ABSTRACT

One Person Company (OPC) is a revolutionary concept which came into India with the introduction of Companies Act 2013. It is viewed as a hybrid of sole proprietorship and company form of business. The Article reveals the present scenario of OPC in India along with the conceptual framework. OPCs will boost up the entrance of young entrepreneurs who want to go solo to the organized sector of business and this will in turn mitigate the problem of unemployment. Even though this concept of OPC is flourished in many developed countries like UK, USA, China, Bahrain, Qatar, It is still in its nascent stage in India.

Keywords: One person company, Companies Act, Sole proprietorship, Directors.

INTRODUCTION

The Companies Act 2013 opens a new segment for organizing a business in India by providing the concept of One Person Company. It is a legitimate way to incorporate a company with only one member. This concept was first recommended by an expert committee constituted under the leadership of Dr. J.J.Irani in 2005. Till the establishment of new Companies Act, minimum of two persons were required to form a private company. So if anyone wanted to have as a sole entrepreneur without any interference, then the only option left was the sole proprietorship which is unregulated. Thus as a substantial shift from existing concept OPC was formed to suit the startup ventures and proprietary business. It offers a business platform which allows absolute control over all business affairs with limited liability.

OBJECTIVES

- To understand the conceptual framework of One Person Company.
- To analyze the present status of One Person Company.

Meaning

One Person Company is defined under Sec 2 (62) of the Companies Act 2013, “A company which has only one person as a member”.

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Sec 3 classifies OPC as a private company for all the legal purposes with only one member. Thus all the provisions related to the private company are applicable to an OPC unless otherwise expressly excluded.

Features of OPC

One shareholder

Only a natural person, who is an Indian citizen and resident in India shall be eligible to incorporate an OPC. The person must not have opened another OPC or be a Nominee in more than one OPC.

Nominee for the shareholder

The shareholder has to nominate another person who shall become the shareholder in case of death/incapacity of the original shareholder, with a written consent from the nominee. Only a natural person who is an Indian citizen and resident in India shall be a nominee for the sole member of an OPC.

Director

A minimum of one director is required for a One Person Company. But there is no constraint to recruit more than one director with a maximum of fifteen directors.

Compliances

While OPC has limited liability like a private limited company, many compliance requirements such as Annual general meetings, preparation of Cash Flow Statements etc. which apply to Private Limited companies are not applicable to OPC.

One Person Company Vs Sole Proprietorship

<table>
<thead>
<tr>
<th>Basis of Difference</th>
<th>One Person Company</th>
<th>Sole Proprietorship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Entity</td>
<td>Separate Legal</td>
<td>Not a Separate Legal Entity</td>
</tr>
<tr>
<td>Liability</td>
<td>Limited Liability</td>
<td>unlimited liability</td>
</tr>
<tr>
<td>Succession</td>
<td>Perpetual succession</td>
<td>No Perpetual Succession</td>
</tr>
<tr>
<td>Tax bracket</td>
<td>Separate from owner’s tax and huge Tax Burden</td>
<td>Tax paid by the owner</td>
</tr>
<tr>
<td>Legal requirement</td>
<td>The incorporation and operation requires various procedural formalities.</td>
<td>No procedural formalities required for incorporation and operation</td>
</tr>
<tr>
<td>Credit/ finance</td>
<td>Credit is granted after analysing the credit history of the company.</td>
<td>Credit is granted after analysing the credit history of the owner</td>
</tr>
</tbody>
</table>

Provisions for OPC

Memorandum & Articles of Association

The memorandum of a company shall state—

- the name of the company with the last word Private Limited;
- the State in which the registered office of the company is to be situated;
- the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
- the liability of members of the company, whether limited or Unlimited, with details;
- the amount of share capital with which the company is to be registered and the division thereof as specified;
Apart from this, name of the nominee shall also be included.

**Board Meeting (Section 173(5))**

OPC having only one Director should not require holding Board Meeting. In case of more than one Director, the at least one board meeting shall be conducted in each half of a calendar year and the gap between two meetings shall not be less than 90 days.

**Annual General Meeting**

Extra Ordinary General Meeting and notice convening to general meeting are not applicable to OPC. Only the resolution shall be communicated by the member of the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of the meeting.

**Financial Statement and Annual Meeting (Section 134 & 92)**

The financial statement shall be signed by only one director and the annual return shall be signed by the company secretary or where there is no company secretary, by the director of the OPC.

**Related Part Transactions (Section 193(1))**

Where OPC enters into a contract with the sole owner of the company, who is also the director of the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or recorded in the minutes of the Board meeting held next after entering into the contact. Further the company shall inform the registrar about every contract entered into by the company within a period of fifteen days from the date of approval by the Board of Directors.

**Conversion of OPC into Public or Private Company and Vice-Versa**

It is provided in the Act that when an OPC reaches a paid up capital of 50 lakh rupees or more or when the average turnover of the company which is Rs 2 Crores or more for a period of 3 years, the company shall be converted into a private limited company after making necessary changes in the Memorandum of Association and Articles of Association and shall comply with all the requirements of a private limited company and vice versa.

**Types of OPC**

Even though the Company Act 2013 provides for two forms of Company – Limited and Unlimited Company, for obvious reasons an OPC can only be a limited company which can be of two types:-

**Limited by Shares**

It is a company in which the liability of the members (shareholders) is limited to the amount due for their shares. This is limited in the Memorandum of Association of the Company. These companies shall comply with following requirements:

- Shall have minimum paid up capital of 1 Lakh rupees
- Restricts the right to transfer its shares
- Prohibits any invitations to public to subscribe for the securities of the company.

**Limited by Guarantee**

In this type of company, the liability of its members is limited to the amount each member guarantees to contribute to the aspects of the company in the event of winding up and this is limited by Memorandum of Association.
Process of incorporation

- Obtain Digital Signature Certificate [DSC] for the proposed Director(s)
- Obtain Director Identification Number [DIN] for the proposed director(s)
- Select suitable Company Name, and make an application to the Ministry Of Corporate Affairs for availability of name
- Draft Memorandum of Association and Articles of Association [MOA & AOA]
- Sign and file various documents including MOA & AOA with the Registrar of Companies electronically
- Payment of Requisite fee to Ministry of Corporate Affairs and Stamp Duty
- Scrutiny of documents at Registrar of Companies [ROC]
- Receipt of Certificate of Registration/Incorporation from ROC

Status of OPCs in India as On 11 Nov 2016

<table>
<thead>
<tr>
<th>Status</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active</td>
<td>8444</td>
</tr>
<tr>
<td>Under process of striking Off</td>
<td>20</td>
</tr>
<tr>
<td>Struck Off</td>
<td>7</td>
</tr>
<tr>
<td>Dormant under section 455</td>
<td>3</td>
</tr>
<tr>
<td>Captured</td>
<td>2</td>
</tr>
<tr>
<td>Total Number of OPCs</td>
<td>8476</td>
</tr>
</tbody>
</table>

(Source: Zauba technologies & data services)

Industrial classification of OPCs

OPCs, as a new form of business proved its dominance in the real estate, Renting and business activities as compared to other sectors. Sectors of public administration, fishing and extra territorial organizations showed a weak presence of this company.
Benefits

Easy compliance
One Person Companies are exempted from various procedural formalities not otherwise available to private companies such as conducting an AGM, general meeting or extra ordinary general meeting (EGM) etc., thereby making its operations very convenient and hassle free.

Separate legal entity and limited liability
This is another stress buster that new Company law has brought for entrepreneurs. Under separate legal entity clause of OPC, entrepreneurs will be treated separate from business and have limited liability. Thus the personal assets of the shareholders and directors remained protected in case of any default.

Unorganized sector coverage
One Person Company will bring the unorganized sector of proprietorship into the organized version of private limited liability. A range of small and medium enterprises, doing business as sole proprietors, might enter into the corporate domain and can benefit from the policies and schemes of government and banks.

Boost for beginners
OPC is best suited for those who want to fly solo and have great ideas but don’t want to share with anyone. Since OPC is one notch higher than sole proprietorship, it provides better market, economic and management opportunities.

Perpetual succession
An OPC being an incorporated entity shall be a perpetual entity and thereby, unlike proprietorship, the death or incapacity of sole member would not dissolve the company.

Hurdles

Huge cost of incorporation
When compared with sole proprietorship OPC has high cost incorporation and statutory compliances. Registration of OPC requires a lot of paperwork and it is a time consuming process.
Self-Ruling

Since One Person Companies are autocratic form of organization all decisions are taken without consultation of any stakeholders. Thus one person decision without any accountability can break the fate of OPC.

Interest conflict between investors and directors

The blurred line between ownership and control may call for serious unethical business practices and hence, may result into serious corporate governance issues.

Tax implications

OPCs are taxed at 30% as applicable to private companies whereas sole proprietors are taxed at the rate applicable to individuals. So OPCs seem to be less lucrative concept as it imposes heavy financial burden as compared to sole proprietorship.

RECOMMENDATIONS

- The Income Tax Act 1961 should recognize OPC and impose different tax schemes upon them.
- Foreign companies and NRIs should be given a platform form an OPC without any harsh restrictions and stringent legal formalities.
- Legal compliances should be made less complicated and the registration process should be made more flexible.
- The awareness of OPC should be brought into broad daylight.
- Banks and financial institutions should not deny for the financial aid to the OPC as it is a new form of business with no past credit records.

CONCLUSION

One Person Company is a next big thing in India and it will be favourable for the economic conditions in India through small to medium sized entrepreneurship. The success of One Person Company is purely dependent on its implementation. But, the concept is a necessity in the changing business arena of the country where entrepreneurs are willing to take risk and at the same time needs protection to cover up that risk. We need to understand that the concept holds good in a matured economy where corporate governance is an integral part of all organizations. In India, OPC is in its infancy stage and hence, requires ample time to usher throughout the economy.

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