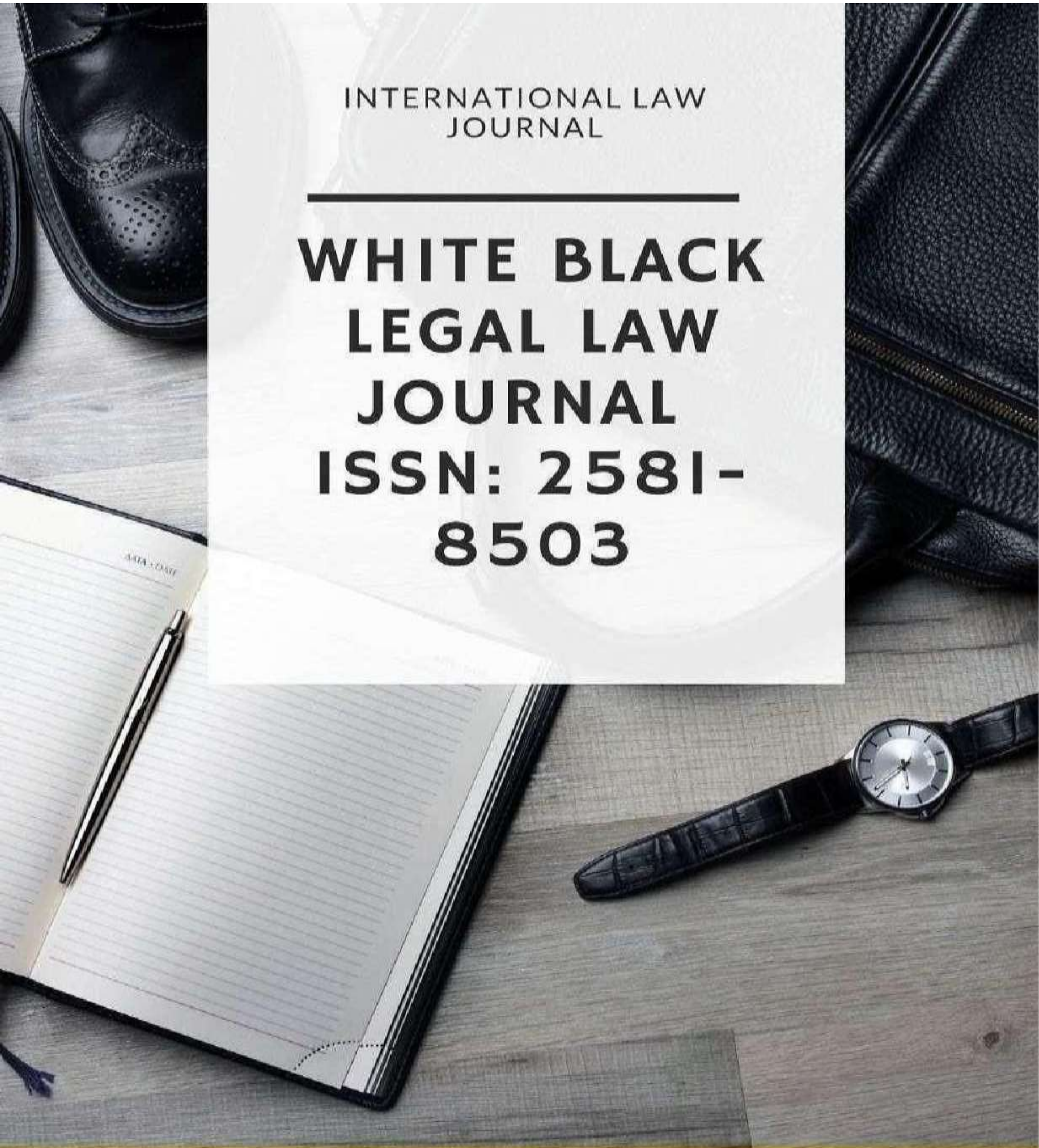

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The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

Challenges An Opc Faces When Transitioning To A Private Company

Authored By - Aishwarya Dash

Challenges An OPC Faces When Transitioning To A Private Company

The foreword of OPC in Section 2 of the Companies Act 2013 paved the way for the expansion of Indian businesses and entrepreneurship. One person can form an OPC, a limited liability company with perpetual succession and legal status. The Act provides many exemptions and fosters the incorporation of OPCs into the corporate framework; however, there are significant legal and financial ramifications for OPCs wishing to convert or modify these entities into private companies. They must adhere to specific rules and procedures in order to transform into a private company which they are unable to change their status directly. However, the Ministry of Corporate Affairs made modifications to them by the Amendment of Companies (Incorporation) Second Amendment Rules 2021, which establish certain minimal requirements for turning an OPC into a private limited business.

Legal procedure for the conversion of OPC into Private limited Company: -

A OPC can be changed to a private limited company through specific legal procedures. which calls for a great deal of paperwork and going through numerous internal management processes, like changing the AOA and MOA, getting approval from the shareholders and ROC and meeting the minimal requirements to become a private limited company by adding more directors. Additionally, before 2021, the OPC must meet the requirements to become an OPC, which include having paid-up share capital of at least 50 lakhs and an annual turnover of at least 2 crores.

In India, One person companies must fulfill specific legal requirements in order to become private companies:

1. The conversion process is implied by section 18 of the Companies Act 2013
2. By changing the AOA and MOA with a special resolution, OPC can become PVT limited.
3. An application for the conversion must be made to ROC. The company must satisfy the ROC that it as complied with all of the act's provisions in order for it to be granted a certificate of incorporation.
4. The company will remain unchanged following the conversion and its debts, liabilities, contracts, or any outstanding amount won't have an impact.
5. Up to two years following the OPC's incorporation Voluntary Conversion is prohibited.
6. If the opc's paid-up capital surpasses 50 lakhs and it generates an annual turnover of 2 crores rupees, it can become a private limited company (PVT) (Applicable before Amendment)
7. Add two or more directors to the board of directors (BOD) in process of conversion
8. The OPC should get a No Objection Certificate from the shareholders and pass a special resolution at the general meeting.
9. The resolution copy must be sent to the registrar within 30 days of it being passed.
10. The OPC must follow the procedures for registration and incorporation fees for conversion as outlined in the Companies (Registration offices and Fees) Rules, 2014.

<u>The following documents were necessary for the OPC conversion:</u>

1. The director will attest in an affidavit to a declaration form that all creditors and members have granted
2. Permission for the conversion of the company's members and creditors list.
3. Balance sheet audited and profit and loss.
4. A certified copy of the secured creditors' NOC.

The registrar will be satisfied after receiving all of the paperwork and will then issue the certificate.

<u>Effect of the Second Amendment rules of companies (incorporation) in 2021</u>.

- Prior to 2021, an OPC had to have paid-up capital of at least 50 lakhs and an average yearly turnover of at least INR 2 crores.
- However, as a result of this modification, the minimum paid-in capital required by the Act for

that particular class of company is no longer required or mandatory.

Financial Consequences:

To convert an OPC into a private limited company, the following steps must be taken:

1. Ask creditors for a No Objection Certificate (NOC).
2. Call a general meeting to approve a resolution designating members and directors.
3. Adopt a board resolution proposing changes to the AOA and MOA.
4. Submit an application (e-Form INC-6) and the required paperwork to the Registrar of Companies (ROC).

   Prior to the conversion, the company's obligations and contractual commitments are unaffected by the conversion process. The debts, obligations, and liabilities that were present prior to the conversion will fall under the purview of the succeeding private limited company. The Companies (Incorporation) Second Amendment Rules, 2021 and the Budget 2020–21 eliminated the minimum paid-up share capital and average annual turnover requirements, so converting an OPC to a private limited company no longer requires these levels of capital.

Financial Implications after conversion:

- The company's current debts, liabilities, obligations, and contracts remain unchanged.
- The tax liability of the company remains unchanged, as the tax rates apply to both OPC and private limited companies.
- The total number of shares provided by the partners/shareholders, reserves accumulated over the course of the business, and profits noticed prior to the conversion make up the company's ongoing financial obligation.
- The assets, name, and legal personality of the company are all still the same.
- The company's compliance needs could alter because, because of their size and number of shareholders, private limited companies often have stricter requirements.

  The company's long-term goals, potential for growth, and requirement for greater ownership flexibility should all be taken into consideration when deciding whether to convert an OPC to a private limited company.

Conclusion:

There are many opportunities and difficulties when an OPC in India decides to become a private or public company. Although it creates opportunities for development, financing, and growth, overcoming the operational, financial, and regulatory obstacles calls for cautious planning and strategic execution. When contemplating a shift of this kind, OPCs need to balance the advantages over the drawbacks and get ready for the long road of change. An OPC can effectively make the transition, utilizing the benefits of a corporate structure while.