ONE PERSON COMPANY

One Person Companies (OPCs) in India are a unique type of corporate entity that was introduced in the Companies Act, 2013. The concept of OPCs was introduced with the objective of promoting entrepreneurship and providing a simpler form of business structure for individuals. OPCs are registered under the same laws and regulations as any other company in India, with the exception that they are owned and operated by a single individual. The incorporation of such a company into the Companies Act, 2013, was recommended by the J.J. Irani Expert Committee. The legal provisions pertaining to OPCs in India are dispersed throughout the Companies Act, 2013. The term "One Person Company" is defined under Section 2(62) of the Act, which stipulates that such a company shall have only one person as its member. The concept of OPC is also already in existence around the world in countries such as UK, China, USA, Australia, Singapore, Qatar, etc.

According to Section 3(1)(c) a company can be formed for lawful purposes by a single individual who must subscribe his name to the memorandum and by complying with the requirements of the Act. An OPC can be limited by shares or limited by guarantee. It is important to ensure that there are safeguards provided in case the subscriber either dies or becomes incapable to contract. This is why the memorandum of an OPC must also indicate the name of another individual with their prior written consent who shall become a member of the company contingent upon any of the beforementioned events taking place. The words “One Person Company” must be mentioned in brackets below the name of the company wherever it is printed, affixed, or engraved.

The concept of OPC gives benefits to small service providers, traders, artisans, and entrepreneurs with low risk-taking capacity. There are several relaxations provided to OPCs, such as no requirement to prepare a cash-flow statement, no necessity for an Annual General Meeting (AGM), etc. Upon expansion of business, the OPC can be converted into any other form of a business entity by amending the Memorandum of the company.

According to the Companies (Incorporation) Rules 2014 only a natural person who is an Indian Citizen whether resident in India or otherwise:

a) Shall be eligible to incorporate one-person company
b) Shall be a nominee for the sole member of a one-person company

A natural person shall not be a member of more than one OPC at any point in time and the said person shall not be the nominee of more than one OPC. If an individual who is a member of an OPC becomes a member of another OPC by virtue of their role as a nominee, they must meet the eligibility criteria of being a member in only one OPC within a period of one hundred and eighty days. This means that the individual must withdraw their membership from either one of the OPCs within the stipulated time frame. The OPCs are barred from doing business of Non-Banking Financial Investment Activities including investment in securities of anybody corporate. Existing

Private Companies may also convert themselves to OPC by passing special resolutions in the general meeting.

There are certain differences between an OPC and a Sole proprietorship:

OPC	SOLE PROPRIETORSHIP
Separate Legal Entity	Not a Separate Legal Entity
Limited Liability	Unlimited Liability
Registered Entity	No Registration required
Perpetual Succession	No Perpetual Succession

Advantages of OPC

- ✓ OPCs need not bother too much about compliance under the Companies Act.
- ✓ Businesses currently run under the proprietorship model could get converted into OPCs without any difficulty.
- ✓ OPCs require minimal capital, to begin with. Being a recognized corporate could well raise capital from others like venture capital financial institutions etc., thus graduating to a private limited company.
- ✓ The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding general meetings, shall not apply to a One Person Company.
- ✓ A One Person Company needs to have a minimum of one director. It can have directors up to a maximum of 15.
- ✓ Financial statements of a one-person company need to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of the financial year along with all necessary documents.
- ✓ Easy way exit from the business is possible under OPC by the entrepreneur by transferring the shares based on the valuation.

Income Tax Implications in respect of OPC

- ➢ The OPC is assessed as a separate legal entity in the status of a domestic company and the member of the OPC is assessed in his individual capacity.
- ➢ Any income like Dividends and remuneration received from OPC by the member/Director of the OPC is assessed in the hands of the Member in his Individual Capacity.
- ➢ However, in the case of a proprietary concern, the entire business income is assessed in the hands of the proprietor as an Individual taxpayer.

- The tax rates in respect of companies are now very minimal considering the new tax rates under section 115BAA/115BAB, however, in respect of Individuals the tax rates are based on slab rates which are more than 30% if the income exceeds 10 Lakhs.
- Any carried forward loss in respect of business loss and unabsorbed depreciation of the business available to the successor of the business subject to the provisions of section 79 of the Income tax act.
- The sale of shares by the member of the OPC on account of business transfer is assessed under capital gains in the hands of the Member as long-term if the shares are held by him for more than two years.

The are numerous exemptions provided under the Companies Act, 2013 for OPC for ease of doing business. However, The OPC is taxed both on income as well as the distribution of profits i.e. tax on Dividends distributed to the single member. After removing of turnover and share capital threshold, even a manufacturing company that requires huge capital may also be incorporated as an OPC and avail the benefits of the lower tax rate of 15% under section 115BAB for a newly incorporated manufacturing company. After amendments in the Companies Act, 2013 and new tax rates under the Income Tax act, of 1961, the benefits of incorporating OPC are a great option for new entrepreneurs and startups.

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