Affluence
Advisory Private Limited

Note On One-Person Company

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Highlights of the Article

Basic Concept

The concept of a One Person Company is newly added in the Companies Act, 2013. Before the enactment of the Companies Act, 2013 there was no concept of One Person Company.

It can be summarized that OPC is a company that is owned by a single person.

Section 2(63) of the Companies Act, 2013 defines OPC as a One-person company means a company that has only one person as a member.

Objectives

Following were the objectives behind introducing the concept of One Person Company:

- Less Compliance burden
- Promote the individual having resources to form a company
- Reducing the complications and challenges in incorporating the legal entity
- Cost Saving in all aspects
- The single entrepreneurs are in the need of a speedy mechanism to get incorporated into the company form of a business
- The possible solution where the entrepreneur is not required to fritter away their Time energy and sources.

Preliminary conditions cum Eligibility which are to be fulfilled

According to it only a natural person who is an Indian Citizen whether resident in India or otherwise.

- Is eligible to incorporate One Person Company.
- Shall be the nominee for the sole member of OPC
    - “Resident in India” means a person who has stayed in India for a period of not less than 4 [one hundred and twenty days] during the immediately preceding financial year.
- A natural person shall not be a 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.

- Minor shall not become a member or nominee of the One-person company or can hold shares in the beneficial interest in such OPC.
- One-person companies are restricted to do business in Non-Banking Financial Investment activities including investment in securities of any other body corporate
- OPC can be incorporated as a Private Limited Company only.
- OPC cannot be incorporated or converted into section 8 company.
- OPC cannot be converted to any form of Company before the expiration of two years of incorporation.

Mandatory Annual Compliances for the OPC

- **Disclosures from the Directors:** In each financial year in form DIR-8 and MBP-1
- **DIR-3 KYC:** Before 30th September every year.
- **MSME-1:** in respect of pending payments to MSME vendors as at the end of half-year. April to Sept- 30th October
  October to March- 30th April
- **DPT-3:** Every year on or before 30th June in respect of return of deposit and particulars of transaction not considered as deposits as on 31st March of every year.
- **ADT-1:** Within 15 days of the Annual General Meeting and thereafter for every re-appointment of auditors for a further term of five years.
- **AOC-4:** Along with the Board's Report and Auditors Report within 180 days from the closure of the financial year.
- **MGT-7 A:** OPC will file its ROC Annual Return within 60 days of entry of ordinary resolution in Minute Book.

Benefits cum Exemptions for OPC

- **Exemptions for the annual general meeting:** As per section 96(1), OPC is not required to hold an annual general meeting. As we are all aware there are various compliances for the Annual general meeting for the companies here, we are having exemption from this compliance.
- **Exemptions for Rotation of company auditors:** It is not necessary for OPC to follow the condition laid in Section 139(2) of the Company Act 2013, which mandates the rotation of auditors every 5 years (individual auditors) and every 10 years (firm of auditors).
- **Exemptions for Signing of Financial statements:** In the case of One Person Company, only one Director can sign financial statements for submission to the auditor for his report thereon.
- **Board Meetings:** OPC doesn't have a wide range of business so it's not required for OPC to hold 4 board meetings in a year, OPC may hold only 2 board meetings in a calendar year. Which is actually very relaxing for the owner.
- **Shareholder and director can be the same:** Shareholder being a member of the company can also be the director of the company.
- **Limited Liability & perpetual succession Concept:** Members aren't personally liable for the actions of the company and members may come and go however the company will still be a going concern. This would encourage entrepreneurial persons to take the challenge of doing business without bothering about liabilities getting to the personal assets.
- **Easy to get a loan from banks and manage finance:** To manage finances is easy as compared to other forms of business. Because usually it is preferred by the bank to finance a company rather than a partnership and other forms of business.

Hindrances for the OPC

- **Tax Slab:** OPC would have to pay 30% tax on all profits. There are no exemptions.
- **Only suitable for small businesses:** An OPC will only support small businesses, and after a prescribed turnover criterion, it is required to be converted into companies.
- **Complications in management at the time of any emergencies:** There will be no apparent line between ownership and management because the only member can also be the company's director. All decisions must be made and approved by the lone member. The barrier between ownership and control is becoming increasingly blurred, it might be leading to unethical commercial activities.
- **Restriction on certain business activities:** OPC cannot carry out the Non-banking financial investment activities.
- **Maximum Paid up share capital and turnover Criteria:** OPC can have a maximum share capital limit, in excess of that limit or turnover there is a mandatory requirement to convert that OPC into a private company.

Comparative Analysis among OPC, Sole Proprietorship LLP & Private Limited Company.

Sr. No.	Particulars	Sole Proprietorship	One Person Company	LLP	Private Limited Company	Remark Concerning OPC in relation to Others
1	**Registration**	Not Required	Required to be Registered under Companies Act, 2013	Registration is required under the Companies Act, 2013	Registration is required under the Companies Act, 2013	It is always advisable to register any entity for the safe side. Therefore, this is a considerable point.
2	**Status**	Not a separate legal entity	Separate Legal Entity	Separate Legal Entity	Separate Legal Entity	Considerable aspect because owner and entity are treated as separate persons.
3	**Liability**	Unlimited	Limited to the extent share capital	In the case of Oppression and Mismanagement, the liability of its members is unlimited when it comes to the aspects of liquidity and debt-equity	Limited to the extent share capital	The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for limited liability.
4	**Annual Filing**	Income Tax returns are to be filed	Annual filings are required under the Companies Act, 2013	Income tax returns and filing under LLP Act, 2008 are required.	Income tax returns and filing under the Companies Act, 2013 are required	Applicable as mentioned

5	**Going Concern**	It ends on the death or retirement of the member	It has perpetual succession	It has perpetual succession	It has perpetual succession	It is always a going concern which is beneficial

Conclusion

The success of OPC is purely reliant on its implementation but the concept is a necessity in the changing business arena of the country where entrepreneurs are require taking risk & at the same time needs protection to cover up that risk.

The single entrepreneurs are in the need of a speedy mechanism to get incorporated into the company form of a business & OPC seems to be the possible solution where the entrepreneurs are not required to fritter away their time, energy & resources on procedural matters.