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CHARTERED ACCOUNTANTS

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One Person Company under Companies Act, 2013: An Analysis

Introduction

The concept of One Person Company [OPC] is a new form of business, introduced by The Companies Act, 2013, thereby enabling Entrepreneur(s) carrying on the business in the Sole-Proprietor form of business to enter into a Corporate Framework. One Person Company is a hybrid of Sole-Proprietor and Company form of business, and has been provided with relaxed requirements under the Act.

It is expected that this model would encourage small and medium enterprises/ business organizations in the unorganized sector with the concept of limited liability, and open avenues for more favorable banking facilities. All provisions relating to private companies would apply to an OPC, unless otherwise specially excluded. However, procedural formalities such as conducting annual general meetings and meetings of Board of Directors are not applicable to OPCs.

OPC's as not profit making companies and Corporate Social Responsibility

An OPC can never be able to get itself registered under Section 8 of the Act, not only because a single person cannot be an association, whether for profit or not, but also because it is specifically prohibited under the Rules. An OPC cannot even be part of the club of companies that are required to contribute a small portion of their profits towards their corporate social responsibility.

OPC and Meetings

For a meeting there should always be more than one person as one person cannot meet himself. Recognizing this, Section 96(1) of the Companies Act, 2013 excludes One Person Company from holding an Annual General Meeting in each year. Further, proviso to section 173(5) of the Act states that if there is only one director in an OPC then the provisions relating to minimum number of Board Meetings and quorum will not be applicable.

Limits on Capital and Turnover

An OPC can never have a paid up capital beyond ₹50 Lakhs and its average annual turnover in a period of three years could never cross ₹200 Lakhs. The Rules state that an OPC cannot voluntarily convert into any other type of company during the first two years of its incorporation unless its capital or turnover increases beyond the threshold limit during the relevant period. If one has to see if there is any increase in the capital or turnover during a relevant period, it must first be checked only after the expiry of relevant period which refers to a period of three consecutive financial years.

Single Person-Single OPC

OPCs are not meant for those who would like to double. The rules say that a single person can form only one OPC. He cannot have different OPCs for different lines of business. A person can be a shareholder in only one one person company at any given time.

OPC and Nominee

The person forming the One Person Company has to nominate a Nominee with his written consent who, in the event of death or inability to contract of the owner of the One Person Company, shall come forward and take over the reins of the one person company.

The requirements of being an Indian citizen also apply to the nominee. Further if the person so nominated becomes the member of such a One Person Company and is already a member of another One Person Company, at the same time, by virtue of rules has to decide within six months which one person company he has to continue. The member can change the nominee at any point of time. A minor is not entitled to become the nominee of the single member of an OPC.

On the death of the sole member, the nominee shall be the person recognized by the company as having title to all the shares of the member. 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.

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.

Contracts with OPC

In case of contract with OPC, Section 193 says : “Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the Company who is also the director of the Company, the company shall, unless the contract is in writing, ensure that the terms of the contract of offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of directors of the company held next after entering into contract”.

Share Transfer

If the single member wants to transfer his entire shares in the company to another individual, all the provisions with respect transfer of shares will also apply. In case the transfer is not approved by the Board, the transferee has the statutory right to apply for a rectification of register of members of the OPC. Change in nominee may also arise. In some cases, the nominee may be the transferee.

Liability of the member of the OPC

Section 3 (2) of the Act provides that an OPC formed under the Act may be either a company limited by shares, or limited by guarantee or an unlimited company. The liability of the member of the OPC may be either limited or unlimited and the same shall be stated appropriately in the Memorandum of Association of the OPC. In the case of an OPC having a share capital, the Memorandum of Association shall state the amount of share capital with which the company is to be registered and the division thereof into shares of fixed amount and the number of shares which the subscriber to the memorandum agrees to take which shall not be less than one share. It is also provided that the memorandum of association of the OPC shall indicate the name of the person who, in the event of death of the subscriber, shall become the member of the company.

Taxation

Since nothing has been specified as such by the finance ministry, it is assumed that the rates of taxation applicable for a private limited company shall apply to a One Person Company. Net profits, which are calculated by deducting all allowable expenses from the turnover of sales, shall be taxable at the rate of 30 percent plus education cess.

From taxation perspective, the concept of OPC may not appeal to smaller proprietorships (to convert themselvesin OPCs) since the base rate of tax of a company is quite high and may result in a higher incidence of taxation for them.

Related Party Transactions

Where One Person Company enters into a contract with the sole owner of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

Further, the company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board.

This clause shall be very much in vogue since the business of the One Person Company may use many assets of the owner and may pay compensation for that. Examples may be rent paid for using property or machinery or Furniture owned by the Owner. It may pay interest on loans taken from the owner. It may pay salaries to the Owner. All these contracts are covered under the section.

Conversion from one person company to private limited and vice versa

It is provided in the Act that when a One Person Company reaches a paid up Capital of 50 lakh rupees or more or when the average turnover of the company which is ₹2 Crores or more for a period of 3 years, then the company shall be converted into a private limited company after making the necessary changes in the memorandum of association and articles of association and shall comply with all the requirements of a private limited company.

Conversion of a private limited company into a one person company- A private limited company which does not have a paid up capital of more than ₹50 lakhs or where the average annual turnover for the past 3 years is less than ₹2 Crores can convert itself into a One Person Company and enjoy the benefits as such.

Privileges and Exemptions to OPC

Apart from the benefits of private limited company, the following exemptions/ privileges attracts the person to form OPC:-

- Financial Statement of OPC may not include cash flow statement.
- OPC can have only one director as against minimum number of three directors in the case of a public company and two directors in the case of a private company.
- There is no requirement to hold minimum four Board meetings and gap between two consecutive meetings may exceeds 120 days. Further, it would be sufficient if at least one Board meeting is conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.
- The provisions relating to sending of notice atleast 7 days before the Board meeting, participation though video conferencing or other audio visual means, quorum does not apply to OPC if there is only one director on its Board of Directors.
- Company Secretary ('CS') alone can sign the Annual Return of OPC. However, if there is no CS, Director of OPC need to sign the Annual Return as against the requiremenst of companies other than OPC's where, Annual Return need to be signed by a director and the CS, or where there is no CS, by a company secretary in practice.
- Financial statement, Board's report, etc., of OPC can be signed by one director, for submission to the auditors for their report thereon.
- OPC need not to hold AGM.
- The provision of Postal ballot, Circulation of members' resolution, Power of Tribunal to call meetings of members, etc. does not apply to OPC.
- The provision relating to appointment of an individual as an auditor for more than one term of five consecutive years; and an audit firm as an auditor for more than two terms of five consecutive years shall not apply to OPC.
- As per the Companies (Share Capital and Debentures) Rules, 2014, share certificate need to be issued under the seal of OPC, which shall be signed by one director or a person authorized by the Board of OPC and CS or any other person authorized by the

Board for the purpose. Whereas, in case of companies other than OPC, share certificate shall be issued under the seal of the Company and signed by two directors, one of whom shall be the Managing Director or Whole-time Director; and CS, if there is one or any other person authorised by the Board.

Conclusion

Doing business under the One Person Company form of business ownership is a mixed blessing to the single entrepreneur. While it avoids frittering away his resources, time and energy by confessing on him certain exemptions/privileges on procedural matters but at the same time results in higher tax liability. It remains to be seen whether the benefits outweigh the cost. As of now the introduction of One Person Company seems to be a flash in the pan. Where, there are a multiple of advantages flowing to an OPC there are some dark spots also, especially with regard to tax liability. To make the OPC concept workable and acceptable corresponding changes in the Income Tax Act are also required.

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