

Incorporation of One Person Company- A Practical approach

Introduction

The Upper House of Parliament (Rajya Sabha) on August 8th, 2013, passed the Companies Bill, 2012 with some amendments.

The Minister of State (Independent Charge) of The Ministry of Corporate Affairs, Shri Sachin Pilot, replying to the debate, on Companies Bill, 2012, held in Rajya Sabha on 6-8 August 2013, said the following in respect of concept of one-person company:

“The intent behind having this new initiative is the fact that in India we have a lot of people who are artisans, craftsmen, weavers and they work as Individual workers, we want these people to have the same rights, the same credit facilities, the same recognition as companies without having the multiplicity of Compliances. A simple artisan or a craftsmen working in any part of our country should be able to avail the benefits of having an Incorporation without having the complexity of the lot of disclosures, and audit, and reporting that large companies do. So we made a distinction between a limited company and a one-person company which is a new initiative, and I am hopeful that this initiative will take ground in India and encourage a lot of young people, a lot of craftsmen, weavers, artisans to take this advantage of having access to banks, access to credit facilities.”

With the introduction of concept of One Person Company (hereinafter “**OPC**”) in Companies Act, 2013 individuals doing business as sole proprietors will now be able to avail the benefits of limited liability without a second person to form a company.

Definition

1. As per Section 2(62)(3) of the 2013 Act, OPC means a company which has only one person as member.
2. As per rule 6 of The Companies (Incorporation) Rules, 2014, OPC needs to convert itself into a public company or a private company in certain cases.-
Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period* exceeds two crore rupees, it shall cease to be entitled to continue as a OPC.

We can extract Two condition which needs to be fulfilled for a Company to get the privilege of One Person Company. i.e,

- a) It has only One person as member.
- b) The paid up share capital of an OPC does not exceeds fifty lakh rupees or its average annual turnover during the relevant period* does not exceeds two crore rupees.

*"relevant period" means the period of immediately preceding three consecutive financial years.

Procedure for Incorporation of One Person Company - A Practical approach

In terms of section 3(1) (c) of the Companies Act, 2013 an OPC may be formed for any lawful purpose by one person and it is a Private Company. Salient features in relation to incorporation include:

- There must be one natural person as member, one natural person as Nominee and at least One Director to incorporate an OPC. Member and Director can be the same person.
- Application for getting Digital Signature, with any of DSC Vender i.e. E Mudra/ Siffy/ TCS etc, who are known as Certifying Agencies who are duly appointed office of the Controller of Certification Agencies (CCA) under the provisions of IT Act, 2000.
- Making Application for allotment of Director Identification Number (DIN) in E-Form DIR 3, along with attachments i.e, PAN card and copy of address proof. ID and Address Proof Shall be certified by Practicing CA/CS/CMA.
- Making Application for reservation of name in E-Form INC-1 to Registrar of Companies. The Applicant can give maximum six names in order of preference. The proposed names for the company given in E-Form INC-1, shall end with, OPC Private Limited or Private Limited OPC. For Example XYZ Construction OPC Private Limited or XYZ Construction Private Limited OPC.
- Once the Name is approved by Registrar of Companies, draft MOA and AOA. In MOA, the Seven clause mainly i.e. Name Clause, Registered Office Clause, Main Object Clause, Liability Clause, Capital Clause, Subscribers Clause and Nominee Clause will have to take into consideration.

- Filing of E-Form INC-2, i.e, Application for Incorporation of an “OPC” needs to be filed within 60 Days from the date on which the application for Reservation of name was made.
- The Subscriber to the memorandum of an OPC shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber’s death or his incapacity to contract become the member of the company. Consent of such nominee Shall be obtained in Form No INC.3 and shall be attached in E-Form No INC.2.
- The name of the person nominated shall be mentioned in the seventh clause of memorandum of association of OPC.

Attachments of E-Form No INC.2.

- Memorandum of Association. (Format Prescribed in Table A of Schedule I of Companies Act, 2013). Only Change is replace point no 7 and 8 with point No 6 of the said table.
- Articles of Association.
- Identity Proof and Residential proof of the member and the nominee.
- Copy of PAN card of the member and the nominee.
- Consent of Nominee in Form NO. INC-3.(After filling Form INC-3, take print out and get it signed by the Nominee and attached the signed scanned copy in E –Form INC-2).
- Affidavit from the subscriber and first Director to the memorandum in Form NO. INC-9.
- List of all the companies (specifying their CIN) having the same registered office address, if any.
- Specimen Signature in Form No. INC-10 by subscriber to the memorandum.
- Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement etc. along with rent receipts).

- Copies of the utility bills of Registered Office address (not older than two months).
- Consent from Director in Form DIR-2.
- The company can file form INC-22 within 30 days once form INC-2 is registered, in case the address of correspondence and registered office address are not same in form INC-2.

Application for Commencement of Business Certificate

- a) Upload of E-Form INC-21, anytime within 6 months from the date of incorporation.

Mandatory Point to be mentioned in Articles of Association of a One Person Company. **The Points are inclusive and not exhaustive.**

- a) The company is a “One person Company within the meaning of Section 2(62) of the Companies Act, 2013 and accordingly:

Limits the number of its member to one person.

- b) Share Certificate :

Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.

- c) Transmission Of Shares:

- i. On the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member;
- ii. The nominee on becoming entitled to such shares in case of the member’s death shall be informed of such event by the Board of the company;

- iii. Such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable;
- iv. On becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of the company.

d) General Meetings

- i. The resolution required to be passed at the general meetings of the company shall be deemed to have been passed if the resolution is agreed upon by the sole member and communicated to the company and entered in the minutes book maintained under section 118;
- ii. Such minutes book shall be signed and dated by the member;
- iii. The resolution shall become effective from the date of signing such minutes by the sole member.

Points/Conditions to be noted while incorporating a One Person Company

- A person can be member in only one OPC.
- No person shall be eligible to incorporate more than an OPC or become nominee in more than one such company.
- Only a natural person, who is an Indian citizen and resident in India*, shall be eligible to incorporate an OPC.
- Only a natural person, who is an Indian citizen and resident in India*, shall be a nominee for the sole member of an OPC.
- Minor cannot become member or nominee of the OPC or can hold share with beneficial interest.
- OPC cannot be incorporated or converted into a Section 8 company.

- OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.
- OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.
- Where the sole member of OPC ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4, within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No.INC.3.
- The words “One Person Company” must be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved. [Second proviso to Section 12(3)].

* Resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year

Compliances

Sec 2(68) of the 2013 Act defines Private Company which includes OPC. Thus all those provisions which are applicable to Private Companies are applicable to OPCs. However, OPCs are provided with certain exemptions in Companies Act, 2013 Act which are as follows:

- OPC is not required to prepare cash flow statement as a part of financial statement. [Section 2(40)]
- In case an OPC does not have a company secretary, the annual return can be signed by the director of the company. [Proviso to section 92(1)]

- An OPC is not required to hold an annual general meeting. [Section 96(1)]
- The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to an OPC -[Section 122(1)]
 - (a) Section 98: Power of Tribunal to call meetings of members, etc.
 - (b) Section 100: Calling of extraordinary general meeting
 - (c) Section 101: Notice of meeting
 - (d) Section 102: Statement to be annexed to notice
 - (e) Section 103: Quorum for meetings
 - (f) Section 104: Chairman of meetings
 - (g) Section 105: Proxies
 - (h) Section 106: Restriction on voting rights
 - (i) Section 107: Voting by show of hands
 - (j) Section 108: Voting through electronic means
 - (k) Section 109: Demand for poll
 - (l) Section 110: Postal ballot
 - (m) Section 111: Circulation of members' resolution
- An OPC must conduct at least 1 meeting of the board of directors in each half of a calendar year with a gap of at least 90 days between the 2 meetings.
- For the purposes of section 114 (Ordinary and Special Resolution), any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act. [Section 122(3)].
- Where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under Companies Act, 2013. [Section 122(4)].

- The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board, by one director in the case of a One Person Company, for submission to the auditor for his report thereon. [Section 134(1)].
- One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year. [Third Proviso to Section 137(1)].
- For an OPC having only 1 director, the provisions to section 174 (Quorum for meetings of board) will not apply. [Proviso to Section 173(5)]

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