ONE PERSON COMPANY (OPC) – A NEW FORM OF CORPORATE ENTITY INTRODUCED IN INDIA

CS S Raja Babu

BBM, MBA (Fin.), ACS, CMA (Inter.)
JM(Company Affairs),
D-12, Company Affairs Department
Rashtriya Ispat Nigam Limited
Visakhapatnam Steel Plant
Visakhapatnam – 530 031

ABSTRACT: One Person Company (OPC) is a concept introduced in India by the Companies Act, 2013. "One Person Company" means a company which has only one person as a member. 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.One Person Company enables entrepreneurial minded persons to take the risks of doing business without botheration of litigations and liabilities getting attached to the personal assets. The paper will discuss the concept of One Person Company introduced in India by Ministry of Corporate Affairs through Companies Act, 2013 and rules made thereunder. In addition, the paper will explain the genesis and existence of OPC, difference between OPC and Proprietorship concern, benefits of OPC, how to incorporate OPC, Compliances required for OPC and exemptions to OPC, penalties under Companies Act, 2013, etc. The paper gives overall view of concept of One Person Company which in the nascent stage in India.

Key Words: One Person Company (OPC), Incorporation, Companies Act, 2013, Company, Proprietorship, Limited liability

INTRODUCTION:

The concept of one Person Company in India is brought from the foreign countries. This is brought into India for the smooth running and to form a new legal entity by an individual. Before applicability of the Companies act 2013, an individual legally can form only his sole proprietorship in India and no other option remain to him. Before the applicability of Companies act 2013, Individual had to search a reliable, genuine, and honest partner to form a private limited company.

One person company is a concept introduced in India by the Companies Act, 2013. Now, with the applicability of the Companies act 2013, the requirement of two or more person is not required. Now a person who wishes to incorporate a private limited company can form individually without the involvement, share of any other individual. This is really a great concept introduced by the concept in the interest of the new entrepreneur who want to start the business by forming private limited company but could not do the same. Now, as per 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.

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GENESIS AND EXISTENCE OF OPC:

One person companies are in existence in certain countries like UK, China, USA, Australia, Singapore, Qatar, Pakistan and several other countries.

United Kingdom
Historically, United Kingdom is the first one, which paved the way to the one man company through a precedent set in its famous case Salomanv. Saloman& Co. (1897).

United States of America (USA)
In USA several States permit the formation of a single member Limited Liability Company (LLC).

Singapore
Singapore permits One Person Company under Companies Amendment Act of 2004.

China
China introduced One Person Company in 2005.

Pakistan
Single Member Companies Rules, 2003 of Pakistan provide for incorporation of single member company.

ORIGIN OF THE CONCEPT IN INDIA

The concept of OPC was mooted, in the report of Dr. J.J. Irani Committee. The Irani Committee briefly referred to OPC in its report in Chapter III titled "Classification and Registration of Companies".Regarding OPC, the suggestions of the Committee were:

6.0 With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.

6.1 The concept of 'One Person Company' may be introduced in the Act with following characteristics:-
(a) OPC may be registered as a private Company with one member and may also have at least one director;
(b) Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.

(c) Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies."

OPC VS SOLE PROPRIETORSHIP:

OPC structure would be similar to that of a proprietorship concern without the ills generally faced by the proprietors as detailed below:

OPC	Sole Proprietorship
OPC completely separate entity	No distinction between owner and the business
Liability of the shareholder limited	Sole liability
Taxed in the same manner as private companies; higher tax implications. Distribution of dividend may attract dividend distribution tax.	Lesser Tax Implications
Succession through Nominee	Succession through execution of WILL
Must file annual returns, etc. like other private companies and get its accounts audited every year.	Need to get its accounts audited u/s 44AB of IT Act, 1961, once turn over crosses certain threshold.

- In OPC liability of the member is limited to the value of shares held by such person in the Company where as in Sole proprietorship the liability of the person is unlimited. One Person Company enables entrepreneurial minded persons to take the risks of doing business without the botheration of litigations and liabilities getting attached to the personal assets.

- One Person Company has a separate legal identity from its shareholders i.e., the company and the shareholders are two different entities for all purposes. On the other hand proprietorship does not have a separate legal identity from its members.

- The existence of a One Person Company is not dependent upon its members and hence, it has a perpetual succession i.e., death of a member does not affect the existence of the company and the Sole proprietorship is an entity whose existence depends on the life of its members and death or any other contingency may lead to the dissolution of such an entity.

- Banks and Financial Institutions will examine credit record of OPC for providing finance whereas in case sole proprietorship, credit record of owner will be examined.

ONE PERSON COMPANY UNDER COMPANIES ACT, 2013:

As per Section 2 (62) of the companies act 2013 "One Person Company" means a company which has only one person as a member"
The following are some other features of the One Person company:-

Types of OPC (Section 3(2))

- A company limited by shares; or
- A company limited by guarantee; or
- An unlimited company.
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Who can incorporate an OPC?
(Rule 3.1 & 3.2 of Companies (incorporation) Rules, 2014)

Any naturally born Indian who is also a resident of India (i.e. have stayed in India for at least 182 days during the immediately preceding FY). However, one of such person cannot form more than one OPC.

The words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved [Sec 12(3)(d)]

The memorandum of Association of One Person Company shall indicate the name of the other person who shall, in the event of the subscriber's death/ incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar of Companies (form INC-3).

Restriction on OPC
(Rule 3.1 & 3.2 of Companies (incorporation) Rules, 2014)

OPC cannot be incorporated or converted into Section 8 Company (i.e. company with charitable objects, etc.) or carry out non-banking financial activities, including investment in securities of any body corporate. No OPC can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except when threshold limit (paid up share capital) is increased beyond fifty lakh rupees and its average annual turnover during the relevant period exceeds two crore rupees.

A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

Members and Directors in an OPC

The minimum and maximum number of members in an OPC can be only one. As per Section 152(1) of the Act, an individual being member of OPC is deemed as First Director of the OPC until the director(s) are duly appointed by the member. The minimum and maximum number of directors in an OPC can be one (1) and fifteen (15) respectively. In order to increase the number of directors beyond 15 directors, a special resolution must be passed by the OPC to that effect. **(Sec. 149 (1) (a))**

Board Meetings and AGM

OPC (also Small Cos. and Dormant Cos.) is deemed to have complied with S. 173, if at least one meeting of the BoD is has been conducted in each half of a calendar year and the gap between two meetings is not less than 90 days. Section 173 and 174 (Quorum of Meeting of BoD) will not apply to an OPC in which there is only one director on its Board. Further, an OPC is not required to hold an AGM.

Ordinary and Special Resolutions by an OPC

Section 114 of the new Act is talks about ordinary and special resolutions. As per Section 122(3), it will be sufficient for an OPC, if the resolution is communicated by the member to the Company in the minutes book (as required under section 118) and signed and dated by the member. Such date will be then considered as date of meeting. Where there is only one director on the Board of an OPC, a resolution by such director has to be entered into the minutes book and signed and dated by such director. (Section 122(4))

Financial Statements of an OPC

Financial Statement of an OPC has to be approved by the Board and needs to be signed by only one director for submission to the auditor. It is to be noted that One Person company (OPC) is exempted from the requirement of preparing Cash Flow Statement (Sec. 2(40)). The copy of such financial statement along with other documents etc. must be filed with the RoC within 180 days from the closure of the financial year (Sec. 137), Report of the Board to be attached to the financial statement shall mean, in case of an OPC, a report containing explanations or comments by the Board on every qualifications, reservations or adverse remarks or disclaimer made by the auditor in his report.

Annual Returns & Auditor's Report of an OPC

Sec 92(1): Annual Return of an OPC shall be signed by a company secretary and the director or where there is no company secretary, by the Director of the Company. Mandatory rotation of auditor after expiry of maximum term is not applicable to an OPC.

Contract between OPC and Member

Where an OPC enters into a contract with its sole member (who is also the director), unless the contract is in writing, the OPC should shall ensure that the terms of the contract/ offer are incorporated in the memorandum of the OPC or recorded in the first meeting of the Board held next after entering into such contract (Sec. 193). The above provision is, however, not applicable if the contracts are entered into by the company in the ordinary course of business. The other requirement is that the OPC must intimate the RoC about every such contract recorded in the minute book of its Board under section 193(1) within 15 days of the date of approval by the Board

Forms for Incorporation of 'One Person Company':

1. Application for Reservation of Name- Form INC-1
2. Consent of Nominee – Form INC-3
3. Application for Incorporation- Form INC-2
4. Notice of Situation or change of Situation- Form INC-22
5. Appointment of Directors and key general Managerial person and changes – Form DIR -12.

List of Exemptions Available to OPCs under the Companies Act, 2013

Following sections are not applicable to OPCs-

1. Section 96 Option to dispense with the requirement of holding an AGM.
2. Section 98 (Power of Tribunal to call meetings of members, etc.)
3. Section 100 (Calling of EGM)
4. Section 101 & 102 (Notice of Meeting & Statements to be annexed to Notice)
5. Section 103 (Quorum of Meetings)
6. Section 104 (Chairman of Meetings)
7. Section 105 (Proxies)
8. Section 106 (Restriction on Voting Rights)
9. Section 107 & 108 (Voting by show of Hands & by Electronic Mode)
10. Section 109 & 110 (Demand for Poll & Postal Ballot)
11. Section 111 (Circulation of Member's Resolutions)

Penalty of non-compliance with the provision of the Act

If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues. (Rule 7A).

Conclusion:

This is the good step by the government which is brought from the foreign. If we see it by the view of income tax provisions, the 'one person company' is to be taxed with the higher rate as the other private limited companies and the dividend distribution tax under 2(22)(e) is also applicable on the 'One person Company'. So to promote the new model of the company, government should give some tax benefits so that people attract to form the company under this new model called 'One Person Company' and the concept of OPC being in the nascent stage in India, it needs to be seen whether the idea of OPC emerges as a success in Indian corporate arena as it is in other countries.

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