

ADVANTAGE OF BEING A PRIVATE LIMITED COMPANY UNDER THE COMPANY LAW OF INDIA – A BUSINESS PERSPECTIVE.

We give hereinbelow the advantages of conducting the affairs of a Company as a Private Limited Company (Pvt. Ltd). These advantages are based on the provisions of the Companies Act as in force and the recommendations of the 2nd Naresh Chandra Committee on Private Limited Companies (PLC) are not being dealt with here, as they are only recommendations at this point of time.

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- 1. Managing Business Risk:** The Annual Accounts of a PLC filed with the Registrar is a public document and any person can inspect the same & obtain copies. However, in case of a Private Company the Profit & Loss Account should be filed separately in Form 23ACA, and no person other than a shareholder can obtain copies from the Registrar. While filing the accounts you would have to ensure that This would effectively act as hedge from the competitors gaining access to the profitability details of the Company. This assumes a greater relevance when the Ministry unveils its e-governance programme.
- 2. Augmenting Additional Capital:** Private Company cannot raise funds from the Capital Markets, and a PLC can do so. However, for an **unlisted PLC**, if it were to raise additional resources for tying up its Capital requirements from its Promoters, then, it can do so only if its Articles of Association permits it and also comply with many disclosure requirements. Whereas there are no such restrictions / disclosures that are required to be made by a Private Company.
- 3. Managing Shareholder Affairs :**
 - a) Transfer of Shares:** Shares in any form of Company are normally freely transferable. However, in a Private Company the articles can lay down certain restrictions and also the methodology in which they can be transferred.
 - b) Convening General Meetings:** A PLC necessarily has to give a notice of 21 clear days for conducting any general meeting, unless all the shareholders agree for a shorter notice. However, in case of a Private Company the articles can determine the period of notice, which is required for convening a general Notice, as well as the percentage of shareholders to consent for a meeting to be convened at a shorter notice.

- 4. Utilization of surplus of the Company:** A PLC can utilize the surplus funds available in its ordinary course of business either by making a loan or investing in the shares of another company, by following the provisions laid down in the Act, which require unanimous consent of the Board in certain cases and in certain other cases requires approval of the shareholders. However, a Private Company is not subject to these restrictions.
- 5. Exception from certain statutory committees & the Board :** A PLC that has a paid up capital of Rs. 5 Cores and above is required to constitute a Committee of the Board called the Audit Committee, to review the internal control systems, the half yearly annual financial statements and related irrespective of its capital.
- 6. Acceptance of loan from Directors:** In a normal course of conducting the business of a Company, it is common for the Directors to bring in personal funds to manage the cash flow of the Company. However, in a PLC the Directors can do so only on following the detailed procedure laid down in the Act as it is construed as a deposit. However, in a case of a Private Company any loan given by a Director is not construed to be a deposit.
- 7. Managing Directorial Affairs:**
 - (a) Remuneration to Directors :** A PLC has a restriction that it can pay only a maximum of 5% of its Net Profits as remuneration to its Managing Director, Whole-time Director and the like and 10% while there is more than one such person. Also in order to pay remuneration to Director simpliciter, PLC needs the approval of the Central Government before it can do so. However, such restrictions are not applicable to a Private Company, if the articles of the Company provides for the same.
 - (b) Loan to Directors:** A PLC in order to give a loan to a Director or give a guarantee for a loan given to the Director by another person has obtain the approval of the Central Government before doing so. However in case of a Pvt. Company such approval is not required and the Company can do so after obtaining a Board Resolution.

(c) Other Benefits: The other benefits that a Private Company has with regard to its Directorial Affairs are as follows :

- i) The number of Directors can be 2.
- ii) A Director interested in a particular item of business may participate in the discussion.
- iii) A Managing Director may be appointed for a period more than 5 years. There is however no mandatory requirement that the company must have a Managing Director where as a PLC with a paid up capital Rs. 5 cores and above has to have a MD / WTD.
- iv) The complex formulae to be applied to calculate the Net Profits from which an M.D remuneration is to be calculated is not applicable to a Private Company.

8. Managing Strategic Affairs: A PLC if it were to decide on taking any of these decisions :

- (a) Selling any line of its business;
- (b) Extend the time for repayment of a loan to a Director or to repay the debt of a Director;
- (c) Borrow in excess of its Paid-up Capital and Free Reserves;
- (d) Contribute for a Charitable purpose which is not connected to its business, in excess of Rs. 50,000/-;

Its would have to obtain the approval of Members holding at-least 51% equity. However, these restrictions do not apply to a Private Company.

9. Perception of society at large and of those who deal with the company. A PLC definitely has a larger image and would go well particularly with customers and prospective parties dealing with the Company.

The above are only major illustrations and are not to be taken as exhaustive. For further information please contact seshwar@eshwars.com.

