder. OPC is a ground-breaking idea in global corporation law practice established today to give ambitious individual entrepreneurs a chance to enter a corporate framework with full legal status/entity independence from the owner. By having the status of a private limited company, one can access loans from individuals, banks, and other corporate bodies; receive credits and credit facilities from governments, corporations, and individuals; enjoy limited liability as the sole shareholder; and benefit from corporate market and legal protection under a different legal name from that of the owner. OPC is a mix between a sole proprietorship and a company as a means of conducting business.<sup>3</sup>

Many nations, including Togo, Ghana, Liberia, Turkey, Afghanistan, Niger, Brazil, Azerbaijan, Bahrain, and Bangladesh, have yet to domesticate OPC as a part of their national business law practices despite this significant advancement and the advantages it has brought to support the expansion of the economy. This is because, despite its numerous advantages, some difficulties may still arise, such as the fact that one individual can only incorporate one OPC at a time. Second, neither a candidate nor a beneficial interest in an OPC may be a minor. Additionally, an OPC cannot independently change into a private or public business.<sup>4</sup>

The practice of OPC also raises the question of whether the company's sole shareholder will be allowed to be a creditor of his own company, thereby lifting and penetrating the corporate veil. This study aims to investigate the meaning of OPC and how it is used in three (3) different continents, namely Africa, America, and Australia, with a focus on legal entity, OPC incorporation process, minimum share capital, nominee appointment, and OPC conversion. As a result, 5 (five) nations from each continent are chosen to make up the sampling. The Gross Domestic Product (GDP) of each of the five continents where samples for this study were chosen is used as a selection method.

## RESEARCH METHOD

This study adopted a Comparative Legal Research Methodology, which involves a critical analysis of different bodies of law to examine how the outcome of a legal issue could be different under each set of laws. A comparison is being made between different jurisdictions, that is, Africa, America and Australia continents, to identify the similarities and dissimilarities of the legal framework of OPC. This method is further used as a critical analytical tool to distinguish particular law features in the said jurisdictions.

## ANALYSIS AND DISCUSSION

### The Concept of A One-Person Company

OPC, as the literal meaning of it connotes, is a company owned by one person.<sup>5</sup> It is also defined as a company which has one corporate shareholder entity, where legal & financial liabil-

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<sup>3</sup> T Orhnia, *Limited Liability and the Corporation*, ed. Croom Helm (London & Canberra, 1982).

<sup>4</sup> Kanisshiks Tyagi, "One Person Company-Soon to Be Reality," *Lex Witness* 3, no. 6 (2012): 23–33.

<sup>5</sup> Bei-hu Miao, "A Comparative Study of Legal Framework for Single Member," *Journal of Politics and Law* 5, no. 2 (2012): 312.

ity is limited to the company only.<sup>6</sup> Being a private company, the laws regulating other private companies also affect the operation of OPCs. Additionally, an OPC must include “One Person Company” at the end of their names, much like private companies must use an inscription like “ltd” or “plc” in their names.

Shameema and Hetha<sup>7</sup> argue that OPC is a revolutionary concept and a hybrid of sole proprietorship and company forms of business. An OPC resembles a sole proprietorship but differs from it. The distinguishing feature between them is that a person could operate and function like a proprietary enterprise for all intents and purposes while enjoying the status and advantages of a company. This feature of the OPC is seen as the right law to harness the talent pipeline of developing global business people, particularly start-up ventures.<sup>8</sup> Additionally, due to the company's status, the business has additional opportunities to raise capital due to its improved creditworthiness. It broadens the company's financial foundation. OPC is a corporation. Hence the owner's liability is constrained because it is a distinct legal entity. For the owner, this is unquestionably the most significant benefit.<sup>9</sup> Moreover, the company would not be dissolved in the event of the death or incapacity of the lone member. As a result, many profitable businesses would be able to continue operating even in the event that their owner died or became incapable of managing the business.<sup>10</sup>

The incorporation of OPC into the legal system is a step that would promote the corporatisation of micro-businesses and entrepreneurship with a less onerous legal framework so that the small business owner is not required to spend much time, energy, and money on intricate legal compliances. Individuals will be able to contribute to economic progress owing to this, and it will also create job opportunities.

Regulations relating to OPCs are lenient, considering most of them are small companies. For instance, there is no requirement for the object clause to be divided into primary, ancillary, and other objects in the company's memorandum of association. The only things to be listed are those for which the company was founded and things deemed necessary to further those purposes. The company cannot include a clause for other objects. The Company's Articles of Association may include an entrenchment clause that states that the specific elements of the article can only be notified if stricter requirements or processes than those that apply in the case of special resolution have been followed.<sup>11</sup>

OPCs are also excluded from numerous obligations that are typically imposed on other private limited corporations, such as the necessity to have annual or special general meetings. The

<sup>6</sup> Behrens, *Comparative Company Law* (Budapest: CEU Press, 2002).

<sup>7</sup> Shameema V and Hetha P, “One Person Company - An Ideal Approach for Transforming New Age Business,” *Abhinav International Monthly Refereed Journal Of Research in Management & Technology* 5, no. 11 (2016): 1–6.

<sup>8</sup> See H. Gesell and K. V Hulle, *European Corporate Law* (Baden-Baden: Nomos, 2006). & Mary T. L, “Relevance of One Person Company,” *International Journal of Trend in Scientific and Research Development (IJTSRD)* 2, no. 1 (2017): 1317.

<sup>9</sup> Kirkbride, J. European company law harmonisation: A study (1994) ICCLR Suhaib Hammad Hammad, and Al-Mehdar. "Doing business in Saudi Arabia: an overview." *Practical Law Country Q&A 0-520-4520* (2019): 1-26 & Divesh Goyal: Advantages and Disadvantages of One Person Company – [www.taxguru.com](http://www.taxguru.com) accessed on May 7, 2020.

<sup>10</sup> Yun, Z. A company with the pros and cons of legislation. *China Daily*, June 3. (2001). p. 74.

<sup>11</sup> Brian R. Cheffins, “Using Theory to Study Law: A Company Law Perspective,” *The Cambridge Law Journal* 58, no. 1 (1999): 99–104.

member only needs to communicate the resolution and record it in the minutes' book Both regulators and market participants benefit from the OPC concept. In addition to limiting a single proprietor's liability, the status of a private limited company grants market participants accesses to various credit and financing facilities, which will promote entrepreneurship.<sup>12</sup>

The idea of OPC was first introduced to enable even an individual to participate in a commercial endeavour with limited responsibility without wasting his time and energy hunting for a partner. The legal need that the shareholder list a nominee in the company memorandum at the time of OPC's creation, who would take the subscriber's place as a member in the case of his death or inability to enter into a contract, has, however, cast a shadow over the entire goal. Since eternal succession is the fundamental attribute of a corporation, this practice was established with the intention of reserving it. However, this requirement burdens sole shareholders with additional steps, such as finding a suitable nominee and gaining his agreement.<sup>13</sup>

In order to achieve the objective of this study, the subsequent heading highlights the relevant laws and the application of OPC in Africa; America and Australia; and after that, identify the similarities and the dissimilarities of the application of OPC in various jurisdictions under study and concludes the paper with the findings and recommendation.

## **One-Person Company in Africa, America, and Australia**

### ***One-Person Company in Africa***

For many years in Africa, there was no foundation for business law that was appropriate for the existence of corporations. Even though the form for both private limited and public limited companies was codified, only some businesses, most notably OPC, were ever incorporated. However, the number of businesses registering in Africa has increased significantly in recent years.<sup>14</sup> So, a company framework enables the entrepreneur to approach investors by selling equity and projecting a transparent view of the company's operations. In addition, the overall organisation that leads to the corporate framework is what helps the entrepreneurs. Additionally, investors, shareholders, or lenders of debt over public or private companies have never preferred proprietorship and partnership firms. It was necessary to alter the framework continuously and the rules to account for some technical advancements and the shifting elements visible in the current global market. This necessitates one Person company's adoption and acceptance throughout Africa.<sup>15</sup> Nigeria, South Africa, Egypt, Morocco, and Algeria are the nations with the highest GDP in Africa that were chosen.<sup>16</sup>

### ***One-Person Company in Nigeria***

A single person can now launch, market, register, and own a private business by acting as its sole shareholder and director under Nigeria's Companies and Allied Matters Act (CAMA) of

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<sup>12</sup> Hang, C. W. *On one of the company's legal system and business*(2002). p. 234.

<sup>13</sup> S. Braun, "The European Private Company: A Super-National Company Form for Small and Medium-Sized Enterprises," *German Law Journal* 5, no. 11 (2009): 1393–1608.

<sup>14</sup> Hang, C. W. *On one of the company's legal system and business* (2002) p. 85.

<sup>15</sup> Orhnia, *Limited Liability and the Corporation*.

<sup>16</sup> "Indicators," tradingeconomics.com, 2022, <https://tradingeconomics.com/country-list/gdp?continent=asia>.

1990. Previously, a business had to have a minimum of two shareholders and directors.<sup>17</sup> This adjustment will make conducting business in Nigeria easier.

Features Of OPC In Nigeria ; (1) According to the New Company Act 2020, a single owner may convene and adjourn a valid meeting. Since the shareholder is allowed to act as the company's director, secretary, and auditor, the resolutions adopted at the meeting can then be signed and submitted to the Corporate Affairs Commission, (2) The Act permits the sole owner to appoint a nominee shareholder to represent him in the case of his death or incapacitation due to a physical or mental handicap, (3) An OPC can be incorporated using the same process as a private limited liability company. Either an online or manual application may be submitted, (4) The minimum age to incorporate a one-person business is 18 years old, and the share capital required to start an OPC is 10,000.00 Naira (equivalent to 26.23 USD), (5) If an OPC's threshold surpasses 500 000 Naira, it may be converted (equivalent to 1,311.65 USD) to another form of a company,(6) Lastly, for a one-person business, it can be impossible to obtain a banking or insurance license in Nigeria without meeting the requirement of the law.<sup>18</sup>

### ***One-Person Company in South Africa***

South Africa's business sector was unorganised until the enactment of the Companies Act, No. 71 of 2018, which introduced OPC and regulated other forms of proprietorship firms. There will not be a middleman raking profits when an OPC is established in South Africa, giving it direct access to target markets, corporate execution of business premises, loans, banks, etc.<sup>19</sup>

The South African Company Law also permits the sole owner to appoint a nominee director or shareholder to act on his or her behalf in the case of death or incapacity; however, this must be done before incorporation. Finally, if the maximum share capital reaches the requirement for public enterprises, OPC may be converted.

### ***One-Person Company in Egypt***

Because of its limited liability that is confined to the value of the shared capital, which protects the investor from any risks that may reach his wealth, OPC in Egypt has become a widely accepted term. It is a structure implemented under Company Regulation No. 1 16 2018 and has achieved tremendous results. The minimum capital requirement is EGP50,000 (equivalent to 3,197.09 USD), in addition to its function in minimising the phenomena of creating fictitious corporations to satisfy the numerous partners' requirements.<sup>20</sup>

OPC in Egypt is a company that a single person wholly owns, whether natural or juristic, as per Decree No. 256 2018, which Amends Article 281 Companies Law No. 159 1981, and the founder of the company shall not be liable for the company's obligations unless within the allocated shared capital. This company may have been founded by one partner from the beginning or may later become a one-partner corporation with that original partner still present. Thus, it is an exception to the rule that there should be at least two parties because, in contrast

<sup>17</sup> S. 18 (2) and 20 (1) CAMA, 2020.

<sup>18</sup> Oladele Oladunjoye, "Company Law under the Nigerian Legislation," *Mondaq Journal of Contemporary Affairs*, 2018, 37.

<sup>19</sup> M. L. Benade, J. T. Pretorius, and P. A. Delpont, *Entrepreneurial Law Incorporating the New Companies Act Manual* (Durban: LexisNexis, 2009).

<sup>20</sup> M Burhardt, *The Limited Liability Company* (Munich: Ruster, 1991).

to OPC, which is a business made up of just one person, a company is often a contract executed by two or more parties.<sup>21</sup>

### ***One-Person Company in Morocco***

Even though it is still in the concept stage, OPC in Morocco only requires one founder or partner, allowing many small investors to start a business without securing a specific number of shareholders or partners. As a result, the law has yet to be put into effect. The existence of limited liability of the owner causes credit to be impaired because an OPC is the owner-partner who is only accountable for his portion of the company's capital. Therefore, the people who work with the OPC consider this when evaluating their liability.<sup>22</sup>

The establishment of OPC in Morocco makes decision-making in the company simply because, as the sole partner, the owner of OPC exercises all the powers assigned to the board of directors as well as the powers of the regular and special general assemblies. As a result, the business owner is allowed to run it in a particular way. Being independent in management, control, and the issuance of decisions will be simple and swift, and it will convey the value of the company's attention and effort as well as the growth of his fund.<sup>23</sup> According to the proposed Morocco Company Amendment Act, 2019, the OPC shall have internal regulations that include its name, purposes, the data of its founder, duration, how it is managed, the address of its head office, branches, the amount of its capital, and the company liquidation rules. This is in addition to the ease of conversion of the company to be transformed its position or merger with others because of its easy decision-making, as we mentioned earlier.<sup>24</sup>

### ***One-Person Company in Algeria***

A single shareholder, either a natural person or a legal person, may be the sole owner of an OPC in Algeria under the Investment Promotion Law 16-09 2019. As a result, only one shareholder owns all of the company's shares, and as required by law, this shareholder's identity must be made public in a registry entry. Everyone is entitled to know who this shareholder is. When a corporation becomes a single-member company because a single person has acquired all of its shares, this information, along with the individual's identity, must either be placed in a publicly accessible register maintained by the company or be documented in the file. A single member may also execute the authority of the company's general meeting, according to Section 312 of the Algerian Company Act. Contracts between him and the company he represents and any decisions he makes must be documented in minutes or written down.<sup>25</sup>

### ***One-Person Company in America***

A company in the US can be a corporation, partnership, association, joint-stock company, trust, fund, or organised group of people, whether or not they are corporations. It can also be (in an

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<sup>21</sup> Swati Shanker and Shubham Gautam, *One Person Company: A Revolutionary Idea or a Half-Baked Concept?* (2018) p. 42.

<sup>22</sup> Victor C S Yeo et al., *Commercial Applications of Company Law in Singapore*, 6th Edition, 2018.

<sup>23</sup> CS Kundan Kumar Mishra, "Incorporation of One Person Company – A Practical Approach," taxguru, 2016, <https://taxguru.in/company-law/incorporation-person-company-practical-approach.html>.

<sup>24</sup> CA Bhavesh Salva, "One Person Company: A Step By Step Overview," Trak. in, 2015, <https://trak.in/tags/business/2014/04/08/person-company-india/>.

<sup>25</sup> CA Rajkumar S Adukia and CA Rishabh R Adukia, *Guide to One Person Company (OPC)* (Law House, 2014).

official capacity) any receiver, trustee in bankruptcy, or similar official or liquidating agent, for any of those as mentioned earlier. American businesses like OPCs are typically created or incorporated following the regulations of a specific state. Even if the corporation's operations are conducted outside of the state in which it was founded, its internal governance is often governed by the corporate law of that state. The corporate laws of the various states vary from one nation to another, sometimes dramatically. Local laws and state and federal legislation may also be relevant sources of business law in the United States. Given the preceding, the following American nations were chosen based on the strength of their economies after calculating their Gross Domestic Products (GDPs). Therefore, two countries from North America and three from Latin America are chosen, and their one-person company policies will be explained and discussed in relation to those countries' GDPs.<sup>26</sup>

### ***One-Person Company in the United States***

The Internal Revenue Service (IRS) typically treats OPCs as pass-through entities in the United States, even if they are incorporated as limited liability corporations (LLCs). Any "dividends" paid by the LLC to its sole shareholder are therefore considered to be the proprietor's self-employment income, not dividends.<sup>27</sup> Section 117 of the Company Law Reform Bill, 2005 stipulates that a corporation with a single owner is taxed as either a "C corporation" or, if it meets the requirements, as an S-corporation. The single owner must be a US citizen natural person or one of a few special kinds of trusts.<sup>28</sup> A single-owner business trust is also allowed (tax treatment can vary under different circumstances).<sup>29</sup>

A sole director in an OPC is ordinarily required to prepare the minutes of the board of directors' meetings, and if he holds all three officer positions (CEO, director, and secretary), his minutes must reflect that he acted as the director and nominated himself to fill each of the three executive positions.<sup>30</sup> Every time he wants to make a significant choice to determine the course of the organisation, a unique and updated set of minutes is necessary. This could involve anything from requesting a bank loan to suing another company in court.<sup>31</sup> Even so, Double taxation on corporate assets can be problematic for single owners, notwithstanding the benefits of establishing OPC in the United States. This is due to the fact that the IRS Code taxes corporations on their profits and any owners who remove gains from their businesses are required to pay taxes on those profits using their tax returns.<sup>32</sup>

### ***One-Person Company in Canada***

OPC in Canada is obligated to apply due diligence and abide by all applicable federal, provincial, and municipal regulations in every jurisdiction in which it conducts business.<sup>33</sup> Annual meetings must be convened and duly documented as necessary. In some circumstances,

<sup>26</sup> Khizer Ahmed Sheriff, "A Comparison: OPC vs LLP vs Pvt. Ltd. vs Partnership vs Sole Proprietorship," tradingeconomics.com, 2014, <https://tradingeconomics.com/country-list/gdp?continent=america>.

<sup>27</sup> S. 212 of the New Joint Stock Companies Act, 1867.

<sup>28</sup> Hannigan B, *Company Law* (Oxford University Press, 2003).

<sup>29</sup> Himani Law 1 Raina of NALSAR. Sole Proprietorship V. One Person Company (2014).

<sup>30</sup> Mayson, S.W. Mayson, French & Ryan on Company Law (22<sup>nd</sup> Ed, 2005) p. 119.

<sup>31</sup> Department of Trade and Industry (UK), *Modern Company Law for a Competitive Economy: Developing the Framework* (London, 2005).

<sup>32</sup> Singh, Vatsala (Singh & Associates): One Person Company – A Concept for New Age Business Ownership.

<sup>33</sup> S. 45 of the Canada Business Corporations Act, 1985.

in order to keep the corporation active, an Annual Report/Annual Summary must be filed with the government every year.<sup>34</sup> Any changes that have an impact on the business or how it operates, including a change in shareholder, director, or officer names or addresses, must be properly documented and notified to the relevant government body.<sup>35</sup>

Compared to sole proprietorships or other types of unincorporated business organisations, OPC in Canada, operating under the Canada Business Corporations Act, typically has greater access to finance. This is due to the fact that OPCs have the ability to issue a wide range of securities, including shares, bonds, and debentures, to raise money. This enables the organisation to secure funds more flexibly and innovatively than traditional business models. According to the Business Corporations Act, the fundamental advantage of OPC in Canada is that it provides restricted liability up to a sum equal to the share capital that the owner (shareholder) has invested in the business. In contrast to sole proprietorships and partnerships, where all of the owner's personal assets can be seized to pay for corporate debts, obligations, and liabilities. Someone generally can only be held personally accountable for some of the corporation's debts and other obligations.<sup>36</sup>

### ***One-Person Company in Mexico***

All Mexican corporations, including OPC, are obliged by law to have bylaws and articles of formation under the General Law of Business Organizations Act of 2006. The bylaws govern the specific powers of the officers and directors. The company's internal day-to-day decision-making process is also outlined in the bylaws. The rules will specify what authority each director or officer has, such as who can open bank accounts vs who may sell a property. This rule also applies to a single owner (a "One Person Company") because he shares the same distinct and independent legal personality and liability as the business. This includes the authority to represent the business in legal proceedings or file taxes.<sup>37</sup>

The Mexican Constitution and the General Law of Commercial Companies serve as the primary legal frameworks governing OPCs (LGSM). Commercial companies are subject to the provisions of the Mexican Commercial Code (Código de Comercio) because they are regarded as merchants, the Tax Code (Codigo Fiscal), the Income Tax Law (Ley del Impuesto Sobre la Renta), and the Value Added Tax Law (Ley del Impuesto al Valor Agregado) serve as the primary regulatory bodies for taxes.<sup>38</sup>

OPCs are registered in Mexico as Sociedad Anónima (SA) limited liability firms, the country's most popular form of corporate entity. According to the General Law on Commercial Business Act of 2006, businesses must operate under a company name and have shareholders who possess shares of the company's capital. The Act's Section 262 further states that similar to limited liability firms, an individual shareholder's responsibility is only limited to the amount of his or her capital contributions to the company. The Sociedad de Responsabilidad Limitada is another name for the limited liability company (SRL). The corporation uses a corporate name for its operations, and negotiable certificates do not indicate ownership. The Mexican General

<sup>34</sup> S. 76 of the Canada Business Corporations Act, 1985.

<sup>35</sup> Gadgil, Salonee. *The A-to-Z of One Person Company Registration* (2018) p. 16.

<sup>36</sup> V Salze-Lozach, 'Boosting Economic Mobility: SMEs as Drivers of Inclusive Growth' (2015) p. 46.

<sup>37</sup> Kcjmadmin. *One Person Company in comparison with Sole proprietorship* (2017) p. 22.

<sup>38</sup> Mishra, "Incorporation of One Person Company – A Practical Approach."



Corporation Law restricts the transferability of contributions to share capital under certain circumstances. It can be compared to a partnership in other common law nations quite closely for taxation purposes. In Mexico, no set amount of money is needed to launch an OPC.

### ***One-Person Company in Argentina***

Sociedades Anonimas are single-shareholder businesses in Argentina. OPC may only be created as a corporation, according to Section 1 of Argentina's Company Law No. 19. A sole proprietorship cannot establish OPC. According to Section 11(4), corporate capital must also include each partner's contribution. In the case of OPCs, the equity must be fully incorporated into the business.<sup>39</sup>

Argentina's most prevalent type of business entity is a corporation or "Sociedades anónimas." Since the paid-in capital caps his responsibility, the individual shareholder controls the OPC.<sup>40</sup> The government authorities in Argentina have oversight and control over OPC.<sup>41</sup>

OPC may be established by a single shareholder, who may be either an Argentine citizen or a foreign person, under Articles 2 and 35 of the Federal Company Law of Argentina. The Federal Act additionally stipulates that an SAU may have only one partner in both situations, whether that partner resides in the county or not and whether or not the SAU is a legal organisation formed in Argentina or elsewhere. Only one restriction applies: an OPC cannot be incorporated by another OPC.

### ***One-Person Company in Brazil***

In Brazil, a single person is permitted to establish a corporation, commonly referred to as a One-Person Company with Legal Entity. In essence, this implies that having a partner is not necessary for the individual owner. The unfortunate news is that this type of company can only be founded by Brazilians or foreigners who have permanent residency (PR) (although it is possible to open an LTDA, and when such a become a PR, the person intending to start an OPC may make an amendment and change it to Empresa Individual de Responsabilidade Limitada (EIRELI), thereby "excluding" one of the shareholders). There is no minimum share capital requirement for launching OPC in Brazil prior to 2017. One may launch their business with very little cash and then increase it in accordance with the Brazilian Corporate Governance Regulation, 2020. Starting with huge capital and later reducing the same may create some problems.

### ***One-Person Company in Australia***

Two states were chosen from North Australia and three from South Australia for the study's sample states, which were chosen based on the strength of their economies and their Gross Domestic Products. These include the following States:<sup>42</sup>

By creating OPC in Australia, it means that the individual owner (a human being) is both the company's only director and its sole (100%) shareholder (the sole person whose responsibility is to run the company).<sup>43</sup> In addition, in OPC, the individual owner can be the

<sup>39</sup> EC Janet M. Dine, *Company Law* (European Practice Library publishers, 1992).

<sup>40</sup> Article 18 of the Argentine Federal Company Law

<sup>41</sup> Mads Andenas and Frank W, *European Comparative Company Law* (Cambridge University Press, 2009).

<sup>42</sup> "GDP | Australia," Trading Economics, n.d., <https://tradingeconomics.com/country-list/gdp?continent=australia>.

<sup>43</sup> Anish Aditya, *Good News for Small Business* (OPC Now in the World, 2020).

company's sole secretary (though, as a private company, it is not required to have a company secretary).<sup>44</sup> Additionally, the corporation may choose to have its registered office and its principal place of business in Australia (subject to zoning regulations).<sup>45</sup>

OPCs are required to pay an annual review fee each year, and if an Australian company is registered, it is optional to register it in each state or territory to conduct business there.<sup>46</sup> The Corporations Act 2001 (Cth) is the primary piece of legislation governing the creation and operation of businesses (and some other commercial entities) (Corporations Act). OPCs additionally need an Australian Business Number (ABN) and a Tax File Number (TFN), both of which are provided by the Australian Tax Office for taxation purposes (ATO). Relevantly, a recipient may be compelled to deduct a sum at the top marginal rate of tax from the total payment made to the company where a supplier of goods or services to them fails to provide an ABN.

### ***One-Person Company in New Zealand***

The Companies Act of 1993 serves as the fundamental legal basis for all businesses, including OPCs in New Zealand, and it also stipulates that each OPC in that country is a distinct legal entity from each of its individual owners. The shareholder's main interest is in the value of his investments. Hence he is not liable for the company's responsibilities or debts. A single person can register OPCs in New Zealand. However, the individual director must have a New Zealand address.<sup>47</sup> Once registered, a company like this cannot freely transfer shares. OPC does not depend on the shareholder or director's life or involvement for its continuous existence because it is a separate legal entity under Section 16 of the Companies Act 1993 and is different from the owner. In New Zealand, an OPC will remain in effect even if one of its shareholders passes away, leaves the company, or if the company's ownership changes. Compared to an unincorporated firm, which continuously depends on the continued participation of its proprietor or partners, this gives the company more stability and predictability.<sup>48</sup>

Despite the advantages of establishing OPC in New Zealand, the organisation faces more regulations, record-keeping requirements, and financial burdens there. OPCs are also subject to more regulation than other types of business.<sup>49</sup> Given the substantial record-keeping and accounting requirements, this necessitates the maintenance of current corporate documents (including a corporate minute book, bylaws, and resolutions), as well as the filing of one or two corporation tax returns annually.<sup>50</sup> As a result, OPCs in New Zealand are considerably more expensive to start and run than other business models. Before establishing OPC in New Zealand, no minimum share size or par value was necessary.<sup>51</sup>

### ***One-Person Company in Papua New Guinea***

In general, the Companies Act 1997 governs the formation and administration of a company in Papua New Guinea (PNG). This includes issues like legal capacity, the raising of debt and

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<sup>44</sup> B, *Company Law*.

<sup>45</sup> Charlesworth & Morse, *Company Law* (15<sup>th</sup> Ed. 1996).

<sup>46</sup> Charlesworth & Morse, p. 55

<sup>47</sup> Mishra, "Incorporation of One Person Company – A Practical Approach."

<sup>48</sup> M Brassey, *Competition Law* (Juta, 2002).

<sup>49</sup> HJO Van Heerden, *Unlawful Competition* (LexisNexis, 2008).

<sup>50</sup> Van Heerden.

<sup>51</sup> Andenas and W, *European Comparative Company Law*.

equity capital, the registration of security interests over corporate property, shareholders' meetings, the preparation of accounts, the appointment and duties of auditors, directors' responsibilities, corporate arrangements and reconstructions, takeovers, reductions of capital, and winding up.<sup>52</sup>

A request to register a company with the company registrar is filed to register OPC in Papua New Guinea. In accordance with Section 14 of the 2014 Companies Act, the application must include the company's addresses (registered office, address for service, and postal address); director details for each individual; and other pertinent information (full name, nationality, date of birth and residential and postal addresses). In addition, Section 25 of the Act mandates that a Secretary (if any, shareholder details (including the number and class of shares he accumulates whether the shareholder is a natural person or a registered entity); and whether a constitution has been adopted and include a certified copy of the proposed constitution and also be accompanied by a notice reserving a name for the proposed company.<sup>53</sup>

In Papua New Guinea, a single person who also happens to be an OPC's sole shareholder may conduct and pass a good resolution without completing the other legislative criteria of notice of meeting, secretary attendance, and the presence of other members and officials of the company. The company's sole owner has the authority to act in the capacities of the secretary, director, and other key members, sign the document outlining the resolutions adopted by the board and submit it to the commission for filing with the registrar of corporations. The Companies Act also allows appointing a nominee shareholder or director to take the place of a sole proprietor in the event of death or incapacitation. Regarding conversion and the required minimum share capital, the law is silent.

### ***One-Person Company in Caledonia***

Only a natural person who is a citizen of Caledonia and resides in Caledonia, that is, a person who spent a significant amount of time in Caledonia before independence or during the immediately prior calendar year, is qualified to incorporate OPC and nominate a single member for OPC.<sup>54</sup> Additionally, a single individual is permitted to register more than one OPC or nominee in more than one such corporation.<sup>55</sup> Since there is only one Director and one Member, it is necessary to nominate a nominee on their behalf so that, in the event of their incapacity or death and their inability to discharge their obligations, the nominee will act in their place.<sup>56</sup> Additionally, the OPC will be mandated to change into a private or public company within six months if the average annual turnover for the three financial years immediately before this one exceeds the minimum share capital for private limited businesses.<sup>57</sup>

<sup>52</sup> Cliff Fratten, *The competitiveness of Small Firms* (1991) p. 51.

<sup>53</sup> Geoffrey Morse, *Company Law: Annotated guide to corporate law* (2<sup>nd</sup> Ed. 2009) p. 74.

<sup>54</sup> Van Heerden, *Unlawful Competition*.

<sup>55</sup> Van Heerden.

<sup>56</sup> Van Heerden.

<sup>57</sup> Dragana Radenkovic Jovic, *A single member company convenient or not for the founder Facta Universitatis* (Series: Economic and Organization) (2005) p 209-219.

**One-Person Company in Fiji**

OPC in Fiji is a type of company that protects its members from personal liability for the debts and obligations of the business. Section 56 of the Companies Act 2015 restricts a shareholder's ability to transfer shares.<sup>58</sup> OPC must also have at least one director who normally resides in Fiji.<sup>59</sup> The internal corporate governance structure, shareholder information, and share structure must all be included in the Articles of Association that the OPC must draft. Standard articles are provided in the Companies Act of 2015, which can be utilised to meet this legal obligation.<sup>60</sup>

After submitting the necessary paperwork to the Office of the Registrar of Companies for registration, the applicant for an OPC must get a Tax Identification Number (TIN) from the Fiji Revenue and Customs Service (FRCS). Along with the appropriate stamped forms from the Office of the Registrar of Companies, a TIN registration form needs to be filled out and submitted to FRCS. FRCS will issue a standard TIN letter confirming the TIN.<sup>61</sup>

The following table illustrates OPC usage in the States under consideration in terms of a legal entity, OPC incorporation process, minimal share capital, nominee appointment, and OPC conversion.

**Table 1.** *OPC usage in the States in terms of a legal entity*

| Countries        | Legal Entity | Procedure of Incorporation | Minimum Share Capital | Nominee | Conversion |
|------------------|--------------|----------------------------|-----------------------|---------|------------|
| Nigeria          | ■            | ■                          | ■                     | ■       | ■          |
| South Africa     | ■            | ■                          | ■                     | ■       | ■          |
| Egypt            | ■            | ■                          | ■                     | ■       | ■          |
| Morocco          | ■            | ■                          | ■                     | ■       | ■          |
| Algeria          | ■            | ■                          | ■                     | ■       | ■          |
| United States    | ■            | ■                          | ■                     | ■       | X          |
| Canada           | ■            | ■                          | X                     | X       | X          |
| Mexico           | ■            | ■                          | ■                     | ■       | X          |
| Argentina        | ■            | ■                          | ■                     | ■       | ■          |
| Brazil           | ■            | ■                          | ■                     | ■       | ■          |
| Australia        | ■            | ■                          | ■                     | X       | X          |
| New Zealand      | ■            | ■                          | ■                     | X       | X          |
| Papua New Guinea | ■            | ■                          | X                     | ■       | X          |
| Caledonia        | ■            | ■                          | ■                     | ■       | ■          |
| Fiji             | ■            | ■                          | ■                     | ■       | ■          |

Key ■ shows that a particular country has incorporated the item in its law, while X shows that it is silent or lacks provision.

**Comparative Discussion**

From Table 1 above, the researchers conclude that a single owner may conduct and pass a good resolution without the other regulatory provisions of the notice of meeting, presence of the secretary and other members and officers of the company. This is true for meetings of the OPC in all jurisdictions. A shareholder may serve as the company's secretary, director, and member, and any resolution taken in those capacities is enforceable.

<sup>58</sup> Jovic, p. 63.

<sup>59</sup> Dennis Davis, *Companies and Other Business Structures in South Africa* (Oxford University Press, 2009).

<sup>60</sup> Klaus J. Muller: *A guide to the World Limited Liability Company* (2<sup>nd</sup> Ed. 2009) p. 39.

<sup>61</sup> Cassim, Farouk HI, *et al. Contemporary Company Law* (2 ed.). Juta, (2012) p. 41.

It should be noted that almost all of the laws of the countries mentioned above, with the exception of Canada, Australia, and New Zealand, have a provision that allows for the appointment of a nominee director or shareholder to replace the sole shareholder in case of emergencies, even though he is not considered to be a member or officer of the company for any reason other than the absence of the sole shareholder in cases where he passes away or becomes incapacitated.<sup>62</sup> However, the nominee must offer his or her consent, which the nominee may later withdraw at any time. In addition, as recognised by the nations above, OPC is legally distinct from its owner (shareholder) and the shareholder's liability is restricted to OPC's obligations.

Additionally, OPCs may be converted in some countries, including Egypt, Morocco, Algeria, Argentina, Brazil, Papua New Guinea, Fiji, Nigeria, and Caledonia, if the maximum share capital reaches the requirement for public companies.

In some jurisdictions, a natural person may establish OPC, a legal (corporate organisation), or both. Only a natural person may form an OPC in some nations, such as Caledonia and New Zealand. The ability of both natural and legal persons to incorporate OPC has been made explicit in nations including South Africa, Nigeria, Algeria, and Argentina. However, in the USA, in addition to allowing natural persons to incorporate OPC, the law also permits a select few special types of trustees to do so. However, these special types of trusts have yet to be defined to determine whether they include legal persons. In Nigeria, a natural person must be 18 years old in order to incorporate a corporation, but there is no set age requirement for doing so in the other countries being studied. Additionally, only residents of New Zealand or nationals of nations like the USA and Caledonia are eligible to incorporate OPC.

There is no requirement for a minimum share capital before incorporating OPC in certain jurisdictions, including Canada, Australia, the United States, Mexico, New Zealand, Papua New Guinea, Fiji, and Caledonia. The countries that required minimum share capital of a particular amount before incorporating OPC are listed in table 2.

**Table 2.** *Share capital to create an OPC*

| Country      | Country's Currency | Dollar Equivalent |
|--------------|--------------------|-------------------|
| Nigeria      | 10, 000 Naira      | 26.23 USD         |
| South Africa | ARS\$100,000       | 1,257.75 USD      |
| Egypt        | EGP50,000          | 3,197.09 USD      |
| Morocco      | 273768.75          | 30,000 USD        |
| Algeria      | 100,000            | 776.85 USD        |
| Argentina    | AR\$ 100,000       | 1,257.59 USD      |
| Brazil       | R\$ (brl) 93,700   | 174,70 USD        |

It can be observed from Table 2 that Nigeria has the lowest required minimum share capital, at 26.23 USD, followed by Algeria (776.85 USD) and Argentina (1,257.59 USD), in that order. In contrast, Morocco has the highest required share capital for creating an OPC, at 30,000 USD.

It can be argued that where the minimum share capital to create an OPC is huge like that of Morocco, surely it will prevent the lower class or citizens from establishing OPC due to their

<sup>62</sup> The laws of Canada, Australia, New Zealand, the United Kingdom and Russia are silent on the appointment of a nominee.

financially incapacitated and, as such, the ability to form an OPC is left at the mercies of a rich individual. In such a situation, the motive of establishing OPC will be defeated.

## CONCLUSION

The study compared the operations of one-person businesses with the relevant legal laws that govern OPC operations in Australia, America, and Africa. The application varies from jurisdiction to jurisdiction despite the adoption of identical standards in most of these countries, particularly in the legal requirements for creating an OPC. Additionally, while the majority of wealthy nations have advanced the practice of OPC, other nations, particularly those in Africa, are still in the proposal and testing stages. The overall goal of introducing OPC is to promote the domestic economy by providing entrepreneurs with the chance to start a formal corporate business that exists independently of them without having to go through the time-consuming processes and requirements for forming a private or public limited company. Numerous benefits of the OPC method stand out, including less paperwork and procedures, corporate names and seals, organised business structures, and distinct liability from the owner. However, this practice is not without its drawbacks, which may include; share capital requirements (very high and fixed in some jurisdictions) like Morocco, non-transferable shares, the possibility of the business failing upon the death of the sole owner, and the inability of a person to incorporate more than one OPC. Finally, it was hoped that, based on the actions already taken by nations around the world to practice and adopt OPC, individual business owners would reach new heights, less fortunate and weaker entrepreneurs would gain strength, and the economies of the countries and the entire world would be strengthened, raising the status of their gross domestic products (GDPs). As a result of this recommendation, the minimum share capital for creating an OPC should be reasonable to enable the lower class or citizens to establish an OPC and fully control the business. This is because where more shares are created for the public or outsiders, more powers are given away, which may reduce the level of control of the founders of the OPC.

## REFERENCES

- Aditya, Anish. *Good News for Small Business*. OPC Now in the World, 2020.
- Adukia, CA Rajkumar S, and CA Rishabh R Adukia. *Guide to One Person Company (OPC)*. Law House, 2014.
- Andenas, Mads, and Frank W. *European Comparative Company Law*. Cambridge University Press, 2009.
- B, Hannigan. *Company Law*. Oxford University Press, 2003.
- Behrenes. *Comparative Company Law*. Budapest: CEU Press, 2002.
- Brassey, M. *Competition Law*. Juta, 2002.
- Braun, S. "The European Private Company: A Super-National Company Form for Small and Medium-Sized Enterprises." *German Law Journal* 5, no. 11 (2009): 1393–1608.
- Burhardt, M. *The Limited Liability Company*. Munich: Ruster, 1991.
- Cheffins, Brian R. "Using Theory to Study Law: A Company Law Perspective." *The*

- Cambridge Law Journal* 58, no. 1 (1999): 99–104.
- Davis, Dennis. *Companies and Other Business Structures in South Africa*. Oxford University Press, 2009.
- Trading Economics. “GDP | Australia,” n.d. <https://tradingeconomics.com/country-list/gdp?continent=australia>.
- Gesell, H., and K. V Hulle. *European Corporate Law*. Baden-Baden: Nomos, 2006.
- Heerden, HJO Van. *Unlawful Competition*. LexisNexis, 2008.
- tradingeconomics.com. “Indicators,” 2022. <https://tradingeconomics.com/country-list/gdp?continent=asia>.
- Janet M. Dine, EC. *Company Law*. European Practice Library publishers, 1992.
- L, Mary T. “Relevance of One Person Company.” *International Journal of Trend in Scientific and Research Development (IJTSRD)* 2, no. 1 (2017): 1317.
- M. L. Benade, J. T. Pretorius, and P. A. Delport. *Entrepreneurial Law Incorporating the New Companies Act Manual*. Durban: LexisNexis, 2009.
- M, Amin. “One Person Company: Challenges and Prospect in the World Today.” *Zenith International Journal of Multidisciplinary Research*, 2018, 174.
- Miao, Beihu. “A Comparative Study of Legal Framework for Single Member.” *Journal of Politics and Law* 5, no. 2 (2012): 312.
- Mishra, CS Kundan Kumar. “Incorporation of One Person Company – A Practical Approach.” taxguru, 2016. <https://taxguru.in/company-law/incorporation-person-company-practical-approach.html>.
- Oladunjoye, Oladele. “Company Law under the Nigerian Legislation.” *Mondaq Journal of Contemporary Affairs*, 2018, 37.
- Orhnia, T. *Limited Liability and the Corporation*. Edited by Croom Helm. London & Canberra, 1982.
- Salva, CA Bhavesh. “One Person Company: A Step By Step Overview.” Trak.in, 2015. <https://trak.in/tags/business/2014/04/08/person-company-india/>.
- Sheriff, Khizer Ahmed. “A Comparison: OPC vs LLP vs Pvt. Ltd. vs Partnership vs Sole Proprietorship.” tradingeconomics.com, 2014. <https://tradingeconomics.com/country-list/gdp?continent=america>.
- Tyagi, Kanisshiks. “One Person Company-Soon to Be Reality.” *Lex Witness* 3, no. 6 (2012): 23–33.
- (UK), Department of Trade and Industry. *Modern Company Law for a Competitive Economy: Developing the Framework*. London, 2005.
- V, Shameema, and Hetha P. “One Person Company - An Ideal Approach for Transforming New Age Business.” *Abhinav International Monthly Refereed Journal Of Research in Management & Technology* 5, no. 11 (2016): 1–6.
- Yeo, Victor C S, Joyce Lee, Pamela Hanrahan, Ian Ramsay, and Geof Stapledon. *Commercial Applications of Company Law in Singapore*. 6th Edition., 2018.