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TRANSFORMING AN OPC INTO A PRIVATE LIMITED COMPANY: PROCEDURES AND BENEFITS

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Abstract:

The current paper is associated with the procedures involved in transforming an OPC into a PLC, which falls under the jurisdiction of the Companies Act of 2013. The idea behind this topic in this introductory chapter gives background regarding the creation of a legal entity form of OPC where particularly it is established in a way that in one OPC form one person acts both as its member and also its director as it is otherwise for PLC for Private Limited Companies as it compulsorily includes two members along with directors to create such company. It is further mentioned that one of the main reasons for converting an OPC into a PLC is the increase in membership, capital limits, better liability management, and increased business reputation. The arguments for not staying as an OPC, which include attracting more investors, the need for joint decision-making, and more effective exit strategies are also put forth. The procedure for conversion is then thoroughly examined through such steps as, the calling of a Board meeting, the adoption of requisite resolutions, the submission of Form No. INC 6 to the Registrar of Companies, changes in the Memorandum of Association and Articles of Association, and the granting of the notification of the Certificate of Incorporation. Lastly, the responsibilities involving the incorporation where such incorporation must involve the directors and the shareholders of the OPC, are also provided. Conversion of OPC into a private company begins with Directors overseeing the entire process by being compliant with legal requirements and communicating with shareholders. Shareholders on the other hand are crucial in making resolutions and restructuring the company's capital ratio. The conclusion of the article addresses the problems in the conversion process and conflicts between directors and shareholders.

Keywords: One Person Company, Private Limited Company, Conversion Procedure, Shareholders and Directors, Corporate Governance, Capital Structure, Legal Compliance

Introduction:

The One Person Company or OPC model is such that a person alone can be a member of the company and even its sole director, as mentioned under by Section 2(62) of the Companies Act, 2013. In other words, the law which is referred to the Companies Act of 2013, Section 2(62) gives the possibility of business registration to only one person who will own the business and serve as its member and director at the same time and is not aimed at other types of companies that are governed by other laws where the minimum number of stockholders is two, or more.[1] As prescribed by section 2(68) of the Companies Act 2013, for private company incorporation there must be at least 2 directors who also have to be 2 members (shareholders) of the Company Act, 2013.[2] A transition from the status of an OPC to that of a Private Company improves the business scope and other business structures by allowing more shareholders and the needed funds necessary to build the company's trust in the market. The process through which a One

[1] Companies Act, 2013, § 2(62).
[2] Companies Act, 2013, § 2(68).

Person Company is transformed into a Private Company is explained by Section 18 of the Companies Act of 2013 and through this conversion, OPCs can change their organizations and add new members of the board to directors without changing the existing debts, liabilities, obligations, or contracts.[3]

Benefits and Reasons for Converting an OPC to a Private Limited Company:

When considering the imaginations of a company director, people usually think of someone who has power, someone who is capable of making certain decisions that would affect the growth of the company. Although this statement is somewhat accurate, the position of a director is not merely about making decisions. It is also a position which comes with a lot of encumbering responsibilities. A director is also a person who rules the company but also serves as an officer for the company's goals, policies, and standards of conduct. The interest of the shareholders is well protected because director is responsible for developing the company policyand directing how it operates al l within the ambit of the limit prescribed by law. There exist two major classifications of shareholders which consist of equity shareholders and preference shareholders. Equity shareholders are the main owners and bear the most risk, as they have the vote and place to return, for they expect a higher return. Preference shareholders enjoy the right of priority when it comes to dividends or proceeds from the liquidation but in most cases do not have the right to vote.

Converting an OPC into a Private Limited Company offers several key benefits that enhance the business's scope and flexibility. Firstly, it allows for an increase in the number of members. While an OPC is limited to a single member, converting to a private limited company enables the inclusion of up to 200 members, paving the way for business expansion and collaboration. Secondly, the transition removes the cap on share capital. An OPC's maximum share capital is restricted to ₹50 lakhs, but a private limited company has no such limit, providing the flexibility to raise substantial funds in the future. Additionally, the liability structure improves significantly. In an OPC, the sole member bears complete accountability for the company whereas, in a private limited company, the shareholder's liability is limited to the extent of their shareholding, ensuring better risk management.[4]

An OPC (One Person Company) may consider conversion to a Private Limited Company (PLC) for a variety of reasons, among them being the need to raise more capital. As the business develops, there may arise a necessity for more funds to cater to growth, product development, marketing, and the like. The structure of an OPC with only one shareholder can be very constraining about funding as a PLC can widen ownership and new resources by raising equity through selling shares to several people. Closely related to the issue of desire is the problem of the wish to delegate power about ownership and control. An OPC founder would wish to do this if there are other people with ancillary skills and experience. When a company converts to a PLC, the company can have more directors and shareholders which can result in an enhanced form of management. There is also the fact that the board becomes more reputable after conversion. In some sectors becoming a PLC may enhance people's perception of the company and close more business deals. Also, financing may not be a problem since many people consider the PLC more stable in comparison to an OPC thus securing loans, partnerships and human resource becomes easy.

Furthermore, compliance considerations often drive conversion. While OPCs benefit from simplified compliance, they face restrictions on paid-up capital and annual turnover.

[3] Companies Act, 2013, § 18.

[4] Adv Vishal Wason, All About Conversion of an OPC to a Private Company, (Taxguru Dec. 13, 2022), https://taxguru.in/company-law/conversion-opc-private-company.html/ Accessed on 31st December 2024

Converting to a PLC eliminates these limitations, providing greater flexibility for future growth without the risk of surpassing set thresholds. Lastly, a PLC offers a better exit strategy for the OPC founder. If the founder wants to get out of the operations but still wants to retain some ownership, conversion into PLC will allow the founder to sell shares in the company while retaining an interest in the company.

Procedure of Conversion

The requirement for conversion of an OPC (One Person Company) into a Private Limited Company involves several key steps. First, a Board of Directors meeting is convened, as per Section 173 of the Companies Act, 2013,[5] where at least 7 days notice has to be given to all directors. This meeting involves the passing of resolutions on matters such as the relevant date, time, and place of the EOGM, incorporation of the new directors on the specified form of the company, and the draft formulation of the Memorandum of Association and the Articles of Association for the company. After this, a special resolution is put before the shareholders who pass it to reconcile the conversion and effect appropriate amendments to the MoA and AoA. Then, Form No. INC 6 is submitted to the Registrar of Companies (RoC) along with some important documents required in place of the altered MoA and AoA, a copy of the special resolution, lists of proposed members and directors, creditors, and the latest financial statements in Section 18 in Companies Act of 2013. After a successful examination of the application received by the RoC, he issues a Certificate of Incorporation (COI) which declares that the Company has been converted into a Private Limited Company. All the legal and financial documents like PAN, GST registration, bank accounts, and statutory registers will have to be updated post-conversion Also, there would be ongoing regulatory requirements such as filing annual returns and maintaining statutory registers that would be the case in the status of a Private Limited Company.

Role of Directors and Shareholders During the Conversion Process:

It is the directors' duty to manage the actual merger of the business and to see that operational, financial, legal, and strategic requirements are attended and they also liaise with regulators, shareholders, and others to make sure that the whole exercise is in order. He's responsible for overseeing everything throughout the conversion process in order to meet the legal stepped requirements; for example, checking with the Companies Act, 2013 and the necessary laws. Directors are responsible for sharing information with the Ministry of Corporate Affairs and ensuring that all filings are accurate. Directors pass formal resolutions to authorize the conversion and approve changes in governance. Additionally, they provide their consent through official filings with the ROC and ensure transparency and compliance. Shareholders approve resolutions related to the conversion, with the help of their voting rights. Further, a minimum percentage of shareholder approval, as outlined in the company's constitution, is required for the transition to proceed. Shareholders give consent to Directors in performing various activities related to organizing meetings to present the conversion strategy. Shareholding structure and the company's capital of shareholders are also impacted by the conversion. Directors and shareholders collaborate to create a governance framework that defines the roles and decision-making processes. Additionally, both parties agree on key decisions, such as the introduction of new shareholders or changing the capital structure. The conversion process can present several challenges for both shareholders and directors. In J.K.P. Agro Foods Pvt Ltd vs Mahindarpur Balaji Trading Co. 2023, the Gujarat High Court indirectly addressed the role of directors in an OPC and their legal responsibilities when the company is involved in legal matters, especially concerning cheque dishonor cases, further

[5] Companies Act, 2013, § 173.

underscoring the complexity in cases involving OPCs,[6] this judgment aligns with the due diligence that directors must perform while converting an OPC to a Private Limited Company. Disagreements between shareholders and directors over the new structure, equity distribution, or governance practices are some of the challenges that can create conflicts. Existing shareholder are concerned about equity dilution or changes in their rights and responsibilities. Directors should balance legal responsibilities with strategic decision-making, and ensure that the conversion aligns with the company's goals.[7]

Conclusion:

Transforming from an OPC to a Private Company is an important fundamental change in increasing the business opportunities, and augmenting the capital base and governance structures. This process does not only provide more elasticity with regard to member and shareholder composition, but it also enhances the investment capabilities of the company, and its ability to work with others and expand its market. The functions of the director and shareholders are very important within this phase since there should be effective integration throughout the transition with respect to compliance, transparency, and the company achieving its objectives. If potential difficulties such as those regarding the management of equity, dissenting shareholders, and governance are resolved in a manner such as promotes trust between the directors and shareholders, the process can be completed smoothly. Both parties must communicate and cooperate with each other about which trust and resources can avoid such obstacles, ensuring that the entire process of the conversion is in line with the firm's objectives. In the end, such transformation creates larger potential, more credibility, and improved market competitiveness. Complying with legal and regulatory requirements and making proper strategic moves will protect the firm's new structure from being incapable of fulfilling its growth plan and objectives in the long run and create a favorable climate for further progress.

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2. Section 2(68) of the Companies Act, 2013
3. Section 18 of the Companies Act, 2013
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6. J.K.P. Agro Foods Pvt Ltd Through Director Kalpesh Prajapati v. Mahindarpur Balaji Trading (OPC) Co. Pvt Ltd, Criminal Misc. Application No. 3191 of 2022, Gujarat High Court, The Advocates' Have Audited the Judgment Dated Nov. 1. 2023
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