One Person Company

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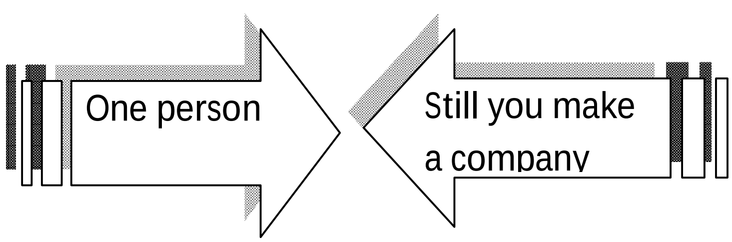
➢ Introduction

One person company is a concept introduced in India by the Companies Act, 2013. The concept opens up new vistas of business opportunities and particularly spectacular possibilities for sole proprietorships and entrepreneurs who can enjoy the advantages of limited liability, and the benefit of separate legal entity as well.

Ministry of Corporate Affairs vide its G.S.R. Notification No. 250(E) dated 31st March, 2014 notified the Companies (Incorporation) Rules, 2014 under the Companies Act, 2013 which provide for formation of One Person Company.



➢ **Concept of OPC in other countries**

The concept of one person company is new to India. OPC concept was first recommended by an expert committee constituted under the leadership of Dr. J. J. Irani, in 2005.

In the US, several states permit registration of One Person Company as a limited liability company (LLC). Singapore introduced the concept in 2004, followed by China in 2005. The concept of OPC also exists in other countries such as the UK, Mauritius, Ireland, Qatar and Bahrain. Pakistan too amended its Companies Act by The concept of one person company (OPC) was first recommended by an expert committee constituted under the leadership of Dr J. J. Irani, in 2005.

introducing the concept of OPC. In most countries, the law provides that one person company should or can have more than one director and exempts from holding annual general meeting, though documents and records are to be maintained.

GENESIS AND GLOBAL DEVELOPMENT

One person companies are in existence in certain countries. In India this concept has been mooted by the Ministry of Corporate Affairs by allowing One Person Companies in India in line with UK, China, USA, Australia, Singapore, Qatar, Pakistan and several other countries. It is a right thinking in right direction by the Ministry of Corporate Affairs. One Person Companies have been in existence in UK for several years now. China allowed formation of OPCs as recent as in 2005. A few other countries have also given the legal status for OPCs.

➢ Definition of person

The definition of person is neither defined in the Act nor in the Companies Bill. However, considering the other available definitions in the Act as well as in the Bill, such as “Director”, “Officer who is in default" and "relative", a person means only natural human beings. On the other hand, the General Clauses Act, 1897, The Income Tax Act, 1961 and the Indian Penal Code, 1860 define person to include any company or association or body of individuals, whether incorporated or not. The concept of one person company therefore, restricts that only individuals can form OPC by subscribing their or his name to a memorandum and complying with other requirements of the Act in respect of registration of OPC. It has also made it mandatory that the person who forms OPC has to nprovide a nominee with his prior consent who shall, in the event of the subscriber's death or inability, become the member of the OPC. The objective of OPC is to establish perpetuity and continuity to the life of the company and does not end with the life of the person who is the owner of the company. The golden rule of "members may come and go, but the company must live on" holds good.

➢ **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.

➢ **OPC or Proprietorship Concern! Your choice**

OPC VS. SOLE PROPRIETORSHIP

OPC	SOLE PROPRIETORSHIP
Separate Legal entity	Not a Separate Legal Entity
Limited Liability	unlimited liability
Perpetual succession	No perpetual succession
Loan not the sole responsibility owner	Loan-sole responsibility of the of the owner
Registration required	Registration not required
Finance –credit record of the OPC	Finance –credit record of the Owner

➢ **Types of OPC**

• a company limited by shares; or
• a company limited by guarantee; or
• an unlimited company.

➢ INCORPORATION OF OPC

Process of Incorporation of One Person Company (OPC)

⇩

Obtain Digital Signature Certificate [DSC] for the proposed Director(s)

⇩

Obtain Director Identification Number [DIN] for the proposed director(s)

⇩

Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name

⇩

Draft Memorandum of Association and Articles of Association [MOA & AOA]

⇩

Sign and file various documents including MOA & AOA with the Registrar of Companies electronically

⇩

Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty

⇩

Scrutiny of documents at Registrar of Companies [ROC]

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Receipt of Certificate of Registration/Incorporation from ROC

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➢ **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.

- **<u>Privileges available to OPC Some of the privileges and benefits identified with OPCs are:</u>**

• 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.

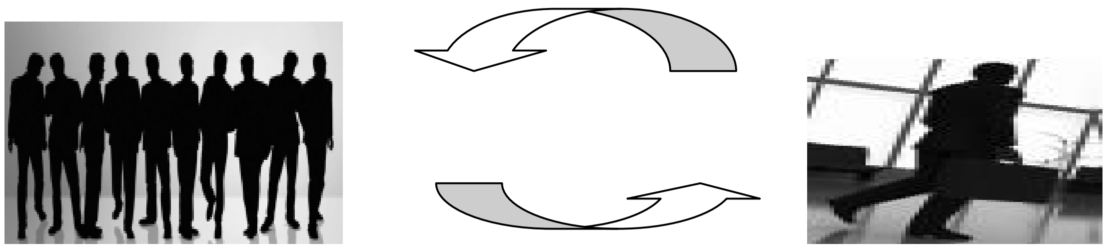
• A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.

• 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, atleast 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.

• 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. Financialstatements 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.

• 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.

➢ **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 lakhs 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.

- **Conversion of Private company into One Person Company**

(1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.

(2) Before passing such resolution, the company shall obtain ‘No objection’ in writing from members and creditors.

(3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.

(4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-

— The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share

capital of the company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;
— the list of members and list of creditors;
— the latest Audited Balance Sheet and the Profit and Loss Account; and
— the copy of 'No Objection' letter of secured creditors.
(5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate..

➢ Distinction between OPC and MPC S.

Points of Comparison	**OPC** 	**MPC** 
Definition	Clause 2(62	Clause 2(20) defines a company. MPC is therefore any "company" other than OPC.
Class	Necessarily a private company [Clause 3(1)(c)]	Public or private
No. of members	Only 1	Private other than OPC: □ Minimum: 2 □ Maximum: 200 Public: □ Minimum: 7 □ Maximum: No limit

Cash Flow statement [as per Clause 2(40)]	Not mandatory	Mandatory (except for small company and dormant company as well)
Approval of the Financial Statement [Clause 134(1)]	□ signed only by 1 director	□ signed at least by □ the chairperson so authorised by the Board **or** by 2 directors (out of which one shall be MD and the CEO, if he is a director in the company), □ the CFO, and the CS of the company,
Filing of Financial Statements (with attachments) with the Registrar [Clause 137(1)]	□ Duly adopted by its member, □ within 180 days from the closure of the financial year	□ Duly adopted at the AGM of the company, □ within 30 days of the date of AGM
Signing of Annual Return [Clause 92(1)]	By the CS, or where there is no CS, by the director of the company	By a director and CS (if there is no CS, by a CS in Practice) wherever they are appointed.
Annual General Meetings [Clause 96(1)]	Not required	□ Mandatory; □ Maximum gap of 15 months between 2 consecutive AGMs

Inapplicability of certain Provisions	Section 98 and Sections 100 to 111 (both inclusive) [Clause 122(1)]	Section 98, 100-111 all applicable
Minimum Directors [Clause 149(1)]	1 (one)	Public: 3 Private other than OPC: 2
Board Meeting [Clause 173]	Minimum 1 in each half of a calendar year Gap between the two meetings: not less than 90 days Not applicable where there is only one	Minimum 4 every year Maximum gap: 120 days [sub-clause (1)]

➢ **Advantages foreseen**

- The main reason for consideration and introduction of the concept of OPC on the lines of what has been introduced in various other countries is to encourage the sole proprietors to enter into the organised sector of business
- to restrict the liability of the proprietors to the extent of the liability of the company.
- The other reasons being advocated are that the concept will help foreign companies to form their subsidiaries conveniently which would encourage foreign funds flow into India, to bring the small

and medium enterprises within the domain of corporate entity and so on.

- The objective of OPC is to establish perpetuity and continuity to the life of the company so that it does not end with the life of the person who is the owner of the company.

➢ Success is doubtful

Limited Liability Partnership Act, (LLP Act) 2008 was enacted on January 7,2009. The LLP Act was introduced with the objective of providing limited liability for the partners in business, besides bringing the all small and medium enterprises in the unorganised sector into organised sector. The concept of LLP has not been successful and till date approximately only 10,000 entities are registered. The LLP model of business is not fully encouraged even by professionals. The success of the concept of OPC is doubtful on some of the following grounds:

1. The existing proprietors are free to raise funds from their relatives, friends and others when the need arises. On the other hand, an OPC, being a private limited company, is not permitted to borrow from others.

2. Several existing private limited companies may be as good as proprietorship firms but such private companies may consider and introduce several other shareholders, up to a limit of 200. On the other hand, the capital of the OPC is only to the extent of available funds of the person who owns OPC.

3. The concept of nomination is slowly being introduced in bank accounts, share trading etc., but has not come into the business enterprises. Normally, the existing proprietorship business assets are shared by the legal heirs which may be more than one. Conversion of existing proprietorship business into OPC requires providing one nominee which may not be acceptable to the other family members.

4. Foreign companies may not be able to incorporate their subsidiaries as OPCs as the subscriber has to be only an individual and that too, with a nomination of another individual. The concept of subsidiary company is that the entire shares are held by the holding company and therefore, it is not possible for MNCs to incorporate their subsidiaries as OPCs.

5. The expectation that the bankers will provide funds easily to OPCs seems unrealistic. At present, bankers do insist on collateral and other securities for extending credit facilities to small individual business entrepreneurs. Since the OPC now allows the same individual proprietors to claim limited liability, the risk avenue is more to the bankers.

6. Above all, the requirement of filing documents with the Regulator may not encourage small business entrepreneurs to incorporate as or to switch over to OPCs.

➢ Conclusion

The Companies Act, 1956 (the Act) has mandated minimum two members to incorporate a company. Such a company must have at least two members as its shareholders throughout the company's existence. Such a provision was probably to keep a distinction between a sole proprietorship firm and a company. Several companies are being formed by just issuing a single share to another shareholder thereby retaining almost the entire shares with one person so as to maintain the status of a company. Multinational companies (MNCs), in order to float a 100% subsidiary company, nominate one other person by issuing a single share and simultaneously complying with the provisions of beneficial shareholder. One person could enjoy the status and benefits of a company with limited liability while operating and functioning like a proprietor concern for all practical purposes. Hence, to overcome such a situation and to make things clearer and more transparent, it was thought fit to introduce the concept of one person company (OPC).But there are several point, which show the success of OPC in doubt. So let see in future how much it will success.
