

Few Highlights on Single-Member Private Limited Company

Description

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Introduction

The 1960's Ethiopia's Commercial Code was one of the codes that needed a deep amendment. It governed Ethiopia's commerce and business related field for the last five decades. In the current period, the world is introducing and establishing the newest companies in accordance with most recent technologies. These new advancements need a new governing law that could go in parallel with the current time. These, of course raised various requests from scholars and investors that the code shall be amended and altered. After various attempts the Commercial Code was reviewed by the legislators and amended.

The new Commercial Code of Ethiopia Proclamation No 1243/2021 has introduced a number of changes. Among those new introductions is a Single-Member Private Limited Company(hereafter referred to as SMPLC). SMPLC is the vital new establishment. Accordingly, under the new Commercial Code, one person can establish a company by himself/herself. Therefore a brief discussion on the formalities of establishing a SMPLC shall be discussed here-below.

Membership

The normal private limited company shall have members ranging from two to fifty in number. The SMPLC, however is established only by one person. A person can be both natural and juridical person. The law is clear on Article 539(1) that a SMPLC cannot establish another SMPLC. There is no clear prohibition against Private Limited Company or Share Company from forming SMPLC. Obviously SMPLC can be formed by a natural person. It seems that SMPLC is a form of sole proprietor whereby the SMPLC enjoys limited liability. This can be confirmed by Article 538 in that the sole proprietor is allowed to convert to SMPLC. However the sole proprietor shall remain liable jointly and severally for creditors and debts happening before the conversion to SMPLC.

Establishment

A SMPLC is established by a declaration entered in front of a notary. The declaration shall be registered on the commercial registry. This is different from normal PLC formation that requires memorandum of association for its formation. However the content of the declaration is a bit different to that of the memorandum of association. One such difference is the requirement of appointing on the declaration a Property Keeper. The Property Keeper shall take over the single member PLC in case of death, absence, juridical interdiction of the Member. The property keeper should consent for the job. Once the Property Keeper consents, he cannot be a property keeper for another SMPLC. The SMPLC once registered, shall have a different personality than the member.

Contribution and Capital

The SMPLC is established by the member having contributed in full the subscribed contribution. If the contribution is in cash, then there should be a statement stating that the full amount is paid in full.

Failing to contribute in full the subscribed cash contribution shall make the member liable personally. The minimum capital should not be less than 15,000 Birr. This is similar to the minimum capital requirement for a Private Limited Company in the 1960 Commercial Code. Now the minimum capital requirement is lifted for PLC's in the new Commercial Code. On the other hand, in-kind contribution is permissible. When it comes to in-kind contribution, the valuation has to be confirmed by an Auditor. Damage occurring due to over-valuation of the property on third parties shall make the auditor and member jointly and severally liable. However, such liability shall be barred by period of limitation after five years from the date of valuation.

Liability

In principle the member in SMPLC shall be liable to the extent of his contributions. The exceptions to this rule are detailed in Article 543, in non-exhaustive way, to include *'doing unlawful act intentionally to harm creditors or the PLC itself; merge the Single Member PLC's property with his personal property; fails to separate his identity from the PLC; issuing a false financial standing of the PLC to creditors; benefiting himself or others of the property of the PLC without appropriate consideration/ compensation and pay himself dividend above the legally accepted range.* Committing these acts or similar other unlawful acts shall make the member jointly and severally liable with the SMPLC.

General Meeting and General Manager

The SMPLC shall have a General Meeting. The member is endowed with the power of the General Meeting of Members of a normal Private Limited Company. Any resolution as a General Meeting can be done and such resolution has to be attached to the files of the SMPLC. Similarly, the SMPLC shall have a General Manager. The General Manager can be the member himself/herself or a third party. The General Manager shall have powers and responsibilities of the any general manager in a Private Limited Company.

Dissolution

Dissolution of a SMPLC may follow the legal procedure of first liquidation and then dissolution. However, the law allows the SMPLC to dissolve without liquidation, if the member pays all debts of SMPLC. In such situation, the property of the SMPLC shall devolve to the member as it is. Nevertheless, in the circumstance that a creditor comes after dissolution without liquidation, then the member shall be personally liable. The period of limitation is five years from the date of knowledge of the dissolution by the creditor. However from date the property of the SMPLC passes to the member, any creditor's claim shall be barred by ten years period of limitation.

Conclusion

Company law in Ethiopia used to cover only Private Limited Company and Share Company under the 1960 Commercial Code. Now under the new Commercial Code of Ethiopia 2021, an additional company is introduced namely Single Member PLC. The Single Member PLC will give options to those private limited companies, whose members are nominal or their names are included to fill the minimum number of members requirement, and the active member can convert easily to Single Member PLC. Similarly sole proprietors can now enjoy limited liability by forming a Single Member PLC. Our clients may contact our office for further legal services and advice for issues related with conversion from PLC to Single Member PLC or from sole proprietorship to Single Member PLC.

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Date Created

July 25, 2021

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