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"One Person Company"

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ABSTRACT

The concept of "One Person company" (OPC) has found its place in the Companies Act, 2013 after the recommendation by the expert committee of Dr JJ Irani in 2005. OPC provides opportunities and encourage the establishment of micro businesses with less complex legal compliances so that the entrepreneurs are not constrained to give their considerable time and resources on adhering to the rules prescribed by the act. The prerequisites to form an OPC is relatively relaxed and uncomplicated. This also generates job opportunities. One person company provides with harmonised requirements under the act. A single person can establish a company under the provisions of the act.

INCEPTION AND GLOBAL DEVELOPMENT OF OPC-

One Person Companies are in subsistence in some countries. In India, the concept of OPC was put forth by the Ministry of Corporate Affairs in line with United Kingdom, Australia, China, Singapore, Qatar, United States of America and few other countries.

UK is the first nation which paved the way to the formation of OPC by the precedent set in the landmark case of *Saloman v. Saloman & C*o (1897 AC 22). United States recognises the concept of single member limited liability Company. The RBI under its Master Circular No. RBI/2013-14/ 107 RPCD.CO. Plan.BC9/04.09.01/2013-14 dated July 01, 2013 has directed all the scheduled commercial banks to extend their involvement in financing of the priority sectors mainly small scale industries and agriculture.

OPC AS AGAINST SOLE PROPRIETERSHIP

Limited Liability. the demarcating feature is the risks that are limited to the extent of value of the shares held by such person in the company. This would encourage entrepreneurial minded persons to commence a business without the liabilities getting attached to the personal assets unlike sole proprietorship. OPC enjoys **separate legal entity** from that of its shareholder.

Perpetual Succession is also a feature of OPC, death of the member does not affect the existence of the company and in case of sole proprietorship, the existence of the entity depends on the life of its members and any other contingency may end up in dissolution of the entity. The business head is the decision maker in OPC, resulting in easier and quicker decision making. As he runs the business, the question of majority opinion doesn't arise. The concept of OPC does not exist under the Income Tax Act, 1961. OPC falls under the ambit of private companies which are taxed under the bracket of 30% on total income with an additional surcharge of 5%. An OPC has to file the annual returns like a normal company and get accounts audited like a normal company whereas the sole proprietorship entity need to get audited under the provisions mentioned under section 44AB of Income Tax Act, 1961 once the turnover of the entity crosses the threshold.

The share capital may comprise of equity and preference shares. OPC comes within the ambit of the definition of 'private company' under Section 2(68) of Companies Act, 2013. The minimum share capital prescribed under the afore said section is rupees one lakh and maximum of rupees fifty lakh.

OPC PRIVILEGES

Limited Liability advantages and minimal capital to start with. Compulsory rotation of the Auditor after expiry of the maximum term is not applicable. OPC can raise capital from various sources such as financial institutions, venture capitalists. The provisions related to the holding of general meetings does not apply to the OPCs. An OPC needs to have a minimum of one director and can have directors up to maximum of 15 which can also be increased by passing a special resolution under section 149(1) of Companies Act, 2013.

Elaborate details contained in the report of Board of Directors as per Rule 8 of Companies (Accounts) Rules, 2014 are not a pre requisite. Directors of an OPC are not required to retire by rotation. Where an OPC limited by shares or by guarantee comes into a contract with the only member of the company who is also the director of the company, the terms of contract must be in writing or recorded in the minutes of the meeting of the BODs of the company held following the entering into contract with the member. The provisions with respect to the board meetings will not apply where there is only one director, the resolution by such director will be noted in the minute book dated and signed by the director, such date will be deemed to be the date of meeting of BODs. Under Section 462(1), Central Government can grant exemption to any type of companies from any of the provisions of Companies Act, 2013 or provide that the provision of the Act will apply with exceptions, modifications and adaptations, by issuing a notification.

The annual return of an OPC shall be signed by the Company Secretary or where there is no CS, by the director of the company under section 92 of the Companies Act, 2013. Cash flow Statement need not be included in the financial statements. It is filed within 180 days from the closure of financial year with ROC. Report of the Board of Directors to be attached to financial statements which includes comments or explanations by the board on each and every qualification, reservation or disclaimer or adverse mark made by auditor in his report.

Exemption from holding Annual general meeting as the shareholder is the only person in the company. As OPC can have more than one director in its board, the provisions mentioned in sections 173 and 174 are applicable. In case the board has only one member, these provisions cease to apply. An OPC must conduct at least one meeting of BODs in each half of the calendar, year with a gap of at least 90 days between the two successive meetings.

RELATED PARTY TRANSACTIONS

There are some restrictions in regards to related party transactions (a transaction between company and its related persons) under section 188 of the Companies Act, 2013.
Section 193 provides that the contract should be either be in writing or the terms of the contract must be recorded in the minutes of the BODs held next after entering the contract, as in OPC the only member is the related party. The OPC is bound to inform the Registrar of Companies of every such contract within the span of 15 days of approval of BODs whereas the contracts entered in its ordinary course of business are immune from this section.

NOMINEE

Only a natural person, who is an Indian citizen and Indian resident is eligible to be a nominee. The Memorandum of Association of the OPC shall prescribe the name of such person who shall be the member of the company in case of death or incapacity. The nominee shall be entitled to all the shares, dividend and all rights of the deceased member. A minor cannot be a nominee.

RESTRICTIONS ON OPC

A **minor** is incompetent to incorporate an OPC neither can a minor be a nominee of OPC. No beneficial interest can be held by the minor in an OPC. An OPC can't be incorporated as or converted into a Section 8 Company**.** Investment in securities of a body corporate and Non-Banking Financial Investment activities cannot be carried out by OPC. A natural person can be a part of only one OPC or become a nominee of only one company. If in any case, he was a nominee of other company and subsequently became a member owing to death of the member, he has to give up any one of the company within the span of 180 days.

An existing owner of an OPC cannot incorporate further OPCs, the law imposes a restriction in this regard. A minor can neither hold the beneficial interest in an OPC nor can be named as a nominee. As OPC is ineligible to issue shares, its arduous to seek financial aid. If OPC or any of its members contravene the provisions of Companies (Registration offices and Rules), 2014, OPC or any of its officers shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to rupees one thousand for each day after the first during which such contravention persists.

MANDATORY CONVERSION OF OPC TO PRIVATE OR PRIVATE COMPANY

If the paid-up capital of OPC exceeds rupees fifty lakhs and the annual turnover cross rupees two crore, then the OPC is compelled to convert either into a private or public company. A

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special resolution should be passed during the general meeting. Within the span of 15 days of the passing the resolution, the company needs to file an application to the registrar of companies along with the copy of the resolution. After scrutinizing the documents, the registrar issues the fresh certificate of incorporation.

WINDING-UP OF OPC

A resolution to be passed with 2/3rd in value of the creditors of the OPC for voluntary winding up of OPC. The notice of this resolution is to be submitted to the registrar of companies within 10 days of its approval from the creditors. Moreover, a declaration is also to be attached stating that the OPC is free of debts, or if there are some debts, these will be paid off through the sale of its assets within a year. The resolution is to be advertised in the Official gazette and in a newspaper which is widespread in the district where the registered head office of the closing OPC is situated. A registered Liquidator is appointed for processing of the required tasks associated with the winding up of the OPC. The Liquidator shall maintain and submit all requisite accounts (Statement of Assets and Liabilities) and reports to the tribunal and also to the registrar. After the examination of all the records, the tribunal and the registrar if satisfied, declare the OPC closed. No OPC is permitted to wind up its business prior to the expiration of the period of two years barring when the OPC crosses the threshold limit and if the tribunal in its opinion orders for the closure.

RECENT AMENDMENTS

Companies (Amendment) Ordinance, 2018 was promulgated by the President of India on 2nd November 2018 to amend certain provisions of the Companies Act, 2013. Section 446B was amended to provide that the penalty for OPCs and small companies will be half of that appropriated to the normal companies for contravening sections 92(5), 117(2) or 137(3). The amendment is with respect to the Financial Statements.

CONCLUSION AND SUGGESTIONS

The concept of OPC is innovative and is in line with International enactments followed in China, Singapore and the US. OPC offers greater ease as it has corporate structure and uncomplicated procedural fulfilments thereby presenting comfort of both sole proprietorship and corporate composition. This structure has been brought in force to encourage small scale entrepreneurs and regulate the unorganised sector.

Although OPCs has lesser compliances to adhere to, the stipulations like holding meetings, informing ROC, filing of returns and passing resolutions will still pose a hurdle for the entrepreneurs due to composite procedure.

OPCs are taxed at a flat rate of 30%. If certain amendments with respect to Income tax law to provide concessions and exemptions in tax rates are devised, micro and small-scale businessmen will be motivated and the concept of OPC may take off as anticipated.