

One Person Company: An Overview

(A New Business Opportunity in New Companies Act 2013)

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ABSTRACT: A person can set up and run a company called "One Person Company (OPC)", which was introduced under the Companies Act, 2013 by the enactment of the Companies (Organization) Rules, 2014. Many concepts were introduced in companies act 2013 one of the important concept in that One Person Company. Under the formation of such OPCs any individual resident person of India can form a company on their own. OPC is similar to the concept of Sole-proprietorship with separate legal entity. OPC provides full freedom to entrepreneurs to contribute in the economic activities. This paper is an attempt to discuss a few aspects and overview the core contents of One Person Company.

Keywords: OPC, Companies Act 2013, One Person Company.

INTRODUCTION: The Companies Act 2013 regulates the formation and functioning of corporations or companies in India. The 1956 Act was based on the recommendations of the Bhabha Committee. This Act was amended multiple times, and in 2013, major changes were introduced. The new law is aimed at easing the process of doing business in India and improving corporate governance by making companies more accountable. The 2013 Act also introduces many new concepts one of which was the Person Company.

One of the important introductions brought by the Companies Act, 2013 is the concept of 'One Person Company' (OPC). OPC is defined in Section 2 (62) of The Companies Act, 2013, which reads as follows: "One Person Company means a company which has only one member" Such companies are generally created when there is only one founder/promoter for the business. One person company is similar to the concept of Sole-proprietorship with separate legal entity. It provides opportunity to small business enterprise with the advantages of company.

The Government of India constituted an expert committee on company law on 2 December 2004 under the chairmanship of Dr. J J Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956. On the basis of the committee had suggested that such an entity may be provided with a simpler legal regime through exemptions so that the small entrepreneur is

not compelled to devote considerable time, energy and resources on complex legal compliance. Thus, the concept one person Company was recognized in Companies Bill, 2009 which came after the submission of report by J.J. Irani Committee. The Companies Bill, 2009 was later considered as Companies Bill, 2011. This bill became Companies Act, 2013 after it was passed by the Parliament. The concept of OPC was given statutory recognition by this Act of 2013.

Till 31.08. 2022 a total number of 45577 One Person Companies were active with a collective paid up capital of Rs. 607.41 core⁽²⁾

SALIENT FEATURES OF ONE PERSON COMPANY:

- **Private company:** Section 3(1) (c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes one-person company will be treated as a private company for all the purposes of legal nature
- **Single-member:** One Person Company can have only one member or shareholder, unlike other private companies.
- **Naming of OPC:** Section 12 of the Companies Act, 2013 deals with naming of a company, that is, whether it is a public company or a private company, it should be mentioned wherever the name of the company is used. The same is in the case of One Person Company as well, that is, under the name of the company, 'One Person Company' or OPC should be written in brackets.
- **Nominee:** A unique feature of One Person Company that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.
- **No perpetual succession:** Since there is only one member in a One Person Company, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession means continuous existence of the company.
- **Minimum one director:** Every company shall have directors. Minimum of two directors in case of private company and minimum of three directors in

case of public company. One Person Company need to have minimum one person (the member) as director. They can have a maximum of 15 directors. The member of the company shall be its first director which shall also be mentioned in MoA.

- **Minimum paid-up share capital:** The minimum capital required to start up with One Person Company is Rs. 1,00,000/-
- **Special privileges:** One Person Company enjoy several privileges and exemptions under the Companies Act that other kinds of companies do not possess. Ex: They do not have to hold annual general meetings. Etc.,

COMPARISON OF ONE PERSON COMPANY WITH OTHER FORM OF COMPANIES.

Features	One Person Company	Sole Proprietorship	Private Company
Name	Words "One Person Company" or opc. must be mentioned in brackets below the name of the company	Any name without contravening legal provisions of other forms of entrepreneurship	Words "Private Company" or pvt., ltd. must be mentioned at the end of the name of the company
Capital	Minimum – ₹. 1 Lakh Maximum – ₹. 50 Lakh	Minimum – No Limit Maximum – No Limit	Minimum – ₹. 1 Lakh Maximum – No Limit
Number of Member / Shareholder	Minimum – 1 Maximum – 1	Does not arise	Minimum – 2 Maximum – 200
Number of Directors	Minimum – 1 Maximum - 15	No provision for director	Minimum – 2 Maximum - 15
Nominee	Mandatory to mention the name of one nominee	Does not arise	Does not arise
Transfer of Shares	No transfer of shares	Does not arise	Transfer of shares restricted
Residential Status of Shareholder(s)	Must be Resident of India	Does not arise	May or May is not Resident of India
Separate Entity	Legal Separate Entity exists	Does not arise	Legal Separate Entity exists
Succession	Perpetual Succession Provision in the law	No Perpetual Succession Provision in the law	Perpetual Succession Provision in the law
Registration	Mandatory Registration with ROC	Registration not required with ROC	Mandatory Registration with ROC
Quorum for Meeting	No Quorum	Does not arise	2 members

PRIVILEGES OF ONE PERSON COMPANIES:

One Person Company enjoy the following privileges and exemptions under the Companies Act:

- Meetings: They do not have to hold annual general meetings.
- OPC does not requirement of preparing cash flow in the annual financial statements.
- Annual returns: A company secretary is not required to sign annual returns; it means that the Director himself can be signed annual returns instead of a company Secretary.
- Provisions relating to independent directors do not apply to them.
- Their articles can provide for additional grounds for vacation of a director's office.
- Several provisions relating to meetings and quorum do not apply to them.
- They can pay more remuneration to directors than compared to other companies.

Requirement for Registration of One Person Companies:

- Minimum and maximum of one member.
- The name of the OPC must be selected as per the provisions of the Companies (Incorporation Rules) 2014. And

should mention as OPC in bracket at the end of the name.

- A nominee name should mention before incorporation.
- The Memorandum of Association (MoA) and the Articles of Association (AoA) of the OPC have to be written out and submitted to the Registrar.
- The minimum authorized capital must be at least Rs 1 Lakh
- OPC should have its own registered office with address.
- The documents required to be furnished for the incorporation of OPC are required to be signed digitally and submitted to the Registrar.
- All other legal documents like Aadhar, PAN etc.,

Process of Incorporation / Registration of One Person Company (OPC)

- Registration is mandatory and know that along with the requirements of an OPC.
- The first step is to apply for Digital Signature Certificate [DSC] with the required documents like Aadhar Card, PAN (Permanent Account Number), etc
- An Application for DIN (Director Identification Number) is to be made, which is mandatory for the directors of the OPC.
- Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name and get approved.
- Draft Memorandum of Association and Articles of Association.
- Sign and file various documents including MOA & AOA, the form INC 3, Address Proof of the registered office and declaration and consent of the directors with the Registrar of Companies electronically.
- All the required forms and documents are uploaded to the MCA portal with the director’s DSC.
- Payment of fee and stamp duty to the Ministry of Corporate Affairs.
- The registrar verifies all the documents submitted and he also checks the receipt of fees deposited.
- Issue of Certificate of Incorporation - If the registrar of the company satisfied with the validity and authenticity of the documents, then he enters the name of the company in the register and issue the certificate of incorporation along with the PAN and TAN (Tax Deduction Account Number).

Who cannot become a member of an OPC or ac as Nominee in OPC?

- ◇ Minor.
- ◇ Foreign citizen.
- ◇ Non Resident.
- ◇ A person incapacitated to contract.
- ◇ A person other than a natural person.

Conclusion:-

One Person Company is a new business concept for the Indian Market but still it has gain an excellent response within 9 years. The important advantage of OPC is a single person can start a business without fear of unlimited liability. OPC gets the advantages of sole proprietorship and a company both at one time. OPC helps the people who are in to small business or self-employment sector and gives many opportunities to start a small business with limited liability to the individual. The success of OPC is purely dependent upon its implementation but the concept is a necessity in the changing business area of the country where entrepreneurs are require taking risk & at the same time needs protection to cover up that risk. It is still in its developing stage in India and would require some more time to mature and to be fully accepted by the business world. With the passage of time, the OPC mode of business organization will be all set to become the most preferred form of business organization, especially for small entrepreneurs.

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