ONE PERSON COMPANY

A New Way of Doing Business

PEEYUSH SHARMA & Co.

CHARTERED ACCOUNTANTS

Our Mission is to achieve a leadership position in domestic and international markets by providing services to our clients for their business needs with the highest standards of integrity, quality and efficiency. We strive to create an environment to promote group spirit and commitment to excellence amongst our staff, thereby providing opportunity for growth of individual members.

" We Believe we will be successful if our clients are successful"

About the Author

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Preamble

The Companies Act, 2013 aims pave the way for a more modern and dynamic legislation, to enable growth and greater regulation of the corporate sector in India. The revolutionary new concept of 'One Person Company' (OPC) is a step forward to facilitate more business friendly corporate regulations in India. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc. all in the name of a separate legal entity.This concept of OPC was first recommended by the expert committee of Dr. JJ Irani in 2005 and was subsequently inserted in the Companies Bill so as to provide an option to persons operating under the sole proprietorship model to operate as a company. Till recently, if you wanted to set up a private company, you needed at least one other person because the law mandated a minimum of two shareholders. So, for the person wanting to venture alone, the only option was proprietorship, an onerous task since it is not legally recognized as a separate entity. Now, after the recent passing of the much-hyped Companies Bill, 2012, by the Rajya Sabha, there may be hope for the budding entrepreneur. The bill that aims to bring 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).

OPC provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc all in the name of a separate legal entity.

Though the concept of OPC is new in India but it is a very successful form of business in UK and several European countries since a very long time now. Currently, it is a grey area, and only time will tell how well this works in India. A one person company is a paradigm shift in the Indian corporate regime, bringing it at par with global standards.

Single entrepreneur can manage his business on his own. It can have only one member at any point of time. It may have only one director but as per the provisions of section 149 can however appoint more than 15 directors after passing a special resolution. So, the key difference between OPC and sole proprietorship is the way the liabilities are treated. For instance, in an OPC the promoter's liability is limited in the event of a default or legal issues. Also one person can take a decision without waiting for other director's consent and wasting of time and energy in convincing other directors can be avoided.

OPC – A Legal Fiction:

A company by definition denotes the coming together of more than one person. Consequently, an OPC is something quite difficult to fathom. It is an oxymoron – a contradiction in terms. The new act has helped create a new form of business organization through a legal fiction. As the name itself suggests OPC consists of one person who is himself the promoter, the director and the member all rolled into one. Nevertheless he is a company! In a manner of speaking it is a process of incorporating oneself.

Features of One Person Company (OPC)

1. Only One Shareholder:

Only a natural person, who is an Indian citizen and resident in India shall be eligible to incorporate a One Person Company. *Explanation:* 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.

2. Nominee for the Shareholder:

The Shareholder shall nominate another person who shall become the shareholders in case of death/incapacity of the original shareholder. Such nominee shall give his/her consent and such consent for being appointed as the Nominee for the sole Shareholder. Only a natural person, who is an Indian citizen and resident in India shall be a nominee for the sole member of a One Person Company.

3. Director:

Must have a minimum of One Director, the Sole Shareholder can himself be the Sole Director. The Company may have a maximum number of 15 directors.

Terms and Restrictions of OPC

1. A person shall not be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
2. Minor cannot shall become member or nominee of the One Person Company or can hold share with beneficial interest.
3. An OPC cannot be incorporated or converted into a company under Section 8 of the Act. [Company not for Profit].
4. An OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
5. An OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond Rs.50 Lakhs or its average annual turnover during the relevant period exceeds Rs.2 Crores i.e., if the Paid-up capital of the Company crosses Rs.50 Lakhs or the average annual turnover during the relevant period exceeds Rs.2 Crores, then the OPC has to invariably file forms with the ROC for conversion in to a Private or Public Company, with in a period of Six Months on breaching the above threshold limits.

Section 2(62) –Defination of OPC

One Person Company – a company which has only one person as member Name of company will carry Suffix – **'OPC'**

Section 3(2) – Types of OPC

- A company limited by share
- A company limited a guarantee
- A unlimited company

Section 3 – Formation of Company

One person is required for formation of OPC say as private company by subscribing his name to a MOA and comply with the requirements of this act in respect of registration

Provided that the memorandum of OPC shall indicate the name of the other person, with his prior written consent in the prescribed form who shall in the event of death of subscriber or incapacity to contract become the member of company and the written consent of such person shall also be filed with register at the time of incorporation along with memorandum and articles.

Provided further that member can change nominee anytime by notice to company and company to registrar

Conditions for incorporation of OPC

1. Only a natural person who is a *Indian citizen* and *resident* in india
   - shall be eligible to incorporate OPC
   - shall be a nominee for the sole member of OPC

2. No person shall be eligible to incorporate more than a one OPC or become nominee in more than one such company
3. When a member of OPC become a member in another OPC by virtue of his being a nominee in that OPC then such person shall meet the eligibility criteria with in a period of 180 days
4. No minor shall become member or nominee in OPC or can hold share with beneficial interests
5. Such company cannot be incorporated or converted in to section 8 company
6. Such company cannot carry on Non banking financial Investment activities including investment in securities of body corporate
7. No such company can voluntary convert into any kind of company unless two years have been expired from date of incorporation of OPC except threshold limit(paid-up capital) is increased beyond 50 lakhs rupees or average annual turnover during the relevant period exceeds 2 crore rupees.

(*refer rule 3 of company Incorporation rules – 2014*)

Nomination by the subscriber or member of OPC

For the purposes of first proviso to sub section (1) of section 3-

1. Subscriber to the memorandum of a one person company shall nominate a person, after obtaining prior consent of such person who shall in the event of the subscriber death or incapacity to contract become the member of company

2. Name of such person shall be mentioned in the Memorandum and Such nomination in **Form no INC 2** along with consent of such nominee obtained in **Form no INC 3** with fees provided in companies (registration offices and fees) rules, 2014

3. Person nominated by subscriber or member of OPC may withdraw his consent by giving a notice in writing to such sole member and to OPC provided that member shall nominate another person as nominee with in fifteen days of the receipt of notice of withdrawal and

send the intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in **Form no INC 3**

4. The company shall with in 30days of receipt of notice of withdrawal of consent, file with registrar a notice of such withdrawal and intimation of the name of another person nominated by sole member in **Form No INC 4** along with fee.

5. Subscriber or member of OPC may by intimation in writing to the company change the name of the person nomination by him at any time for any reason including incase of death or incapacity of nominee and nominate another person after obtaining the prior consent of such other person in **form no INC 3** provided that the company file with the registrar a notice of such change in **form INC 4**.

6. Where the sole member of OPC ceases to be the member in the event of death or incapacity to contract and his nominee become member of such OPC, such new member nominate within fifteen days of becoming member, a person who shall in the event of death or incapacity to contract become the member of company and company shall file with ROC an intimation of such cessation and nomination in form no INC 4 along with fee and written consent of new nominee in INC 3.

    i. (*refer rule 4 of company Incorporation rules – 2014*)

Penalty for non-compliance with rules

If any officer or OPC non complied with this rules shall be punishable with fine which may extend to 10000 rupees and further fine which may extend to 1000 rs for every day after the first during which such contravention continues.

OPC can convert itself into a public company or a private company – **form no INC 5**
Conversion of private company into OPC – **Form no INC 6** and **form MGT 14**

Procedural Exemption and benefits of OPC

An OPC is exempt from certain procedural formalities,

1. Conducting annual general meetings, general meetings and extraordinary general meetings not required.
   a. (*refer section 98, 100 and 111,122 of companies act 2013*)

2. 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.
3. Since the company is distinct from that of its owner, the personal assets of the shareholders and directors remain protected in case of a credit default. – ***Separate Legal Entity and Limited Liability***
4. Loan is not sole responsibility of the owner
5. For Finance credit record of OPC required but not Owner
6. Mandatory rotation of Auditor after expiry of maximum term not applicable
7. OPC require minimal capital to begin with, being a recognized corporate could well raise capital from others like venture finanacial institutions etc thus graduating to private company
8. Annual return of a OPC shall be signed by the company secretary or where there is no CS, by the director of company
9. Minimum of one director require for OPC,it can increase upto 15 directors.
   a. (*refer section 152(1) and 149 (1)(a) and (b) of companies act 2013*)
10. Cash Flow Statement need not mandatorily form part of financials, its should file the financials with registrar after duly adopted by member, within 180 days of closure of financial year along with necessary document.
    a. (*refer section 92 and 134 of companies act 2013*)
11. Board report to be annexed to financial statement may only contain contain explanation by board on every qualification, reservation or adverse remark or disclaimer made by auditor in his report.

Drawback of OPC

1. An OPC is not easy to set up. For one, it requires a lot of paperwork and is a time-consuming process. For instance, you need to get a lawyer or company secretary to help you draft the memorandum and articles of association.
2. The process may cost upwards of Rs 2 lakh.
3. OPC will be taxed at 30%, which may be higher than the 10-30% for a business that is not PEincorporated. Other types of taxes, such as the minimum alternate tax and dividend distribution tax, may also be applicable.
4. No relief from the provisions on audits, financial statements and accounts, which are applicable to private companies

5. Any resolution passed by the sole member must be communicated to the company and entered in the minutes book – for meetings.

8. Compulsory Conversion if paid-up capital is increased beyond 50 lakhs rupees or average annual turnover during the relevant period exceeds 2 crore rupees.

Steps to incorporate OPC

1. Obtain Digital Signature Certificate [DSC] for the proposed Director(s).
2. Obtain Director Identification Number [DIN] for the proposed director(s) - ***form DIR 3***.
3. Select suitable Company Name, and make an application to the Ministry of Corporate Office for availability of name. – ***Form INC 1***
4. Draft Memorandum of Association and Articles of Association [MOA & AOA].
5. Sign and file various documents including MOA & AOA with the Registrar of Companies electronically. – ***Form INC 2,Form INC 22 and Form DIR 12(In some cases)***

6. Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.
7. Scrutiny of documents at Registrar of Companies [ROC].
8. Receipt of Certificate of Registration/Incorporation from ROC.

Other Information To Be Provided:

A. The applicant should provide the following details :

1. Proposed name : Maximum 6 names can be quoted which will be considered on the basis of name subscribed (first to last basis)
2. Proposed business to be carried on
3. Capital to be contributed for the formation
4. State in which registered office of the OPC to be situated
5. Details of nominee

B. After obtaining name availability, within 60 days we have to file incorporation documents with ROC. The following are the attachments:

1. Memorandum of Association of the Company
2. Articles of Association of the Company
3. Proof of identity of the member and the nominee
4. Residential proof of the member and the nominee
5. Consent of the nominee in form INC.3
6. Affidavit from the subscriber and first director to the memorandum in the form no. INC.9
7. Specimen signature in form INC.10
8. List of all the companies (specifying their CIN) having the same registered office address, if any; specimen signature in form INC.10
9. Consent from director
10. Proof of registered office address
11. Copy of PAN card of member and nominee
12. Details of duration of stay at present address if it is less than one year address of the previous residence has to be provided
13. Details of the name of the nominee
14. Details of entrenchment of articles.

Financial Statements :

1. The financial statements of a one person company can be signed by one director alone.
2. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company [Section 2(40)].
3. Board 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.
4. OPC should file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred and eighty days from the closure of the financial year.

Annual General Meeting :

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

Board Meeting :

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 ninety days.

For the purposes of holding board meetings, in case of one person company which has only one director, it shall be sufficient compliance if all resolutions to be passed by such a company at a board meeting, are entered in the minutes book required to be maintained under section 118 and signed & 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.If OPC has only one director, it is exempted from holding Board meetings.

AUDIT AND AUDITORS :

Compulsory rotation of auditors – Not applicable

Provision for compulsory rotation of auditor in section 139(2) are not applicable to OPC as they apply to listed companies and companies belong to such class or classes as may be prescribed (unless central govt. applies it to OPCs through notification).

An OPC needs to gets its accounts audited just like a normal company.

An OPC has to file annual returns, Balance sheet, Profit & Loss statement just like a normal company i.e within 180 days of closure of Financial Year.

Any change in member or nominee is to be notified to the ROC by E-form INC 4.

OPC can file a intimation for cessation in E-form INC-5 as per the rules prescribed from time to time.

Other compliances as to Charge registration, appointment of director (if more than one), etc, apply mutatis mutandis to OPC

Applicability Of Chapter – VII (Management & Administration) :

The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (3).

For the purposes of section 114 (Ordinary and Special Resolutions), any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 (Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot) and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of

Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 (Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot) and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

Cessation Of OPC Status :

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 ` 50 lacs; or
2. Its average annual turnover during the relevant period i.e. immediately preceding 3 consecutive financial years exceeds ` 2 crores
3. Intimation for increase in threshold limit has to be filed in form INC.5

Conversion Of OPC Into Public Or Private Company:

As per rule 6(2) of the Companies (Incorporation) Rules 2014, OPC is mandatorily required to be converted itself into either a private or 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 ` 50 lacs; or
2. Last day of the relevant period during which its average annual turnover exceeds ` 2 crores
3. Application for conversion has to be made in form INC 6.

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.

Conversion Of Private Companies Into OPC :

1. A private company other than a company registered under section 8 of the act having paid up share capital of ` 50 lacs or less or average annual turnover during the relevant period is ` 2 crores or less may convert itself into one person company by passing a special resolution in the general meeting.
2. No objection in writing from members and creditors is required before passing resolution.
3. A copy of special resolution has to be filed with Registrar within 30 days.
4. The company shall file an application to the Registrar along with the following documents :

i. 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 company is Rs. 50 lacs or less or average annual turnover is less than Rs. 2 crores, as the case may be;

ii. The list of members and list of creditors;

iii. The latest audited balance sheet and profit & loss account; and

iv. The copy of no objection letter of secured creditors.

Provisions Not Applicable To OPC :

As per section 122, the following provisions shall not apply to a One Person Company :

Sections	**Particulars**
Section 98	Power of tribunal to call meetings of members
Section 100	Calling of extra ordinary general meeting
Section 101	Notice of meeting
Section 102	Statement to be annexed with the notice
Section 103	Quorum for meetings
Section 104	Chairman of meetings
Section 105	Proxies
Section 106	Restriction on voting rights
Section 107	Voting by show of hands
Section 108	Voting through electronic means
Section 109	Demand Poll
Section 110	Postal Ballot

Section 111	Circulation of member's resolution.

Due Date Of Filing Forms For OPC :

Sr. No.	Nature of E-Forms	Form No.	Due Date Of Filing
1.	***Application for reservation of name***	***INC.1***	***NA***
2.	***Application for incorporation***	***INC.2***	***60 days***
3.	***Nominee – Consent Form***	***INC.3***	***15 days***
4.	***Change in Member/Nominee***	***INC.4***	***30 days***
5.	***Intimation of exceeding threshold – i.e. ceased to be OPC***	***INC.5***	***60 days***
6.	***OPC – Application for conversion***	***INC.6***	***NA***
7.	***Filing of Special Resolution***	***MGT.14***	***30 days***
8.	***Application for DIN***	***DIR 3***	***NA***
9.	***Verification for DIN***	***DIR 4***	***NA***

Taxation of OPC:

Though the concept of an OPC has been incorporated in the Companies Act, 2013 but the concept of same does not exist in tax laws as yet, as a result an OPC can be put in the same bracket of taxation as other private companies. In case of Sole proprietorship, business income is added to the individual income and hence tax slab between 10% and 30% is available. But the same is not the case with private company. According to Income Tax Act,1961 a private limited company is taxable at a flat base rate of 30% in addition to that surcharge and education cess is also applicable. Also, provision of Minimum Alternative Tax (MAT) is also applicable to private company. The concept of one person company is an attempt to organize the unorganized, yet a very large, sector of proprietorship concerns. and other entities which will be convenient to regulate and manage if the same is in the form of One Person Company.

Contracts By One Person Company:

If 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 and where the contract is not in writing, it should be ensured 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 said provision is not applicable in case the contract is in writing and where the contract entered is by the company in the ordinary course of its business.

The company should inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors within a period of fifteen days of the date of approval by the Board of Directors.

Opportunities To Small Entrepreneurs:

Small entrepreneurs can carry on their business in form of OPC with status of separate legal entity. The concept is good for entrepreneurs with new ideas and ventures trying to explore the corporate world with minimum compliances and maximum benefits as exemptions. Various small and medium enterprises, doing business as sole proprietors, might enter into the corporate domain through OPC. The unorganized sector of the economy will find an outlet to show their entrepreneurial expertise.

So the small entrepreneurs enjoy the benefit of OPC and can hence boost the economy of our country.

End Note:

OPC company is like an *One Man Army*. The compliance burden is very less and the liability of the members is very limited is an added advantage. OPC is expected to benefit people who are into self employment and many small scale sectors. It is a remarkable feature of the Companies Act,2013. ***"OPC should boost the confidence of small entrepreneurs".***

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