

One Person Company

A N GAWADE & CO, Chartered Accountants

Under New
Companies
Act, 2013

About SAN

SAN Corporate Advisors P Ltd is leading financial and corporate advisory boutique firm having presence and reach across India. SAN has expertise in financial structuring, Joint Ventures, Merger & Acquisitions, Taxation, and other corporate affairs.

SAN is based out of Pune has advised deal worth more than Rs. 500 Cr plus since last 6 years. It has in-house entire team of experts to cater the need of its clients.

Introduction :

'One Person Company' (OPC) is an revolutionary concept is a step forward to facilitate more business friendly corporate regulations in India. The Companies Act, 2013 aims pave the way for a more modern and dynamic legislation, to enable growth and greater regulation of the corporate sector in India.

Till recently, if you wanted to set up a private company, you needed at least one other person because the law mandated a minimum of two shareholders. So, for the person wanting to venture alone, the only option was proprietorship, an onerous task since it is not legally recognized as a separate entity.

OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc. all in the name of a separate legal entity.

OPC provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc all in the name of a separate legal entity.

Single entrepreneur can manage his business on his own. It can have only one member at any point of time. It may have only one director but as per the provisions of section 149 can however appoint more than 15 directors after passing a special resolution. So, the key difference between OPC and sole proprietorship is the way the liabilities are treated. For instance, in an OPC the promoter's liability is limited in the event of a default or legal issues. Also one person can take a decision without waiting for other director's consent and wasting of time and energy in convincing other directors can be avoided.

The Concept and Salient Features :

One Person Company (OPC) is defined in sub section 62 of section 2 of the Companies Act, 2013 which reads as follows :

“One person company means a company which has only one member”

The important features of the One Person Company (OPC) –

- OPC has only one person as a member/shareholder.
- OPC can be registered only as a Private Company.
- OPC may be either a company limited by share or a company limited by guarantee or an unlimited company.
- An OPC limited by shares shall comply with following requirements :
 - Shall have minimum paid up capital of INR 1 lac
 - Restricts the right to transfer its shares
 - Prohibits any invitations to public to subscribe for the securities of the company.
- An OPC is required to give a legal identity by specifying a name under which the activities of the business could be carried on.

The words “One Person Company” should be mentioned below the name of the company, wherever the name is affixed, used or engraved.

Eligibility Norms For Incorporation and Nominee Member :

As per rule 3(1) of the Companies (Incorporation) Rules 2014, only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate/ form a OPC. Indian resident means who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.

- A nominee for OPC has to be a natural person who is an Indian citizen and resident in India.
- No person shall be eligible to become a nominee in more than one OPC.

At the time of incorporation of OPC, the sole member of OPC is required to appoint another person as his nominee and his name shall have to be mentioned in the Memorandum of Association of the OPC.

The nominee so appointed shall become the member in the following situation :

- a. In the event of the sole member’s death; or
- b. In the event of the sole member becoming incapacitated to contract.

A nominee so appointed is required to give his written consent for the same which is required to be filed with the ROC at the time of incorporation of the OPC along with its MOA and AOA.

A nominee has the right to withdraw his consent if he so desires.

Following person cannot be member of OPC :

- A minor shall not be eligible to become a member or nominee of the OPC or can hold share with beneficial interest.
- Foreign citizen.
- Non Resident.
- A person incapacitated to contract.
- Persons other than natural person i.e living human being.

The sole member shall nominate another person as nominee within 15 days of the receipt of notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person. The company shall within 30 days of receipt of the notice of withdrawal of consent has to file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member and the written consent of such another person.

As per rule 4 of the Companies (Incorporation) Rules 2014 :

1. Memorandum of OPC should mention the name of the nominee by the OPC subscriber with the Registrar in Form No. INC.2
2. The consent of his nominee is to be filed in form no. INC.3
3. OPC to file with the Registrar within 30 days any change in membership
4. Form no. INC.4 is to be filed for the intimation for such cessation and nomination.

Incorporation Stages:

Name Availability :

1. Information required for DIN :

a. DIN No. if available

b. Permanent residential address of the applicant

1. Passport
2. Voters Id Card
3. Driving License
4. Aadhaar Card
5. Or any other valid address proof

c. Educational qualification of the applicant

d. Identity Proof.

Other Information To Be Provided :

A. The applicant should provide the following details :

1. Proposed name : Maximum 6 names can be quoted which will be considered on the basis of name subscribed (first to last basis)
2. Proposed business to be carried on
3. Capital to be contributed for the formation
4. State in which registered office of the LLP to be situated
5. Details of nominee

B. After obtaining name availability, within 60 days we have to file incorporation documents with ROC. The following are the attachments :

1. Memorandum of Association of the Company
2. Articles of Association of the Company
3. Proof of identity of the member and the nominee
4. Residential proof of the member and the nominee
5. Consent of the nominee in form INC.3
6. Affidavit from the subscriber and first director to the memorandum in the form no. INC.9
7. Specimen signature in form INC.10
8. List of all the companies (specifying their CIN) having the same registered office address, if any; specimen signature in form INC.10
9. Consent from director
10. Proof of registered office address
11. Copy of PAN card of member and nominee
12. Details of duration of stay at present address if it is less than one year address of the previous residence has to be provided
13. Details of the name of the nominee
14. Details of entrenchment of articles.

Status – Whether Private Limited or Public Limited ?

Section 2(68) of the bill provides for the definition of private company to include OPC. It also explicitly excludes OPS from the condition for minimum number of members i.e. 2 for its formation. This implies that all the provisions of the act which is applicable to a private company shall also be applicable to OPC unless otherwise it is specifically excluded from its compliance. Also section 3 of the bill, further clarifies the fact that OPC shall be treated as a private company for all legal purposes with only one member.

TYPES OF OPCS :

One person company may be

1. A company limited by shares or
2. A company limited by guarantee or
3. An unlimited company

Thus, OPC may be of the following 5 types :

1. One person company (OPC) limited by shares
2. OPC limited by guarantee and having share capital
3. OPC limited by guarantee and having no share capital
4. OPC unlimited having share capital
5. OPC unlimited not having share capital.

OPC Is Required To File Annual Return :

As per the provisions to section 92(1) of the Companies Act 2013, the annual return in case of OPC shall be signed by the company secretary or where there is no company secretary, by the director of the OPC.

Financial Statements :

1. The financial statements of a one person company can be signed by one director alone.
2. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company [Section 2(40)].
3. Board 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.
4. OPC should file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred and eighty days from the closure of the financial year.

Annual General Meeting :

As per section 96(1) of the Companies Act 2013, the provision relating to holding of AGM is not mandatory for a OPC.

Board Meeting :

At least 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 ninety days.

For the purposes of holding board meetings, in case of one person company which has only one director, it shall be sufficient compliance if all resolutions to be passed by such a company at a board meeting, are entered in the minutes book required to be maintained under section 118 and signed & 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. If OPC has only one director, it is exempted from holding Board meetings.

AUDIT AND AUDITORS :

Compulsory rotation of auditors – Not applicable

Provision for compulsory rotation of auditor in section 139(2) are not applicable to OPC as they apply to listed companies and companies belong to such class or classes as may be prescribed (unless central govt. applies it to OPCs through notification).

An OPC needs to gets its accounts audited just like a normal company.

An OPC has to file annual returns, Balance sheet, Profit & Loss statement just like a normal company i.e within 180 days of closure of FY.

Any change in member or nominee is to be notified to the ROC by E-form INC 4.

OPC can file a intimation for cessation in E-form INC-5 as per the rules prescribed from time to time.

Other compliances as to Charge registration, appointment of director (if more than one), etc, apply mutatis mutandis to OPC

Applicability Of Chapter – VII (Management & Administration) :

The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (3).

For the purposes of section 114 (Ordinary and Special Resolutions), any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 (Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot) and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 (Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot) and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

Cessation Of OPC Status :

As per rule 6(1) of the Companies (Incorporation) Rules 2014, OPC shall cease to be entitled to continue as a OPC if :

1. Its paid – up capital exceeds ` 50 lacs; or
2. Its average annual turnover during the relevant period i.e. immediately preceding 3 consecutive financial years exceeds ` 2 crores
3. Intimation for increase in threshold limit has to be filed in form INC.5

Conversion Of OPC Into Public Or Private Company :

As per rule 6(2) of the Companies (Incorporation) Rules 2014, OPC is mandatorily required to be converted itself into either a private or public company. Such conversion shall happen within 6 months from the

1. Date of increase of its paid up capital as mentioned in rule 6(1) i.e. exceeding ` 50 lacs; or
2. Last day of the relevant period during which its average annual turnover exceeds ` 2 crores
3. Application for conversion has to be made in form INC 6.

As per rule 6(2), (3) and (6) of the Companies (Incorporation) Rules 2014, OPC should ensure that the conversion shall happen in accordance with the provisions of section 18 of the Companies Act,2013 which provides for necessary alteration in memorandum and articles, read with section 122 of the Act. The other requirements of minimum capital, minimum number of directors and subscribers as the case may be need to be complied with at the time of any such conversion by OPC.

Conversion Of Private Companies Into OPC :

1. A private company other than a company registered under section 8 of the act having paid up share capital of ` 50 lacs or less or average annual turnover during the relevant period is ` 2 crores or less may convert itself into one person company by passing a special resolution in the general meeting.
2. No objection in writing from members and creditors is required before passing resolution.
3. A copy of special resolution has to be filed with Registrar within 30 days.
4. The company shall file an application to the Registrar along with the following documents :

i. The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of company is Rs. 50 lacs or less or average annual turnover is less than Rs. 2 crores, as the case may be;

ii. The list of members and list of creditors;

iii. The latest audited balance sheet and profit & loss account; and

iv. The copy of no objection letter of secured creditors.

Provisions Not Applicable To OPC :

As per section 122, the following provisions shall not apply to a One Person Company :

Sections	Particulars
Section 98	Power of tribunal to call meetings of members
Section 100	Calling of extra ordinary general meeting
Section 101	Notice of meeting
Section 102	Statement to be annexed with the 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 Poll
Section 110	Postal Ballot
Section 111	Circulation of member's resolution.

Due Date Of Filing Forms For OPC :

<i>Sr. No.</i>	<i>Nature of E-Forms</i>	<i>Form No.</i>	<i>Due Date Of Filing</i>
1.	Application for reservation of name	INC.1	NA
2.	Application for incorporation	INC.2	60 days
3.	Nominee – Consent Form	INC.3	15 days
4.	Change in Member/Nominee	INC.4	30 days
5.	Intimation of exceeding threshold – i.e. ceased to be OPC	INC.5	60 days
6.	OPC – Application for conversion	INC.6	NA
7.	Filing of Special Resolution	MGT.14	30 days
8.	Application for DIN	DIR 3	NA
9.	Verification for DIN	DIR 4	NA

Fee for filings etc. under section 403 of the Companies Act, 2013 :

Table of fees for the documents required to be submitted, filed, registered or recorded or for any fact or information required or authorized to be registered under the Act, shall be

submitted filed, registered or recorded within the time specified in the relevant provision on payment of fee as prescribed in enclosure attached.

Taxation of OPC:

Though the concept of an OPC has been incorporated in the Companies Act, 2013 but the concept of same does not exist in tax laws as yet, as a result an OPC can be put in the same bracket of taxation as other private companies. In case of Sole proprietorship, business income is added to the individual income and hence tax slab between 10% and 30% is available. But the same is not the case with private company. According to Income Tax Act,1961 a private limited company is taxable at a flat base rate of 30% in addition to that surcharge and education cess is also applicable. Also, provision of Minimum Alternative Tax (MAT) is also applicable to private company. The concept of one person company is an attempt to organize the unorganized, yet a very large, sector of proprietorship concerns. and other entities which will be convenient to regulate and manage if the same is in the form of One Person Company.

Contracts By One Person Company :

If OPC 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 and where the contract is not in writing, it should be ensured that the terms of the contract or 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. The said provision is not applicable in case the contract is in writing and where the contract entered is by the company in the ordinary course of its business.

The company should inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors within a period of fifteen days of the date of approval by the Board of Directors.

Opportunities To Small Entrepreneurs :

Small entrepreneurs can carry on their business in form of OPC with status of separate legal entity. The concept is good for entrepreneurs with new ideas and ventures trying to explore the corporate world with minimum compliances and maximum benefits as exemptions. Various small and medium enterprises, doing business as sole proprietors, might enter into the corporate domain through OPC. The unorganized sector of the economy will find an outlet to show their entrepreneurial expertise.

So the small entrepreneurs enjoy the benefit of OPC and can hence boost the economy of our country.

End Note :

OPC company is like an *One Man Army*. The compliance burden is very less and the liability of the members is very limited is an added advantage. OPC is expected to benefit people who are into self employment and many small scale sectors. It is a remarkable feature of the Companies Act,2013. "OPC should boost the confidence of small entrepreneurs".

Courtesy CA - Mayur Zanwar, FCA

CONTACT US

SAN Corporate Advisors P Ltd

101, Sanskruti Vijay, Lane 9/3, Prabhat Road, Pune-411004

Ph. 020-25421093, Email san@sanadvisors.com

www.sanadvisors.com ,

A N GAWADE & CO, Chartered Accountants

- *101, Sanskruti Vijay, Lane 9/3, Prabhat Road, Pune-411004*
- *Dadiseth Agyari Road, Kalbadevi, Mumbai.*

Ph. 020-25421093 Email ang@angca.com

www.angca.com

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