NAVIGATING THROUGH THE ONE PERSON COMPANY LANDSCAPE

INTRODUCTION

Under the erstwhile Companies Act 1956, individuals were prohibited from establishing a One Person Company ("**OPC**"). Since the old law mandated to have minimum two individuals to form a company, only viable option they had was to engage in a sole proprietorship.

With the enactment of Companies Act, 2013 in India, it has brought forth novel concepts in the country's corporate legal system that were absent in the previous Companies Act of 1956. One of these new concepts introduced by the Act is the notion of "One Person Company."

The concept of OPC finds its roots in international corporate frameworks such as those in the United Kingdom, Singapore, China, and other European countries and from the recommendations of the "Expert committee on Law" supervised by Dr. J.J. Irani in 2005.

OPCs are particularly well-suited for individuals aspiring to be solo entrepreneurs and do not have immediate plans to scale up. Interestingly, sole proprietorships also provide similar advantages. However, unlike sole proprietorships, OPCs offer the added benefits of limited liability, separate entity status, perpetuity and greater credibility.

WHAT IS OPC?

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

According to section 2(62) of the Companies Act 2013, "One Person Company" means a company which has only one person as a member.

Only a natural person who is an Indian Citizen, whether resident in India or otherwise can form an OPC or become a nominee for the sole member of the OPC. For the purpose of OPC, the term 'resident in India' refers to a person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year.

A natural person shall not be a member or nominee of more than one OPC at any point of time.

CHARACTERISTICS OF OPC

- OPC can be registered only as a Private Company.
- OPC may be either a company limited by share, or a company limited by guarantee or an unlimited company.
- As per Section 149, OPC shall have minimum 1 person as a director and a maximum of 15 directors. It may appoint more than 15 directors if a special resolution is passed to this effect.

- As per Section 152, where no provision is made in the articles for the appointment of first director, an individual being a member shall be deemed to be its first director until the director or directors are duly appointed.

NOMINEE OF ONE PERSON COMPANY

- The Subscriber to OPC shall nominate a nominee, who shall become the member of the OPC in the event of the Subscriber's death or his incapacity to contract.

- The name of the nominee shall be mentioned in the MOA of OPC. Such nomination details along with consent of such nominee shall be filled in **Form (SPICe+)** as a declaration.

- The nominee can withdraw his consent or the member of the OPC can at any time change the nominee by giving a notice and such details shall be intimated by filing **Form INC-4.**

INCORPORATION PROCESS

- **Obtain DSC for the proposed directors.**
- **Apply for Name approval by filing SPICe+ PART A***
- **Incorporation of a company by filling SPICe+ PART B along with various linked forms****

*Maximum two names can be applied at a time. The allotted name will be valid for 20 days from the date of allotment of name.

** Linked form as follows:

- **Form INC- 35 AGILE-PRO-S -** Application for GSTIN, Employees State Insurance Corporation Registration plus Employees Provident Fund Organisation registration, Profession Tax Registration, Opening of bank account and Shops and Establishment Registration.
- **Form No INC-33 -** e-MOA
- **Form No INC-34** - e-AOA
- **Form No INC-9 -** Declaration by subscriber and First directors which will be automatically generated.

BENEFITS AVAILABLE TO OPCs

OPCs benefit from a range of exemptions and reduced compliance burdens, affording them certain advantages in terms of regulatory requirements. A few of them are listed below:

1. **Board Meeting:** Section 173 requires Every Company to hold a minimum of four meetings in a calendar year with not more than 120 days gap between two meetings. Whereas an OPC shall be

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deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of calendar year and the gap between the two meetings is not less than ninety days.

2. **Quorum:** Section 174 envisages that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher. If the OPC consists of only one director, then the OPC is exempted from complying with this section.

3. **Cash Flow Statement Exemption**: In terms of exemption notification dated June 17, 2017, OPCs are not required to prepare a cash flow statement as part of their financial statements.

4. **Exemption from Annual General Meeting** (AGM): As per Section 96(1) of the Act, OPCs are not required to hold an annual general meeting. For any business required to be transacted at AGM or EGM, the resolution shall be communicated by the member to the Company and entered in the minutes-book.

5. **Board's report:** An abridged version of Board's report has been notified for OPCs under Rule 8A of the Companies (Accounts) Rules, 2014 with effect from July 31, 2018.

LIMITATIONS FOR OPC

- OPC cannot raise additional capital except from its existing member.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- OPC cannot be incorporated or converted into a company under section 8 of the Act.
- OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of a body corporate.

CONVERSION OF OPC

An OPC can convert to Public or Private Company in accordance with the requirements under Rule 6 of the Companies (Incorporation) Rules, 2014. A Private Company is also permitted to convert to OPC as per Rule 7 of the Companies (Incorporation) Rules, 2014.

CONTRACTS BY ONE PERSON COMPANY

Section 193 of the Act deals with the provisions relating to contracts entered into by the OPC with its sole member who is also the director of the company. Unless such contract is in writing, the terms of the contract or offer should be contained in the memorandum or should be recorded in the minutes of the first meeting of the Board held after entering into the contract. Further the OPC shall intimate the ROC about every such 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 from the date of approval by the Board of Directors.

This requirement does not apply to contracts entered into by the Company in the ordinary course of its business.

CONCLUSION

OPC is a lucrative option for entrepreneurs starting out alone and seeking to give their business a formal structure. It offers a certain degree of flexibility in managing the operations along with the added advantage of unlimited liability. With the omission of provisions relating to mandatory conversion of OPC to private or public company, OPCs enjoy the freedom to continue as such for any period of time.

Ramya M
Executive

Date: 27 June 2023