



ONE PERSON COMPANY (OPC) UNDER COMPANIES ACT, 2013

Commerce

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ABSTRACT

This paper endeavour One person company is a new concept in India which has been introduced by the companies act 2013. In the old Companies act 1956 a minimum of two directors and shareholders were required to form a private limited company. This study focuses on various rules and provision associated with the one person company., only 1 person is required who can be a shareholder as well as the Director. The concept opens up spectacular possibilities for sole proprietors and entrepreneur who can take the the advantages of Limited liability and corporatization but were held back in doing so because of the requirements of finding a second director or second shareholder. Rules provide that only a natural person who is a resident of India and also a citizen of India can form a one person company.

KEYWORDS

Introduction

With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.

The concept of 'One Person Company' may be introduced in the Act with following characteristics :-

- OPC may be registered as a private Company with one member and may also have at least one director;
- Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original 4 One Person Company (OPC) director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.
- Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies."

As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member

Features of OPC

The salient features of OPC are:

- Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.
- Personality driven passion and implementation of a business plan.
- The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
- Personal commitment to the business which is a sole idea of the person and close to his heart.
- It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.
- A One Person Company is incorporated as a private limited company.
- It must have only one member at any point of time and may have only one director.
- The member and nominee should be natural persons, Indian Citizens and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
- One person cannot incorporate more than one OPC or become nominee in more than one OPC.
- If a member of OPC becomes a member in another OPC by virtue

of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.

- OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in three immediate preceding consecutive years.
- No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.
- Such Company cannot carry out Non Banking Financial Investment activities including investment in securities of any body corporate.
- No such company can convert voluntarily into any kind of company unless 2 years have expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into one person company by passing a special resolution in the general meeting.

Privileges and benefits available to OPC.

Some of the privileges and benefits identified with OPCs are:

- OPCs would provide the start-up entrepreneurs with new business idea.
- OPC provides an outlet for the entrepreneurial impulses among the professionals.
- The advantages of limited liability. The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability.
- OPCs are not proprietorship concerns; hence, they give a dual entity to the company as well as the individual, guarding the individual against any pitfalls of liabilities. This is the fundamental difference between OPC and sole proprietorship.
- Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.
- Businesses currently run under the proprietorship model could get converted into OPCs without any difficulty.
- OPCs require minimal capital to begin with. Being a recognized corporate, could well raise capital from others like venture capital financial institutions etc., thus graduating to a private limited company.
- Mandatory rotation of auditor after expiry of maximum term is not applicable.
- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.

12. For the purposes of holding Board Meetings, in case of a one person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, at least one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days.
13. The financial statements of a one person company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company need to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.
14. Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Types of OPC (Section 3(2))

1. a company limited by shares; or
2. a company limited by guarantee; or
3. an unlimited company.

Impact of OPC in Indian Entrepreneurship

The concept of OPC is still in its nascent stages in India and would require some more time to mature and to be fully accepted by the business world. With passage of time, the OPC mode of business organisation is all set to become the most preferred form of business organization specially for small entrepreneurs. The benefits emanating from this concept are many, to name a few –

- Minimal paper work and compliances
- Ability to form a separate legal entity with just one member
- Provision for conversion to other types of legal entities by induction of more members and amendment in the Memorandum of Association.

The One Person Company concept holds a bright future for small traders, entrepreneurs with low risk taking capacity, artisans and other service providers.

The OPC would act as a launch pad for such entrepreneurs to showcase their capabilities in the global arena.

The counterparts of Indian OPCs in Europe, United States and Australia have resulted in further strengthening of the economies in the respective countries. OPCs in India are aimed at structured, organised business units, having a separate legal entity ultimately playing a crucial role in further strengthening of the Indian economy.

Conversion of OPC into Public or Private Company and Vice-Versa

One Person Company to convert itself into a public company or a private company in certain cases.-

1. Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
2. Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least seven members and three directors in accordance with the provisions of section 18 of the Act.
3. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
4. The One Person Company shall within a period of sixty days from the date of enhancement of above ceiling limit, give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up

share capital or average annual turnover, having exceeded the threshold limit. It may be noted that "relevant period" means the period of immediately preceding three consecutive financial years;

5. If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
6. A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

Exemptions available to OPCs under the Companies Act, 2013

1. Section 96. Option to dispense with the requirement of holding an AGM.
2. Section 98. Power of Tribunal to call meetings of members.
3. Section 100. Calling of extraordinary general meeting.
4. Section 101. Notice of meeting.
5. Section 102. Statement to be annexed to notice.
6. Section 103. Quorum for meetings. Section 104. Chairman of meetings.
7. Section 105. Proxies.
8. Section 106. Restriction on voting rights.
9. Section 107. Voting by show of hands.
10. Section 108. Voting through electronic means.
11. Section 109. Demand for poll.
12. Section 110. Postal ballot.
13. Section 111. Circulation of members' resolution

Conclusion

The concept of One Person Company (OPC) is a new vehicle/form of business, introduced by The Companies Act, 2013. One Person Company is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the Act. Only a natural person, who is an Indian citizen and resident in India shall be eligible to incorporate a One Person Company But he has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.

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