

**Private Limited
Company(PLC)
CHAPTER NINE**

Private Limited Company(PLC)

Nature of PLC - Art. 495

➤ Is the ***most popular*** form of co. in Ethiopia.

Because:

✓ It is particularly well adapted to ***small and medium-sized business*** and currently, Ethiopian business is at these stages.

✓ It is ***hybrid*** of(middle way between) share co. and partnership(i.e. limited liability, & shares are not freely transferred to the outsiders).

➤ Not allowed to engage in ***banking, insurance & similar activities*** .

➤ Is always of ***commercial nature***

Formation of PLC

- Min. no. of members = 2, Max. no. = 50 - Art. 495(4).
- If it fall below two & a person does not join co. within 6 month, co. shall be dissolved or converted to single member company by amending its MOA [Art. 498].
- Registration by Ministry of Trade and Industry and trade and industry Bureau at Federal and regional level respectively.
- Application for Registration of PLC should be accompanied with the ff. documents:
 - MOA
 - Subscribers minute
 - Document shows cash deposited in blocked account book
 - Valuation documents of in kind contribution, if any

- Acquires **legal personality** after **registration**.
- **Minimum capital** = Birr 15,000 – Art. 496(1).
- Its capital must be **fully paid-up** – Art. 499(1).
- The **face value of share** capital may not be less than **Birr 100** & issues shares of **equal value**, a member may hold **>1 share**.
- Liability of member- limited to their contribution– Art. 495(1).
- Liability can be enforced during the **existence** & **winding-up**.
- MOA must contain a valuation of asset contributed in kind – Art. 500 (6).
- **Method of valuation**-determined by members.
- It **does not issue transferable securities**. Art. 495(5)
- **Form of Shares**- The company may issue only shares registered in the name of the members [Art.

MEETINGS

- Meetings of the company may be ordinary or extraordinary.
- At least one ordinary general meeting held within four months from the end of each financial year.- Art.521
- Four months may be extended to six months by MOA or relevant gov't authority.
- The meeting shall be called by board if any, manager, auditor if any, or by members representing more than one-half of the capital of the company [Art. 521 (3)].
- Member representing more than one-half of the capital of the company shall be present for a decision to be taken at an ordinary meeting.

- The meeting may adopt a resolution so long as it is called in compliance with the law and the required amount of capital is represented; In particular, the mere fact that some shareholders are not willing to attend a meeting shall not preclude the general meeting from discharging its responsibility. [Art 525 (2)]
- Decisions of an ordinary general meeting are taken by a simple majority of shares represented at the meeting. [Art. 525 (3)]
- At a second meeting, decisions shall be taken by a simple majority of shares represented without regard to the amount of capital represented. [Art. 525 (4)]

Extra-ordinary resolution

➤ *To alter the nationality of the co. and* increase in the capital of the company by raising the par value of existing shares ***must be decided by unanimous vote.*** (i.e. transfer of share to outsiders [Art 526(1)],

➤ But, members represent $\frac{3}{4}$ of capital is sufficient to an increase in the capital of the company is to be effected from profits or reserve funds that may be distributed to members. [Art. 526 (2)]

➤ Amendments of MOA requires consent of members representing $\frac{3}{4}$ of capital unless

➤ PLC shall have a general manager appointed by a general meeting. Art. 514

➤ **Appointment and dismissal of manager**

➤ Manager can be appointed either from **shareholders or outsiders.**

➤ **2 types of managers.**

✓ ***Statutory managers*** (by statutes of the co.) and

✓ ***Non-statutory managers***—by general meeting

✓ If co. have board, manager shall be appointed by board of director. Manager shall not be chairperson of BOD. Art. 514 (3)

✓ the manager is an employee of the company.

Voting

- Members have the ***right to vote*** - Art 524.
- Each member shall be entitled to a number of votes equal to the number of shares held by him.

Management

Board of Directors

- The MOA may provide for the management of a private limited company by a board of directors.
Art. 513
- **If there is board**, shall consist of three to seven members.
- The provisions of this Code on the board of directors of a share company concerning appointment, guarantees provided, removal, term of office, decision making, liability, remuneration, powers and duties and other relevant matters

Dismissal of a Manager- Art. 517

- A manager may be dismissed by the organ appointing him; In particular, in the absence of a provision to the contrary in the memorandum of association, a manager appointed by the board of directors shall be dismissed in the same manner as a manager of a share company.
- In the absence of a provision to the contrary in the memorandum of association, a manager may be dismissed by an ordinary general meeting irrespective of whether he is appointed in the memorandum of association or by an ordinary general meeting; A manager is not entitled to be reinstated to his position even where the dismissal is without good cause.
- a manager may be dismissed, on the request of any shareholder, by the court where it is of the opinion that there is good cause

Powers of the Manager- Art. 515

- where the company does not have a board of directors, the manager shall have full powers to act in the name of the company for the realization of the business purposes of such company.
- Provisions of the MOA restricting the powers of the manager shall be of no effect except as between the company and members on the one hand and the manager on the other.
- The manager shall be liable to the company, shareholders and third parties for any damage caused by breach of his duties under the law or the MOA.
- Where in bankruptcy the assets are shown to be inadequate, the court may, on the application of the trustee in bankruptcy, order that the company's debts or part of them shall be paid by the manager and the previous managers of the company.

Auditor- Art. 518

- where a private limited company consists of ten and more members or its total assets exceed Ten Million Ethiopian Birr; it shall have an independent and impartial external Auditor.
- an Auditor shall be elected by a general meeting.

ACCOUNTS

❑ **Legal Reserve** - Art. 528

- Not less than five percent of the profits shall be transferred each year to the legal reserve until such fund amounts to ten percent of the capital.

❑ **Fictitious Dividends- Art. 529**

- Members may be required to repay dividends which have been paid out of sums which are not actual profits.
- Claims for repayment of fictitious dividends shall be barred by a period of limitation after five years from the date the dividends were paid.

Transfer of Shares: Art. 508

- must be made in writing.
- are freely transferred among members.
- Transfer of shares shall be of no effect in relation to third parties unless it has been entered in the share register.
- free transferability may be restricted by MOA.
- Shares can be transferred to outsiders with the consent of majority of the members representing at least $\frac{3}{4}$ of the capital unless a larger majority or unanimity is required in MOA.- Art. 509

Transfer *inter vivos* and *mortis cause*

- any member intending to transfer his shares should offer the shares ***first to members***. Art. 508(3)
- Shares can be transferred to non-members only if any member is not willing to buy the shares. This is termed as “***preemption clause***”.
- When ***shareholder dies*** his shares ***transfer*** to his heir by the ***operation of law***. Art. 511
- If 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.
- shall not apply where the company does not have sufficient reserve that is distributable to shareholders.
- Any person becoming entitled to a share on the death of shareholder may elect either:
 - ✓ ***To register himself a holder of share or***

DISSOLUTION AND WINDING-UP

❑ Grounds of Dissolution- Art. 531

- Subject to the general provisions of Article 181 of this Code.
- where a private limited company does not have a required management organ (by court)
- Where three-quarters of the capital is lost, the board of directors, if any or the manager shall cause the members to decide whether or not to dissolve the company.
- Where the members decide not to dissolve the company; they shall make additional contributions to restore the capital.
- not complied with within ninety consecutive days from the date on which the loss of three-quarters of the capital is known, any interested person may apply to the court for dissolution.

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**ONE MEMBER
PRIVATE LIMITED
COMPANY**

CHAPTER TEN

Introduction

- 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

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

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.

**Conversion
and
amalgamati
on of B.O**

Chapter 11