A New Way of Doing Business: One Person Company

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Abstract

In todays contemporary world ,"one man business "has been replaced by "One person company" that brings the benefit of joint stock company enjoyed by private companies . A one-man business is referred to as a sole proprietorship , because under this a single person (known as sole trader) uses his own funds, skills and intelligence and is solely responsible for all the profits and risks associated with business. The sole proprietor can use his personal funds or can borrow funds on its behalf to run the business. He has full control on the business and take all the necessary decisions (managerial, financial, technical and others) himself and is personally liable for all the debts. Self employment is one of the objective of OPC (One Person Company) and OPC is an important element of Companies Act, 2013. OPC enjoys special privileges which other company does not enjoy related with board meeting and general meeting. Like in partnership the biggest limitation is unlimited liability which is removed by the Limited Liability Partnership form. Similarly, the biggest limitation of sole trader of unlimited liability is removed by the One Person Company. This paper conceptual in nature based on the secondary sources of data and explained and make you realise the concept and the importance of one person Company, its benefits and disadvantages and different rules related to its (one person company) members, formation and conversion.

Keywords: *One Person Company (OPC), Sole Proprietorship, Skills and Intelligence, Limited Liability Partnership.*

Intrpoduction

The modernise world is dominated by the new term called OPC (One Person Company) which is an important part of companies Act 2013 . It promote self employment on a larger scale thanks to India's legal system . "One person company "comes with the new way of doing business which gives lot of advantages to private companies in the form of providing security of limited liability ,which sole proprietorship or partnerships lacked. One Person Firm (OPC) is the appropriate choice to incorporate a company if there is only one sponsor. The company's name will carry a suffix "OPC".

One member (who subscribes to the Memorandum/has their name in the Register of Members/holds shares of the company with their name in the depository records) and one nominee (who becomes a member of the company) are mandated by OPC.

Meaning of "One Person Company"

'One Person Company refers to firm which has only one member/ Owner', this is according to Section 2(62) of Companies Act 2013,

A one person company is a company involve one person as its member , which we called shareholder as well as subscriber to its memorandum of association . So in short we can say that shareholder is a member of OPC , which make OPC more effective .

The requirement of one person companies –

a) Minimum paid up capital is ₹1 lakh and its turnover cannot go beyond ₹ 2 crore in the preceding three years

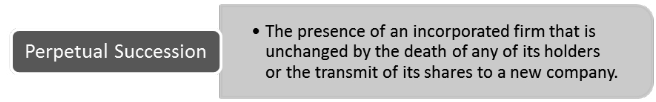
b) With companies amendment act 2015 there is no minimum requirement of paid up capital of the company .

That means now company can be formed with even Rs1000 as paid up capital . If the above occurs, a single-person firm must transfer to a public company.

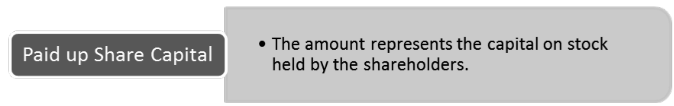
Characteristics of OPC

Characteristic of OPC are as Follow:

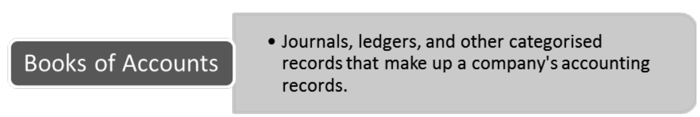
- ***Privately operated firms:*** An individual can establish a firm for any legal purpose (Section 3(1)(c) of the "Companies Act 2013"). It goes on to say that OPCs are private companies that can be transformed into public companies either proactively or compelled after meeting certain standards.
- ***Sole member****:* OPCs demands only one member for doing business. Any person, business, or organization that acquires at least one share of a firm's stock is referred to as a shareholder (equity).Owners of the company are shareholders that take advantage in the form of higher stock valuation At the same time shareholder can lose money if company is not working properly .
- ***Nominee***: One aspect that distinguishes OPCs from other kinds of firms is that the lone owner of a one-person business must name a nominee when incorporating the business. A individual, association, entity, or company that exists legally and can be recognized individually. Another individual (the nominator) designates or chooses an entity to act on their behalf in a low capabilities .
- ***No perpetual succession***: Because an OPC has only one member, his death will force the nominee to choose whether or not to become its single member which is not possible in perpetual succession .



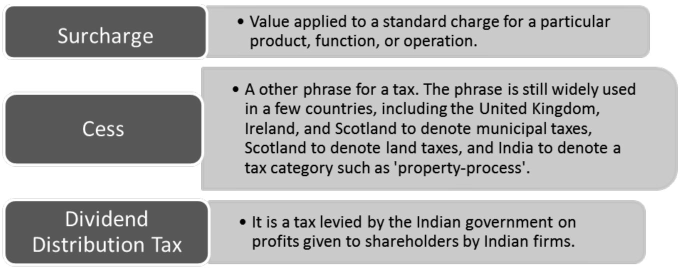
- ***Minimum one director***: Under OPCs they require minimum 1 director and they can exceed till 15 as maximum .
- ***Paid-up share capital***: For OPC the 1 lakh is needed as minimum paid up capital..



- ***Special privileges***: OPCs take lots of advantages and exemption under companies act, for examples -Exemptions related to holding board meetings and general meetings .
- ***Separate legal entity***: In the viewpoint of the law, OPC is an independent corporate entity from its founder. This indicates that both entities are subjected to distinct taxation.
- ***Limited Liability***: The OPC offers its members a limited liability benefit, which indicates that if the firm loses money, the owner of the OPC's liability is limited.
- ***Furnish Annual Reports***: Same as private companies OPC also require to file and inspect its book of account with the registrar of the companies every year . Company secretary signed the annual return of the company and if there is no secretary then the authority of signature is in the hand of director of the company .



- ***Tax Perspective***: When it comes to tax structure ,its not really beneficial for OPC as it taxed as private firms and pay taxes without exemption. OPC would typically be taxable at 30% (plus surcharge and cess). Separately, on distribution of profits by OPC to its sole member, OPC would be subject to dividend distribution tax at 20.56%.



- ***Registration***: We must register with the Company registrar in ready to initiate an OPC, which is not needed in "one man business".

Advantages of One Person Company

- ***Easy to make:***

  A one-person company is incredibly easy to establish up because only minimum of legal requirements are required.

- ***Limited Liability*** :

  The founder of a One Person Company is responsible for any loss up to the amount of the company's capital.

- **Separate Legal Entity** :

  "Founder" and "organization" are two different unit of OPC . The survival of the one-person corporation is undisturbed by the death or bankruptcy of its members.

- **Quick Decisions**:

  Under such kind of company the decision is fast because of the complete regulation of founder.

- **Minimum legal formalities**:

  A one-person corporation is exempt from numerous legal obligations.

- **Complete Control**:

  Member of one person company is responsible for the company operation because of the monopoly control over business.

- **Direct Motivation**:

  The gains of a one-person company are not shared with others, resulting in great drive and devotion.

- **Flexibility in Operations**:

  OPC help all infant entrepreneurs and professionals by providing flexibility for setting up of organization.

- Obtaining loans is simple:

  Enterprises with OPCs have indefinite life and limited liability. They also give the company a distinct identity and provide transparency, which is advantageous for fund raising and commercial development.

Disadvantages of One Person Company

- ***Difficulty in winding up of a business*** : When it comes to closing up company then it will take a month to get a letter from registrar legally .
- ***No Democracy*** : A business should function as a democratic institution, with choices made by discussion and vote. This does not happen in an OPC, though, because there is no democracy.
- ***Limited Life***: OPC have single member so its life is highly unpredictable and uncertain . Because it completely depends on that one member .
- Tax : Tax rate is high under one person company as compare to sole proprietor.

Essentials for Creating OPC

- Any individual can form OPC just by: a) fulfilling the condition mentioned in companies Act 2013 and b) by giving his name to the memorandum of association.

  The memorandum must include the identity of a nominee who will become the company's sole owner if the founding member expires or becomes incompetent of engaging into contractual arrangements.

- This memorandum, as well as the nominee's agreement to his nomination, shall be presented with an application for registration with the Registrar of Companies. By providing the necessary applications, such a nominee can remove his name at any moment. His nomination can also be cancelled by the member anytime .

Rules Regarding Membership in OPC

- Only legal persons (not associations of persons, bodies of individuals, companies, or other entities) who are Indian nationals and citizens (who resided in India for 182 days in the previous calendar year) are allowed to establish a one-person corporation in India.
- Member of OPC also require same condition .
- A natural person can join the firm as a member.
- Minors are not allowed to be members or nominees of OPCs under the legislation.
- Furthermore, at any given moment, a natural person cannot participate in more than one OPC

Process of Converting OPCS Into Different Companies

The condition require to form one-person corporations clearly prohibit OPCs from converting to Section 8 of the Companies Act. (like for companies that have charitable objectives). The rules underlying the development of one-person businesses expressly prohibit OPCs from transferring to Section 8 of the Companies Act. A One Person Company (OPC) can be officially changed into either a Pvt . ltd. or a Limited Company, either freely/forcefully. These transformations are made in compliance with "Section 18 of the Indian Companies Act of 2013 "and the" Companies (Incorporation) Rules of 2014", particularly Rule 7(4) of the Companies (Incorporation) Rules, 2014.

OPC's Voluntary Transformation into A Private Limited Company

OPC cannot be changed into any of the limited company within two years of its incorporation , Nobody is doing any kind of intervention (counted from the date of its incorporation) . The following provisions and steps must be fulfilled in order to convert an OPC into a private limited company on a voluntary basis :

At the time of conversion, the existing OPC's total paid-up capital must be less than or equal to INR-50 Lakh, and its average annual turnover must be less than or equal to INR-2 Crores for the three immediately preceding and consecutive financial years. Members and creditors of the OPC must sign a "No Objection" letter.

To convert OPC into private limited company in order to do so, they needed to adopt a special resolution in the meeting held. Within thirty days of the occurrence of such a resolution, a copy of it must be transmitted to the concerned ROC via Form No. "MGT-14" .

Submitting Form INC-6, the Conversion Application, together with the following documents and the charges set forth in the Firms Rules of 2014:

a. Members and creditors should give separate confirmation in favour of conversion and
b. Member list and creditor list .
c. Creditor should give a copy of "No objection " letter.

Compulsory Conversion

An OPC is required to convert to a private or public limited company if its total Paid-Up Capital equals or exceeds Fifty Laces or its Average Annual Turnover equals or exceeds Rs. Two Cores during the relevant period (immediately preceding three consecutive financial years), according to the Companies (Incorporation) Rules 2014. (INR-2 Cores). In Form INC-5, the current OPC must notify the associated ROC of the given incident. [Intimation of Exceeding Threshold] within sixty days of the occurrence of any of these two severe requirements.

Benefits of One Person Companies

- No general annual meeting.
- Cash flow statements is not included in financial statement.
- Directors can also sign annual return .
- They are exempt from provisions relating to independent directors..
- They are exempt from a number of meeting and quorum restrictions.

Differentiate Between "One Person Company" and "Sole Proprietorship"

Basis of Difference		One man business	One Person Company
1	Registration	In this form of organization registration is not compulsory.	In this form of organization registration is compulsory.
2	Owner Liability	Unlimited Liability	Limited Liability
3	Legal Formalities	No legal formalities involved.	Many legal formalities required similar to a company but less than company formalities.
4	Setting Up	It is easy to set up as minimum paperwork is required.	It is difficult to set up as it involves lot of paperwork.
5	Separate Legal Entity	In this form of organization owner and business does not have separate legal entity. Both are same.	In this form of organization owner and business have separate legal entity.

6	Tax	As an individual	As a private limited company.
7	Compliance	File annual returns	File annual returns, Get books audited, Complete Registrar of Companies and Company compliances.

Conclusion

One person Company gives the benefit to the sole trader that, the owner and the company both have separate legal entity; both are different person in the eyes of law. Moreover, it is easy to form and it provides a sole trader the benefit of converting itself into private companies voluntarily in future. Along with this having one person company form of organization is beneficial for us because in this form of organization we face less difficulty as compared to other form of organization. It was a great step taken by The Companies Act, 2013 in the business era.

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