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ONE PERSON COMPANY

Introduction

One Person Company ("**OPC**") has been conceptualized by the Ministry of Corporate Affairs ("**MCA**") to help fill-in the gap between a proprietorship and a private company set-up and was introduced in India through the Companies Act, 2013 ("**Act**"). This type of entity encourages an individual to start his own business, especially an individual who has low risk capacity and such a structure is ideal to set up a small enterprise. Moreover, there are minimum compliance requirements for incorporating an OPC and, if required, OPC can easily get converted in to any other form of company. Section 2(62) of the Act defines OPC as a company which has only 1 (one) person as a member. It gives the said single member, full control over the company by permitting him to be the only director and shareholder. OPC is treated as a separate legal entity from its member and the requirement to raise equity fund or offer employee stock options is deemed to have been waived.

Paid-up capital / Turnover

A sole member can incorporate an OPC as specified in Section 3(1)(c) of the Act and the OPC shall be treated as a private company. However, as per Rule 6 (1) and (2) of the Companies (Incorporation) Rules, 2014 ("**Rules**"), if an OPC's average turnover exceeds Rs. 2,00,00,000/- (Rupees Two Crores Only) or the paid-up capital exceeds over Rs. 50,00,000/- (Rupees Fifty Lakhs only) then it shall cease to exist as an OPC and has to be converted into a private limited company or a public limited company within 6 (six) months of the date on which its paid up share capital or average turnover exceeded the prescribed limit for OPC. OPC cannot be voluntarily converted into a private or a public limited company before the expiry of 2 (two) years, except in the event, an OPC exceeds the prescribed limit of paid up capital or average turnover.

Compliance

The sole member of OPC must subscribe his name to a memorandum and comply with all the terms and conditions prescribed under the Act. Further, as per Section 3 (1) (c), the sole member must nominate a nominee in the prescribed form. In the event of death or incapacity of the sole member, the nominee shall become the member of the OPC and shall be entitled to all shares of OPC and bear all liabilities of OPC. The written consent of such nominee to act as nominee must be obtained and filed with the Registrar of Companies ("**ROC**") at the time of incorporation along with the Memorandum of Association and Articles of Association of the OPC. Appointed nominee, can withdraw his consent by giving a notice in writing to the sole member and to the OPC. The sole member shall then nominate any other person as a nominee of OPC within 15 (fifteen) days of the receipt of the notice of withdrawal by the original nominee. All the documentations towards this effect shall be required to file with ROC within 30 (thirty) days of receipt of the notice of withdrawal of consent from the original nominee. Further, the sole member can appoint a new nominee at any point of time by providing a notice to the ROC.

Further, as per Rule 3 (1) and (2) of the Rules the member / nominee of the OPC must be:

a) a naturally born Indian citizen i.e. who is a resident of India, having stayed in India for at least 182 (one hundred and eighty-two) days during the immediately preceding financial year; and
b) shall be eligible to incorporate an OPC or be a nominee for the sole member of the OPC. However, one such person cannot form more than 1 (one) OPC.

Restrictions

A member / nominee of the OPC should not be a minor. Further, a member or nominee can incorporate or become a nominee of only 1 (one) OPC.

Moreover, an OPC cannot be incorporated as or converted into a company for non-profit, charitable purpose, etc. as specified under Section 8 of the Act and it cannot carry out non-banking financial or investment activities including investment in securities of any body corporate.

Section 152(1) of the Act mentions that the sole member of OPC is considered as the first director of the OPC. Further, as per 149(1) OPC can have a maximum of 15 (fifteen) directors and if required, OPC can appoint more directors after passing a special resolution to that effect.

An OPC is required to mention the words 'One Person Company' below the name of the company, wherever the name is affixed, used or engraved.

Types of OPC

As per Section 3, OPC can be of the following types:

a) limited by shares; or
b) limited by guarantee with share capital; or
c) limited by guarantee without share capital; or
d) an unlimited company with share capital; or
e) an unlimited company without share capital.

An OPC limited by shares should have a minimum paid up capital of INR 1,00,000/- (Rupees One Lakhs only) and the shares cannot be opened for public offer.[1]

Advantages

[1] Section 193 of the Companies Act, 2013.

1. Section 122 (1) and Section 122 (3) of the Act specifically provides that the provisions of Section 98 and Section 100 to Section 111 (both inclusive), which are related to quorum for meetings, extraordinary general meeting, the notice of meeting, restriction on voting rights, voting through show of hands, by electronic means, postal ballot, circulation of member's resolution, etc. are not applicable to OPC. In the event, an OPC is required to pass a special or ordinary resolution, it shall be sufficient if the resolution is communicated by the member of the company and entered in the minutes book which is required to be maintained as per Section 118 and signed and dated by the member and such date shall be deemed to be the date of meeting for the purposes of the Act.

2. As per Section 173 (5) of the Act, OPC shall be deemed to have complied with the requirements of conducting board meetings, if at least 1 (one) meeting of the board of directors has been conducted in each half of a calendar year and the gap between 2 (two) meetings is not less than 90 (ninety) days. Further, the requirement of quorum is waived-off for an OPC, if there is only 1 (one) director on its board.

3. Further, preparation of cash flow statement for the financial statement of OPC is not mandatory. Financial statements of OPC have to be approved by the Board and needs to be signed by only 1 (one) director for submission to the auditor. As per Section 137 of the Act, the copy of such financial statement along with other documents etc. must be filed with the ROC within 180 (hundred and eighty) days from the closure of the financial year.

4. Further, the liability of the member in OPC is limited to the extent of the value of shares held by such member in OPC.

5. OPC being a separate legal entity has a perpetual succession and the ownership of the OPC can be transferred to another person unlike the proprietorship or the partnership entities.

Conclusion

As of September 2016, there have been a total of 9174 OPC's incorporated in India, out of which, 7185 OPC's are currently functioning, 20 OPC's are under process of striking off, 7 OPC's have already been struck-off and 3 OPC's have been declared dormant under Section 455 of the Act.

Due to easy incorporation process and the feature of limited liability, OPC is a viable option for many budding entrepreneurs. It permits an individual to operate the company singularly to the exclusion of others. The benefits of ease of compliance outweigh the issues of joint operation. However, from the perspective of professional services incurred for the incorporation, the cost of incorporation of an OPC and a private limited company is often the same. The advantage is, of course, having a limited liability corporate legal entity versus an unlimited liability proprietorship until the business operations reach a threshold. The real trick is to have a sustainable business model wherein a reasonable threshold is set (not as low as the present one) and real benefits are offered in terms of ease of incorporation etc. Until then, regular businesses cannot use this structure effectively.

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