सत्यमेव जयते

**Ministry of Corporate Affairs**
**Government of India**
**www.mca.gov.in**

# OPC:
ONE PERSON COMPANY

## Alone, you can do wonders,
# as a company!

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**OPC: ONE PERSON COMPANY**

## INTRODUCTION

The introduction of OPC in the legal system is a move that would encourage corporatization of micro businesses and entrepreneurship with a simpler legal regime so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances. This will not only enable individual capabilities to contribute economic growth, but also generate employment opportunity. With the implementation of the Companies Act, 2013, a single national person can constitute a Company, under the One Person Company (OPC) concept.

## IMPACT OF OPC IN INDIAN ENTREPRENEURSHIP

The concept of One Person Company is still in its nascent stages in India and would require some more time to mature and to be fully accepted by the business world. With passage of time, the OPC mode of business organisation is all set to become the most preferred form of business organisation. The benefits emanating from this novel concept are many, to name a few -

- Minimal paper work and compliances
- Ability to form a separate legal entity with just one member
- Provision for conversion to other types of legal entities by induction of more members and amendment in the Memorandum of Association.

The One Person Company concept would hold a bright future for small traders, entrepreneurs with low risk taking capacity, artisans and other service providers. The OPC would act as a launch pad for such entrepreneurs to showcase their capabilities in the global arena. The foreign joint venture capitalists are going to find it quite feasible to deal with a sole entrepreneur rather than having to even it out with numerous shareholders / directors leading to chances of discrepancy in ideas, concepts and understanding of the business.

The counterparts of Indian OPCs in Europe, United States and Australia have resulted in further strengthening of the economies in the respective countries. OPCs in India are aimed at structured organised business units, having a separate legal entity ultimately playing a crucial role in further strengthening of the Indian economy.

## OPC OR PROPRIETORSHIP CONCERN! YOUR CHOICE

| OPC | SOLE PROPRIETORSHIP |
|---|---|
| Separate Legal entity | Not a Separate Legal Entity |
| Limited Liability | Unlimited liability |
| Perpetual succession | No perpetual succession |
| Loan - not the sole responsibility of the owner | Loan - sole responsibility of the owner |
| Registration required | Registration not required |
| Finance - credit record of the OPC | Finance - credit record of the Owner |

OPC structure would be similar to that of a proprietorship concern without the ills generally faced by the proprietors. One most important feature of OPC is that the risks mitigated are limited to the extent of the value of shares held by such person in the company. This would enable entrepreneurial minded persons to take the risks of doing business without the botheration of litigations and liabilities getting attached to the personal assets. One Person Company has a separate legal identity from its shareholders, *i.e.,* the company and the shareholders are two different entities for all purposes. On the other hand proprietorship does not have a separate legal identity from its members. The existence of One Person Company is not dependent upon its members and hence, it has a perpetual succession, *i.e.,* death of a member does not affect the existence of the company and the Sole proprietorship is an entity whose existence depends on the life of its members and death or any other contingency may lead to the dissolution of such an entity.

In OPC, the business head is the decision maker, he is not dependent on others for suggestions or implementation of suggestions *etc.,* resulting in quicker and easier decision making. He is the sole person who runs the business and hence, the question of consensus or majority opinion *etc.,* does not arise.

| COMPANY VS. OPC | | |
|---|---|---|
| COMPANY | Common Seal | OPC |
|  | Perpetual Succession |  |
| | Separate legal entity | |
| | Limited Liability | |
| | Separate Ownership | |
| | Management and Control | |

## ONE PERSON COMPANY

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

## SALIENT FEATURES OF OPC

- Personal freedom that allows the Professional, skilled person to adopt the business of his choice.
- Personality driven passion and implementation of a business plan.
- The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
- Personal commitment to the business which is a sole idea of the person and close to his heart.
- It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.
- A One Person Company is incorporated as a private limited company.
- It must have only one member at any point of time and may have only one director.
- The member and nominee should be natural persons, Indian Citizens and resident in India. 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 calendar year.
- One person cannot incorporate more than 1 OPC or become nominee in more than 1 OPC.
- If a Member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.
- OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in 3 immediate preceding consecutive years.
- No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.
- Such Company cannot carry out Non Banking Financial Investment activities including investment in securities of any body corporate.
- No such company can convert voluntarily into any kind of company unless 2 years is expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into one person company by passing a special resolution in the general meeting.

## PRIVILEGES AVAILABLE TO OPC

- OPCs would provide the start-up entrepreneurs with new business idea.
- OPC provides an outlet for the entrepreneurial impulses among the professionals.
- The advantages of limited liability. The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability.
- OPCs are not proprietorship concerns; hence, they give a dual entity to the company as well as the individual, guarding the individual against any pitfalls of liabilities. This is the fundamental difference between OPC and sole proprietorship.
- Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.
- Business 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.
- Mandatory rotation of auditor after expiry of maximum term is not applicable.
- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.
- For the purposes of holding Board Meetings, in case of a one person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, atleast one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days.
- The financial statements of a one person company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company needs to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.
- Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

## TYPES OF OPC (SECTION 3(2))

- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company.

**MEMORANDUM (SECTION 4)**

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;
- the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
- in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

**DIRECTORS {Sections 152(1), 149(1)(a)& (1)(b)}**

- Articles of a company may provide for the appointment of the first directors
- If articles are silent then the subscriber to the memorandum who is an individual shall be deemed to be the first director of the company
- May have a single director
- Maximum-15 directors and more than 15 directors after passing Special Resolution
- Director must have stayed in India for a total period of not less than 182 days in the previous calendar year.

**MEETINGS OF BOARD {SECTION 173(5)}**

- At least one meeting of the Board of Directors to be conducted in each half of a calendar year
- Gap between the two meetings should not be less than ninety days
- Exemption – if company has only one director.

**EXEMPTION**

- Section 96. Option to dispense with the requirement of holding an AGM
- Section 98. Power of Tribunal to call meetings of members
- Section 100. Calling of extraordinary general meeting.
- Section 101. Notice of meeting.
- Section 102. Statement to be annexed to notice.
- Section 103. Quorum for meetings.
- Section 104. Chairman of meetings
- Section 105.Proxies
- Section 106. Restriction on voting rights
- Section 107. Voting by show of hands
- Section 108. Voting through electronic means
- Section 109. Demand for poll
- Section 110.Postal ballot
- Section 111. Circulation of members' resolution

**PROCESS OF INCORPORATION OF ONE PERSON COMPANY (OPC)**

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