<u>One Person Company</u>

Introduction

A new concept has been introduced in the Company's Act 2013, about the One Person Company (OPC). In a Private Company, a minimum of 2 Directors and Members are required whereas in a Public Company, a minimum of 3 Directors and a minimum of 7 members. A single person could not incorporate a Company previously.

But now as per Section 2(62) of the Company's Act 2013, a company can be formed with just 1 Director and 1 member. It is a form of a company where the compliance requirements are lesser than that of a private company.

Definition of One Person Company

Section 2(62) of Companies Act defines a one-person company as a company that has only one person as to its member.

The Minimum Requirements to Form an OPC

1. Member – There is a minimum requirement of one member.
The member should:

- be a natural number
- cannot be a minor
- should be an Indian citizen
- Should be resident of India

2. Director – There is a minimum requirement of minimum one director and a maximum of 15. The member and the director can be the same person or different persons. Generally, the director will be paid remuneration and the profit part goes to the member. The director will take care of the management of the company.

3. Nominee – There is a minimum requirement of one nominee. Written consent of the nominee in INC-3 is mandatory. The same is filed with the ROC. The nominee of one OPC cannot start his own OPC. A nominee at a later stage may withdraw his nomination if he desires so. The nominee should communicate about the intention to withdraw his nomination to the member and the member will further intimate the same to the Board within 15 days. The Board, in turn, informs the ROC within 30 days in INC-4. It is very important to note that, the member should appoint a new nominee. An OPC cannot function without the presence of the nominee.

Difference between Proprietorship and OPC

Particulars	Proprietorship	One Person Company
Registration	Not Compulsory	Can be registered under MCA and Companies Act 2013
Legal status of entity	Not considered as a separate legal entity	Separate legal entity
Members liability	Unlimited liability	Limited to the extent of share capital
Minimum number of member	Sole Proprietorship	Minimum number of 1 person
Maximum number of members	Maximum 1 person	Maximum 2 person
Foreign ownership	Not allowed	Allowed if one is the director and the other is the nominee. Both the director and the nominee cannot be foreign citizens
Transferability	Not allowed	Allowed to 1 person only
Survival	comes to end on death or retirement of the member	Existence is independent of directors or nominee
Taxation	Taxed as an individual	Tax rate is 30% on profits plus cess and surcharge

Important Points:

1. We can only incorporate only one OPC. The law does not permit the incorporation of more than one OPC by the same owner. This is the same case with regards to the nominee of an OPC also. A nominee of an OPC cannot be a nominee of another OPC.
2. A minor cannot become a nominee or can hold shares of a beneficial interest in an OPC.
3. An OPC cannot enjoy the status of an OPC after achieving the ceiling limit as prescribed by the Companies Act, 2013. The rules state that where the paid-up capital of a PC exceeds Rs. 50 lakhs and its average annual turnover exceed Rs.2 crores. Upon crossing the above-mentioned threshold it should be converted to a private or public company. The conversion should take place within 6 months.
4. It cannot voluntarily convert into a private or public company unless it has completed two years from the date of incorporation except in point (3).
5. Many of us feel that the cost of registration is cheaper than that of the private company. But in practice, that is not the case. The cost of registration depends upon the authorized capital.
6. OPC shall not carry out non-banking financial investment activities.
7. OPC cannot be converted or incorporated into a section 8 Company.
8. OPC shall not invest into the securities of Body Corporate.
9. Mandatory Rotation of Auditor after expiry of Maximum term is not applicable.
10. OPC shall not require to constitute AGM.

Features of a One Person Company

a. **Private company:** Section 3(1) (c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.

b. **Single-member:** OPCs can have only one member or shareholder, unlike other private companies.

c. **Nominee:** A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.

d. **No perpetual succession:** Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.

e. **Minimum one director:** OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.

f. **No minimum paid-up share capital:** Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.

Steps for Incorporation of an One Person Company (OPC)

1. The first step is the directors have to obtain Digital Signature (DSC) and Director Index Number (DIN). DIN is mandatory for all directors. To apply DIN the person must have a PAN. DIN is applied using e-form DIR-3 downloaded from MCA. The DSC obtained should be registered with the MCA portal.

2. The second step is to reserve a unique name for the OPC through RUN (Reserve Unique Name) or SPICe-32. This is done through form no. INC-1. Only after receiving the Certificate of Registration from the ROC, the OPC can enter into a contract or business in the proposed name.

3. Consent letter has to be obtained from the nominee in INC-3. The nominee will become the member of an OPC when the owner loses his capacity to contract. The name of the nominee is to be mentioned.

4. Now we have to draft the Memorandum of Association (MOA) and Articles of Association (AOA). The models for AOA are given in tables F, G, H and J of schedule I. If the AOA has entrenchment provisions, it has to be intimated to the Registrar through Form INC-2. This is in the case of newly incorporated OPC. The MOA and AOA have to be signed. The sign should be attested by a witness. The address and occupation of the member who signs are mandatory. INC-33 and INC-34 have to be prepared and uploaded.

5. The next step is the filing of the application with the Registrar of Companies (ROC). The form is INC-2. It is the incorporation form. INC-3 is a part of this. We should fill all the details with the required attachments.

6. The affidavit in Form No. INC-9

The basic mandatory compliance are

- a. Atleast one Board Meeting in each half of calendar year and time gap between the two Board Meetings should not be less than 90 days.
- b. Maintenance of proper books of accounts.
- c. Statutory audit of Financial Statements.
- d. Filing of business income tax return every year before 30th September .
- e. Filing of Financial Statements in Form AOC-4 and ROC Annual return in Form MGT 7.