

ONE PERSON COMPANY

[effective 1st April, 2014]

What is a One Person Company (OPC)?

Section 2(62) of the Companies Act, 2013 defines OPC to mean a Company which has only one person as a member.

Could OPC be formed in the regime of the Companies Act, 1956?

OPC is a new concept introduced in the Companies Act, 2013. Therefore, OPC could not be formed under the earlier Acts.

What type of OPC can be formed/incorporated?

As per section 3(1) and (2), OPC can only be incorporated as a private limited company. Such a company may either be:

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

Who can form or incorporate a OPC?

As per Rule 3(1) of the Companies (Incorporation) Rules 2014, only a natural person who is an Indian Citizen and resident in India shall be eligible to incorporate/form a OPC.

Who can become a nominee of a OPC?

As per Rule 3(1) of the Companies (Incorporation) Rules 2014, only a natural person who is an Indian Citizen and resident in India shall be a nominee for the sole member of a OPC.

Who is a resident of India for the purpose of the provisions laid down for OPC?

As per the explanation given to Rule 3(1), a resident of India for the purpose of the provisions governing OPC is a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.

Is there any number restriction on formation of OPC by a person?

As per Rule 3(2) of the Companies (Incorporation) Rules 2014, no person shall be eligible to incorporate more than one OPC.

Is there any number restriction on acting as a nominee of a person?

As per Rule 3(2) of the Companies (Incorporation) Rules 2014, no person shall be eligible to become a nominee in more than one OPC.

What is the concept of nominee in case of OPC?

As per the first proviso to section 3(1) of the Companies Act 2013, at the time of incorporation of OPC, the sole member of OPC is required to appoint another person as his nominee and his name shall have to be featured in the Memorandum of Association of the OPC.

The nominee so appointed shall:

- a. in the event of the sole member's death; or
 - b. in the event of the sole member becoming incapacitated to contract;
- become the member of OPC.

A nominee so appointed is required to give his written consent for the same. The said written consent will also have to be filed with the ROC at the time of incorporation of the OPC along with its MoA and AoA.

A nominee may also withdraw his consent if he so desires.

To re-iterate, only a natural person who is an Indian Citizen and resident in India is eligible to be a nominee as aforesaid.

Can the member of the OPC change the nominee?

As per the third proviso to section 3(1) of the Companies Act 2013, the member of the OPC may at any time change the name of the nominee by giving notice.

What is the procedure to be followed for Nomination by a Member or Subscriber of OPC?

As per Rule 4 of the Companies (Incorporation) Rules 2014:

1. Memorandum of OPC to indicate the name of nominee.
2. The above nomination indication shall be filed by the OPC subscriber with the Registrar in Form No. INC.2 along with fees prescribed
3. OPC subscriber also required to file the consent of his nominee in Form No. INC.3 along with fees prescribed
4. If the OPC subscriber/member dies or become incapacitated to contract, his nominee shall become the new member of OPC.
5. The new member as aforesaid in turn is required to appoint his nominee within 15 days of his becoming the new member of OPC
6. OPC to file with the Registrar within 30 days of change in membership:
 - a. Form No INC.4 along with fees prescribed, the intimation of such cessation and nomination and
 - b. Form No INC.3 along with the fees prescribed, the consent of the new nominee.

What is the procedure to be followed in case of withdrawal of consent by a nominee?

As per Rule 4(3) and (4) of the Companies (Incorporation) Rules 2014:

1. A nominee may withdraw his consent by giving a written notice to the OPC Member/Subscriber and to the OPC concerned.
2. The sole member/subscriber to nominate a new person as his nominee within 15 days of the notice of withdrawal.
3. The sole member/subscriber to intimate the OPC
 - a. of such nomination in writing and
 - b. of the written consent by sending Form No INC.3
4. OPC shall within 30 days of the receipt of notice of withdrawal as mentioned in clause 1 above, file:
 - a. Form No INC.4 along with fees prescribed, the intimation of such withdrawal and new nomination and
 - b. Form No INC.3 along with the fees prescribed, the consent of the new nominee.

What is the procedure to be followed for Change in Nomination by a Member or Subscriber of OPC?

As per Rule 4(5) of the Companies (Incorporation) Rules 2014:

1. The subscriber or member of OPC can change his nominee at any time or for any reason by giving a notice in writing to the OPC.
2. OPC subscriber to obtain prior consent of new nominee in Form No INC.3.
3. OPC to file with the Registrar within 30 days of receipt of intimation of change:
 - a. Form No INC.4 along with fees prescribed, the intimation of such cessation and new nomination and
 - b. Form No INC.3 along with the fees prescribed, the consent of the new nominee.

Who cannot become a Member of OPC or act as a nominee in OPC?

1. Minor (as per Rule 3(4) of the Companies (Incorporation) Rules 2014). A minor cannot even hold share with beneficial interest.
2. Foreign Citizen
3. Non Resident (see meaning of resident in India above and relate)
4. A person incapacitated to contract
5. Persons other than a Natural Person i.e. living human being

Can OPC engage in all business activities?

OPC needs to be formed for any lawful purpose. Such companies cannot engage in "Non Banking Financial Investment" activities including "investment" in securities of any body corporates (as per Rule 3(6) of the Companies (Incorporation) Rules 2014).

Can OPC be incorporated or converted to a Section 8 Company (with Charitable Objectives or erstwhile Sec 25 Company of the Companies Act, 1956)?

As per Rule 3(5) of the Companies (Incorporation) Rules 2014, the answer is 'No'.

How many Directors can OPC appoint?

OPC can have one or more Directors on its board. As per the provisions of Sec 149 a OPC can have a maximum of 15 directors. It can, however appoint more than 15 directors after passing a special resolution.

Is OPC required to hold Board Meeting? How many Board Meetings are required to be held by a OPC?

As per section 173(5) of the Companies Act 2013, the answer is 'Yes', if there is more than one Director on the OPC Board. A OPC is required to hold at least one meeting of the Board in each half of a calendar year and the gap between the 2 meetings should not be less than 90 days.

How will the Board Meeting be conducted and its business transacted if there is only one Director on the OPC board?

As per section 122(4) of the Companies Act 2013, where there is only one Director on OPC Board, any business which is required to be transacted at the Board Meeting of OPC, it shall be sufficient if, in case of OPC, the resolution by such one Director is entered in the minutes book and signed and dated by such director and such date shall be deemed to be the date of the meeting of the OPC Board for all the purposes of the Companies Act, 2013.

Is OPC required to file Annual Return?

As per the proviso to section 92(1) of the Companies Act 2013, the answer is 'Yes'. The annual return in case of OPC shall be signed by the company secretary or where there is no company secretary, by the director of the OPC.

Is OPC required to hold AGM?

As per section 96(1) of the Companies Act 2013, the provision relating to holding of AGM is not mandatory for a OPC.

Can OPC voluntarily convert itself into any other kind of company?

As per Rule 3(7) of the Companies (Incorporation) Rules 2014, the answer is 'Yes', only if it has been in existence for more than 2 years.

When will a company cease to continue as OPC?

As per Rule 6(1) of the Companies (Incorporation) Rules 2014, OPC shall cease to be entitled to continue as a OPC if:

1. Its paid up capital exceeds Rs.50 lacs; or
2. Its average annual turnover during the relevant period i.e. immediately preceding 3 consecutive financial years exceeds Rs.2 Crores

How will the OPC function on hitting the requirements mentioned in Rule 6(1)?

As per Rule 6(2) of the Companies (Incorporation) Rules 2014, OPC shall be mandatorily required to convert itself into either a private or a public company. Such conversion shall happen within 6 months from the:

1. date of increase of its paid up capital as mentioned in Rule 6(1), i.e. exceeding Rs.50 lacs; or
2. last day of the relevant period during which its average annual turnover exceeds Rs.2 Crores.

As per Rule 6(2), (3) and (6) of the Companies (Incorporation) Rules 2014, OPC should ensure that the conversion shall happen in accordance with the provisions of Section 18 of the Companies Act, 2013 which provides for necessary alteration in memorandum and articles, read with section 122 of the Act. The other requirements of minimum capital, minimum number of directors and subscribers as the case may be need to be complied with at the time of any such conversion by OPC.

Is any intimation before conversion required to be given to the Registrar by the OPC?

As per Rule 6(4) of the Companies (Incorporation) Rules 2014, OPC shall within a period of 60 days from the date when it ceases its entitlement to continue as a OPC, shall give a notice to the Registrar in Form No. INC.5 informing:

1. that it has ceased to be a OPC and
2. that it is now required to convert itself into a private or a public company by virtue of its paid up capital or average annual turnover exceeding the threshold limit as mentioned above.

Can a Private Company convert itself into a OPC?

As per Rule 7(1) and (2) of the Companies (Incorporation) Rules 2014, a private company can convert itself into a OPC provided:

1. it is not a Section 8 (with charitable objects) company
2. its paid up capital is equal to or less than Rs.50 lacs
3. its average annual turnover is equal to or less than Rs.2 crores in the relevant period
4. it passes a special resolution in its general meeting for such conversion
5. it obtains a NOC in writing from its members and creditors* for such conversion prior to passing of the abovementioned special resolution.

*Observation: In the point 5 above, the word that has been used is just 'creditors' and not 'secured creditors'.

Is any intimation before conversion required to be given to the Registrar by the Private Company?

As per Rule 7(3) and (4) of the Companies (Incorporation) Rules 2014, the following intimation/filing is required before the Registrar grants the conversion certificate:

1. the converting private company* shall file a copy of the special resolution with the Registrar within 30 days of passing of such resolution in Form No. MGT. 14
2. the converting private company to file an application in Form No. INC.6 for conversion into OPC along with prescribed fees by attaching the following documents:

- a. declaration by way of an affidavit from the directors in the prescribed manner
- b. list of members and list of creditors
- c. latest audited balance sheet and profit and loss account and
- d. the copy of NOC letter of secured* creditors.

As per Rule 7(5) of the Companies (Incorporation) Rules 2014, the ROC shall issue the Certificate.

*Observation: Rule 7(3) mentions that OPC shall file a copy which seems to be apparently incorrect as at this stage OPC has not come into existence and special resolution is required to be passed by the converting private company.

*Observation: Here the word 'secured' has been added, whereas in Rule 7(2) the word 'secured' has not been used.

What is the penalty prescribed for non compliance of any of the Rules?

Rule 6(5) of the Companies (Incorporation) Rules 2014: If OPC or any officer of OPC contravenes the provisions of the Companies (Incorporation) Rules 2014, then such OPC or any officer of the OPC shall be punishable with fine which may extend to Rs.10,000/- and with a further fine which may extend to Rs.1000/- for every day after the first day during which such contravention continues.

Which sections of Chapter VII (Management and Administration) of the Companies Act, 2013 are not applicable to OPC?

As per the provisions of Section 122 of the Companies Act 2013, following sections do not apply to OPC:

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| 1. | Sec 98 | Power of the Tribunal to call meetings of members |
| 2. | Sec 100 | Calling of EGM |
| 3. | Sec 101 | Notice of meetings |
| 4. | Sec 102 | Explanatory statement be annexed to notice |
| 5. | Sec 103 | Quorum for meetings |
| 6. | Sec 104 | Chairman of meetings |
| 7. | Sec 105 | Proxies |
| 8. | Sec 106 | Restriction on Voting Rights |
| 9. | Sec 107 | Voting by show of hands |
| 10. | Sec 108 | Voting through electronic means |
| 11. | Sec 109 | Demand for Poll |
| 12. | Sec 110 | Postal Ballot |
| 13. | Sec 111 | Circulation of members' resolution |

The section on quorum of Board Meeting in case if there is only one Director on OPC Board is also not applicable to OPC (Section 174 of the Companies Act, 2013).

Is there any exemption to OPC pertaining to transaction of Ordinary & Special Resolutions at General Meetings?

Yes. As per Sec 122(3) of the Companies Act, 2013 any business which is required to be transacted at AGM or other general meetings of OPC by means of an ordinary or special resolution, it shall be sufficient if, in case of OPC, the resolution is communicated by the member to the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes of the Companies Act, 2013.

Can OPC enter into a contract with its member/director?

As per section 193(1) of the Companies Act 2013, where OPC limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the OPC shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

The proviso to this section mentions that the above shall not apply to contracts entered into by the company in the ordinary course of its business.

It is pertinent to notice here that the contracts entered into with the sole member of the company who is also the director of the company is attracted by the section.

In case of any contract/related party transactions of OPC with its other directors (who is not the sole member), if any, the provisions of Sec 188 of the Companies Act, 2013 shall get attracted. In terms of the said provisions, the approval of the Board in the prescribed manner shall be required.

Does the OPC need to inform the ROC about the contracts entered u/s 193 of the Companies Act, 2013?

As per section 193(2) of the Companies Act 2013, the OPC will have to inform the Registrar about every such contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under section 193(1). The said information will have to be given within a period of 15 days of the date of approval by the Board of Directors.