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AN OVERVIEW OF ONE PERSON COMPANY

By Tanya Agarwal and Kriti Bhatia

INTRODUCTION

The Companies Act, 2013 [Act no. 18 of 2013] introduced many new concepts in the Indian corporate world that did not exist before, thereby revolutionizing the corporate regime in India. "One such concept is the introduction of One Person Company [hereinafter called and referred to as OPC] which has led to the recognition of an innovative way to undertake any business opportunity. This provides flexibility which is enjoyed in a company form of undertaking while also providing protection of limited liability that sole proprietorship or partnerships lack."[1] Introduction of OPC is a step forward to assist business friendly corporate regulations in India. "This concept might be new to India but there are many successful examples of this model in the UK (2006), USA (a. k. a Limited Liability Company in US), China (2005), Singapore (2004) and Turkey (2012)."[2] "In India, the introduction of OPC was suggested in the Dr. J.J. Irani Committee Report dated May 31, 2005 which promised the escalation of entrepreneurs in the market place, making their contribution in the economy widely effective. The Committee had suggested that an entity like OPC would save time, energy and resources of the small entrepreneurs by providing them with easier and simpler legal regime and exemption from complex legal compliance." [3]

ONE PERSON COMPANY

[1]https://www.toppr.com/guides/business-laws/companies-act-2013/one-person-company/#:~:text=Section%202(62)%20of%20Companies,one%20shareholder%20as%20its%20member. (accessed on June 5, 2020)

[2] https://economictimes.indiatimes.com/small-biz/legal/the-one-man-show-understanding-the-concept-of-one-person-company/articleshow/72195134.cms?from=mdr (last updated on November 23, 2019) (accessed on June 5, 2020)

[3] ibid

Under the Companies Act, 1956 [Act No. 1 of 1956], in order to set up a private company, a minimum of two shareholders were required. So a person interested in venturing alone had the only option of a sole proprietorship, which is not recognized as a separate legal entity. An OPC is thus, considered "an amalgamation of the benefits of sole proprietorship and a company form of business. It does away with the hassle of finding the co-partner for starting a business as a registered entity."[4]

Section 2(62) of the Companies Act, 2013 [hereinafter called and referred to as the Act] has defined One Person Company in the following words:

"2(62) —One Person Company: means a company which has only one person as a member"[5]

"An OPC shall have a minimum of one director; therefore an OPC is registered as a private company with one member and one director. Such an OPC may be either company limited by shares/guarantee or an unlimited liability company."[6]

FORMATION OF OPC

Section 3 of the Act allows one person to form a company for any lawful purpose. It classifies OPC as a private company with only one member.

"A single person can form an OPC by subscribing his name to the Memorandum of Association and fulfilling other requirements prescribed in the Companies Act, 2013."[7] The relevant portion of Section 3 is as under:

"3. Formation of company— (1) A company may be formed for any lawful purpose by—

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

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[4] http://www.legalservicesindia.com/article/2332/One-Person-Company.html (accessed on June 5, 2020)

[5] Section 2(62) Companies Act, 2013, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf (accessed on June 24, 2020)

[6] https://www.legalindia.com/tag/research-article-on-one-person-company/ (accessed on June 7, 2020)

[7] Supra 1

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber‘s death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

Provided further that such other person may withdraw his consent in such manner as may be prescribed:”[8]

“The Section also states that the memorandum shall indicate the name of such other person, with his prior consent, who will in the event of the subscriber’s death or incapacity to contract become the member of the company and such consent along with the memorandum and articles of the OPC be registered with the Registrar of Companies.”[9] “Such nominee can withdraw his name at any point of time by submission of requisite applications to the Registrar.”[10]

MEMBERSHIP TO OPC

“Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate an OPC or be a nominee for the sole member of an OPC. Further, such a natural person cannot be a member or nominee of more than one OPC at any point of time. As prohibited by law, no minor shall become a member or nominee of the OPC or can hold shares with beneficial interest.”[11]

FEATURES OF OPC

The following are the important features of the One Person Company:

- “OPC is a type of company based on the number of members
- It has only one person as a member/shareholder
- It is a Private Company

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[8] Section 3(1) Companies Act, 2013, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf (accessed on June 24, 2020)

[9] Neha Yati, Krusch PA, *“One Person Company in India”,* Vol 2 Issue 4 (IJLLJS), p.11

[10] Section 3(1) Companies Act, 2013, http://companiesact2013advisory.blogspot.com/2014/05/formation-of-company.html (accessed on June 24, 2020)

[11] Supra 9

- Minimum paid up share capital of OPC is one lakh rupees
- OPC may be either a company limited by shares/guarantee or an unlimited company
- "The words 'One Person Company' should be mentioned in brackets below the name of the OPC"[12]
- OPC shall indicate the name of the nominee/other person in the memorandum, with his prior consent
- The written consent shall be filed with the Registrar at the time of incorporation of the OPC along with the memorandum an articles of the One Person Company
- In case of death of member/shareholder or his incapacity to contract, then the nominee/ other person becomes the member of the company"[13]

"As stated in One Person Company (Rule 3 of Companies (Incorporation) Rules, 2014 it is imperative that the member and the nominee should be natural persons, Indian citizens and resident of India. The term 'resident of India' means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year."[14]

ADVANTAGES OF ONE PERSON COMPANY

- **"Limited Liability of the member:** The most significant advantage of setting up an OPC is certainly the limited liability of the members. This implies that in case of an unfortunate event or a crisis which cannot be mitigated by the entrepreneur, the personal assets of the owner would not be held liable. The liability of the member extends to only the unpaid subscription money."[15]
- **"Legal Status:** OPC is a private limited structure which enjoys a separate corporate status in society. The entity possesses of assets and liabilities which are different from that of the member. Another aspect is that since the existence of the entity does not depend on the life of the members, it is said to have perpetual succession.
- **Easy to manage:** An OPC is considered to be very easy to manage as it has been exempted from the requirement to hold annual or extra-ordinary general meetings, it may conduct only

[12] Section 12(3) Companies Act, 2013, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf (accessed on June 24, 2020)
[13] Mary T.L, "*Relevance of One Person Company",* Vol.2 Issue 1 IJTSRD, p. 1317 (2017)
[14] https://www.icsi.edu/media/webmodules/ONE%20PERSON%20COMPANY.pdf (accessed on June 7 2020)
[15] Supra 13

one meeting of the Board of Directors in each half of the calendar year and the gap between the meetings can extend to up to 90 days. The provisions of Section 174 of the Act in relation to quorum for meetings of Board do not apply to OPC in which there is only one director on its Board of Directors.

- **Minimum requirements:** Minimum requirements have been imposed upon OPC to make it very easy to set up and run. An OPC requires a minimum of one shareholder, a minimum of one director and the director and the shareholder can be the same person. It requires only one nominee and can be set up with the minimum share capital of one lakh rupees.
- **Complete control of the owner:** Since the OPC comprises of only one member who has complete control of the business, it leads to fast decision making and execution. Yet the member may appoint as many as 15 directors in the OPC for administrative functions, without giving any share to them.
- **"Organized sector:** OPC will help bring the unorganized sector of sole proprietorship into the organized version of a private limited company. It can encourage several small and medium enterprises to enter the corporate domain as the OPC offers limited liability of the member."[16]

ONE PERSON COMPANY V. SOLE PROPRIETORSHIP

Though the number of members required to form both a sole proprietorship and an OPC is one member but these entities are completely different structurally. Whereas sole proprietorship is the oldest form of business in India, an OPC is still in its nascent stage being introduced in Companies Act, 2013. "The Companies Act does not recognize sole proprietorship as a separate legal entity and thereby holds the proprietor personally liable for non-fulfillment of the business' liabilities, while the Act attributes a separate entity to an OPC which becomes the biggest advantage of this business model."[17] "As the assets and liabilities of the OPC are separate from its owner, the promoter is not personally liable to repay the debts of the company."[18] "The existence of a sole proprietorship as an entity depends on the life of its members and death or any other contingency can lead to its dissolution. On the other hand, the existence of the OPC does not depend upon its members and hence enjoys perpetual succession. The death of a member does not affect

[16] https://www.caclubindia.com/articles/advantages-disadvantages-of-opc-24192.asp (accessed on June 13, 2020)
[17] https://registrationseva.com/services/one-person-company-registration/ (accessed on June 24, 2020)
[18] Supra 1

the legal status of the Company."[19] "As far as quick decision making and implementation of suggestions is concerned, it enjoys the liberty as enjoyed in a sole proprietorship as the business head is the sole decision maker and he is not dependent on others for any consensus or majority opinion."[20]

IMPACT OF OPC ON INDIAN ENTREPRENEURSHIP

The concept of OPC is still in its beginning phase in India, though due to its simplicity its popularity has increased among small and medium enterprises. "With due course in time, it can be expected that OPC develops as a preferred model of business organization due to the benefits emanating from it, such as:

- Minimal paper work and compliances
- Ability to form a separate legal entity with just one member
- Provision for conversion to other types of legal entities by induction of more members and amendment of Memorandum of Association."[21]

"In case the paid up capital of an OPC exceeds fifty lakh rupees or its average annual turnover of immediately preceding three consecutive financial years exceeds two crore rupees, then the OPC has to mandatorily convert itself into private or public company."[22]

"The OPC can be a torch-bearer for small traders and entrepreneurs with low risk taking capacity, artisans and other service providers to showcase their capabilities in the global arena."[23]

PROHIBITIONS FACED BY OPC

- "An OPC is prohibited from carrying out any Non-Banking Financial Investments activities, converting a wholly owned subsidiary into an OPC and also issuing any kind of Employee Stock Scheme."[24]
- The Companies Act, 2013 also prohibits a person to have more than one OPC or become a nominee in more than one OPC.

19 Supra13
20 ibid
21 Supra 9
22 http://www.mca.gov.in/MinistryV2/onepersoncompany.html (accessed on June 12, 2020)
23 Supra 9
24 https://taxguru.in/company-law/conversion-opc-private-public-limited-company.html#:~:text=OPC%20cannot%20be%20incorporated%20or,securities%20of%20any%20body%20corporates. (accessed on June 24, 2020)

- "From the tax perspective, The Income Tax Act, 1961 does not recognize the concept of OPC and has placed it in the same slab as a private company under the bracket of 30% (plus surcharges) on total income."[25]
- "An OPC cannot convert into Section 8 Companies, which are those companies registered as Non-Profit Company under Section 8 of the Companies Act, 2013"[26]
- "As per Section 193(2) of the Act, an OPC shall inform the Registrar of Companies about every contract entered into by the company and recorded in the minutes of meeting of its Board of Directors within 15 days from the date of approval of the Board."[27]
- "An OPC must be converted to a private limited company if the turnover exceeds Rs.2 crore or paid up share capital of the OPC is increased beyond Rs.50 Lakhs."[28]

CONCLUSION

"The introduction of OPC in the legal system is a move that has encouraged corporatization of micro businesses and entrepreneurship with a simpler legal regime that not only enables an individual to contribute to economic growth but also generates employment opportunities."[29] The attraction towards reduced compliance burden and limited liability of the members has helped OPC to become a sought out venture. "OPC form of business structure has helped small entrepreneurs carry on business with status a separate legal entity, to explore ideas and ventures with minimum compliances and maximum benefit of exemptions. OPC have also helped effectively regularize the unorganized sector of sole proprietorship."[30]

OPC is similar to One Man Army. The compliance burden is very less and the liability of the members is very limited which is an extra advantage. OPC is expected to benefit people who are into self employment and many small scale sectors. It is a remarkable feature of the Companies Act, 2013 but there still persist a lot of limitations like, a person shall not be eligible to incorporate more than one OPC or become a nominee in more than one such company. Secondly an OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate. Also there has been criticism in certain quarters against the formation of such a company as it may give room for evasion of public funds and tax

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[25] Supra 16
[26] Supra 24
[27] Section 193(2) Companies Act, 2013, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf (accessed on June 24, 2020)
[28] Supra 24
[29] Mary T.L, "*Relevance of One Person Company*", Vol.2 Issue 1 IJTSRD, p. 1317 (2017)
[30] http://unicomply.com/site/one-person-company (accessed on June 24, 2020)

liability by an individual. "It is suggested that in order to promote the growth of One Person Companies in India, the procedural formalities and the tax burden on them be reduced."[31] "There is a need to revisit and revise the existing policies and implementation of innovative policies by providing monetary and non-monetary benefits to the investors. These measures can be helpful to reduce the obstacles in the development of the corporate growth in India."[32]

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[32] ibid

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