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One-Person Company a New Business Opportunity in New Companies Act: A Panorama

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ABSTRACT

Now, in India, an individual can establish and run a company, called "One Person Company (OPC)" which has been introduced with the enactment of the Companies (Incorporation) Rules, 2014 under the Companies Act, 2013. As a unique inclusion of new vista of business opportunity in new companies act for enjoying the advantages of the separate legal entity and limited liability, it draws a good understanding the nuances of setting up, management and administration of OPC. OPC is a hybrid of sole proprietorship business and corporate business and is imperative as it would give the entrepreneurial capabilities of people an expeditious participation in economic activities in the form of companies. In spite of huge benefits available to OPC, it also suffers from some drawbacks. On selection an appropriate form of business entrepreneurship to be promoted in near future, the start-up entrepreneurs should make a comparative study of the different forms of entrepreneurship including the new business idea OPC. OPC being in the evolving stage, there would always be scope for further improvement. Keeping in mind these points of views both theoretical and practical knowledge, the present article is an attempt to discuss a few aspects of OPC in nut shell and designed with some core contents in the form of introduction, meaning and definition, salient features, benefits, drawbacks, a comparative study, basic steps for incorporation, development and ended with some concluding remarks.

Keywords: *Vista of Business Opportunity, Entrepreneurial Capabilities, Expeditious Participation, Start-Up Entrepreneurs.*

1. INTRODUCTION

The countries like UK, Pakistan, Singapore, Chaina, USA, UAE, Turkey and several others had introduced and established "One Person Companies (OPCs)" since so much earlier. The Government of India constituted an Expert Committee on Company Law on December 2, 2004, under the Chairmanship of Dr. J. J. Irani to make recommendations on various issues of Company Law. The Irani expert committee recommended the formation of OPC for the very first time in 2005. The Committee expressed the view that the law should recognize the potential for diversity in the forms of companies and rather than seeking to regulate specific aspects of each form, seek to provide for principles that enable economic inter-action for wealth creation on the basis of clear and widely accepted principles. Regarding OPC, the suggestions of the committee were thus - "With increasing use of information technology and computers, the 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". Besides, the Companies Act 1956 had been prepared for meeting the needs of the then requirements and the act had been passed through a series of amendments during its 57 years long life. Time and its requirements are the major parameters for substantial revise of an act to make it more contemporary. Under this backdrop, the Companies Bill regarding formation and establishment of OPC was passed by the lower house of parliament, Lok Sabha, in December of 2012 and sent to the President of India for final authorization. Finally, the revolutionary concept of OPC was introduced in the Companies Act, 2013 and the Ministry of Corporate Affairs allowed to form OPC by G.S.R. Notification No. 250 (E) dated 31st March 2014 notified the Companies (Incorporation) Rules, 2014 under the Companies Act, 2013.

2. MEANING AND DEFINITION

The Companies Act, 2013 opens a new segment for organizing a business in India by providing the concept of OPC which is a legitimate way to incorporate a company with only one member. There is no needed to have co-founder to start such business. An OPC is a hybrid structure wherein it combines most of the benefits of a sole proprietorship business and a company form of business. It has only one person as a member who will act in the capacity of a shareholder as well as a director. Thus, it does away the hassles of finding the right kind of co-partner/s for starting a business as a registered entity. The best part is a legal and financial liability is limited to the company and not the member. As the name suggests, an OPC is a form of private company with a separate legal entity which is formed with only one person as its member. Since such company has only one member, the company enjoys certain privileges or exemptions as compared to other companies. OPC is similar to the existing concept of sole-proprietorship business with separate legal entity distinct from its proprietors and promoters. OPC can run and undertake its business like sole-proprietorship with the status of the company. This new concept of business may encourage various small and medium-size enterprises doing business as sole proprietors to organize their business into the corporate domain. As per Section 2(62) of the Companies Act 2013, ”One Person Company means a company which has only one person as a member.”

3. SALIENT FEATURES

An OPC bears the following features:

(a) An OPC has only one person as a member/share holder.
(b) Only “Naturally-Born" Indian and resident of India is eligible to incorporate an OPC.
(c) Joint-holder of share(s) would not constitute double membership and they can form an OPC.
(d) The words “One Person Company” must be mentioned in brackets below the name of the company to distinguish it from other forms of companies.
(e) The Memorandum of OPC shall indicate the name of the nominee.
(f) The written consent of nominee shall be filed with the Registrar at the time of incorporation of the OPC along with the Articles of Association.
(g) The nominee should be a natural person, an Indian citizen, and resident in India.
(h) The nominee may be changed at any time and intimated the same to the Registrar.
(i) It can be registered as a private company.
(j) It may either be a company limited by share or by guarantee or an unlimited company.
(k) The paid up share capital is minimum Rs. 1 Lakh and maximum Rs. 50 Lakh.
(l) It must have a minimum of one director and maximum fifteen directors.
(m) If the Articles of Association do not contain the name of the first director, the sole shareholder/member can be the sole director.
(n) Every OPC shall have to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days.
(o) All the businesses to be transacted at the meeting of the Board shall be entered in the minute’s book.
(p) The financial statements of an OPC consist of Profit & Loss Statement, Balance Sheet and Notes to Account.
(q) The Cash Flow Statement may not be included in the list of financial statements.
(r) The financial statements shall be signed by only one director.
(s) OPC shall file the copies of the financial statements to the Registrar of Companies (ROC) within a period of 180 days from the closure of financial year.
(t) The annual return of an OPC shall be signed by the Company Secretary or by the director of the company where there is no Company Secretary.
(u) Every contract should be informed to the ROC and should be recorded in the minutes of the Board of Directors meeting.

4. EXPECTED BENEFITS

Some of the advantages identified with OPCs are:

(a) An OPC has a common seal for its separate legal entity from the member.
(b) The liability of the member is limited to the unpaid subscription.
(c) It carries perpetual and automatic succession.
(d) In the event of the death of the subscriber, the nominee will be considered as a member of the company and be responsible for the running of the company.
(e) It requires minimum paper work and minimum compliances of company provisions.
(f) OPCs would provide the start-up entrepreneurs with the new business idea.
(g) OPC provides an outlet for the entrepreneurial impulses among the professionals.
(h) Businesses currently run under the proprietorship model could get converted into OPCs without any difficulty.
(i) OPCs require minimal capital, to begin with.
(j) An OPC needs to have a minimum of one director.
(k) An OPC having only one director shall not require holding Board Meeting.
(l) Provisions relating to General Meeting, Extra-Ordinary General meeting and Notice convening general meeting are not applicable to OPC.
(m) Mandatory rotation of auditor after the expiry of the maximum term is not applicable here.
(n) The financial statements can be signed by one director alone.
(o) Cash Flow Statement is not a mandatory part of financial statements.
(p) The annual return of an OPC shall be signed by the director of the company where there is no Company Secretary.
(q) The OPC concept holds a bright future for small traders, entrepreneurs with low risk taking capacity, artisans, and other service providers.
(r) It is easy to convert to other types of legal entities by induction of more members and amendment in the Memorandum of Association.

5. POSSIBLE DRAWBACKS

Some of the disadvantages identified with OPCs are:

- It is strictly prohibited to invite public for purchasing of shares.
- Shares of an OPC are not transferable.
- A person shall not be eligible to incorporate more than one OPC.
- A person shall not be eligible to become the nominee in more than one such company.
- Minor cannot become member or nominee of an OPC.
- The nominee can withdraw his consent at any time.
- The owner of OPC is the only supplier of the capital fund.
- An OPC cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.
- An OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- Foreign Companies are not allowed to incorporate their subsidiaries in India as OPCs.
- An OPC cannot be converted voluntarily into any kind of company unless two years have expired from the date of incorporation.
- Threshold limits of capital and average annual turnover are Rs. 50 Lakh and Rs. 2 Crore respectively.

6. COMPARATIVE STUDY

Sl. No.	Features	Sole Proprietorship	OPC	Private Company
1	Name	Any name without contravening legal provisions of other forms of entrepreneurship	Words "One Person Company "must be mentioned in brackets below the name of the company	Words "Private Company" must be mentioned at the end of the name of the company
2	Capital	Minimum – No Limit Maximum – No Limit	Minimum – ₹ . 1 Lakh Maximum – ₹ . 50 Lakh	Minimum – ₹ . 1 Lakh Maximum – No Limit
3	Number of Member / Shareholder	Does not arise	Minimum – 1 Maximum – 1	Minimum – 2 Maximum – 200
4	Nominee	Does not arise	Mandatory to mention the name of one nominee	Does not arise
5	Issue of Shares	Does not arise	No issue of shares to the general public	No issue of shares to the general public
6	Transfer of Shares	Does not arise	No transfer of shares	Transfer of shares restricted
7	Residential Status of Shareholder(s)	Does not arise	Must be Resident of India	May or May is not Resident of India
8	Separate Entity	Does not arise	Legal Separate Entity exists	Legal Separate Entity exists
9	Liability	Unlimited Liability	Limited up to un-paid amount of face value of shares	Limited up to un-paid amount of face value of shares
10	Succession	No Perpetual Succession Provision in the law	Perpetual Succession Provision in the law	Perpetual Succession Provision in the law
11	Registration	Registration not required with ROC	Mandatory Registration with ROC	Mandatory Registration with ROC
12	Borrowings	Borrowings with sole responsibility	Not the sole responsibility of the owner member	Not the sole responsibility of the owner member
13	Turnover	No Limit	Maximum ₹ . 2 Crore per year	No Limit
14	Number of Directors	No provision for director	Minimum – 1 Maximum - 15	Minimum – 2 Maximum - 15
15	Quorum for Meeting	Does not arise	No Quorum	2 members
16	Tax	Tax paid by Owner at an Individual Tax Rates	Tax paid by Company at Company Tax Rates	Tax paid by Company at Company Tax Rates
17	Restriction of Activity	No restriction	Not allowed for Non-Banking Financial Investment Activities including investment in securities.	No restriction

7. BASIC STEPS FOR FORMATION

The required steps to incorporate an OPC are as follows:

(1) Arrangement for obtaining proposed DIN(s) [Director(s) Identification Numbers(s)].
(2) Arrangement for obtaining proposed DSC(s) [Digital Signature Certificate(s)].
(3) Arrangement for obtaining a suitable name of OPC [Application to be made to the Ministry of Corporate Affairs in Form No. INC-1 along with requisite fees].
(4) Arrangement for Memorandum of Association (MOA) and Articles of Association (AOA).
(5) Arrangement for the consent of nominee in Form No. INC-3.
(6) Arrangement for affidavits of the subscriber and first director(s) in Form No. INC-9.
(7) Arrangement for specimen signature(s) of subscriber, director(s) & nominee in Form No. INC-10.
(8) Arrangement for the appointment of director(s) in Form No. INC-12.
(9) Arrangement for a declaration by professionals in Form No. 8 [Here, professionals mean Advocate, Chartered Accountant, Cost Accountant or Company Secretary].
(10) Arrangement for application to the concerned ROC along with fees for registration / incorporation in Form No. INC-2.
(11) Receipt of Certificate of Registration / Incorporation issued by the concerned ROC in Form No. INC -11.
(12) Arrangement for making a notice in Form No. 22 within 30 days from registration / incorporation indication the address of registered office of the company.
(13) Arrangement for a declaration of commencement of business in Form No. INC-21 within 180 days from registration / incorporation.

8. GROWTH AND DEVELOPMENT OF OPC IN INDIA

The first OPC in India was incorporated on 28th April 2014 at Delhi under ROC-Delhi jurisdiction. The company name is "VIJAY CORPORATE SOLUTIONS OPC PRIVATE LIMITED" having CIN: U93000DL2014OPC267546. MR. VIJAY KUMAR SHARMA is the only Director and Shareholder of the Company. Not only that during the financial year 2014-15, a total number of 1,403 OPCs was registered with collective authorized capital of ₹ . 31.13 Crore.

The Table shows the Sector-Wise Distribution of OPCs

Sl	Economic Activity	2014-2015		2015-2016		2016-2017		Cumulative Total No.
		No. of Companies	Percentage Share	No. of Companies	Percentage Share	No. of Companies	Percentage Share	
1	Agriculture and Allied Activities	21	1.50	63	1.61	46	1.00	130
2	Business Services	776	55.30	2272	58.07	3039	66.00	6087
3	Community, Personal & Social Services	196	14.00	571	14.60	322	7.00	1089
4	Construction	64	4.60	163	4.17	184	4.00	411
5	Electricity, Gas & Water Companies	8	0.60	22	0.56	46	1.00	76
6	Finance, Insurance and Real Estate	42	3.00	126	3.22	92	2.00	260
7	Manufacturing	107	7.60	329	8.41	369	8.00	805
8	Mining & Quarrying	17	1.20	14	0.35	-	-	31
9	Trading	135	9.60	266	6.80	369	8.00	770
10	Transport, Storage and Communications	37	2.60	86	2.21	138	3.00	261
	TOTAL	1403	100.00	3912	100.00	4605	100.00	9920
	Authorized Capital (In Crore ₹ .)	31.13		94.31		115.62		241.06

Sources: Annual Report 2014-2015, 2015-2016 & 2016-2017, Ministry of Corporate Affairs. Govt. of India.

The number of OPCs registered in the year 2015-2016 was 3912 which was 178.83 percent more than the previous year. But, the registered number of OPCs was increased to 4605 in the year 2016-2017 at a slower rate 17.71 percent only which was 161.12 percent less compared with respect to 2015-2016 year's growth rate. The amount of authorized capital was ₹ . 31.13 crore in the year 2014-2015. It was increased to ₹ . 94.31 crore in the year 2015-2016 for 3912 number of OPCs. The simple growth rate of authorized capital was 202.95 percent more in 2015-2016 with respect to 2014-2015 year's authorized capital where as the authorized capital in the year 2016-2017 was increased to ₹ . 115.62 crore at a 22.60 percent simple growth rate which was 180.32 percent lower than the growth rate of 2015-2016. The number of OPCs was increased from 1403 in 2014-2015 to 9920 in 2016-2017 at simple growth rate 607.05 percent compared with respect to 2014-2015. Among the various economic activities, the investors' first choice was business services of which the percentage share was gradually increasing from 55.30 percent in 2014-2015 to 66.00 percent in 2016-2017. But, the investors' least choice economic activity was Mining & Quarrying. It was 1.20 percent in the year 2014-2015 and 0 percent in 2016-2017.

9. CONCLUSION

The initiative of the introduction of OPC was finally implemented through the enactment of the Companies (Incorporation) Rules, 2014 under the Companies Act, 2013. As a response, registration of 1,403 numbers of OPCs with an authorized capital of ₹ . 31.13 crore in 2014-2015 cumulating to 9920 number of OPCs with an authorized capital of ₹ . 241.06 core during the period three years is not bad. It is still in its developing stage in India and would require some more time to mature and to be fully accepted by the business world. It is assumed that it holds a bright prospect for small entrepreneurs with low risk taking capacity, artisans, and other service providers. With the passage of time, the OPC mode of business organization will be all set to become the most preferred form of business organization, especially for small entrepreneurs. Now, it will be worth watching how the corporate players react to this new regime of GST.

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