

Ethiopia Starts Registering One Member Private Limited Companies

Ethiopia has started registration of One Member Private Limited Companies (OPC) two years after it introduced this new form of company in its revision of the 60-year-old Commercial Code. The current Commercial Code enables a single person to establish a limited liability company with a separate legal personality from the member and owner of the company. With a view to implement this, the Ministry of Trade and Regional Integration (MoTRI) developed detailed registration requirements for an OPC Business Registration, Licensing and Post-Licensing Inspection Directive No. 32/2022 ("Directive") that it issued last year. However, investors have not been able to form an OPC until now.

Pursuant to the current Commercial Code and the Directive, a Unilateral Declaration of the member of the OPC – which serves as a Memorandum of Association for OPCs – and an authenticated certificate of trust issued by a body authorized by law are required to be submitted to the Documents Authentication and Registration Service ("DARS"). Based on the current practice, an OPC must verify its name before the licensing and registration department of a trade bureau or MoTRI, as the case may be, prior to registering its Unilateral Declaration. In addition, for the time being, only the Head Office of DARS authenticates the Unilateral Declaration of an OPC.

The law also demands for the name of a nominee to be included in the Unilateral Declaration of an OPC. A Nominee is a person who will act on behalf of the member of the OPC or his/her heirs in the event of death, absence, or judicial interdiction of the member. Currently, the OPC will not be formed unless the Nominee declares his/her acceptance of the nomination and signs an affidavit accepting the responsibilities of a nominee before DARS.

Similar to Private Limited Companies (PLC), the minimum capital requirement of an OPC is set at Birr 15,000 (around USD 285). When the member is a foreign investor, the minimum capital requirement provided under the Investment Proclamation shall be applicable. The general matters of the OPC are also governed by the rules that govern PLCs. The OPC is expected to modernize and limit the general liability implied from operation as a sole proprietorship. Individual wealthy people can now bring their preferred assets under one entity and shield the rest from liability. Most PLCs are normally one person dominated in reality and may as well convert to an OPC. It is yet to be seen how business persons feel confident to move to this form of entity and whether the OPCs flourish like PLCs.

2 Salient features of an OPC

1) OPCs can only have one shareholder.
2) A member of an OPC cannot establish another one-member private limited company.
3) The member of the company shall appoint a nominee during the registration of the company. The nominee is not allowed to be a nominee of more than one OPC at any given time.
4) The dissolution of a one-person company that has settled all its debts and obligations results in the universal assignment of all the assets of the company to the member without liquidation.

3 What are the advantages of incorporating an OPC?

1) **Limited Liability:** Similar to OPC, a sole proprietorship is a business owned by only one person. However, unlike sole proprietorships, a one-person company offers limited liability and the status of a separate legal personality to the owner.
2) **Commercial Benefits:** The fact that an OPC is established as a corporate entity and the personal accounts of the owner are segregated from the OPC's account cultivate trust and build confidence with business partners.
3) **Conversion:** Unlike sole proprietorships, an OPC can be converted to other forms of business organizations.
4) **Closing the Company:** There is no need to liquidate the company. As long as all the debts and liabilities are paid, the assets of the OPC will be assigned to the owner and the OPC will be dissolved without liquidation of assets taking place.

4 Some of the **key issues to be addressed during the implementation**

1) **Can a corporate entity form an OPC?** This does not appear to be a settled issue to date for the relevant authorities. However, the different provisions of the Commercial Code seem to indicate that the legislators intended to apply this form for natural persons only.
   - **(i)** One of the requirements of registration of an OPC is appointment of a nominee who will act **on behalf of the member or his/her heirs in the event of death, absence or judicial interdiction of the member**.
   - **(ii)** **The member of an OPC cannot establish another OPC.**
   - **(iii)** The member shall be **personally liable** for obligations of the OPC if creditors appear after the dissolution has taken effect.
   - **(iv)** The member shall **separate his personality** from the OPC.

   This will become clear as the authorities start implementing the provisions and the practice develops.

2) **What are the roles of the nominee upon the death of the member?** The Code provides that the nominee shall act on behalf of the member or his/her heirs in the event of death, absence, or judicial interdiction. What constitutes acting on behalf the member or the heirs is not regulated. The provisions regulating PLCs provide that, unless otherwise provided in the memorandum of association, the shares of a deceased member shall devolve upon his heirs. Where the heirs do not want to be shareholders, they shall be paid from reserve funds the amount that the deceased's shares represent in the assets of the company in the final balance sheet. The provisions governing PLCs apply to OPCs. What will be the role of the nominee in the event an heir automatically becomes a member to the OPC? What will be the roles of the nominee in cases where the member is survived by two or more successors? The OPC will have its own management structure. What will be the role of the nominee in the event where the member becomes judicially interdicted? The law requires the appointment of the nominee but does not state that his/her powers should be set out in the unilateral declaration of the OPC. These and other questions may start to unfold before the regulators as they start and continue implementing these rules.

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