

## **ONE PERSON COMPANY**

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### **Background of One Person Company (OPC)**

The New Companies Act, 2013 was approved by the Parliament in 2013. Some of the provisions of New Company's Act 2013 came into force on September 20<sup>th</sup> 2013 while majority of sections came into force from 1<sup>st</sup> April 2014. The Companies Act, 2013 has introduced some new concepts in India's Corporate Legal System which were not part of the erstwhile Old Companies Act, 1956.

One Person Company (OPC) is one of those new concepts which has been introduced in the New Act. According to this concept, a single person could constitute a Company. The introduction of OPC in the legal system will boost corporatization of micro businesses. In India, in the year 2005, the *JJ Irani Committee* recommended the formation of OPC. It had suggested that such an entity may be provided with a simpler legal regime through exemptions so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliance.

### **Position of OPC in India under the Companies Act, 2013:**

Various countries permit this kind of a corporate entity. In countries like UK, Australia, Singapore, etc: a single person can form a company, it is a very popular concept in such countries. As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member"<sup>1</sup> An OPC shall have a minimum of one director, therefore an OPC will be registered as a private company with one member and one director. Such OPC may be either a company limited by shares/guarantee or an unlimited liability company.

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<sup>1</sup> Master Guide to Companies Act 2013 & Company Rules – Taxmann's

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. No Minor shall become member or nominee of the OPC or can hold shares with beneficial interest.

*# According to the National Stock Exchange (NSE) an OPC as described in the New Companies Act can act as a stock broker provided it satisfies the condition of two minimum directors<sup>2</sup>.*

### **Benefits of OPC:**

The concept of OPC is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to the market, limited liability and legal protection available to companies.

Prior to the new act coming into effect, at least two shareholders were required to start a company. Now the concept of OPC would provide tremendous opportunities for the small businessman, traders including those working in areas of handicrafts, pottery etc. Earlier they were working as artisans on their own, so they did not have a legal entity of a company. Now the OPC will help them to do business with ease as an enterprise and give them the opportunity to start their own venture with a formal business structure. Further, the amount of compliance by an OPC is much lesser of filing returns, balance sheets, audit etc.

*# The first OPC in India was incorporated on 28<sup>th</sup> April, 2014 at Delhi under ROC- Delhi jurisdiction, the company name being, **Vijay Corporate Solutions OPC Pvt Ltd**<sup>3</sup>*

However, there are also some restriction and terms imposed on an OPC. These are as follows:

1. Any natural person cannot incorporate more than one OPC.

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<sup>2</sup> <http://economictimes.indiatimes.com/markets/stocks/news/one-person-company-can-act-as-stock-broker-nse/articleshow/51057511.cms>

<sup>3</sup> <http://www.corporate-cases.com/2012/02/one-man-company-one-person-company.html>

2. Any natural person who has not attained the age of majority cannot become a member or nominee of an OPC.
3. An OPC cannot be converted into a Company i.e. Company Not for Profit.
4. An OPC cannot carry out The Non-Banking Financial Investment Activities.
5. NRI's are not allowed to incorporate One Person Company<sup>4</sup>

### **Exemptions Provided to an OPC:**

An OPC is provided with certain exemptions which the other types of companies cannot avail. Such exemptions are as follows:

1. Cash Flow Statement is not required to be prepared by an OPC as a part of their financial statement<sup>5</sup>.
2. An OPC is not required to hold an Annual General Meeting<sup>6</sup>
3. The Annual Returns in the case of an OPC shall be signed by the Company Secretary or where there is no company secretary, then by the director of the company<sup>7</sup>

### **Inter-Country Comparison:**

The idea of OPC is new in India, but this concept has been already been prevailing and running successfully in many other countries like, China, Singapore, France, and U.S.A. The Great Britain was the nation which first made the way for such concept through its decision in *Saloman & Saloman Co Ltd*. It was in the year 1925 when Britain gave statutory status to this concept in their country. In due course, many other countries adopted this concept i.e. OPC in their own respective Corporate law. However the structure or perquisites for the incorporation of OPC may differ from country to country wherever they are adopted but the main motive behind is the same that is of promoting entrepreneurship and accelerating their economic development.

- (i) **Capital Requirement:** According to the rules of countries like **U.S.A. and U.K** regarding the incorporation of OPC, the capital of the company should

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<sup>4</sup> As per Rule 2.1 (1) of the Draft Rules under Companies Act,2013 only a natural person who is an Indian Citizen and resident in India shall be eligible to incorporate a One Person Company.

<sup>5</sup> Section 2(40) of the Companies Act, 2013.

<sup>6</sup> Section 96(1) of the Companies Act, 2013.

<sup>7</sup> Section 92 of the Companies Act,2013.

*'meet the expectable strains of a business of its size and its nature'*<sup>8</sup>. Whereas countries like **India, China, Pakistan and France** has expressly provided minimum capital requirement with respect to OPC.

(ii) **Legal and Natural Person:** Most of the countries with respect to incorporation of OPC does not put restrictions in terms of natural and legal persons.

But India, only permits natural persons to incorporate OPC.

### **Conversion of One Person Company into Private Company:**

**An OPC can be converted into Private limited company in the following two situations:**

1. Voluntary Conversion
2. Compulsory Conversion

#### **Voluntary Conversion:**

An OPC cannot be converted into a private limited company for a period of not less than two(2) years from its date of incorporation and if the time has elapsed and the period of two years is over, it can apply for converting itself into a Private Limited Company or Public Limited Company.

The aforesaid conversion should be done in accordance with the rules and regulations laid down under section 18<sup>9</sup> and Rule 7(4)<sup>10</sup>.

#### **Compulsory Conversion:**

When an OPC has a paid-up capital equal to or more than Rs.50 Lakhs or its Annual turnover for the relevant financial year exceeds Rs.2 Crore, then in such a situation the OPC has to be converted itself into Private Limited Company or Public Limited Company as per Rule 7(4)<sup>11</sup>

### **Impact of an OPC in Indian Entrepreneurship:**

Despite the fact that the concept of OPC is still new in Indian Entrepreneurship and hence extremely progressive, it will set aside time for such a concept to be consolidated with full efficiency, however as the time will pass by, OPC will have a sparkling future and will be

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<sup>8</sup> Rule 2.1(2)

<sup>9</sup> Companies Act, 2013.

<sup>10</sup> Companies (Incorporation) Rules, 2014.

<sup>11</sup> Companies (Incorporation) Rules, 2014.

considered as one of the best business idea. The reason behind it is the ease of incorporation of same with fewer compliances and less paper work. The foreign investor will be dealing with only a single member to form his corporate relationship and not with a score of other shareholders or directors where the chances of disparity in ideas. Any foreign company or investor who proposes to establish any business in India, could do so through merger or joint venture with the member of OPC. The concept of OPC has a bright and promising future in India, and is also expected to get good foreign investments, Joint Ventures, and Mergers etc.

### **Criticisms:**

The accomplishment of the idea of OPC is doubtful due to the following reasons:

1. The current sole proprietors can raise funds and reserves from their relatives/friends or others but whereas an OPC being a private limited company is not allowed to acquire such funds from others.
2. In India, there are few existing proprietors who don't want to go by the OPC concept since they prefer doing the business in their own traditional way and they don't want to engage themselves with this concept due to legal compliances.
3. The desire that the financial institutions will provide funds to OPC is unrealistic. At present, the financial institutions demand guarantee and different securities for providing credit facilities to small proprietors. Since OPC now permits the same individual proprietors to claim limited liability, the risk factor is more to the financial institutions.

### **Suggestions:**

In regard to the above-mentioned criticisms, the suggestions for the same are as follows:

1. The introduction of OPC in the legal system is a move that would encourage corporatization of micro business and entrepreneurship. The same concept should have been introduced much earlier into the market.
2. The legal compliances should be made less complicated and the registration process should be made more flexible to the common man, so that more and more individuals are encouraged.
3. The awareness of OPC should be brought into broad daylight with the much wider scope since a lot more are not aware of the concept of OPC.

4. Legal persons should be given an opportunity to incorporate an OPC apart from the regular natural persons.
5. Also, foreign companies and NRI's should be given a platform to form an OPC without any harsh restrictions and stringent legal formalities.
6. The Income Tax Act, 1961 should recognize OPC and impose different tax schemes upon them.

*# There has been total 7127 number of OPC's incorporated in India since past 2 years out of which<sup>12</sup>:*

- 1. 7185 number of OPC's are at current actively functioning in India,*
- 2. 20 number of OPC's are under process of striking off,*
- 3. 7 OPC's are already struck off,*
- 4. 3 OPC's are declared dormant under section 455<sup>13</sup> and*
- 5. 2 OPC's are captured.*

### **Conclusion:**

With the Companies Act, 2013 the concept of OPC has now become reality. This concept has been a keen interest among entrepreneurs looking forward to doing business with the entrepreneurial freedoms as afforded by proprietorships but without the baggage of personal liability that a proprietorship is bound to carry .OPC provide many opportunities to all those who are looking forward to kick start their own venture with a structure of organized business. This concept will help the young or start up entrepreneurs test a business model, a product or a service before attracting new investors. The compliance pressure which has to be mandatorily followed is comparatively less and the feature of limited liability is an added privilege to it. Such a concept will benefit a lot to all the individual proprietors and proprietors engaged in small scale industries. It will provide a greater flexibility to an individual to manage his business at the same time enjoy the benefits of a company. The point to be noted here is that with the use of this concept it will make a way for more favorable banking facilities, particularly loans and advances

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<sup>12</sup> <https://www.zaubacorp.com/company-list/company-type-OPC/p-2-company.html>.

<sup>13</sup> Companies Act, 2013.

to individual proprietors. At the same time it will also boost the foreign funds in India as the requirement of nominee shareholder would be done away with.