One Person Company (OPC) – Ideal for Entrepreneurs

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Selecting the form of his / her business entity is one of the most significant decisions an entrepreneur makes while starting a business. This is also a decision which is required to be revisited periodically as the business develops.

The choice of business entity depends upon the following factors :
1. Objective of the proposed business
2. Likely number of members
3. Amount to be invested
4. Accounting aspects
5. Taxation aspects
6. Advantages of one form of business organisation over others

In India, business enterprises can be broadly divided into two categories – Corporate form and Non–Corporate form. The division of business enterprises is as follows ***(Table - 1).***

Starting a business as a sole proprietorship has some advantages and disadvantages and the same are discussed as follows ***(Table - 2)***

One Person Company [OPC] :

The Companies Act, 2013 introduced a revolutionary concept in the structural form of companies through One Person Companies (OPC) and giving them statutory recognition. Such an innovative move aims to bring in sweeping changes in the corporate world and it has opened doors for the entrepreneur looking to set up a

Table - 1

Sr. No.	Non-Corporate Forms of Business Enterprise	Corporate Forms of Business Enterprise
1	Sole Proprietorship	Companies
2	Partnerships	Co-operative undertakings
3	Hindu Undivided Family	Limited Liability Partnerships

Table - 2

Sr. No.	Advantages of Sole Proprietorship	Disadvantages of Sole Proprietorship
1	Easy to commence business	Limited capital / resources
2	Easy administration	Unlimited liabilities
3	Quick & convenient decision making and prompt action	Not a perpetual entity
4	Maintenance of business secrets	Not a corporate legal entity
5	---	Not much recognition in corporate sector
6	---	Limited managerial capabilities
7	---	Less scope for economies of large scale

Relevant provisions for OPC :

Sr. No.	Basic Questions	Relevant provisions
1	Who can form an OPC?	Only a natural person who is a citizen and resident of India[1] shall be eligible to incorporate an OPC.
2	Who can be the nominee for sole member of OPC?	Only a natural person who is a citizen and resident of India shall be eligible to be nominee for sole member of OPC.
3	Can the nominee withdraw his nomination?	Yes, the nominee nominated by the subscriber or member of OPC may withdraw his consent by giving a notice in writing to sole member and to the OPC.
4	When is a new nominee appointed?	The sole member shall nominate another person as nominee within 15 days on the receipt of the notice of withdrawal by nominee and shall intimate to the OPC in writing.
5	Can the subscriber or member of OPC change the nominee?	The subscriber or member of OPC may, by intimating in writing to the company, change the nominee at any time for any reason including in case of death or incapacity of nominee to contract and nominate another person after obtaining the prior consent of such other person.
6	Where the sole member ceases to be the member of OPC.	Where the sole member of an OPC ceases to be the member [in the event of his death or his incapacity to contract; then the nominee becomes the member of such OPC. The new member shall nominate a nominee within 15 days of becoming the member of OPC.
7	When does OPC convert into private or public company?	Where the Paid Up Share Capital exceeds Rs 50 lakhs or average Annual Turnover of an OPC exceeds Rs 2 crores during the relevant period, it shall cease to continue as an OPC and shall covert within a prescribed time into a private or public company. Requisite approvals from the members of the company shall be obtained for alteration in the Memorandum and Articles of Association of the OPC.

[1] *The Term "Resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one financial year.*

company all by himself. An OPC is a separate legal entity which functions on the same principle as a company, but with only one member.

Section 2(62) of the Companies Act, 2013 states that a "One Person Company" means a company which has only one person as a member.

Relevant provisions for OPC in Companies Act, 2013 :

1. *Financial Statements:* An OPC is required to prepare and maintain the following:

i. Balance Sheet;
ii. Profit and Loss Account;
iii. Statement of changes in Equity;
iv. Explanatory Notes to Balance Sheet, Profit & Loss Account and Statement of Changes in Equity.

An OPC is not required to prepare and maintain Cash Flow Statements.

2. *Memorandum of Association (MoA):* The format for the MoA of an OPC shall be the same for any type of company; except that the MoA of an OPC shall include the name of the person (Nominee) who in the event of the death of the subscribers shall become the member of the company.

3. *Publication of Name of OPC:* The words "One Person Company" shall be mentioned in brackets below the name of the company, wherever it is printed, affixed or engraved.

4. *Signing of Annual Return:* Annual Return of the OPC, shall be signed by :

i) Company Secretary or;
ii) Director of the company, if there is no Company Secretary.

5. *Decision Making (if only one Director):* Where there is only one director on the Board of an OPC, for any business which is required to be transacted at the Board Meeting, it shall be sufficient if the resolution by such director is entered in the Minutes-Book and the same has been signed, dated and maintained under the provisions of Companies Act, 2013. The date of signing shall be deemed to be the date of the Board Meeting for all the purposes under Companies Act, 1956.

6. *Board Meetings:* An OPC shall be deemed to have complied with the provisions relating to holding of Board Meetings if at least one Board Meeting has been conducted in each half of a calendar year and the gap between the 2 meetings is more than 90 days. The provisions are not applicable where an OPC has only one Director on its Board.

Conclusion :

An OPC gives the advantage of limited liability to entrepreneurs whereby the liability of the member will be limited to the unpaid subscription money. This benefit is not available in the case of a sole proprietorship. As stated by the erstwhile Corporate Affairs Minister, in a press conference in 2013:

"Small entrepreneurs can now set up 'OPCs' to directly access target markets rather than being forced to share their profits with middlemen. This would provide tremendous opportunities for millions of people, including those working in areas like handloom, handicrafts and pottery. They are working as artisans and weavers on their own, so they don't have the legal entity as a company. But the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure."

It is a form of business organisation that will also have the feature of perpetual succession and will make it easier for entrepreneurs to raise capital for business. Also, since it will have lesser compliance burden compared to private companies, it can be a preferred mode of business for small industries.

Therefore, an OPC can possibly convert the disadvantages of sole proprietorship into value added features of a corporate business organization.

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