



ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

MASTERS OF BUSINESS OF LAW (LLM)

**EVALUATING THE VIABILITY AND HURDLES IN INTRODUCING ONE-MEMBER
PLCs: A COMPARATIVE STUDY FROM THE STANDPOINTS OF SOLE
PROPRIETORSHIPs AND PLCs**

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**Evaluating The Viability And Hurdles In Introducing One-Member PLCs: A Comparative
Study From The Standpoints Of Sole Proprietorships And PLCs**

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**A Thesis Submitted to Addis Ababa University, College of Law and Governance Studies,
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APPROVAL SHEET BY THE BOARD OF EXAMINERS

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Declaration

I hereby declare that this is my original work and has not been presented for any degree or examination at another university or program. All sources consulted and incorporated are fully acknowledged.

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Dedication

Dedicated to my Beloved and Dearly Missed AgazHailemeskelKerga, for whose sprit always pushes me forward in every difficult situation.

I wouldn't be who I am today, if it wasn't for your Aba.

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Firstly, I want to thank Almighty God for granting me strength and patience throughout this journey. Secondly, this work would not have been possible without the support of many individuals at various stages of the study, for which I am profoundly grateful. I especially want to extend my deepest gratitude to my advisor, **Zekarias Keneaa(Associate Professor)**, for his unwavering patience, humility, professional guidance and critical feedback that shaped this work. Words cannot adequately convey my appreciation, Professor. THANK YOU, SIR!

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Abbreviations And Acronyms

Art.	Article
BoD	Board of Director
CBE	Commercial Bank of Ethiopia
DARS	Documents Authentication and Registration Service
EIC	Ethiopian Investment Commission
EoDB	Ease of Doing Business
OMPLC	One Member Private Limited Company
PLC	Private Limited Company
MoA	Memorandum of Association
MoR	Ministry of Revenues
MoTRI	Ministry of Trade and Regional Integration
S.C	Share Company
TIN	Taxpayer Identification Number

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6. Unilateral Declaration for establishing OMPLC (Sample Format)
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8. Data from the Ministry of Trade and Regional Integration showing current OMPLC registration statistics

Abstract

In 2021, the reform of the Commercial Code in Ethiopia introduced a much-awaited novelty: the One-Member Private Limited Company. This was mainly in response to criticisms against the previous framework, which excluded single investors from limited liability protections. This research investigates the viability and challenges of implementing OMPLC in Ethiopia, and it also compares it with existing sole proprietorships and PLCs. It critically analyzes the practical implementation of the OMPLC legal provisions, mainly to assess their viability and identify challenges. This comprehensive thesis, encompassing both legal and practical investigation, reveals a lower level of viability for OMPLCs due to a significant number of challenges hindering their effectiveness. In conclusion, the research proposes recommendations for legislative amendments to the governing laws. It also recommends simplification of registration process, creation of awareness, government support etc... to uplift the effectiveness of OMPLCs.

Keywords: One-Member PLC, Revised Commercial Code, Limited liability

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CHAPTER ONE

1. Introduction

1.1. Background of the Study

The business environment in Ethiopia has undergone several changes in recent years, and the government has finally enacted the revised Commercial Code to boost commerce and advance the standard of living of citizens. ¹ Before 2021, the privilege of doing business in Ethiopia while enjoying the benefit of limited liability was only extended to companies and registration of a company requires at least two shareholders, so the protection that is granted in the case of unlimited liability for limited liability is not automatically extended to sole proprietors. The amendment of the 2021 Commercial Code of Ethiopia seems to recognize this limitation and introduces a novel concept, the One-Member Private Limited Company (OMPLC). ²

A Sole Proprietorship is the simplest form of business organization in which the owner of the business is a single individual. PLC on the other hand, is a more complex form of business entity where two or more people share the ownership of the business, and the business is subject to more stringent regulations. OMPLC is a hybrid between a Sole Proprietorship and a PLC and is designed to provide entrepreneurs with the combined benefits of both forms of business entities. OMPLC is a one-man company, but is subject to the same regulations as a PLC, with its potential to offer a balance between individual control and corporate advantages, which stands as an exciting avenue that necessitates thorough examination. This means that OMPLC has limited liability, which is a critical advantage over Sole Proprietorship; however, it is also significantly more regulated in comparison to Sole Proprietorship.

The context of the introduction of the new Commercial Code is marked by a break with the challenges posed by the previous code, which was criticized for its prohibitions on sole traders by setting a minimum number of members to establish a limited liability company. Addressing these challenges was particularly essential, and the new code is believed to have provided a solution, notably through the introduction of the OMPLC. Even though, this prohibition was

¹Commercial Code of the Federal Democratic Republic of Ethiopia, Preface, Proclamation number 2143/2021, Federal Negarit Gazette, Extra Ordinary Issue, Year 27, No.23

² Id, Art. 534- 545

evasively circumvented by collaborating nominally with a partner, primarily to meet the minimum requirement of two shareholders. Such practices created hurdles for local as well as foreign investors, compelling them to form partnerships for non-business reasons. The widespread de facto existence of one-member companies rendered the prohibition ineffective and acted as a reason for lifting the restriction, allowing the establishment of OMPLCs.³

Although setting up OMPLCs provides the privilege of limited liability for sole traders and numerous benefits for those entering the economy, it entails specific preconditions to be effective. The unique feature of OMPLCs lies in the strict demarcation between the shareholder and the company, endowing the latter with a detached legal personality. The principles of separate legal identity and limited liability contribute to the flourishing of private enterprises by transferring the risk of business failure from the company to creditors.⁴ The very purpose of this research therefore, is to assess the viability and hurdles in introducing the OMPLCs in Ethiopia. Examination of the subject will be made from the perspective of the existing Sole Proprietorship and PLC model to gain a comprehensive understanding of the potential challenges and benefits of transitioning to the One-Member PLC. Through this study, the research identified potential advantages and limitations associated with establishing OMPLCs as well as legal and regulatory barriers that need addressing before widespread implementation.

1.2.Statement of the Problem

The introduction of OMPLCs in Ethiopia's legal system presents a new business structure, a hybrid business entity combining elements from Sole Proprietorships and PLCs, with the potential to address limitations inherent in both Sole Proprietorships and PLCs. To gain from the fruits of OMPLC, there should be a well-developed business practice, sequential research and well-structured legal framework to protect creditors as well as for the effective implementation of OMPLC. Moreover, since OMPLC is a newly introduced concept to the country system, there is a potential knowledge gap among traders, lawyers, financial sectors as well as in the executive branch of the government. This lack of understanding hinders the effective implementation and

³ Fekadu Petros, *The New Ethiopian Commercial Code: A Highlight of Major Change*, (2021), p 2

⁴ Mohammed Rezal Salim, *Corporate insolvency: separate legal personality and directors duties to creditors*, Vol.2, UniversitiTeknologi, MARA Law Review, No. 90, (2004), p.1

utilization of the OMPLC model, highlighting the importance of comprehensive education and awareness initiatives including such studies.

Hence, this study attempts to exhaustively examine the viability by assessing the overall effectiveness and attractiveness of OMPLCs as a business option and focusing on the identification of challenges faced by OMPLCs in terms of adoption and operation. Through a comparative analysis, it seeks to explore the prospects and challenges of this model in contrast to the established Sole Proprietorship and PLC frameworks.

1.3. Research Questions

This study aims to evaluate the feasibility and challenges of introducing OMPLCs and operational examination it seeks to uncover the potential impacts of OMPLCs on Ethiopia's business landscape. Accordingly, the study will hold the following question as its central research question: -

- ❖ What challenges might OMPLC potentially confront when contrasted with established models, Sole Proprietorships and PLCs in terms of viability and hurdles they encounter?

Based on the main research question mentioned above, the following sub-questions will be examined.

1. Based on Ethiopia's short experience, how efficient is the OMPLC registration and setup process compared to Sole Proprietorships and PLCs?
2. How unique OMPLC is in its potential to attract investment compared to Sole Proprietorships and PLCs models?
3. Would the principle of pricing the corporate value impacts the viability of OMPLC?
4. What are the potential challenges of OMPLCs? Has there been any government support or initiatives specific to OMPLCs that aim to mitigate challenges?
5. Is there a legal mechanism in place to shield the spouses of OMPLC owners from potential fraudulent activities? What are the main challenges creditors may face while dealing with OMPLC?

6. How the ownership, control, and operational structures of OMPLC could be a challenge to the effectiveness of its implementation? Would there be financial challenges on OMPLC due to their novelty?
7. Is the current taxation environment convenient enough for the effective implantation of OMPLCs?

1.4.Objective and Significances of the study

The key objective of this research is to assess the viability and challenges of an OMPLC structure within the Ethiopian business landscape. This paper, in particular, attempts to compare this novel business model with the existing models of Sole Proprietorship and PLCs, which are prevalent in Ethiopia. The research seeks to determine the benefits of this OMPLC structure and its drawbacks, as well as regulatory challenges. The specific objectives of the study are to identify roadblocks faced by potential OMPLC users and suggest solutions to make them successful.

The study holds significant importance as it explores on the feasibility and hurdles of introducing OMPLC into Ethiopia's business landscape. This study will thus provide useful insights through intensive investigation of the real-world practice and the current legislation governing OMPLC. Consequently, the findings will be valuable for policymakers, potential investors, and academicians. Additionally, the research will identify various challenges of implementation of OMPLC and solutions will be laid out.

1.5.The Scope of the Research

Given Ethiopia introduced OMPLC in 2021; this research delves deeper to assess its effectiveness and identify areas for further improvement, particularly within the context of established business structures Sole Proprietorship and PLCs. This research, therefore, sought to analyze the legal frameworks of OMPLC and its practical aspects from various angles. Based on this research, the thesis puts forward possible benefits and limitations of adopting OMPLC in these existing structures by comparatively analyzing Sole Proprietorships and PLCs.

For this, it is important to note that the study confines its scope only to the Ethiopian framework, specifically in the context of Addis Ababa. The research will not conduct comparisons of legal

frameworks across different countries. The major focus remains on the assessment regarding the effectiveness of the OMPLC within the framework of the most common business models of Ethiopia i.e. Sole Proprietorship and PLCs. Also, it shall not explore other types of business models that exist in Ethiopia.

1.6.Limitation of the Study

Due to the novelty of the OMPLC business model in Ethiopia, relevant research is scarce. Existing studies, such as senior essays by Zelalem Teka⁵ and JetuEdosa⁶, and unpublished work by Assamen M. Tessema⁷, predate the introduction of OMPLCs. Similarly, Fekadu Petros' book⁸, while informative, mainly provides a general perspective on Ethiopian companies and offers limited specific insights into OMPLCs. This constraint, along with the reliance on pre-OMPLC data sources, may limit the depth of analysis in this study.

Besides, the scope and depth of the research could be limited due to time constraints. It may not encompass all relevant factors affecting the given subject matter, and also the bias of the researcher may have an impact on the interpretations of the data unconsciously. More so, the business environment is dynamic, and future developments might alter the viability and hurdles connected with the introduction of OMPLCs. Even though this thesis may not address every aspect of the viability and obstacles regarding the implementation of OMPLC in Ethiopia, the research made an effort to present comprehensive investigations and findings of the feasibility and challenges regarding the introduction and implementation of OMPLC in Ethiopia compared to the Sole Proprietorship and PLC.

⁵Zelalem Teka, *The Desirability of Single Member Companies in Ethiopia and the Need to Reform Our Company Law*, School of Law (AAU), (2006)

⁶ Jetu Edosa Chewaka, *Introducing Single Member Companies in Ethiopia: Major Theoretical and Legal Considerations*. College of Law and Governance Studies, School of Law (AAU), (2014)

⁷Assamen M. Tessema, *Comparative Single-Member Companies of Germany, France and England: A Recommendation to Ethiopia*. (2012), Available at <http://ssrn.com/abstract=2193070>

⁸ Fekadu Petros Gebremeskel, “የኢትዮጵያ የኮርፖሬሽን ህግ” [Ethiopian Company Law], 3rd edition, (2014 E.C)

1.7. Research Methodology

1.7.1. Research Method

The research deals with examining the law and the operation of the law. As a result, the study utilized both Empirical and Doctrinal legal research. By doing so it enabled the researcher to get real-world insights and perspectives, as well as a comprehensive understanding of the legal framework and challenges. The thesis employed a qualitative empirical legal research method.

1.7.2. Source of Data

The research employed both primary and secondary sources extensively;

- A. Primary sources:** Selected Manager and staff of Ministry of Trade and Regional Integration, Documents' Authentication and Registration Service, Ministry of Revenues, Ethiopian Investment Commission, PLC Business Owners, Sole Proprietorship Business Owners, Bank officials, OMPLC business owners and Law Firms/Legal advisors were the major sources of the primary data. Observation has additionally served as a means of collecting data. Since the study is doctrinal legal research as well, the new Commercial Code, the deliberation minutes of the new Commercial Code, selected proclamations, regulations and directives were consulted and used as primary sources particularly to assess the feasibility and challenges of the introduction of OMPLC.
- B. Secondary Sources:** The study made a detailed analysis of the various secondary sources related to the introduction and implementation of OMPLC. This includes various texts of legal literature, relevant articles, research papers and writings that were of very much help in the sense of gaining access to the secondary data sources of different articles and journals equivalent to the contextual coverage and theoretical foundations of the study.

1.7.3. Data Gathering Instruments and Analysis

Since the qualitative research approach enables researchers to apply multiple sources of data such as interviews, observation and document analysis, during data gathering of the study, a qualitative approach was implemented. Employing a qualitative research method is suitable for the research for two fundamental reasons. Firstly, OMPLC is a new legal entity to the country's legal system, and quantitative data gathering and analysis wouldn't be practical. Secondly, the

qualitative research method is the most suitable way for addressing the research questions of the study due to its high degree of flexibility and the fact that the study needs to acquire deep information from the informants. The research attempts to derive an overall understanding of the feasibility of the introduction of One-Member PLC along with the impediments attached to the same by collecting insights from qualitative analysis. Interviews, observation and analysis of the law were implemented to gather critical information.

The purposive sampling technique is implemented as it enables the researcher to acquire qualified information from selected individuals based on their experience, position, expertise and other attributes the study so requires. Accordingly, in-depth semi-structured interviews were conducted with a diverse range of stakeholders, including Legal experts specializing in Ethiopian business law, Bankers, Government officials involved in business regulation and Owners of existing Sole Proprietorships and traditional PLCs in Ethiopia. The new Commercial Code, selected proclamations, regulations and directives were consulted, which helped to identify potential legal and regulatory gaps that need to be addressed for implementing OMPLCs.

The research utilizes appropriate qualitative data analysis techniques. Thematic analysis was used for interview data to identify key themes and patterns in the contents of data by developing themes like perceived advantages and disadvantages of OM-PLCs compared to Sole Proprietorships and Legal and regulatory challenges anticipated with introducing OMPLCs. Then by refining and defining themes clear picture of the research questions was able to be gathered. As a conclusion, the research methodology attempts to formulate a rigorous and complete framework for the assessment of the viability and hurdles in the introduction of One-Member PLC in Ethiopia. Through the utilization of a comparative research design over the Empirical and Doctrinal legal research, combining primary with secondary data sources, and keeping the ethical guidelines in place, the generated findings are expected to provide valuable inputs for policy, practice, and future research in the area of company law and business regulation.

1.8.Organization of the Thesis

The study is organized in five chapters. The first chapter constitutes the background of the study followed by the statement of the problem and questions, objectives and significance of the study,

scope of the research, limitations and methodology of the study. An exploration of OMPLC is done in chapter two through a literature review, by bringing out aspects of the characteristics, structure, and governance of the OMPLC by comparing it with Sole Proprietorships and PLCs. Chapter three examines the advantages and challenges of OMPLCs within the existing legal framework of Ethiopia. It focuses on the formation process, the advantages of limited liability, and the flexibility of operations for OMPLCs. Chapter four discusses the challenges associated with implementing OMPLCs in Ethiopia. It explores legal, institutional, and operational hurdles to provide a comprehensive understanding of the potential difficulties faced by these companies. The final chapter summarizes the main points and conclusions of the thesis. It offers practical recommendations based on the research, outlining actionable steps to address challenges and seize opportunities within the study's scope. The thesis adheres to the formatting guidelines set by the Addis Ababa University School of Law for LLM theses.⁹

⁹ Dr. Solomon Abay et al, *LLM Thesis Guidelines*, Addis Ababa University School Of Law, (In consultation with academic staffs of the School of Law), (June 2018)

CHAPTER TWO

2. Literature Review

2.1. General Overview of OMPLCs

The historical development of OMPLCs is closely intertwined with the historical evolution of companies overall. Various nations have thoroughly examined the advantages and disadvantages of this business structure while crafting legal and institutional frameworks alongside traditional corporations.¹⁰ However in almost all countries, history shows that the inclusion of OMPLC as part of company law had been a difficult task, repeatedly rejected by their respective legislatures because a company was conceived to be maintained and pursued by two or more natural or artificial persons.¹¹

The first case judicially recognizing One Member Corporation was *Salomon V. Salomon & Co Ltd.* (1897).¹² The case, though not directly creating the One Member Corporation, is often referenced in its history. Salomon, a businessman, formed a limited liability company with himself, his wife, and his sons as shareholders. The company later went bankrupt, and creditors argued that Salomon shouldn't be shielded from personal liability since he controlled everything. Finally, the House of Lords ruled in favor of Salomon, establishing the principle of a company as a separate legal entity from its owner(s). This laid some groundwork for the future concept of OMPLCs.¹³

Later on, most countries started to accept OMPLC directly after Liechtenstein allowed the creation of a company with a single member in 1925.¹⁴ In France, as is the case in other civil

¹⁰Assamen (2012), *Supra* note 7, p.7

¹¹ Mario Rotondi, *Limited Liability of the Individual Trader: One Man Company or Commercial Foundation*, 48 *Tulane Law Review*, (1973) p.989

¹² *Id.*, p.853

¹³ Marc Moore, *Landmark Cases in Company Law of Salomon v Salomon*, UCL Faculty Of Laws, (2023), p6

¹⁴ Haswani, Vinay and Rajoria, Dr Krati, *One Person Company: An Analytical Study*, *An International Multidisciplinary Research Journal*, Vol.5, (2015)

law countries, the inclusion of OMPLC form of company was not easy.¹⁵ One-member private limited company was permitted by Law No.85-697 of July 11, 1985.¹⁶

In Germany, a company with a sole shareholder can be formed legally and the concept of "Single-Member Company", recognized since the late 19th century, and gained formal acknowledgment in 1980. EEC Company Law Directive no. 12 facilitated its acceptance, swiftly transitioning from proposal to adoption in 1992.¹⁷

OMPLC structure has received attention in many jurisdictions as another form of business vehicle for entrepreneurs seeking to gain the benefits of limited liability and corporate status while maintaining tight control over one's business.¹⁸ OMPLC, like any other company, has a detached legal personality from the owner and limited liability. The sole proprietorship business which grants the same kind of control as that of a One Member Corporation is short of all these privileges. There are plentiful rules and regulations and procedural requirements to be met to involved in a private limited company granting similar features. As such, for one who desires to hold control and enjoy the fruit of a one-member company like limited liability, operating by establishing OMPLC is most suitable.¹⁹

A study by Dragana Radenkovic (2005)²⁰ established some of the various advantages found in OMPLC and their structure in comparison to sole proprietorship relative to asset protection and tax efficiency. The finding shows the immense benefits realized in an OMPLC structure. The first benefit is tied to the protection of personal and business assets. This is unlike in sole proprietorships, where such borders are hardly seen and personal and business assets often become one. The boundaries provide a safeguard through which the owner of the company can

¹⁵ Assamen(2012), Supra note 7, p.8

¹⁶ Wooldridge, F., *The Draft Twelfth Directive of Single-Member Companies*, *Journal of Business Law*, (1989),pp. 86

¹⁷ Assamen(2012), Supra note 7, p.8

¹⁸ Vipin Kumar, *One Person Company: Concept, Issues and Suggestions*, *Corporate Law Adviser*, Vol. 132, pp. 67-76, (2016), pp.3-7, Available at SSRN: <https://ssrn.com/abstract=2877002>

¹⁹ Id

²⁰ Dragana Radenkovic Jocić, *A Single Member Company- Convenient Or Not For The Founders*, Faculty of Economics Niš, University of Niš, (2005), pp. 209-219

shield himself from personal liability if unforeseen legal or financial responsibilities arise. Tax benefits for OMPLCs include benefits that depending on the country's tax system structure, OMPLC might be free from a double taxation scheme, unlike other corporates, in so doing enhancing the tax efficiency under the business structure.²¹

Another study shows²² the dynamic capabilities inherent in OMPLCs, especially for steering through rapidly changing business environments. Not only that, but one of the most interesting elements found in the research regarding the single-member structure of these limited company forms is the flexibility that it provides new entrepreneurs with in terms of ways they can react to the dynamics of a changing market.²³ The study highlights how the efficient decision-making processes inherent in OMPLCs facilitate quick and strategic maneuvers. This agility allows the entrepreneur to capitalize on emerging trends, avoid threats that present themselves, and realize new opportunities almost the instant they emerge, such advantages imply that OMPLCs are better positioned in dynamic business landscapes. The study also emphasizes that the strategic benefit backing the single-member structure could be intensified by more agile and reflexive decision-making. OMPLCs help entrepreneurs make actual decisions based on timely and informed facilities that would be used to take maximum advantage of market opportunities by reducing potential risks due to lesser bureaucratic hurdles and complex internal workings.²⁴

Despite the benefits, there are many challenges in setting up and running OMPLCs. Legal and regulatory requirements vary from place to place, with some jurisdictions imposing restrictions or requiring OMPLCs to comply with company statutes meant for large multi-member companies.²⁵ For instance, some of the comparative studies found that some jurisdictions

²¹ Id

²² Aprajita Bhargava, *One Person Company: Concept, Opportunities & Challenges In India*, An Open Access Journal from The Law Brigade (Publishing) Group, South Asian Law & Economics Review, Annual Volume 7 – ISSN 2581-6535 (2022), pp. 219-221

²³ Id

²⁴ Id

²⁵ Dragana (2005), supra note 20

require a minimum capital investment, while others impose limitations on the kind of business the companies can engage in.²⁶

The other possibly challenging point is the perception of OMPLCs in the business world. Most of the views towards OMPLCs from potential clients to transact with, or investors and customers interested in pooling investments, see them in a very vulnerable status and consider them unreliable when compared with the other forms where investment will not be threatened by a sudden severe loss as other corporates which have multiple shareholders.²⁷ The first reason that makes stakeholders perceive OMPLCs as a feeble company is that they do not have multiple shareholders. Since the absence of multiple shareholders can bring alertness on how OMPLCs are managed and the sureness as to how strong enough they are in instances of economic changes or unpredictable crises, the vulnerability of decisions and strategic planning reduces. Furthermore, heavy reliance on one individual for leadership and decision-making raises questions about succession planning and the company's ability to endure its operations in the long term.²⁸ The instability or lack of credibility that people seem to attach to OMPLCs might in effect just be a matter of not being familiar type of business. What is more easily understood and accepted in the business community is the usual concept of a corporation with at least two shareholders. OMPLCs may be felt to be new, or even unconventional, leading to skepticism or caution.²⁹

Concerns in this venture include the fact that OMPLCs ought to exploit the age-old idea of good relations with their stakeholders concerning overcoming their bad perceptions and fastening credibility. For instance, an owner must interact up front with his investors and customers gaining their trust by exhibiting a lot of creditworthy characteristics and traces. In these ways, OMPLCs can earn a good name for them and improve their position in the market.³⁰

²⁶ Id

²⁷Natcha Rattaphan, *Legal Issues On Creditors' Rights And Protections In Single Member*, THAMMASAT UNIVERSITY Master Of Laws In Business Thesis, (2016), pp. 19-23

²⁸ Id

²⁹ Id

³⁰ Dragana (2005), supra note 20

A comprehensive examination of the underpinnings, challenges, and prospects of the One Member Private Limited Company has yet to be undertaken in Ethiopia, particularly following its adoption in the country. This practical study would be essential to analyze the OMPLC from an Ethiopian perspective and fill the knowledge gap in the literature as well.

2.2. General Theoretical Overview of OMPLCs

Depending on the legal framework governing business entities in various countries, there exist several options for investors and entrepreneurs. Among these options is OMPLC, which is specifically crafted by legislation to offer its owner flexibility, autonomy, and safeguards against liabilities while navigating business activities. The OMPLC operates on the principle that, despite being a single-owner entity, it enjoys the advantages of a separate legal identity and limited liability for the sole proprietor.

Guided by corporate theory fundamentals (details upcoming), the formation and management of an OMPLC are characterized by optimal organizational efficiency while at the same time minimizing risk and maximizing the creation of value. Traditionally, the company theories and laws predominantly favored the creation of business having multitudes of shareholders by providing that this type of business could distribute the risks and the duties more effectively. Hardly noticing the upcoming trends of solo entrepreneurship and the need for limited liability, lawmakers have made provisions for OMPLCs. The provisions make one individual capable of forming and running a company with a solitary liability and that the company does not extend to the owner's wealth.³¹

The theoretical foundations of OMPLCs are intertwined with and also arise from the traditional corporate theories. At its core, the concept of the OMPLC is firmly grounded within the principle of limited liability, which has become the foundation of modern corporate governance, protecting individual entrepreneurs' personal finances from business exposure. This paves the way for the recognition and the incentivizing of risk-taking and entrepreneurship through a legal regime which must shield personal assets and motivate meaningful levels of investment into

³¹ Paddy Ireland, Ian Grigg-Spall and Dave Kelly, *The Conceptual Foundations of Modern Company Law*, Vol. 14, No. 1, Critical Legal Studies, (1987), pp. 149-165

productive enterprise.³² The following section will attempt to take a glimpse at the theoretical underpinning of OMPLC drawing from several key concepts in corporate theories.

2.2.1. Limited Liability

Limited liability is one of the very important theories of the modern corporate law of establishing companies. This normally ensures that the shareholders, in case of insolvency, do not become liable to pay more than the unpaid amount on their shares to the creditors and hence it creates a shield for the personal assets of the shareholder. In return, then, not only does such protection assure shareholders, but also entrepreneurial culture and attraction to investments.³³

Limited liability serves as a type of incentive that urges the individual entrepreneur into risk-taking as it avoids the fear of personal financial collapse in the face of business failure. In this sense, the freedom to innovate ideas is what emboldens entrepreneurship. Limited liability promotes more investment in a company. Similarly, when investors know that the losses cannot exceed the money they contributed, they would be more and more willing to put capital into safe ventures. Such infusions of invested capital then continue to fuel further business expansion, foster job creation, and stimulate economic growth.³⁴ It is the foundation of a decrease in risks and attraction of capital, and proves to be important for the present-day practice of business.³⁵

Such extension of liability protection to OMPLC has never been without contest since granting such protection to sole businessmen has its pros and cons. The awarding of limited liability protection to the owner, on the one hand, will encourage the establishment of own businesses without fear of losing personal properties and, therefore, influences probable reasons like innovation and economic growth.³⁶ Moreover, limited liability guards personal asset by boosting risk-takings and investments in business without any possible disaster occurring to the financial

³² Alan Schwartz, *Limited Liability and the Known Unknown*, Yale Law Journal 118, no. 4 (2009), pp. 804-850

³³ Id

³⁴ Hansmann, Henry, and Reinier Kraakman, *Toward Unlimited Shareholder Liability for Corporate Torts*, The Yale Law Journal 100, no. 7 (1991): pp. 1879-1934

³⁵ Coffee, John C., Jr., *No Soul to Damn: No Body to Kick: An Unscandalized Inquiry into the Problem of Corporate Punishment*, Michigan Law Review 79, no. 3 (1981): pp. 386-459

³⁶ Id

ability of the owner. By granting protection, it will make small businesses compete better and make them contribute in terms of market diversity, while at the same time, they would rise to a certain level of playing field with the large businesses.³⁷ However, limited liability could also increase recklessness and bad decisions by sole proprietors, who do not have to lose everything like other business owners, which may in turn cause more businesses to fall while leaving their creditors at risk.³⁸ Furthermore, it may also be considered discriminatory against other small businesses that do not enjoy such protection and could, therefore, interfere with market competition arrangements.³⁹

2.2.2. Separate Legal Personality

Companies are considered to have an independent legal personality, which stands separate from their owners. A company has the right to own property, carry on business with others by entering into contracts, and will also be liable for its obligations. Separation of legal personality makes possible business transactions and contracts and also ensures clarity in legal proceedings that might arise against such functions, hence stability and credibility. A unique characteristic of an OMPLC is the concept of a separate legal entity, one that captures it as a separate legal personality by itself from its member/owner. It is in the jurisprudential and corporate law background that this is embedded, as forming the basis for business transactions and general dealings, enforcement of contracts, and specification of the rules for legal responsibilities. The law gives an OMPLC an independent legal personality thus, a source of certainty and clarity in commercial dealings and available resources are put to effective use in pursuit of economic goals.⁴⁰

³⁷ Id

³⁸ Marie-Laure Djelic, Joel Bothello, *Limited liability and its moral hazard implications: the systemic inscription of instability in contemporary capitalism*, Theory and Society, (2013), pp.589 - 615

³⁹ Id

⁴⁰ Budustour, Yasmine and Budustour, Leen, *The Doctrine of Separate Legal Personality and Its significance in International Business*, (2023), Available at SSRN: <https://ssrn.com/abstract=4384050>

2.2.3. Agency Theory

Agency theory looks into the relationships and the subsequent conflicts that arise between the principals/shareholders and the agents/managers of an organization. In traditional corporations, agency theory displays more of the challenges of aligning the objectives of the owner with that of the company.⁴¹ Agency theory dwells on the complex relationship between principals and agents within the context of organizational structures. Concerning OMPLCs, the tendency by agency theory the owner of the OMPLC must act in the best interest of the company, most essentially in a situation where the owner simultaneously holds the managerial position.⁴²

In corporations with multiple shareholders, agency conflicts often arise due to the differing interests between owners and agents/managers. Under a unique context of OMPLCs, where there is a high possibility that ownership and management rest singularly with one individual, the problems of an agency are different, the owner must always act in the best interest of the company. Such case, alignment can bring about harmonious synergy and reduce the divergence of interests that can be a bar to make effective decisions that will optimize performance.⁴³

2.2.4. Piercing the Corporate Veil

The process of “Piercing the Corporate Veil” is a legal doctrine that allows a court to go beyond the company and hold shareholders or members personally liable for the debts and obligations of the entity.⁴⁴ This doctrine, if not more, requires special attention when applied to an OMPLC, as in the eventuality of one member who owns all the shares, manages and controls the affairs of

⁴¹Jensen, Michael C., and William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, Journal of Financial Economics 3, no. 4 (1976), pp.305-360

⁴² Id

⁴³ Id

⁴⁴Jeffrey K. Vandervoort, *Piercing the Veil of Limited Liability Companies: The Need for a Better Standard*, 3 DePaul Bus. & Com. L.J. 51 (2004), pp. 51-81

the company. In case of wrongful use, fraud, or other inappropriate conduct by the owner of the company would disqualify the separate legal entity.⁴⁵

The common form that piercing of the corporate veil will assume in the context of the OMPLCs will be intermingling with the owner's personal property with the business. Commingling of funds between the owner and the affairs distinguishing themselves from the affairs of the company could also demolish that line and render the owner personally responsible for the obligations of the company under the piercing the corporate veil doctrine.⁴⁶

The doctrine of piercing the corporate veil has been criticized and supported at the same time, through conflicting views. Proponents argue that this doctrine provides a credible deterrent against irresponsible, fraudulent or wrongful behavior of owner-managers which would have otherwise prejudiced the interests of creditors. In addition, by making the individuals liable for the corporation's actions, piercing the corporate veil serves to guard and retain the business atmosphere integrity that only enhances trust and accountability among the stakeholders.⁴⁷

However, opponents have come up strongly emphasizing the fact that overemployment of the piercing doctrine will affect the company's ability to contribute toward innovation and entrepreneurship. They argue that unreasonable imposing of personal liability burdens the owner-managers may also be a factor that restrains the ambition of risk-taking that prevents the pursuit of ambitious ventures. Afraid of the law, entrepreneurs would like to take conservative strategic forms that would impair their vibrancy and competitiveness in the market.⁴⁸

⁴⁵Randy Johnson, *Regulatory: Piercing the veil of a single-member LLC A possible trap for the unwary*, Inside Counsel A Summit Business Media publication (2012), p 2

⁴⁶Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 Cornell L. Rev. 1036 (1991), pp. 1036-1074

⁴⁷ Id

⁴⁸ Id

CHAPTER THREE

3. Viability of Introducing One-Member PLCs

3.1.The Legal Environment

3.1.1. General Overview of the Legal Framework Governing OMPLCS in Ethiopia

Although various reasons have been mentioned for the improvement of the old Commercial Code (Proclamation number 166/1960), one of the most important is the inclusion of new commercial associations that are common in the rest of the world and important to the business community. According to the old Commercial Code,⁴⁹ there are six types of business associations or organizations that businessmen may establish which are Ordinary partnerships, General partnerships, Limited partnerships, Joint ventures, Share Companies, and Private limited companies. ⁵⁰In the new Commercial Code, One Member Private Limited Company (OMPLC) and Limited Liability Partnerships (LLP) are newly added entities, while the ordinary partnership is cancelled from the list. ⁵¹

3.1.2. Characteristics and Structure of OMPLC under the New Commercial Code

OMPLC is a business entity to be established by a person's Unilateral Declaration. ⁵²The business organization has legal personality, a corporate existence separate from its member. ⁵³The minimum amount of capital required to establish this business entity is Birr 15,000 (fifteen thousand). ⁵⁴ This business organization is different from the usual business associations in our country, and the reason it is included in the new Commercial Code seems that an investor who has enough capital to establish a company should not necessarily be forced to look for a fictitious

⁴⁹ Commercial Code of the Empire of Ethiopia, Proclamation number 166/1960 Negarit Gazette, Extra Ordinary Issue, Year 19, No.3

⁵⁰ Id, Art.212

⁵¹ Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art.174

⁵² Id, Art.534 (1)

⁵³ Id, Art.534 (2)

⁵⁴ Id, Art.535

associate which gives a result to bogus PLCs, it also facilitates opportunities for investors who want to involve in a business through the allocation of a specific/defined capital and asset separate from their personal assets etc...

3.2.Ease of Doing Business vis-à-vis the Registration Process

The Ease of Doing Business (EODB) index of a nation significantly influences the decision of entrepreneurs to engage in business activities, as it demonstrates the regulatory landscape's favorability for starting enterprises.⁵⁵ Both domestic and international investors prioritize assessing a country's Ease of Doing Business before investing capital recognizing that the ease of business startup and registration procedures are paramount in EODB evaluation. Consequently, these factors significantly shape a country's positioning within the global Ease of Doing Business context.⁵⁶

The World Bank's "Ease of Doing Business" project (discontinued in 2021), offered a valuable insight through its global rankings.⁵⁷ Economies were ranked based on laws impacting businesses, whereby the highest rank reflected a more efficient environment. Countries like New Zealand, Singapore, and Hong Kong attain the top status of these rankings consistently, which indicates a smoother process for launching ventures in the list; unfortunately, Ethiopia is ranked 159 in the 2020 study out of 190 countries.⁵⁸ Even though the project is no longer updated, this historical ranking made for almost twenty years reveals that Ethiopia faced challenges, consistently ranking lower on the ease of doing business scale, including on starting a business. This suggests that in Ethiopia there is a potentially more complex process for launching a business compared to countries with higher rankings.

The country's position is, thus, directly related to the problem related to ease of starting a business: the number of registration procedures, the waiting time for processing, cost, and the bureaucratic hurdles. Economies with high rankings typically boast of efficient processes with fewer steps, lower costs, faster approvals, and the like. While some of the lowest-ranked

⁵⁵Rogério ScabimMorano Et al, *The Interdependence Between Ease of Doing Business, Innovation, and Competitiveness of Nations*,Brazilian Administration Review, vol. 20, no. 2, (2023)

⁵⁶Ibid

⁵⁷World Bank, *Doing Business project*, (2020) archive.doingbusiness.org (Accessed 12 March 2024)

⁵⁸Id

trade and investment, and significantly improve Ethiopia's status on the index table of "Ease of doing business".

Having the progress being made in mind, the legal requirements to start a business of an OMPLC, PLC and a Sole Proprietorship will be examined as follows, as it's a yardstick to weigh the ease of doing business in a country.⁶²

3.2.1. Legal and Practical Overview of OMPLCs Formation

Formation of an OMPLC is made following the unilateral declaration given by the member being personally present at the documents authentication and registration service office.⁶³ This "Unilateral Declaration"⁶⁴ supersedes the Memorandum of Association (MoA) in the case of PLCs. In addition to the registration details, the unilateral declaration should include the fact that the entity has only one member, the name of the appointed nominee of the member to perform legal duties on behalf of the member or his heirs if the member dies, is declared absent or judicially interdicted, and that the nominee has accepted the responsibility willingly.⁶⁵

The OMPLC cannot be established if the nominee does not accept the nomination and express his/her willingness to the documents authentication and registration service in person.⁶⁶ A nominee cannot be appointed as nominee for more than one OMPLC at the same time.⁶⁷ A sole proprietor can convert his business into an OMPLC, and the member will be jointly and severally liable for all debts incurred before the conversion of the company.⁶⁸ A One-Member PLC cannot establish another OMPLC, and the member and the OMPLC will be jointly and severally be held responsible for the damage caused to third parties as a result of the violation of this prohibition.⁶⁹

⁶²Rogério, (2023), supra note 54

⁶³ Commercial Code, supra note 1, (Proclamation No. 2143/2021), Art.536 (1)

⁶⁴ See Annex 6, for a sample

⁶⁵ Commercial Code, supra note 1, (Proclamation No. 2143/2021), Art.536 (2)

⁶⁶ Id, Art.537 (1)

⁶⁷ Id, Art.537 (2)

⁶⁸ Id, Art.538

⁶⁹ Id, Art.539

Looking into the practice, Proclamation no 1263/2021, which defines the powers and duties of the executive organs institute, established the Ministry of Trade and Regional Integration.⁷⁰Pursuant to Article 22 (1, N) of the Proclamation, which provides for the powers and duties of the Ministry, the Ministry is empowered to effect commercial registration and business licensing services in accordance with the relevant laws.⁷¹

The researcher conducted a firsthand observation of an OMPLC full formation process across different institutions, following the standard practices in place. First, an applicant needs to register “a unique business name” which in practice is referred to as “ስምስያሜ”.⁷²This can be done in person (at a Sub-city or Ministry level) or via online, at the website of the Ministry of Trade and Regional Integration office, i.e. the E-trade Website.⁷³Applicants are required to fill out a form available at the office, or the Ministry's Website. The Commercial Code has some restrictions regarding the unique business name, in which the name can't be offensive or infringe the rights of third parties, and it must include "One Member Private Limited Company" at the end. The name registration and search process is designed to ensure that companies do not have confusing, overlapping, deceptive, or otherwise not permissible names.

To proceed with company formation after obtaining the approved name from the Ministry of Trade and Regional Integration, the applicant needs to have the unilateral declaration authenticated. This involves the sole owner's appearance at a branch of documents authentication and registration office to present the declaration. Article 536(1) of the code and 5(6) of Proclamation No. 980/2016 of Commercial Registration and Business Licensing require this authentication for the unilateral declaration, which must be accompanied by two affidavits. One affidavit, from the sole owner, confirms his/her selection of a nominee.⁷⁴The other affidavit,

⁷⁰Definition of Powers and Duties of the Executive Organs Proclamation, Article 16(3), Proclamation No. 1263/2021, Federal Negarit Gazeta, 28th Year No.4

⁷¹Id, Art 22 (1, N)

⁷² See Annex 1

⁷³Ministry of Trade and Regional Integration E-trade website (www.etrade.gov.et)

⁷⁴ See Annex 2

from the nominee,⁷⁵ confirms his/her willingness to accept the responsibility of being a nominee.⁷⁶

As the researcher made an observation, after getting a unique taxpayer ID (TIN) for the OMPLC from the Ministry of Revenue, the sole owner needs to get a letter from the Ministry of Trade and Regional Integration's Sub-city/Ministry's office to open a bank account in the name of the company. To get this letter, it is a prerequisite to submit the authenticated unilateral declaration, the TIN number, ID, and a power of attorney (if done through an agent). Once the letter is acquired, the applicant can open a bank account in the company's name and deposit the specified amount of money as "the capital of the company" in the unilateral declaration, which cannot be less than 15,000 (fifteen thousand) Birr.⁷⁷ The money will be deposited in a blocked bank account in the name of the company until the company gets a commercial registration. This deposit is crucial to protect creditors, as it represents the company's initial financial resources. The bank that opened the account will provide a confirmation letter after the deposit, which is required to obtain a commercial registration for the OMPLC.

As the researcher made an observation, after submitting proof of capital deposit, the company may obtain a Commercial Registration certificate, and Business License certificate using the Ministry's e-trade Website. A Commercial Registration Certificate is issued to the applicant who has an authenticated unilateral declaration of the OMPLC and has finalized all the steps listed above. To obtain a business license the applicant must have to have Principal Registration (Commercial Registration), a Tax Identification Number, and a certificate of competence in the field of commercial activity in which the applicant is seeking a business license (if required).

Ethiopian businesses got a welcome improvement in June 2022.⁷⁸ Since then, all applications, cancellations, amendments, replacements, and renewals for commercial registrations and business licenses can only be done online through the Ministry's Website, including for

⁷⁵ See Annex 3

⁷⁶ Commercial Registration, Licensing and Post Licensing Inspection Directive, Article, 17(7), Directive No 935/2022

⁷⁷ Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art.534

⁷⁸ Interview with Mr. Yirsaw Zewede Belachew, Executive Legal Service, Ministry of Trade and Regional Integration (MoTRI)

OMPLCs. This online system makes the process convenient and more accessible for businesses, saving them time and effort. Additionally, according to Mr Yirsaw Zewde, the legal director at the Ministry of Trade and Regional Integration, using the Website offers another advantage: protection. By utilizing the official online system, businesses can safeguard themselves from scams and potential legal disputes.

Moreover, he suggested that parties who wish to get into a contractual deal; must first check all relevant information about their counterparty, on the “Commercial Register Database” which is available online for everyone for free. The Commercial Register contains crucial information like the full name of the company, address of the company, name of the general manager, capital, sectors, its business license number and most importantly their current license status. Checking the license status ensures parties that they are only entering into contracts with active businesses, and confirm whether the other party can actively get into contractual deal or not. This check of due diligence can simply be made by inserting the TIN or the business license number of the counterparty in the inquiry search bar of the Ministry’s e-trade Website to get all the essential data about a registered business entity.

3.2.2. An Analysis of the Legal and Practical Aspects of PLC

The formation of Private Limited Companies (PLCs) in Ethiopia under the new Commercial Code involves legal regulations outlining the required steps to be taken. Article 495 of the Code makes a comprehensive definition of a PLC which mainly underlines the key characteristics which encompass the following points: it is a company in which its capital is divided into shares, and whose members enjoy limited liability for the debts of the company provided their contributions are fully paid,⁷⁹ the subscription of company’s share to the public is prohibited,⁸⁰ and the company is restricted to a minimum of two and a maximum of fifty members.⁸¹ Additionally, there is a specific minimum capital requirement set for a PLC in Ethiopia, ensuring a solid financial foundation for its operations, with an amount which may not be less than fifteen thousand (15,000) Birr and each share has a minimum par value of one hundred

⁷⁹Commercial Code, supra note 1, (Proclamation No. 2143/2021), Art. 495 (1)

⁸⁰Id, Art. 495 (2)

⁸¹Id, Art. 495 (4)

(100) Ethiopian Birr. Further, the name of the PLC shall contain the words "Private Limited Company".⁸²

Moving to the Establishment of the Business, as the researcher made an observation; all the practical steps for the registration of PLC are identical to OMPLC. The establishment of a PLC is done under full capital payment with the registration of the Memorandum of Association (MOA)⁸³ in the commercial register and the funds collected from the sale of stocks should be blocked and placed in a bank account in the name of the company until formation.⁸⁴ Article 500 of the Code also specifies the contents to be included in the memorandum of association. All the processes and procedures to obtain a Commercial Registration certificate and Business License certificate for PLCs are identical to OMPLCs as elaborated above including the obligation to use the Ministry e-trade Website for such services. Generally, the legal requirements for establishing PLCs in Ethiopia under the new Commercial Code and in practice encompass stringent regulations concerning capitalization, membership, contents of MOA and contribution in kind. Compliance with these provisions not only ensures the orderly formation and operation of PLCs but also safeguards the interests of stakeholders, promotes transparency, and enhances accountability in corporate governance.

3.2.3. An Overview of the Legal and Practical Aspects of Forming Sole Proprietorships

To establish a sole proprietorship, it is a must to navigate through various legal requirements to ensure compliance with the country's laws. A sole proprietor is the simplest and most basic business ownership structure. However, to formalize a sole proprietorship, going through the registration process with the appropriate government body is necessary, like any other business structure. The Commercial Code does not address the issue of the establishment of Sole Proprietorships, unlike in the cases of PLCs and OMPLCs. As a result, it is necessary to consult the relevant legislation governing business registrations, including the Commercial Registration and Licensing Council of Ministers Regulation No. 392/2016 and Commercial Registration and

⁸²Id, Art. 497

⁸³ See Annex 7

⁸⁴Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art. 499

Licensing Proclamation No. 980/2016 to fully grasp the legal prerequisites for setting up Sole Proprietorships.

Forming a Sole Proprietorship closely resembles the process for PLCs, although without the incorporation document of Memorandum of Association. Under these legal frameworks, individual traders intending to establish a Sole Proprietorship must register their business name with the appropriate Federal, Regional or City Administration trade bureau which includes the individual's first name, his father's and grandfather's names and it set list of solutions in case the name of the sole proprietor has already been taken.⁸⁵⁸⁶

As researcher conducted a firsthand observation at the Ministry of Trade, the registration process typically involves submitting an application form, providing personal identification documents, paying the prescribed registration fees and obtaining a Taxpayer Identification Number (TIN) at the Ministry of Revenue. Further, depending on the sector or nature of the business operation, sole proprietors may be required to obtain certain specified business licenses or permits from the regulatory body in which the power is vested. The list of requirements and essential documents to obtain Commercial Registration and Business License for sole proprietors are exhaustively listed under Article 9 and Article 23 of the regulation, consecutively. Establishing a Sole Proprietorship involves compliance with various legal requirements related to registering the name of the business, issuing TIN, commercial registration, issuing business licenses, etc...

3.3.Features of OMPLC Which Impact Its Viability

Even though the OMPLC has been recognized in the new Commercial Code for over three years now, the concept of this type of entity is still very new to the country. It is important to know the factors which influence the viability of OMPLC to assess its viability in Ethiopia.

⁸⁵Commercial Registration and Licensing Proclamation, Article 14 (1), Proclamation Number 980/2016, Federal Negarit Gazeta, 22nd Year No.101

⁸⁶Commercial Registration and Licensing Council of Ministers Regulation, Article 3, Regulation Number 392/2016, Federal Negarit Gazeta, 23rd Year No.3

3.3.1. Limited Liability for the Single Member

OMPLCs are preferable due to their advantageous structure, particularly in offering limited liability to their sole member. As discussed in chapter two, in the theoretical overview part of this thesis, limited liability is one of the cardinal principles of corporate. This protection is extended in case of insolvency or legal proceedings, making sure that there can be no recourse to the personal wealth of the member beyond the investment made by him in the company.⁸⁷

For entrepreneurs who wish to start and operate a business in Ethiopia, the new Commercial Code avails several options. The Sole Proprietorship business is the simplest and most direct form of an individual owning and running it all alone, wherein the business person is personally liable for any kind of obligation and debt of the business, carrying a very high risk toward their personal assets. Even though the owner has absolute control over the business and reaps all the accruing benefits, simultaneously he is personally liable for all the losses that are incurred with unlimited liability. A Private Limited Company (PLC), on the other hand, must have more than one member to enjoy the same privilege i.e. protection of limited liability as OMPLCs.⁸⁸

Regarding OMPLC the code states that “*the member shall not be personally liable for debts due by the company in so far as he has fully made his contribution*”⁸⁹ and gives the protection of limited liability for the sole member of the company, save the exceptions which will be covered in the coming sections. We can say that the underpinning for granting such protection for OMPLCs stems from the fact they have their own legal personality as stated under Art 534 (2) of the code.

An interview made with PLC business owners revealed that their primary reason for conducting business in the form of a PLC is to obtain the legal protection of limited liability.⁹⁰ This same justification was echoed by the owner of OMPLC during their interview, the protection of

⁸⁷ Alan Schwartz, (2009), supra note 32, pp. 804-850

⁸⁸ Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art 495 (1)

⁸⁹ Id, Art. 534 (3)

⁹⁰ Interview with, Mesfin Hailemeskel, Major shareholder and General Manager at Ecore Trading PLC

limited liability is the biggest factor which pushed them to be involved in such a structure.⁹¹ This brings one of the main features of OMPLC which impacts its viability. It secures the assets of a business owner while encouraging, in a double move, entrepreneurship and investment. Through limiting the business liabilities, protection is rendered to the business owner's assets. From the above points, we can comprehend that the protection of limited liability for the sole shareholder of OMPLC offers a feasible option to bogus PLCs, simultaneously reducing the personal risks inherent in sole proprietorship.

3.3.2. Simplicity in Management and Decision-Making

OMPLC structure adopts some advantages in the landscape of business ownership, notably simplicity in management and the making of decisions. Since OMPLC is a business entity owned and operated by a single individual, the owner holds full control over decision-making and management responsibilities. Unlike PLC or Partnership, there is a singular authority overseeing all aspects of the business. In this regard, Sole Proprietorship provides the same advantages to the owner. Starting from its inception, OMPLC operates by a single person, and it's incorporated by the "unilateral declaration" of one individual.⁹² The only obligation put by the law against the single member to get consent might be the requirement of the nominee. The law provides that OMPLCs can't be established unless the designated nominee has officially accepted the nomination before an authorized entity empowered to authenticate documents.⁹³

AtoMinilik, owner and manager of Elite Import and Export OMPLC, expressed that Ethiopia's collaborative working culture poses challenges. His experience highlighted the difficulty of decision-making and leadership when involving other members of a company. This challenge became a driving force for him to establish an OMPLC, seeking simplicity in management, which is one of the major benefits associated with OMPLCs.⁹⁴ There are no complex operations

⁹¹ Interview with, Ato Minilik Pawlos, Sole owner and General Manager at Elite Import and Export One Member P.L.C

⁹² Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art 534 (1)

⁹³ Id, Art. 537 (1)

⁹⁴ Interview with, Ato Minilik Pawlos, Sole owner and General Manager at Elite Import and Export One Member P.L.C

in vertical or horizontal hierarchies and coordination with only one owner. The owner retains autonomy over strategic direction, day-to-day operations, and resource allocation. This efficient structure ensures all required decisions are swift in their making and avoids the bureaucratic hindrances that are encountered by most companies. According to the Commercial Code, the single member shall exercise the powers of the general meeting of shareholders of a PLC through holding a meeting of the company.⁹⁵

Furthermore, not having to deal with partners or shareholders reduces the possibility of conflict of interest and different agendas. The owner can develop and pursue the vision of the company without any compromise, therefore having a more efficient organizational culture. In addition, the effectiveness of decision-making at the private limited company with only one member is seen to be very effective, where decisions will be executed swiftly without necessarily making a consensus or bargaining between diverging interests, and therefore, the owner may be able to outline unambiguously and shortly the directions which he makes in achieving his strategic goals. Such organizations also hold efficient mechanisms for decision-making that convert to the implementation of new ideas and initiatives. This gives the owners the flexibility to come up with new products, services, or even business models without the many obstacles laid by the bureaucracy, hence promoting an entrepreneurial and risk-inclined culture. In addition, direct accountability from the owner guarantees a high sense of responsibility and commitment toward the success of the company.

3.3.3. Conversion and Operational Flexibility

The Commercial Code offers a path for Sole Proprietorships to transform their businesses into OMPLCs. Though, the owner retains personal liability for the debts of the business accrued before the conversion.⁹⁶ However, we should add that when such transforming processes constitute a very good strategic move for growth, this advantage has to be weighed together with continued personal liability for the past debts. Moreover, in a situation where the number of members of a PLC is reduced to below two, the company may be converted into an OMPLC by

⁹⁵ Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art 542 (1)

⁹⁶Id., Art. 538

amending its memorandum.⁹⁷ More lenient regulation of OMPLCs is set by the new Commercial Code which provides for simplified incorporation procedures and increased flexibility in governance. This makes it a great choice for business owners who want to mitigate their personal risk.⁹⁸ It makes management easier, as OMPLCs are more flexible and respond well to changes in markets. High business flexibility enables an owner to make a quick shift of strategies and seize emerging opportunities or meet challenges, all with corresponding speed, without too many consultations and board approvals.

Given that both Companies and Sole Proprietorships have the option to convert into OMPLCs, traders are considering this transition. Some are drawn to the legal protection it offers,⁹⁹ while others are enticed by its operational flexibility.¹⁰⁰ In addition to that, the system of OMPLC is quite flexible it allows converting into any kind of business organization including into a private limited company (PLC) or upon fulfilling certain requirements. As a one-person company is a “business organization” the same way as a private limited company, they enjoy the same privileges.¹⁰¹

The availability of the option to convert into OMPLC is indeed a key feature that significantly impacts its viability. This flexibility allows businesses to adapt to changing circumstances, take advantage of legal protections, and simplify their operations as needed. It enhances the attractiveness of OMPLCs as a business structure, by providing an avenue for growth and evolution while maintaining legal safeguards and operational efficiency.

3.3.4. Tax Related Advantage

Even though most tax laws of the country were enacted before the introduction of OMPLC, they will be applicable *mutatis mutandis*, since OMPLC is categorized as “Business Organization”¹⁰² the tax laws will be applicable accordingly. As a result, while instituting an OMPLC or

⁹⁷ Id, Art. 498

⁹⁸ Aprajita, (2022), *supra* note 22, pp. 219-221

⁹⁹ Interview with, Abdulaziz Shafi Sole Proprietorship Owner at Merkato, Bomb tera

¹⁰⁰ Interview with, Mesfin Hailemeskel, Major shareholder and General Manager at Ecore Trading PLC

¹⁰¹ Commercial Code, *Supra* note 1, (Proclamation No. 2143/2021), Art 546

¹⁰² Id, Art. 172 (3)

converting a Sole Proprietorship to a One-Member PLC in Ethiopia, the law and the practice offer some taxation advantages.^{103, 104} Challenges in relation with taxation towards OMPLCs are covered thoroughly in the next chapter of the study.

Looking in to the first advantage OMPLCs could get benefit out of its taxation structure; OMPLCs are separate legal entities and pay corporate tax only on their profits. While corporate tax rates in Ethiopia can be lower than the highest individual marginal income tax rates, the specific tax brackets for the owner of the business income play a crucial role.¹⁰⁵ Businesses are subjected to a flat 30% tax flat rate if they are incorporated, while unincorporated businesses have a stepped rate structure ranging from 0% to 35% as stated under the Proclamation.¹⁰⁶

The other advantage OMPLC may enjoy is a range of tax deductions wider than those enjoyed by a sole proprietorship, in the real-world practice. The owner of OMPLC can deduct business expenses from their taxable income, which reduces the tax burden further. The practice suggests that accepting legitimate business expenses in the case of companies and Sole Proprietorship varies at the Ministry of revenue, for companies most of them get acceptance on the contrary for Sole Proprietorship it is challenged highly.^{107, 108} Moreover, every penny get in to the account of the sole trader are considered as sales, which therefor required profit tax to be made unless the trader can show sources of income, which is difficult most of the time.¹⁰⁹

3.4. Piercing the Corporate Veil and OMPLC

The notion of companies with a “Limited Liability” is a foundation of modern business structures. It is based upon the idea that it protects entrepreneurs by separating their individual

¹⁰³ Interview with, Mesfin Hailemeskel Interview with, Misiker Mitku, Finance Manager at Black Lion Trading PLC, Around Bole

¹⁰⁴ Interview with Mr. Muleye Abera Alemu, Tax Department Director, Ministry of Revenues (MoR)

¹⁰⁵ Id, Interview with, Mr. Muleye Abera Alemu

¹⁰⁶ Federal Income tax proclamation, Article 19, Proclamation No. 979/2016, Federal Negarit Gazette Extra Ordinary Issue, 22nd Year No. 104, 18th August, 2016

¹⁰⁷ Id, Interview with, Misiker Mitku

¹⁰⁸ Interview with, Abdulaziz Shafi Sole Proprietorship Owner at Merkato, Bomb tera

¹⁰⁹ Id, Interview with, Abdulaziz Shafi

assets from those which would be used in settling the debts and obligations of the business.¹¹⁰ However, as shown in the theoretical underpinnings of OPMLC, in chapter two of this study, in certain circumstances, courts may pierce the veil of corporates, disregarding the company's separate legal existence and holding the owners personally liable, but only based on the law.¹¹¹ In this part of the essay, the concept of piercing the corporate veil and its implications for OMPLCs in Ethiopia are investigated.

Limited liability is one of the basic principles of corporate law. It ensures that businesses can operate and incur debt without the exposure of the personal wealth of the owners beyond investment in the company. This incentivizes investment and risk-taking, fostering economic growth.¹¹² However, this protection isn't absolute. Courts may pierce the veil under specific circumstances, primarily when the company is misused to commit fraud, evade legal obligations, or act as the owner's alter ego.¹¹³

Before the introduction of the OMPLC into the country's legal system, there were studies and suggestions made on the issue at hand. A study conducted by JetuEdosa,¹¹⁴ by referring to the then Commercial Code¹¹⁵ provisions governing PLC, identified two major legal strategies for holding owners of OMPLCs personally liable i.e. "Piercing the Corporate Veil". The first relates to the overvaluation of in-kind contributions. This is the concept that may arise when the owner contributes assets, like property or equipment, to the company at an inflated value. Overvaluation, therefore, where leads to a kind of prejudice to the creditors, of course, the owner can be held personally responsible for the damages. This is a crucial tool for protecting third parties from such misconduct.¹¹⁶

¹¹⁰ Paddy, (1987), supra note 31, pp. 149-165

¹¹¹ Vandervoort, (2004), supra note 44, pp. 51-81

¹¹² Ashagrie, Mulugeta, *Business Law in Ethiopia* James Currey Publishers, (2013), P. 122

¹¹³ Nwogugu, E.I. *Lifting the Corporate Veil in Nigeria: A Critical Analysis*, Journal of African Law, (2012), p.225

¹¹⁴ JetuEdosa, (2014), supra note 6

¹¹⁵ Commercial Code, Supra note 49, (Proclamation No. 166/1960)

¹¹⁶ Jetu Edosa ,(2014),supra note 6, pp. 113-114

The second point relates to managerial misconduct. This point focuses on mismanagement by the company's managers, which can be the owner himself or someone else appointed. If the acts, or the lack of action, of a manager, affects the viability of the business and harms third parties, such managers could be personally liable, where the assets of the company turn out to be insufficient for the payment of the company's debt during bankruptcy. This provision¹¹⁷ shall apply in case of breaches of duties as outlined under the law or under the Articles of Association of the company, and of course, it is applicable if the Manager couldn't be able to prove due care and diligence.¹¹⁸ As two key takeaways, Jetu highlights specific legal mechanisms to pierce the corporate veil in OMPLCs i.e. targeting owners who overvalue their contributions to the company and holding managers accountable for mismanagement. Finally, he suggests that to benefit from limited liability protection, OMPLC owners must exercise due care and diligence in the conduct of their business. Regardless of ongoing legal debates, the possibility of veil piercing under established PLC rules can serve as a positive force. As it encourages responsible management and helps ensure the effectiveness of the OMPLC structure.¹¹⁹

Ethiopia's new Commercial Code recognizes the principle of “limited liability” for companies^{120,121} yet it is not without exceptions. As a result, the law adopts the principle of piercing the corporate veil. Looking into the case of PLCs, the accountability of managers is stated under Art 516 of the new Commercial Code. The article acts as a double-edged sword for managers, wielding both the threat of liability and the shield of due care. The article outlines a manager's potential financial responsibility for breaching their duties, as well as fostering accountable decision-making.

The basic principle is that laid down under Article 516 (1),¹²² the manager would be, therefore, subject to responsibility for the damage caused as a consequence of the violation of duties

¹¹⁷Commercial Code, Supra note 49, (Proclamation No. 166/1960), Art 531 and 532

¹¹⁸Jetu Edosa ,(2014),supra note 6, pp. 114-115

¹¹⁹Id, P. 115

¹²⁰Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art 495 (1), Legal protection of limited liability for PLCs

¹²¹ Id, Art. 534(3), Protection of limited liability for OMPLCs

¹²² Id, Art. 516(1)

established by law or by the MOA- Memorandum of Association of the Company. This extends responsibility from only a legal violation of the law to include the violation of the particular guideline of the MoA, thereby strengthening internal governance. The next sub-article of Article 516¹²³ goes further in this regard. In bankruptcy scenarios where assets are insufficient, the court may order the current or even past managers (if any) to contribute from their personal funds towards settling the remaining debt. This encourages long-term financial responsibility, for present decisions can very well bear consequences in the future.

However, the last sub-article of 516¹²⁴ avails provision for a critical defense, which is "due care and diligence." The manager might evade liability even though the company is not in a sound financial standing, for instance, by showing that he/she has exercised risk management, acting in the best interest of the company, and the level of caution that a reasonable manager would take etc. Managers are encouraged to prioritize ethical conduct, legal compliance, and financial prudence in order to protect ultimate stakeholders' interests towards the sustainability of the corporation. There is a limitation in the provision of the Commercial Code in this regard, defining "Due Care" will be open for interpretation by the presiding courts. Notwithstanding this limitation, Article 516 remains a crucial tool as it ensures managers' responsibility. It brings out clearly what is expected and financial prudence ultimately protects stakeholders from managerial misconduct.

Despite the fact that OMPLC offers a limited liability, this shield can be shattered by "piercing the corporate veil" and the owner/manager may be held personally liable for the company's actions or debts. This idea warns OMPLCs from operating like personal extensions, guaranteeing responsible business conduct. Even though JetuEdosa¹²⁵ suggested two major considerations to take into account, the new Commercial Code seems to go beyond and introduce several grounds to this effect. The exceptions on the limited liability of OMPLC are found in a scattered manner.

Art 541(2) states that *"The general manager shall have the powers and duties of the manager of a private limited company under this code"* and by the cumulative reading of Art 545 and 516,

¹²³ Id, Art. 516(2)

¹²⁴ Id, Art. 516(3)

¹²⁵ Jetu Edosa ,(2014),supra note 6, pp.113-115

all the liability of PLC Manager discussed herein above shall be grounds for the shattering of limited liability and hold the general manager of an OMPLC personally liable. Converting a Sole Proprietorship to an OMPLC offers limited liability; however, not without strings attached to it, the liability of the Sole Proprietorship remains on the pre-conversion debts of the owners.¹²⁶ An existing OMPLC is not permitted to form another OMPLC and violating this rule leads to joint liability for the owner and the company for damages caused.¹²⁷ Overvaluation of the contribution in kind (non-cash assets) during the formation stage would lead to joint liability between the owner and the auditor in case any damages to third parties have been caused.¹²⁸ These provisions further strengthen the responsible conversion and operation of OMPLCs.

However, the main factors which can potentially trigger corporate veil piercing of OMPLCs and hold the member liable are found under a particular provision.¹²⁹ The new Commercial Code offers a specific framework for piercing the veil in the context of OMPLCs. It outlines situations where the member (sole owner) of an OMPLC or anyone exercising control over the company can be held personally liable together with the company. These situations include deliberately harming the company or its creditors, commingling of the assets, failure to maintain a separate identity, misleading creditors, misuse of the assets of the company, and dividends exceeding its actual profit.

The fact of having Article 543 offers a clearer picture for OMPLC owners versus leaving the case to general principles in piercing the corporate veil. By outlining specific situations, it provides a degree of predictability and reduces uncertainty. However, some concerns remain. Under Article 543(7), the words "other similar acts" are vague and open to quite a few different interpretations as a result it allows some kinds of situations to be understood in a rather ambiguous way. Stakeholders can navigate the legal landscape more confidently and contribute to a vibrant business environment in the country when the law protects their interests in a balanced manner.

¹²⁶ Commercial Code, Supra note 1, (Proclamation No. 2143/2021), Art 538

¹²⁷ Id, Art. 539

¹²⁸ Id, Art. 540

¹²⁹ Id, Art. 543

CHAPTER FOUR

4. Potential Hurdles for OMPLCs

4.1. Legal and Institutional Hurdles in General

Ethiopia has been actively reforming the business environment one aspect of which is the introduction of OMPLCs in the 2001 revised Commercial Code. While offering potential benefits such as sole ownership and limited liability, the implementation process has revealed legal and institutional challenges requiring ongoing attention. This chapter is dedicated to discovering potential legal and institutional challenges associated with OMPLCs in Ethiopia's current legal framework and also explores the practical problems in the implementation of OMPLCs.

As covered in the previous chapter, the revised Commercial Code outlines the procedures and requirements for the establishment, registration, and management of OMPLCs and tries to be as comprehensive as possible, though there still are several key areas where the code lacks clear provisions. These gaps concern the fate of the company and the liabilities and responsibilities of an appointed nominee in various situations. For instance, the law is silent on what happens if the nominee dies, becomes incapacitated, or is unwilling to fulfill his/her duties. Additionally, it's unclear how easily a nominee can relinquish his/her responsibility, whether the owner can reject such a request, and the formal process for such a change (should it be written and registered or not). While the law of agency of the country might be invoked to address these issues, the absence of explicit references in the OMPLC provisions of the Code creates uncertainty. This lack of clarity could potentially lead to disputes and hinder the smooth operation of OMPLCs.

Another legal gap seems to exist regarding succession in OMPLCs. Fekadu Petros states in his book¹³⁰ that a key advantage of OMPLCs compared to sole proprietorships is continuity. He highlighted that a sole proprietorship essentially dissolves upon the owner's death. While heirs can inherit and continue the business, they do so in their names, not in the deceased's. However,

¹³⁰ Fekadu Petros, *Supra* note 8, p. 347

due to its separate legal identity, an OMPLC theoretically continues to exist even after the member's death. This allows the heirs to potentially retain the company name and business activities, according to Fikadu.

Fekadu Petros raises an interesting point, but there's still a hurdle to overcome regarding the inheritance of OMPLCs. By design, an OMPLC can only have a single member at any given time. This creates a complication: if the owner passes away and leaves behind multiple heirs, how would the ownership issue of the company be resolved? There are two potential solutions: if there's just a single heir, he/she can automatically become the new owner, if he/she wants to. Alternatively, if the deceased had a will/testamentary (known as testate succession), and if he/she designated a specific person to inherit the OMPLC, no problem could be raised in this regard. However, things get trickier in the absence of a will (intestate succession) and multiple heirs. In such cases, the legal process for transferring ownership of the OMPLC becomes unclear.

Additionally, there's a notable lack of knowledge among the workforce regarding OMPLC. The researcher interviewed various government organizations involved in the regulation of OMPLC, including the Ministry of Trade and Regional Integration (MoTRI),¹³¹ the Ministry of Revenue (MoR),¹³² including in the Tax Payers Registration and Cancellation Department,¹³³ the Ethiopian Investment Commission (EIC),¹³⁴ and the Documents Authentication and Registration Service (DARS).¹³⁵ Disturbingly, none of the employees of the institutions had received proper training on implementing the regulations surrounding OMPLCs. Simply put, without capable personnel to administer this new business entity, the successful execution of the OMPLC law is at risk.

¹³¹Interview with Mr. Yirsaw Zewede Belachew, Executive Legal Service, Ministry of Trade and Regional Integration (MoTRI)

¹³²Interview with Mr. Muleye Abera Alemu, Tax Department Director, Ministry of Revenues (MoR)

¹³³Interview with Ms Etsegenet Tafese H/giyorgis, Tax Payers Registration and Cancellation Department Director, Ministry of Revenues (MoR)

¹³⁴Interview with Mr Ermias Melese, Legal Department Head, Ethiopian Investment Commission (EIC)

¹³⁵Interview with Mr Mesfin Tilahun, Document Authentication and Registration Director, Documents Authentication and Registration Service (DARS)

4.2. Ambiguity Related to Formation of OMPLC

4.2.1. Single Owner and Multiple OMPLC Formation

There are several ambiguities surrounding the formation and operation of OMPLCs which creates uncertainty for potential users. Ethiopia's legal landscape regarding OMPLCs presents a tangled web of conflicting interpretations. The law states the prohibited formation under Article 539 (1) as follows;

“A one-member private limited company may not establish another one-person private limited company”

The Article seems to be clearly stating that an existing OMPLC cannot establish another OMPLC. However, the implementation and understanding of this provision have become a source of significant confusion. Some legal practitioners argue ¹³⁶ that, based on a straightforward reading of the law and its logical implications, the restriction applies to the individual owner, not to form more than one OMPLC. Adding another layer of complexity to the issue, the Documents Authentication and Registration Service (DARS) presents an unambiguous application of the law. DARS not only prohibits the formation of more than one OMPLC by the same person ¹³⁷ but also mandates new applicants to submit an affidavit swearing they haven't previously owned one. ¹³⁸ This additional requirement lacks a legal foundation.

Conversely, legal scholar Fekadu Petros, argues that the law restricts an existing OMPLC, not the individual owner, from forming another OMPLC.

“.....ሕገደንብ አጠቃላይ መሰረት ገንዘብ ገደብ ሆኖ ለአንድ ሰው ብቻ የሚገባውን የግብርና ግብርና ተገልጿል። በዚህ መሠረት ገንዘብ ገደብ ለአንድ ሰው ብቻ የሚገባውን የግብርና ግብርና ተገልጿል። ነገር ግን የአክሲዮን ማህበር ለግብርና ግብርና ተገልጿል።” ¹³⁹

¹³⁶ Interview with Mr Yehualashet Tameru, Ex -Associate at Mehrteab & Getu Advocates LLP & Founder and Partner at Ethio-Alliance Advocates LLP

¹³⁷ Interview with Mr Mesfin Tilahun, Document Authentication and Registration Director, Documents Authentication and Registration Service (DARS)

¹³⁸ See Annex 2

¹³⁹ Fekadu Petros, Supra note 8, p. 349

[...the law also outlines prohibited establishments as described under Article 539. Accordingly, a single-member company cannot create another one-member company. However, there are no restrictions preventing a share company or a Private Limited Company from forming a one-member company.]

He explains that the law defines prohibited establishment, which is described under Article 539. Accordingly, a one-member company cannot establish another one-member company. However, it is not prohibited for share company or a Private Limited Company to form a single member company. This distinction suggests the possibility of a single person owning multiple OMPLCs. This interpretation finds support in the practices of the Ethiopian Investment Commission (EIC), which permits foreign individuals to own multiple OMPLCs.¹⁴⁰

The researcher made an exploration of the full deliberation minutes¹⁴¹ of the new Commercial Code to get a clear understanding of the legislative intention.¹⁴² Unfortunately, the absence of any recorded discussions on this issue during conceding the draft of the new Commercial Code takes away the possibility of gathering clarification from the source. Ultimately, a clear and consistent interpretation regarding single-person ownership of multiple OMPLCs remains elusive.

4.2.2. Legal Persons Forming OMPLC

OMPLC can be formed by both natural and artificial persons in different jurisdictions. The choice to establish OMPLCs is crucial for multi-member companies aiming to establish wholly-

¹⁴⁰Interview with Mr Ermias Melese, Legal Department Head, Ethiopian Investment Commission (EIC)

¹⁴¹የንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴ እና የህግ ፍትህና ዲሞክራሲ ጉዳዮች ቋሚ ኮሚቴ በንግድ ህግ ረቂቅ አዋጅ ላይ ከጠቅላይ አቃቤ ህግና ከንግድና ኢንዱስትሪ ሚኒስቴር ከሚጠቀሙ ጠቅላይ ሚኒስትሮች ጋር ያካሄዱት ውይይት አጭር ቃለ-ጉባኤ, [Minutes of the discussions held by the Standing Committee on Trade and Industry and the Standing Committee on Legal Justice and Democracy with the informant from Attorney General and the Ministry of Trade and Industry on the draft Commercial Code] (2013 EC), (Series of meetings)

¹⁴²የንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴ እና የህግ ፍትህና ዲሞክራሲ ጉዳዮች ቋሚ ኮሚቴ በንግድ ህግ ረቂቅ አዋጅ ላይ ከሚመለከቱት ውባለድርሻ አካላት ጋር ያደረጉት ውይይት አጭር ቃለ-ጉባኤ, [Minutes of the discussions held by the Standing Committee on Trade and Industry and the Standing Committee on Legal Justice and Democracy with relevant stakeholders on the draft Commercial Code] (2013 EC)

owned subsidiaries to conduct businesses with unlimited potential.¹⁴³ Despite the argument by different scholars, Ethiopia's legal framework for OMPLCs presents a fascinating, yet confusing, situation. A key question remains unanswered: can companies or other legal entities actually form OMPLCs?

On the one hand, legal experts like Mr. YirsawZewede from MoTRI argue that the law was designed solely for natural persons. He argues the Code lacks provisions explicitly allowing legal entities to form OMPLCs.¹⁴⁴ The Documents Authentication and Registration Service (DARS)¹⁴⁵ adopted the same approach and forbid juridical persons to form OMPLCs. This view finds support among some other legal practitioners too.¹⁴⁶ However, a contrasting perspective emerges from the very institution responsible for registering OMPLCs. The Ethiopian Investment Commission (EIC)¹⁴⁷ permits legal entities to establish OMPLCs. The Commission bases its approach on the absence of any prohibiting provision in the law. Legal scholars like Fekadu support this practice, arguing that since legal structures like PLCs and partnerships aren't explicitly barred from forming OMPLCs, the option should be available.¹⁴⁸

4.2.3. The Possibility for OMPLC to Form Other Companies

While Ethiopia's Commercial Code clearly prohibits OMPLCs from forming other OMPLCs¹⁴⁹ a new area of uncertainty emerges. Can OMPLC become a shareholder in established entities or become a founder in companies like private limited companies (PLCs) and share companies (SCs)?

¹⁴³JetuEdosa , (2014), supra note 6, p. 94

¹⁴⁴Interview with Mr. Yirsaw Zewede Belachew, Executive Legal Service, Ministry of Trade and Regional Integration (MoTRI)

¹⁴⁵Interview with Mr Mesfin Tilahun, Document Authentication and Registration Director, Documents Authentication and Registration Service (DARS)

¹⁴⁶Interview with Mr Yehualashet Tameru, Ex -Associate at Mehrteab & Getu Advocates LLP& Founder and Partner at Ethio-Alliance Advocates LLP

¹⁴⁷Interview with Mr Ermias Melese, Legal Department Head, Ethiopian Investment Commission (EIC)

¹⁴⁸ Fekadu Petros, Supra note 8, p. 349

¹⁴⁹Commercial Code, Supra note 1, (Proclamation No 2143/2021), Art 539(1)

The Code remains silent on this issue, creating ambiguity. Proponents of allowing OMPLC shareholding in other companies might argue that the absence of a prohibition implies permission. However, this simplistic interpretation, as evidenced by the confusion surrounding single ownership of multiple OMPLCs, is unreliable. A key concern lies in the potential threat against the idea of "piercing the corporate veil". If a PLC or SC faces financial difficulties, holding the ultimate owner (the sole proprietor of the OMPLC) accountable for their personal assets could become more challenging due to the additional layer of corporate protection.

4.3.Operational Challenges

4.3.1. Corporate Governance Structure of OMPLC

The Commercial Code states that OMPLCs have an administrative body consisting of the general manager, auditor (if any) and general meeting.¹⁵⁰ Having a general manager is a mandatory issue, which could be the sole owner himself or another person. Concerning the general meeting, the member shall have the same powers as the general meeting of a PLC. However, the general meeting of a single member company is not required to meet the formalities of calling and organizing and the general meeting is not divided into ordinary and extra-ordinary.¹⁵¹

The absence of a separate board in OMPLCs raises concerns regarding corporate governance and accountability. A sole member could potentially act in their own self-interest, neglecting the company's best interests. In traditional corporate governance trends such as in the case of PLC, corporate governance relies on a board of directors to provide checks and balances on decision-making and ensure accountability.¹⁵² A single owner may struggle with emotional attachment to the business. This can cloud judgment and hinder objective decision-making, particularly during challenging times. Additionally, the sole owner might lack expertise in all areas crucial to the

¹⁵⁰Id, Art. 541, 536 (2, j) and 542

¹⁵¹Id, Art. 542

¹⁵² Interview with Mr Belete Tasew, Attorney and legal advisor

business. This knowledge gap can lead to poor choices due to a limited understanding of certain aspects of the operation.¹⁵³

Despite the opinions on the absence of BOD in OMPLC, there are counterarguments. Concerning the existence of a board of directors in the case of OMPLC they state that OMPLC may have a board of directors. This is not only because it is not expressly prohibited, but because it is implicitly permitted. Article 545 stipulated that the provisions regarding PLCs are also applicable to the OMPLCs *mutatis mutandis*.¹⁵⁴ Without a board of directors or fellow members, the sole owner lacks the benefit of critical discussion and alternative viewpoints. This can lead to confirmation bias, where the owner prioritizes information that confirms existing beliefs and overlooks potentially valuable counterarguments.¹⁵⁵

4.3.2. Financial Challenges Associated With OMPLCs

OMPLC has the potential to become a preferable choice for entrepreneurs since it offers a balance between limited liability and simplified administration. However, it presents unique challenges when it comes to securing financing. Obtaining loans proves challenging for OMPLCs due to two primary factors. First, lenders may perceive them as inherently riskier compared to other corporations because of the concentrated control exercised by the manager/owner. Second, banks have stringent requirements and checklists for loan approval, including audited financial statements and due diligence reports, which may be difficult for OMPLCs to provide currently. Ms. Lulit, a department manager, confirms these challenges faced by OMPLC owners who struggle to meet the banks' checklist of financial documents.¹⁵⁶ She criticizes a trend where OMPLC owners visit the bank without fulfilling the bank's requirements, and approach banks for services without meeting the standard requirements. They expect the

¹⁵³ Forbes, 5 Common Business Owner Mistakes (And How To Avoid Them). Available at <https://www.forbes.com/sites/rohitarora/2024/02/02/5-common-mistakes-that-small-business-owners-make-over-and-over/> 2023, March 21, (Accessed April 14, 2024)

¹⁵⁴ Fekadu Petros, *Supra* note 8, p. 350

¹⁵⁵ Organization for Economic Co-operation and Development, (OECD), "The board of directors: Composition, structure, duties and powers", (2001)

¹⁵⁶ Interview with Ms. Lulit Hailemeskel, Lead Customer Relationship Manager, Commercial Bank of Ethiopia (CBE)

bank to waive these procedures and grant them special treatment simply because their company structure is new to the country's business system.¹⁵⁷

The challenges for OMPLCs securing loans go beyond the previously mentioned requirements by CBE. Banks, like Zemen Bank, often require additional documentation that can be particularly burdensome for these new companies. This includes audited financial statements for a period of 3 to 5 years, which is an impossible request for a new business. Banks, understandably focused on profit, prefer to lend to companies with a proven track record of profitability. Since OMPLCs are new to the country, they lack an operational history that would give lenders confidence in their future success. This lack of data makes it difficult for banks to assess the creditworthiness of an OMPLC, further hindering their ability to secure loans.¹⁵⁸

A limited financial track record could be mentioned as a challenging factor for the owner of OMPLC in relation to securing the financial needs of the company. Since OMPLCs are new entities to our country's legal system as well as for the business community, OMPLCs cannot have past performance in relation to paying back loans, to assess a company's ability to do the same. Banks heavily rely on past performance to assess a company's ability to repay loans. A limited track record makes it difficult for OMPLCs to demonstrate financial stability and future potential, hindering their ability to secure traditional financing.¹⁵⁹

4.3.3. Transferability of Shares and Spousal Protection

The new Commercial Code outlines a clear process for transferring PLC shares, including transfer among shareholders, outsider purchases, court-ordered transfers, and inheritance.¹⁶⁰ Moreover, in real-world practice as per the researcher made in-person observation, both the buyer and seller need to visit the DARS office in person with various documents, including a government clearance. The transaction must also be registered in the Commercial Registry.

¹⁵⁷ Id, Interview with Ms. Lulit Hailemeskel

¹⁵⁸ Interview with Mr. Solomon Addisu, Credit facility director, Zemen Bank

¹⁵⁹ Id, Interview with Mr. Solomon Addisu

¹⁶⁰ Commercial Code, Supra note 1, (Proclamation No 2143/2021), Art 508 – 511

Similar to transferring PLCs, the Commercial Code allows selling sole proprietorships, via "sale of business" or as the Amharic version referred to it “የንግድ ሙደብ ርዥ ያጭ”.¹⁶¹ This is a common practice that requires a clearance from the Ministry of Revenues and a sales contract signed by appearing in person before the DARS office. Uniquely, marital status plays a role in sole proprietorship transfers: bachelor sellers need to provide a bachelorhood certificate of being single, while married sellers require having their spouses be present or a detailed power-of-attorney to protect their spouse's interests. This specific requirement safeguards the trader’s spouse’s interest highly.

The new Commercial Code is silent regarding businesses operating in an OMPLC structure. The Code lacks provisions for transferring shares within an OMPLC or selling the entire OMPLC business. This ambiguity creates a complex legal and practical issue for OMPLC owners. Without clear guidelines, navigating the transfer process becomes a vague matter.

Fekadu Petros argues that

“...በለአንድ አባል ከባንድ ውስጥ አክሲዮን ወይም የአክሲዮን አቻ ዋጋ (par value) የሚባል ነገር የለም”¹⁶² [There is no such thing as shares or par value of shares in OMPLC.]

His view was shared by Mr. YirsawZewede from the MoTRI. He clarifies that an OMPLC differs from a PLC by not having divided shares. The law doesn't provide for the existence of shares in OMPLC and there's no practical purpose for an OMPLC to have one. Consequently, transferring ownership can only occur by dissolving the business or selling it as a going concern.¹⁶³ Adding more confusion to the nature of OMPLC shares, looking into the current practice, the “Unilateral Declaration” by the sole member of OMPLC contains the capital of the company divided in to shares, which makes the situation hard which to follow.¹⁶⁴

The lack of clarity extends to the issue of the sale of OMPLC as well. The role (the right) of a trader's spouse in these transactions is uncertain, unlike in the case of Sole Proprietorship. It's

¹⁶¹ Id, Art. 122-171

¹⁶² Fekadu Petros, Supra note 8, p. 349

¹⁶³ Interview with Mr. Yirsaw Zewede Belachew, Executive Legal Service, Ministry of Trade and Regional Integration (MoTRI)

¹⁶⁴ See page two of Annex number 6

unclear whether their consent is required during the transfer or sale of the business. This ambiguity leaves the interest of the spouse in a risky state. The spouse, in most cases, has financial or legal interests tied to the business, and the lack of clear requirements regarding their involvement creates uncertainty and potential complications during the transfer process.

A legal expert from the Ministry of Trade (MoTRI) discussed the ministry's position on spousal rights during business transactions involving PLCs and SCs. The issue arose when the Documents Authentication and Registration Service (DARS) sought MoTRI's advice on requiring a marital status certificate for PLC and SC transactions like share transfers or property sales. MoTRI proposed requesting such documents to safeguard spousal interests and was drafting directives. However, the Ethiopian Capital Market Authority objected, arguing that a smooth and enabling environment is crucial for an effective capital market. According to the capital market authority's argument, imposing such requirements would significantly hinder market activity.¹⁶⁵

Ethiopia's legal framework regarding spousal consent and business transactions has a critical gap. The Federal Family Code requires spousal consent for transactions exceeding 500 birr unless otherwise provided by law.¹⁶⁶ Article 15-20 of the new Commercial Code considers debts incurred by a business-owning spouse to be marital debts unless the other spouse objects. This creates a situation where a silent spouse's assets could be on the hook for business liabilities, and current practices with OMPLCs seem to bypass the need for spousal consent when mortgaging or selling the OMPLC business/shares is made.

4.3.4. A Multilayered Challenge of Introducing New Business Vehicle

New business structures like OMPLC face roadblocks due to unclear laws. Ethiopia's current legal system focuses on existing business models, leaving the OMPLC in a grey area. To illustrate the problem and give specific instance on the matter, the researcher observed that DARS is currently declining approval of loan agreements between a sole owner and the

¹⁶⁵Interview with Mr. Yirsaw Zewede Belachew, Executive Legal Service, Ministry of Trade and Regional Integration (MoTRI)

¹⁶⁶ The Revised Family Code, Article 68, Proclamation No. 213/2000, Federal Negarit Gazette, Extra Ordinary Issue No. 1/2000, 6th year No, 1

OMPLC, unlike in the case of PLC, claiming it is “self-dealing” which manifests DARS is refusing to recognize a separate legal personality of OMPLC to some extent. This shows a clear misunderstanding of the *raison d’etre* of OMPLCs from the beginning. Interviews with various legal practitioners suggest that while OMPLCs hold promise for innovation and investment, overcoming these initial hurdles requires a holistic approach.¹⁶⁷

A significant challenge lies in the knowledge gap within the business owners’ community as well. Interviews revealed a lack of awareness exists regarding the very existence of the OMPLC. This presents a difficult barrier to the effective implementation of OMPLC. Without basic knowledge of the structure's features and potential advantages, business owners are unlikely to consider it for their business venture. Business owners expressed concerns about dealing with an "alien" business structure.¹⁶⁸ This worry likely stems from a lack of familiarity with the OMPLC's governance framework.¹⁶⁹

Interviews with legal professionals revealed that there is a critical gap in awareness of OMPLC in depth in the legal community. Litigation attorneys acknowledged gap in awareness on the matter unlike transactional lawyers in Ethiopia. This absence of a strong knowledge base translates to a lack of legal expertise and experience specific to the OMPLC.¹⁷⁰ Furthermore, the lack of established precedents can create uncertainty for lawyers advising clients on navigating the OMPLC landscape.¹⁷¹

In contrast to the low awareness among legal professionals, document writers working around document authentication offices appear to have significantly more experience with OMPLCs. As per an interview by the researcher, these document writers confirm advising numerous clients on OMPLCs. By the time of the interview, they had prepared incorporation unilateral declarations

¹⁶⁷Interview with, Ms Hibist Desalegn, Associate at Mesfin Tafese and Associates law office

¹⁶⁸Interview with, Abdulaziz Shafi Sole Proprietorship Owner at Merkato, Bomb tera

¹⁶⁹Interview with, Mikiyas Teshome Sole Proprietorship Owner around Powlos Hospital

¹⁷⁰Interview with, Mr Esayas Yoseph, Attorney and legal advisor

¹⁷¹Interview with, Mr Ermias Mamo, Attorney and legal advisor

for over 50 clients, exceeding the involvement of lawyers in OMPLC formations. This suggests a potential gap in knowledge among legal professionals regarding the new business structure.¹⁷²

Despite the late introduction of the One Member Private Limited Company (OMPLC) in Ethiopia, the registered numbers of OMPLCs are astonishing. As of April 10, 2024, the number of registered OMPLCs is 2,481 according to the Ministry of Trade and Regional Integration (MoTRI).¹⁷³ This high number of registrations is attributed to the strong desire of the market to function in a type of company which gives the protection of limited liability for individual traders and other preferable characters of OMPLC.

4.4. Tax Related Challenges

4.4.1. The Ethiopian Tax System in Brief

The Ethiopian tax system employs a two-pronged approach, encompassing both direct and indirect taxes. Direct Taxes are one type of tax a company or individual pays directly to the government. Taxpayers are categorized according to their income levels. Direct income tax is levied progressively, with taxpayers bracketed into three categories (A, B, and C) based on their annual revenues. Those that fall in category A, with revenues exceeding 1 million Ethiopian Birr, face the highest income tax rates. Categories B and C have progressively medium and lower tax rates.¹⁷⁴ The system also has various schedules for taxing different income types such as employment (Schedule A), rental income (Schedule B), business income (Schedule C), and other income (Schedule D). Exempt income is listed under Schedule E.¹⁷⁵ Specific tax rates for employment income and rental income are defined in Articles 11 and 14, respectively. Businesses are subjected to a flat 30% tax rate if they are incorporated, while unincorporated businesses have a tiered rate structure ranging from 0% to 35% as stated under Article 19 of the Federal Income Tax Proclamation No. 979/2016. A peculiar feature for corporate businesses is, that they are expected to pay 10% of dividend tax before the dividend is distributed among

¹⁷² Interview with, Selamawit Mamo, a private secretary around Documents Authentication and Registration Service (DARS)

¹⁷³ See Annex 8

¹⁷⁴ Supra note 106, Federal Income tax proclamation, No. 979/2016, Article 3

¹⁷⁵ Id, Art 8

shareholders, but if shareholders decide not to distribute dividends and want to increase their capital, then they can escape from dividend tax. On the other, hand in the context of sole proprietorship, once the profit tax and all necessary taxes are settled, the proprietor has the option to either take the entire profit or reinvest it into the business as capital. However, withdrawing profits from a sole proprietorship account can pose practical challenges in real-world scenarios.¹⁷⁶

Indirect taxes play a significant role as well, with the value-added tax (VAT) being the major contributor. Businesses with a yearly turnover exceeding 1 million Birr are required to register for VAT.¹⁷⁷ This tax is applied to most goods and services. For smaller businesses that haven't reached the VAT threshold, a turnover tax (TOT) serves as an alternative. Article 4 of the Proclamation details the TOT structure, which imposes a flat rate of 2% on goods, sold. The rate for services varies, ranging from 2% for specific sectors like contractors and grain mills to 10% for others.¹⁷⁸ It's important to note that depending on the specific business activity and sector, additional indirect taxes may come into play. These can include income tax and Pension contribution (if the business has employees), excise taxes on certain goods, surtax, stamp duty, withholding tax, and customs duty levied on imports.

4.4.2. Potential Tax-Related Problems in the Implementation of OPMLC

4.4.2.1. Identification of Tax Liabilities and Obligations

One of the potential hurdles which possibly will be faced by OMPLCs lies in accurately identifying their tax liabilities and obligations. Unlike established companies with organized tax departments, OMPLCs might lack the resources or expertise to navigate through the complexities of the tax landscape, since they are new to the country's legal system. OMPLCs occupy a unique space, blurring the lines between sole proprietorships and PLCs. Understanding

¹⁷⁶ Interview with, Mesfin Hailemeskel Interview with, Misiker Mitku, Finance Manager at Black Lion Trading PLC, Around Bole

¹⁷⁷ Value Added Tax Proclamation, Article 16, Proclamation No 285/2002 Federal Negarit Gazette, 8th Year No. 33, 4th July 2002, as amended by Proclamation No 609/2009 and 1157/2019

¹⁷⁸ Turnover Tax Proclamation, Article 4, Proclamation No. 308/2002, Federal Negarit Gazette, 9th year No. 21, 31st December, 2002

how the tax authorities classify the company for tax purposes is crucial. This classification determines which tax rates and filing requirements apply. Although the government has not started collecting taxes from OMPLCs yet, they plan to treat them like regular PLCs for tax purposes.¹⁷⁹

OMPLCs face distinct tax filing requirements compared to Sole Proprietors. OMPLCs are treated as business organizations and must comply with corporate tax filings. This involves understanding deadlines, forms, and required documentation to avoid penalties and ensure compliance. The process is generally electronic, with corporations using an online system for monthly and yearly reporting of VAT, pension contributions, income tax, and withholdings, unlike sole proprietors who require reporting their taxes manually. Communication with the Revenue Ministry also occurs primarily through email for corporations. Moreover, for their yearly income tax declaration, corporations are required to have a certified auditor accountant prepare an audit report and financial statements.¹⁸⁰

In contrast, Sole Proprietorships enjoy greater flexibility in tax filing. While they can prepare financial statements, including the general ledger, balance sheet, inventory valuation report, income statement, owner's bank statement, and cash flow, this can be done by an employee of the Sole Proprietorship. Unlike corporations, Sole Proprietors are not mandated to use the online filing system, which can be beneficial for those who are not comfortable and able to use technology. Additionally, they are not required to hire a certified auditor accountant, reducing their tax preparation costs.¹⁸¹

4.4.2.2. Strict Scrutiny and Piercing the Corporate Veil

A core principle of company law is the concept of a "separate legal entity", meaning a company is distinct from its owners, with its own tax liabilities. The challenge of maintaining a clear separation between the sole member's personal finances and the company's finances in an OMPLC is a critical subject. With only one member owning the whole company, the line

¹⁷⁹Interview with Mr. Muleye Abera Alemu, Tax Department Director, Ministry of Revenues (MoR)

¹⁸⁰Interview with, Mesfin HailemeskeInterview with, Misiker Mitku, Finance Manager at Black Lion Trading PLC, Around Bole

¹⁸¹ Id, Interview with, Misiker Mitku

between business and personal finances can be blurred in OMPLCs. This can lead to increased tax authority scrutiny and the importance of meticulous record-keeping to demonstrate a distinct financial identity for the company. Fictitious dividends, to avoid corporate tax, can trigger penalties.¹⁸²

Unlike in the case of being a shareholder of a PLC, where the general manager takes all the faults in most of the cases, courts may disregard the OMPLC's separate legal identity if the owner's personal and business finances are commingled or for other cases as elaborated in the above. This can lead to the owner being held personally liable for the company's debts, including tax liabilities.¹⁸³

4.4.2.3. Double Taxation and Tax Planning in OMPLCs

One of the most significant challenges for OMPLCs is the potential for double taxation. This occurs when both the company itself and the sole member are taxed on the same income. The classic example is with dividends, which are distributions of company profits to shareholders. Dividends are subject to personal income tax (often referred to as dividend tax) for the sole member who receives them, which is 10% of the dividend.¹⁸⁴ However, the problem arises because the company has already paid 30% corporate tax on those very same profits before distributing them.¹⁸⁵

Double taxation on the same profit is also the reality in other companies too, but it seems pointless, especially in the case of an OMPLC. Because all the profit of the company is paid to one member, there is no difference between the company profit and the dividend to the member like in other companies. Some nations, like the United States, managed to avoid such dual taxation for OMPLCs.¹⁸⁶

Further complicating matters is the challenge of tax planning for OMPLCs. Striking the right balance between retaining profits for reinvestment and distributing them as dividends can be

¹⁸²Interview with Mr. Muleye Abera Alemu, Tax Department Director, Ministry of Revenues (MoR)

¹⁸³Supra note 1, Commercial Code 2143/2021, Art. 543

¹⁸⁴Supra note 106, Federal Income tax proclamation, No. 979/2016, Art 55(1)

¹⁸⁵ Id, Art 19 (1)

¹⁸⁶Fekadu Petros, Supra note 8, pp. 347-348

tricky. While retaining profits relieves from immediate 10 % taxation, it also reduces the sole member's personal disposable income.

4.5.Creditors' Potential Concerns

The introduction of a new business structure into a country's legal system may face complex challenges. Such introduction may encounter resistance or skepticism from stakeholders, including investors, creditors, and business partners.¹⁸⁷

When considering creditors' concerns regarding dealing with OMPLCs, several factors come into play. Creditors may worry about the limited pool of assets available for recovery in the event of default or insolvency. In an OMPLC, the assets of the business are essentially intertwined with the personal assets of the sole shareholder, blurring the distinction between corporate and personal liabilities. The main weakness of OMPLC compared to a PLC is that it is less trusted by third parties, it is like a Sole Proprietorship with limited liability for the member, which may pose more risk to creditors than a regular sole proprietorship, with unlimited liability. As such, creditors may be reluctant to work with an OMPLC.¹⁸⁸

For any business structure/entity to function effectively, it needs to be reliable. This makes creditor protection a top priority, requiring strong legal safeguards. Therefore, a critical question for OMPLCs is establishing a dependable system to prevent creditor abuse.¹⁸⁹ The current law, with its own gaps, has attempted to implement mechanisms for creditor protection. This intent is evident in the brief explanation of the new Commercial Code.

“ከዚህአይነቱድርጅትንገንዘብላሚጠይቁሰዎችመደረግያለበትጥበቃእናድርጅቱንስራሐመራርየተመለከተዎማህበሩንልዩበሀረታሰቢያደረጉድንጋጋዎችንምይዟል”¹⁹⁰[It also includes provisions that address the unique characteristics of the company, focusing on the protection of creditors and the

¹⁸⁷ Organization for Economic Co-operation and Development, “Designing Legal Frameworks for Social Enterprises”, 2018

¹⁸⁸ Fekadu Petros, *Supra* note 8, p. 348

¹⁸⁹ *Id.*, p. 351

¹⁹⁰ ረቂቅ የንግድ ህግ አጭር ማብራሪያ፣ የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የጠቅላይ ሚኒስትር ጽ/ቤት, [Brief explanation of draft commercial law, Federal Democratic Republic of Ethiopia Prime Minister's Office] (2012 EC)P.27

management of the organization.] However, only time and its practical applications will reveal the law's true effectiveness.

4.6.Dissolution of OMPLCs

Dissolution and winding up are two final commercial proceedings in case a company loses all its assets or is unable to pay its debts. An OMPLC, just like ordinary companies, may be dissolved and wound up due to some internal or external causes. The dissolution of OMPLCs poses a distinctive set of challenges, triggering the intersection of legal requirements, shareholder rights, and procedural complexities. The dissolution process of OMPLCs is governed by statutes tailored to its unique structure. Under Article 544 of the Code, the law allows an OMPLC to dissolve without a formal liquidation process, transferring assets to the sole member, but only if all debts are settled. The member becomes personally liable for any future debts but also may take advantage of the prescribed time limit for creditor claims. Despite this simplified approach, the member can still choose a regular liquidation if desired. However, this seemingly straightforward procedure needs to be examined carefully, given the practical complexities and legal intricacies that could arise during the dissolution process in any sort of corporate structure.

One significant challenge concerns the protection of creditor interests in the dissolution of OMPLCs. Unlike PLCs with the possibility of diversified shareholder bases, an OMPLC lacks the checks and balances inherent in multi-member structures, raising concerns regarding the potential abuse of dissolution to evade creditor liabilities. As discussed in the previous chapter, the legal doctrine of piercing the corporate veil may be invoked to prevent unjust outcomes whereby the sole member seeks to dissolve the company to escape the obligations s/he owes creditors. As per the provisions governing OMPLC courts retain the discretion to disregard the separate legal personality of OMPLC if it is deemed necessary to prevent fraud or unfairness.¹⁹¹ Thus, the dissolution of OMPLCs necessitates a delicate balance between the autonomy of the sole member and the protection of creditor interests.

¹⁹¹ Commercial Code, Supra note 1, (Proclamation No 2143/2021), Art.543

CHAPTER FIVE

5. Conclusion and Recommendations

5.1.Key Findings and Conclusion

Ethiopia's recent introduction of OMPLCs has opened a new chapter for its business environment. This thesis began by outlining key research questions regarding the viability and hurdles of this new structure. Through rigorous investigation, this research yields the following conclusions.

The research assessed the efficiency of the OMPLC registration and setup process in Ethiopia compared to Sole Proprietorships and PLCs. Recognizing the impact of an efficient registration process on entrepreneurship, the Ethiopian government revised the Commercial Code to improve the country's ranking in the “Ease of Doing Business” index, as indicated in the deliberation and minutes of the new Commercial Code. While online registration through the Ministry of Trade's Website has simplified the process for OMPLC registration, mandating visits to multiple institutions and additional requirements without a legal base for OMPLCs, such as requiring affidavits, complicate the process.

The second research question centered on, the potential for OMPLCs to attract investment. To achieve this, the study examined the possible advantages of OMPLCs and then evaluated whether these benefits make them a viable investment opportunity. Unlike Sole Proprietorships, which offer no protection for the owner's assets, OMPLCs limit the liability of the owner, fostering confidence and encouraging entrepreneurship. OMPLCs go beyond just limited liability by offering simpler management structures and efficient decision-making processes, eliminating the complexities of dealing with multiple partners or shareholders. Sole proprietorships can be easily converted into OMPLCs further incentivizing investment through OMPLCs. Overall, the combination of limited liability, simpler management and conversion ease, make OMPLCs a more attractive option for attracting investment.

The other point this study raises as the third question relates to Corporate Veil Pricing. In ensuring the viability of OMPLCs, pricing the corporate veil plays a vital role, while limited liability shields entrepreneurs, piercing the veil ensures accountability. The Commercial Code outlines several situations where the corporate veil can be pierced, including intentionally

harming the company, overvaluation of contributions, misuse or commingling of assets, and failing to maintain a separate identity from the owner. This discourages treating the company as a personal extension and encourages responsible business practices, which in effect makes OMPLC more feasible. Although the Code sets specific conditions to address the issue, the use of ambiguous terms such as "other similar acts" to describe scenarios where the veil could be pierced leads to uncertainty.

Proceeding to the fourth research question, the study identified obstacles to the effective implementation of OMPLCs. It evaluated the availability of government support and initiatives designed to address these challenges. OMPLCs encounter legal and institutional barriers. The law lacks clarity on issues such as the sale of OMPLC businesses, company continuity after succession, and nominee duties, creating uncertainty and hindering smooth operation. Additionally, there are uncertainties regarding formation, including conflicting views on whether a single person can own multiple OMPLCs, whether legal entities can form OMPLCs or hold shares in other companies, and inconsistent practices among government bodies, further complicating the situation. The shortage of trained government personnel aggravates implementation challenges. Furthermore, legal advocates have limited experience with OMPLCs, due to insufficient education/training and a lack of precedents. In contrast, private document writers around DARS are more familiar with OMPLCs than lawyers. Despite government initiatives are minimal, with no specific support programs, training, or inductions, the registered numbers of OMPLCs are surprisingly high, as of April 10, 2024, the number of registered OMPLCs 2,481.

The fifth research question raised the issue of spousal protection and creditor concerns regarding OMPLCs. The thesis examined whether there is a legal mechanism in place to protect the spouses of OMPLC owners from potential fraudulent activities. The inadequacy of existing legal safeguards towards spouses of OMPLC owners was revealed during this study. The law is unclear on whether spousal consent is required during business of OMPLC transfers. This ambiguity exposes the spouse's financial interests to risk. Additionally, the research explored the challenges creditors might face with OMPLCs. Creditors worry that they might face challenges due to the commingling of personal and corporate assets in OMPLCs, raising concerns about

asset recovery in cases of default or insolvency. Despite attempts to address creditor protection in the Commercial Code, its effectiveness requires validation through practical application.

The research explored how the ownership, control, and operational structures of OMPLCs might challenge the effective implementation, to address the sixth research question. The absence of a separate board of directors raises concerns regarding corporate governance and accountability, potentially leading to decisions driven by personal interests rather than the company's best interests. Moreover, OMPLCs face obstacles in securing financing due to failure to fulfill stringent requirements by lenders/banks, and a lack of operational history to demonstrate creditworthiness.

The last but not the least question of the research focused on the taxation environment for OMPLC. The study showed that the taxation environment in Ethiopia presents significant challenges to the effective implementation of OMPLCs. These challenges stem from the structure of OMPLCs raises the possibility of double taxation on profits, where the company itself is taxed and then the sole owner is taxed again on dividends received.

In conclusion, while Ethiopia's adoption of OMPLCs marks a significant step in its business landscape evolution, hurdles persist in their viability and operational efficacy. While surpassing established models like sole proprietorships in attracting investment due to limited liability and simpler structures, OMPLCs face different challenges. Despite potential advantages in investment attraction, legal ambiguities, regulatory inconsistencies, limited government support and taxation complexities pose substantial hurdles and underscore the need for comprehensive reforms and clearer legal frameworks.

5.2.Recommendations

Based on the above-mentioned findings, the researcher would like to forward the following points as recommendations.

- To simplify the process of registering OMPLCs in Ethiopia, the researcher recommends the consolidation of all essential steps within an online platform or the establishment of a comprehensive "One Stop Service" centre. This approach minimizes the necessity for physical visits thereby ensuring that clients receive all services in one location, and does away with the need to visit more than five offices. This enhances efficiency, aligning with the government's aim to improve the ease of doing business and fostering entrepreneurship.
- It is suggested that targeted awareness campaigns and tax incentives be launched to attract investors seeking secure ventures with simplified structures and limited liability. Investments in OMPLCs must be encouraged by promoting their distinct advantages, including limited liability, efficient management and easy conversion from sole proprietorships. This, it is submitted, would boost entrepreneurial activities.
- Despite the fact piercing the corporate veil is provided for OMPLCs in the Commercial Code, the provisions need to be clarified and refined as regards OMPLCs. Thus, the researcher would like to recommend that explicit guidelines within the scope of the Commercial Code be developed to address vague wordings and to provide clarity on situations warranting veil piercing. This, it is believed, fosters responsible entrepreneurship and enhances the feasibility of OMPLCs.
- It is also recommended that the legal framework on OMPLCs in Ethiopia needs to be improved by providing clarity on the sale of businesses, continuity after succession, and nominee related issues.
- The researcher recommends comprehensive training programs for legal professionals and existing and potential investors on OMPLCSs. Furthermore, as the number of OMPLCs

is increasing, the regulatory institution overseeing business entities must endeavour to create and raise awareness of OMPLCs and simplify registration processes.

- Clear legal mechanisms must be put in place to protect the spouses of the owners of OMPLC from fraudulent activities, including requiring spousal consent for sale of business.
- It is recommended that creditor concerns be addressed by enforcing strict separation of personal and corporate assets in OMPLCs as well as ensuring effective asset recovery mechanisms in cases of default or insolvency.
- The researcher would like to recommend that access to finance for OMPLCs must be facilitated by addressing regulatory hurdles and building operational credibility to increase lenders' confidence.
- It is recommended that the taxation system in Ethiopia be reformed to mitigate challenges facing OMPLCs including potential double taxation.
- Finally, government support is needed to enhance corporate governance and ensure creditor protection with the view to foster the viability and operational efficacy, of OMPLCs and to let them overcome hurdles and promote their integration into the business landscape.

References

Books and Reports

- Ashagrie, Mulugeta, (2013), *Business Law in Ethiopia*, James Currey Publishers
- Fekadu Petros Gebremeskel, (2014 E.C), “የኢትዮጵያዎች-ባንደህግ”, 3rd edition
- Organization for Economic Co-operation and Development, (OECD), (2001) “The board of directors: Composition, structure, duties and powers”
- Organization for Economic Co-operation and Development, (2018) “Designing Legal Frameworks for Social Enterprises”
- World Bank, *Doing Business - Starting a Business*, archive.doingbusiness.org (Accessed 12 March 2024)
- World Bank, *Doing Business project*, (2020) archive.doingbusiness.org (Accessed 12 March 2024)

Theses/Dissertations

- Assamen M. Tessema,(2012), *Comparative Single-Member Companies of Germany, France and England: A Recommendation to Ethiopia*, Available at <http://ssrn.com/abstract=2193070>
- Budustour, Yasmine and Budustour, Leen, (2023), *The Doctrine of Separate Legal Personality and Its significance in International Business*, Available at SSRN: <https://ssrn.com/abstract=4384050>
- Natcha Rattaphan, (2016), *Legal Issues On Creditors’ Rights And Protections In Single Member*, THAMMASAT UNIVERSITY Master Of Laws In Business Thesis,

Journal Articles

- Alan Schwartz, (2009), *Limited Liability and the Known Unknown*, Yale Law Journal 118, no. 4
- Aprajita Bhargava, (2022), *One Person Company: Concept, Opportunities & Challenges In India*, An Open Access Journal from The Law Brigade (Publishing) Group, South Asian Law & Economics Review, Annual Volume 7 – ISSN 2581-6535

- Coffee, John C., Jr., (1981), *No Soul to Damn: No Body to Kick: An Unscandalized Inquiry into the Problem of Corporate Punishment*, Michigan Law Review 79, no. 3
- Dragana Radenkovic Jocić, (2005), *A Single Member Company- Convenient Or Not For The Founders*, Faculty of Economics Niš, University of Niš,
- Fekadu Petros, (2021), *The New Ethiopian Commercial Code: A Highlight of Major Change*
- Hansmann, Henry, and Reinier Kraakman, (1991), *Toward Unlimited Shareholder Liability for Corporate Torts*, The Yale Law Journal 100, no. 7
- Haswani, Vinay and Rajoria, Dr Krati, (2015), *One Person Company: An Analytical Study*, An International Multidisciplinary Research Journal, Vol.5,
- Jeffrey K. Vandervoort, (2004), *Piercing the Veil of Limited Liability Companies: The Need for a Better Standard*, 3 DePaul Bus. & Com. L.J. 51
- Jensen, Michael C., and William H. Meckling, (1976), *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, Journal of Financial Economics 3, no4
- JetuEdosaChewaka, (2014) *Introducing Single Member Companies in Ethiopia: Major Theoretical and Legal Considerations*. College of Law and Governance Studies, School of Law (AAU),
- Marc Moore, (2023), *Landmark Cases in Company Law of Salomon v Salomon*, UCL Faculty Of Laws,
- Marie-Laure Djelic, Joel Bothello, (2013), *Limited liability and its moral hazard implications: the systemic inscription of instability in contemporary capitalism*, Theory and Society,
- Mario Rotondi, (1973) *Limited Liability of the Individual Trader: One Man Company or Commercial*
- Mohammed Rezal Salim, (2004), *Corporate insolvency: separate legal personality and directors duties to creditors*, Vol.2, UniversitiTeknologi, MARA Law Review, No. 90,
- Nwogugu, E.I., (2012), *Lifting the Corporate Veil in Nigeria: A Critical Analysis*, Journal of African Law
- Paddy Ireland, Ian Grigg-Spall and Dave Kelly, (1987), *The Conceptual Foundations of Modern Company Law*, Vol. 14, No. 1, Critical Legal Studies,

- Randy Johnson, (2012), *Regulatory: Piercing the veil of a single-member LLC A possible trap for the unwary*, Inside Counsel A Summit Business Media publication
- Robert B. Thompson, (1991), *Piercing the Corporate Veil: An Empirical Study*, 76 Cornell L. Rev. 1036
- Rogério ScabimMorano Et al,(2023), *The Interdependence Between Ease of Doing Business, Innovation, and Competitiveness of Nations*,Brazilian Administration Review, vol. 20, no. 2,
- Vipam Kumar, (2016), *One Person Company: Concept, Issues and Suggestions*, Corporate Law Adviser, Vol. 132, Available at SSRN: <https://ssrn.com/abstract=2877002>
- Wooldridge, F., (1989), *The Draft Twelfth Directive of Single-Member Companies*, *Journal of Business Law*,
- Zelalem Teka, (2006), *The Desirability of Single Member Companies in Ethiopia and the Need to Reform Our Company Law*,School of Law (AAU),

Internet sources

- Cepheus Growth Capital, (2019), *Ease of Doing Business in Ethiopia: Issues, Reforms, and Progress*, cepheuscapital.com, Available <https://cepheuscapital.com/ease-of-doing-business-in-ethiopia-issues-reforms-and-progress/>
- Forbes, 5 Common Business Owner Mistakes (And How To Avoid Them). Available at <https://www.forbes.com/sites/rohitarora/2024/02/02/5-common-mistakes-that-small-business-owners-make-over-and-over/> 2023, March 21,

Others

- ረቂቅ የንግድ ህግ አጭር ማብራሪያ፣ የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የጠቅላይ ሚኒስትር ጽ/ቤት፣ 2012 ዓ.ም
- የንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴ እና የህግ ፍትህና ዲሞክራሲ ጉዳዮች ቋሚ ኮሚቴ በንግድ ህግ ረቂቅ አዋጅ ላይ ከሚመለከታቸው ባለድርሻ አካላት ጋር ያደረጉት ውይይት አጭር ቃለ ጉባኤ (2013 ዓ.ም)

- የንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴ እና የህግ ፍትህና ዲሞክራሲ ጉዳዮች ቋሚ ኮሚቴ በንግድ ህግ ረቂቅ ቅጽ አዋጅ ላይ ከጠቅላይ አቃቤ ህግና ከንግድና ኢንዱስትሪ ሚኒስትር ከመጡ አስረጃዎች ጋር ያካሄዱት ውይይት አጭር ቃለ-ገባኤ (2013 ዓ.ም) (Series of meetings)

Legislations

- Commercial Code of the Federal Democratic Republic of Ethiopia, Proclamation number 2143/2021, Federal Negarit Gazette, Extra Ordinary Issue, Year 27, No.23
- Commercial Code of the Empire of Ethiopia, Proclamation number 166/1960 Negarit Gazette, Extra Ordinary Issue, Year 19, No.3
- Commercial Registration and Licensing Council of Ministers Regulation, Regulation Number 392/2016, Federal Negarit Gazeta, 23rd Year No.3
- Commercial Registration and Licensing Proclamation, Proclamation Number 980/2016, Federal Negarit Gazeta, 22nd Year No.101
- Commercial Registration, Licensing and Post Licensing Inspection Directive, Directive No 935/2022
- Definition of Powers and Duties of the Executive Organs Proclamation, Proclamation No. 1263/2021, Federal Negarit Gazeta, 28th Year No.4
- Federal Income tax proclamation, Proclamation No. 979/2016, Federal Negarit Gazette Extra Ordinary Issue, 22nd Year No. 104, 18th August, 2016
- The Revised Family Code, Proclamation No. 213/2000, Federal NegaritGazetta, Extra Ordinary Issue No. 1/2000, 6th year No, 1
- Turnover Tax Proclamation, Proclamation No. 308/2002, Federal Negarit Gazette, 9th year No. 21, 31st December, 2002
- Value Added Tax Proclamation, Proclamation No 285/2002 Federal Negarit Gazette, 8th Year No. 33, 4th July 2002, as amended by Proclamation No 609/2009 and 1157/2019

Interviews

1. Mr. Yirsaw Zewde, Legal director, Ministry of Trade and Regional Integration, (MoTRI), (Addis Ababa, 29 April 2024)
2. Interview with Mr. Muleye Abera Alemu, Tax Department Director, Ministry of Revenues (MoR), (Addis Ababa, 8 April 2024)
3. Interview with Ms EtsegenetTafese H/gyiorgis, Tax Payers Registration and Cancellation Department Director, Ministry of Revenues (MoR), (Addis Ababa, 8 April 2024)
4. Interview with Mr Ermias Melese, Legal Department Head, Ethiopian Investment Commission (EIC), (Addis Ababa, 11 April 2024)
5. Interview with Mr Mesfin Tilahune, Document Authentication and Registration Director, Documents Authentication and Registration Service (DARS), (Addis Ababa, 11 April 2024)
6. Interview with, Selamawit Mamo, a private secretary around Documents Authentication and Registration Service (DARS), (Addis Ababa, 11 April 2024)
7. Interview with Ms. Lulit Hailemeskel, Lead Customer Relationship Manager, Commercial Bank of Ethiopia (CBE), (Addis Ababa, 17 April 2024)
8. Interview with Mr. Solomon Addisu, Credit facility director, Zemen Bank, (Addis Ababa, 17 April 2024)
9. Interview with, Misiker Mitku, Finance Manager at Black Lion Trading PLC, Around Bole, (Addis Ababa, 11 April 2024)
10. Interview with, AtoMinilikPawlos, Sole owner and General Manager at Elite Import and Export One Member P.L.C., (Addis Ababa, 16 April 2024)
11. Interview with, Abdulaziz Shafi Sole Proprietorship Owner at Merkato, Bomb tera, (Addis Ababa, 15 April 2024)
12. Interview with, Mikiyas Teshome Sole Proprietorship Owner around Powlos Hospital, (Addis Ababa, 15 April 2024)
13. Interview with, Mesfin Hailemeskel, Major shareholder and General Manager at Ecore Trading PLC, (Addis Ababa, 10 April 2024)
14. Interview with, Ms Hibist Desalegn, Associate at Mesfin Tafese and Associates law office, (Addis Ababa, 19 April 2024)

15. Interview with Mr Yehualashet Tameru, ex-associate at Mehrteab & Getu Advocates LLP & Founder and Partner at Ethio-Alliance Advocates LLP, (Addis Ababa, 29 April 2024)
16. Interview with, Mr Esayas Yoseph, Attorney and legal advisor, (Addis Ababa, 12 April 2024)
17. Interview with, Mr Ermias Mamo, Attorney and legal advisor, (Addis Ababa, 12 April 2024)
18. Interview with Mr Yonatan Assefa, Attorney and legal advisor, (Addis Ababa, 19 April 2024)
19. Interview with Mr Belete Tasew, Attorney and legal advisor, (Addis Ababa, 16 April 2024)
20. Interview with Mr Tilahun Gizaw, Attorney and legal advisor, (Addis Ababa, 19 April 2024)

የንግድ ስም

Annex 1

Trade Name Verification

ቀን:- _____

Date: _____

1. የንግድ ማህበሩ/የግለሰብ ስም: _____
Name of Company/Business Owner: _____
2. አድራሻ/ Address: ክልል : _____ ክፍለ ከተማ : _____
Region: _____ Sub City: _____
ወረዳ : _____ የቤት ቁጥር: _____ የፖ.ሣ.ቁ: _____
Kebele: _____ House No. _____ P.O.Box: _____
ስልክ ቁጥር: _____ Telephone: _____
3. የሥራ አስኪያጁ ወይም ግለሰብ ከሆነ የባለፍቃዱ ስም: _____
የሥራ አስኪያጁ ስም : _____ ፊርማ: _____
Name of Manager/Business Owner: _____ Signature: _____
4. ተግባርተው አንዲመዘገቡ የተጠየቁት የንግድ ስሞች ወይም የንግድ ማህበራት ስሞች እንደምርመራ/ በቅደም ተከተል ስም በአንግሊዝኛና በአማርኛ ይጻፉ

Proposed Trade Name/Company Names to be Verified and Registered/Please Prioritize/

1. _____
2. _____
3. _____
4. _____
5. _____

ማሳሰቢያ:/

1. ተግባር የተፈቀደ የንግድ ስም የማጣያ ደብዳቤና የሥራ አስኪያጅ ስም ለውጥ እንደማይስተናገድ በቅደሚያ እንገልጻለን።
2. የንግድ ዋና ምዝገባ ለማድረግ ወደ መዝጋቢው መሰሪያ ቤት ሲመጡ የማጣሪያው ደብዳቤውን ፎቶ ኮፒ ማቅረብ ይጠበቅበታል።
3. ከላይ የተገለፀው የንግድ ስም በ6 ወር ጊዜ ውስጥ ስለመመዘገቡ ለመ/ቤታችን የማዕከላዊ ምዝገባ ቡድን ካተገለፀ እንደተመዘገበ አይቆጠርም።



COMMERCIAL BANK OF ETHIOPIA
Checklist Form

Annex 4

Name of Applicant: _____

Customer Classification: _____

Name of credit decision committee: _____

LAF No.: _____

S/N	Requirement	Fulfilled	Not fulfilled	Remark
1)	Application letter/s/ signed by authorized person and CAF are attached			
2)	Legal opinion is obtained and attached on the legality of the business and authorized signatory			
3)	Registered and authenticated memorandum and article of association and latest minutes of shareholders, if any for S.C and PLC are presented			
4)	Proof of identity of the borrower with spouse, if any and certificate for marital/non-marital status for sole proprietorship presented			
5)	Renewed business license, commercial registration certificate and tax clearance certificate are presented			
6)	TIN and VAT registration certificates are attached			
7)	Latest three years audited/provision financial statement and interim financial statement presented			
8)	Updated due diligence/customer visit report as per the bank's standard attached			
9)	Recent BoD and management profile presented			
10)	Recent credit information for the applicant/ applicant's spouse/sister companies/major shareholders is/are presented			
11)	The risk grade and credit information of the applicant's spouse/sister companies/major shareholders with CBE is updated in the DDR			
12)	Business plan/cash flow statement that shows the working capital requirement of the business with the relevant contents as per the bank's standard is presented			
13)	Feasibility Study as per the bank's standard with implementation schedule and environmental impact assessment for the project to be financed is presented.			
14)	Deposit performance that relate with the presented financial statements is presented			
15)	Bill of Quantities and Specification for Building and civil works to be financed is presented			
16)	Proof of ownership for the collateral/s/ offered that includes, title deed/ LHC for building, approved plan, construction permit, Libre for vehicles/construction machineries and land lease agreement/certificate with land lease/rent receipt, certificate for blocked cash deposit, government securities/bonds is/are attached			
17)	Valuation/revaluation report of the bank engineer for the physical properties offered as collateral and guarantee letter, SWIFT message from International Banking for foreign bank guarantee, commercial invoice and insurance certificate is attached			
18)	Evidence for equity contribution/Bank statement for project financing is presented			
19)	Machine capacity report of the bank engineer is attached			
20)	Updated loan/facility utilization of all existing loans attached and discussed in the DDR			
21)	Stock list of the business with breakdown is presented			
22)	Pro-forma invoice for raw material, fixed assets purchase and technology/machinery specification and supply agreement is/are presented			
23)	Sales contract agreement/contract agreement or any underlying agreements related to the loan is presented			

I/We the undersigned confirm the availability, genuineness and completeness of the above information/documents.

Name of CRM: _____ Signature: _____ Date: _____

Term Loan	
No.	Type of Document
1	Credit application Form
2	Renewable license
	• Trade License
	• Principal Registration No.
	• Investment License, if applicable
	• Environment certificate, if any, and
	• Licenses from Federal/Regional Bureau if any
✓	• Memorandum of association and Article of Association MOA & AOA ✓
	• TIN of the applicant & spouse in case of solepropitorship, Manager & Shareholder's in case of share co & Private limited Co's. ✓
3	Borrower's Financial Statement:
	• Commercial Credit Report
✓	• Audited Financial Statement, preferably 3-5 years if >5 million ✓
	• Provisional financial statements /preferably 3-5 years/
	• Projected Financial Statement, if any
	• Banking relationship Information
	• Bank statement if any with other banks
	• Loan statement if any with other banks
4	Collateral Information
✓	• Title Deed /LHC(Land Holding Certificates) ✓
	• Booklet for machinery and vehicles
	• Certificate for blocked deposits
	• Copy of Share Certificate
	• Local & Foregin Bank guarantee
	• Land Lease Agreement if any
	• Site Plans, Bldg. Plans, including
✓	• Architectural plan ✓
	*Structural Plan
	*Sanitary
	*Electrical
	*Construction Permit
	*Bill of quantity
	• Purchase agreement if any ✓
✓	• Management profile ✓
✓	• Business Plan if appropriate ✓
	Required
7	Marital status if appropriate ✓
	Tax Clearance certificate from ERCA addressed to ZB ✓
✓	Organization and Marketing Information
✓	List of Major Customers
	Duty free privilege if any

()

XXX XXXX

XXX XXXXA ONE MEMBER P.L.C

1243/2013 .
534

4 **XXX**
XXXX (**XXX** **XXXXA** ONEMEMBER
P.L.C)

No.	Description	Quantity	Unit			
			Code	Name	Code	Name
1	XXX XXXX		XX	XXX	XX	XXXX

3.1. **XXX XXXX** (**XXX** **XXXXA**
ONEMEMBER P.L.C)

3.2. **XXXX** **XXXX** / **XXXX** **XXXX**

