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One Person Company (OPC) under the Companies Act, 2013

A. Background

Before the Companies Act, 2013, if any one wanted to set up a company, he require at least one other person, as the Companies Act, 1956 mandated minimum of two shareholders and two Directors. So, for the person (not minor) wanting to venture alone, the **only option was proprietorship**, an onerous task since it is not legally recognised as a separate entity.

After the Companies Act 2013 (the Act), there is an entity available for the budding entrepreneur. The Act, brought in sweeping changes in the corporate world, has also opened the doors for the entrepreneur looking to set up a company all by himself. This has been made possible by bringing in the concept of One Person Company (OPC).

Compared to a regular private limited company, there are various compliance reliefs granted to OPC under the Act, making it a lucrative way for starting a business. Forming a company as against a sole proprietary business has its own benefits. OPC is regulated by Ministry of Corporate Affairs (MCA) and OPC requires filing of its financials with MCA, which makes the entity transparent and it also increases credit worthiness. Though this concept of OPC is new in India, it has been very popular abroad, including in Singapore, USA and Europe.

Professionals feels that "A one person company is a paradigm shift in the Indian corporate regime, bringing it at par with global standards." It will provide a significant fillip to micro and small-scale businesses.

Only a natural person (not minor) who is an **Indian citizen** and resident in India was would be eligible to set up OPCs. As per the Rules under the Act, an OPC can get itself converted into a private or public company by complying with relevant norms.

However it is pertinent to note that ***an individual can register or be nominee of only one OPC.*** OPC could facilitate easier access to funding sources for entrepreneurs. Besides, having such entities, especially in SME (small and medium enterprises) sector would help the government to capture quality data about the sector and form policies accordingly.

Company format is apt business model for any start-ups, as it gives a respectable image before the customers, vendors, suppliers and other stakeholders with whom they need to work, interact and closely coordinate for the success of their venture. It underlines and emphasises the need for meticulous, organised and focused planning for the business enterprise and sense of self-discipline, which is very important, as most of the start-ups are entrepreneurial-driven and are started by first-generation promoter, OPC kind of entity is very relevant for them.

B. Recent Changes wef 01.04.2021

Before 31st March 2021, if OPC exceeds its paid up share capital beyond Rs. 50 lakh or its average annual turnover exceed beyond Rs 2 crore, then OPC need to convert itself into any kind of company under the Act.

Recently on 1st February 2021, MCA has notified amendment which will be effective from 1st April, 2021. The amendments were made in Rule 3, 6 & 7 of the Companies (Incorporation) Rules, 2014 *under the Act*. These changes are due to Covid-19 Pandemic and to boost the economy. Five major changes are made (a) ***MCA allowed NRIs also to form an OPC in India*** (b) ***Residence status*** for formation of OPC also undergone change, instead of stay of 182 days in India, if a person is in India for 120 days or more, in preceding FY, he can be considered as Resident in India. (c) The ***conversion of OPC*** in Private Limited or Public Limited Company is also made easier. (d) Requirement for voluntary conversion of OPC in any kind of Company, at least two years to expire from the incorporation of OPC has been deleted so now **OPC can be converted anytime** into any other type of company under the Act (e) The threshold limits of having paid up share capital of Rs.50 Lakhs or less and average annual turnover during the relevant period Rs.2 crore or more is also not required for OPC to convert itself into any kind of company under the Act.

OPC cannot be incorporated as a NBFC hence the formation of investment companies is otherwise also not possible. However, there is no bar in OPC's investing in shares and securities of other companies. However, OPC cannot invest in securities of any body corporates. Hence OPC is popular for holding shares of group companies and its tax efficient option too till the Income Tax Act 1961, is not amended.

C. How is an OPC different from Sole Proprietorship

OPC allows a single person to run a company limited by shares, and Sole Proprietorship means an entity where it is run and owned by one individual and where there is no distinction between the owner and the business. The distinction between both the structures is as follows:

Limited Liability - Fundamentally the basic difference between a sole proprietorship and an OPC is the way and manner in which the liability is treated in an OPC. OPC is different from sole proprietorship because it is a completely separate legal entity and that is the distinction between the promoter and the company. The liability of the shareholder will be limited to the extent of unpaid subscription money in his name. On the other hand the liability in a sole proprietorship, the proprietor alone is liable for the claims which will be made against the business.

Tax Bracket - OPC is put in the same bracket of taxation as other private companies. According to Income Tax Act, 1961 a private limited company is under the bracket of 30% on total income with an additional surcharge of 5% if the income exceeds 10 million with an addition to 3% of education cess.

Succession - In an OPC there is a nominee designated by the member. The nominee which will be a Natural Born citizen of India and who may or may not be resident of India. The nominee shall in the event of death of the member become a member of the OPC and will be responsible for the running the OPC. However in the case of sole proprietorship this can only happen through an execution of WILL which may be challenged in the court of law. It affect the continuity of proprietor firm.

Compliances – OPC need to file abridged version of Annual Return in Form MGT 7A just like a normal company and would also need to get its accounts audited in the same manner. On the other hand a sole proprietorship would only need to get audited under the provisions of Section 44 AB of the Income Tax Act, 1961 once its turnover crosses the certain threshold.

D. How to set up an OPC

As the name suggests, a one person company has only one shareholder, who may also be the director. However, it can have more than one director, and up to a maximum of 15.

The process of setting up an OPC is simple. An OPC can be incorporated by filing the e Form Spice+ along with e-MOA and e-AOA. The process of incorporation of an OPC is same as any private company. The name will carry a suffix, 'OPC', similar to the manner in which a private company uses the suffix 'pvt ltd'.

Director to have "Director Identification Number' (DIN) and Digital Signatures. Since the company is owned by a single person, he must nominate someone to take charge of it in case of his death or disability. The nominee must give his consent in writing, which has to be filed with the Registrar. Off course, the owner can change the Nominee any time he wants to, but he will have to inform the Registrar. The Nominee, too, can back off at a later stage, in which case the owner will have to make a fresh nomination.

Once the Registrar finds all documents are complete, he will issue a certificate of incorporation within seven days of receiving the documents, after which OPC can start the business.

No provisions have been prescribed on holding Board Meetings if there is only one director, but two meetings need to be organised every year if there is more than one Director.

Any resolution passed by the sole member must be communicated to OPC and entered in the minutes book. There is, however, no relief from the provisions on audits, financial statements and accounts, which are applicable to private companies.

The biggest advantage of OPC is that its identity is distinct from that of its owner. Therefore, if the OPC is embroiled in a legal controversy, the owner will not be sued, only the OPC will. Most important advantage of OPC is having owners liability limited to the extent of paid up share capital. Since the company is distinct from that of its owner, the personal assets of the member and director remain protected in case of a credit default. However, a proprietorship offers no such advantage.

Flip side is that OPC will be taxed as a company @30% tax rate, which may be higher than the 10-30% for a business that is not incorporated. Other types of taxes, such as the minimum alternate tax and dividend distribution tax, may also be applicable

E. **Is sole proprietorship better?**

Despite the advantages in Tax, OPC offers advantage of limited liability and distinct legal entity. Though it may not be a viable option for everyone. Proprietorship firm is easy to set up. The paperwork involved is minimal since it is limited to a few business-specific approvals. Of course, the risk in a proprietorship is higher as the owner is personally responsible for the business. As far as the taxation is concerned, the income generated from the business is clubbed with the personal income. Therefore, the tax liability would depend on the slabs in which the owner falls. In some cases, a proprietorship can be a tax-inefficient way of doing business. Hence, you must carefully analyse all aspects before choosing the business structure.

F. **Features of One Person Company (OPC)**

The following are the important features of the One Person Company (OPC)

- OPC is one type of company distinct from its owner
- OPC has only one person as a member/shareholder.
- There is no minimum requirement of paid up share capital for OPC
- OPC may be either a Company limited by share / limited by guarantee / an unlimited Company
- The words "One Person Company" should be mentioned in brackets below the name of the OPC
- OPC shall indicate the name of the nominee/other person in the memorandum, with his prior written consent.
- The written consent above, shall be filed with the Registrar at the time of incorporation of the OPC along with its MoA & AoA (Memorandum and Articles)
- The nominee of OPC can withdraw his consent at any time
- The member/Shareholder of OPC can change the nominee at any time, by giving notice & intimate about it to OPC. OPC in turn to intimate the same to the Registrar
- In case of the death of member/shareholder or his incapacity to contract, then nominee/other person become the member of the OPC.
- Member/Shareholder of the OPC acts as first director
- OPC can appoint maximum 15 directors, but minimum should be one director
- Cash Flow Statement is not mandated for OPC in its Financial Statement
- One Director is sufficient to sign the Financial Statements/Director's Report
- Within 180 days from the closure of the Financial Year, OPC should file the copy of the Financial Statements with Registrar
- OPC should inform to the Registrar about every contract entered and also should record in the minutes of the meeting with in 15 days from the date of approval by the BOD (Board of Directors)

G. **Advantages of One Person Company (OPC)**

- Legal Status and Social acknowledgment for Business
- Administration of the Company
- Limited Liability
- Autonomy
- Independent Existence
- Reduced compliance burden
- Simple to procure financial support from Banks or financial organizations
- Everlasting succession
- Customer or Vendors trust such entity

H. Disadvantages of One Person Company (OPC)

- Suitable only for small business
- Restriction on business activities
- Ownership and Management
- High Tax Rate
- Costlier to start as compared to sole proprietorships

Conclusion:

This concept of OPC (One Person Company) is set to organize, regulate and govern the unorganized sector of proprietorship firms and other entities Company Law experts were expecting rise in registrations of OPC however in past 7 years it's not very popular form of entity. OPC gives greater flexibility to an individual or a professional to manage his business efficiently and at the same time enjoy the benefits of a company with limited liability.

OPC is still not considered favourably by Lenders or Banks. FDI is not yet allowed in OPC. The deciding factor for OPC as a structure, is still based on the Tax implication on OPC vis a vis Individual proprietor.

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