

## ONE PERSON COMPANY: CONCEPT, FEATURES & GROWTH IN INDIA

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### ABSTRACT

*With ever changing scenario of business the new concept of One Person Company has been emerged as per Companies Act 2013. It is a hybrid of sole proprietor business and company form of business. Although this concept of Entrepreneurship is new in India and it will require time to be accepted amongst the people. There is a need to provide one person or young entrepreneurs a full freedom to contribute in the economic activities. This paper is therefore an attempt to understand the concept opportunities and threats related with one Person Company in India. OPC is completely different from Sole proprietary in terms of law and workings. One person Company and Sole proprietary sounds just like words. OPC is treated as a personal company solely having a separate legal entity and liability. "One Person Company" could be a company that has only 1 person as a member. And it's treated sort of a personal Company. each one person company shall need to a minimum of hold one meeting of the Board of administrators in every 1/2 a yr and also the gap between the 2 conferences isn't but ninety days. A sole proprietary isn't a legal entity sort of a partnership or a company. The advantage to sole proprietors quite entrepreneurs needn't enter into board conferences and annual conferences. Returns area unit signed beneath their name. they need versatile operating hours. financial gain and losses area unit taxed on the individual's income instrument. It merely refers to an individual WHO owns the business and is in person to blame for its debts. This was looked upon as a barrier in forming private limited company by businessmen who do not want any other participant in their business. Since OPC is a new concept and a gift from the new Act, it is important to understand some of its salient features and how best the professionals can expand their activities by forming OPC. Till now professionals have been more comfortable working either as sole proprietorships or partnerships or by forming 'limited liability partnership' or often times, through an unwritten code of understanding and arrangement between the partners. However, the new structure of doing business through OPC has opened up vast opportunities before the professionals and other entrepreneurs. Broadly, the beneficial aspects of the OPC structure are its separate legal entity, perpetual succession, limited liability and freedom from complying with numerous formalities associated with doing business otherwise through the traditional limited liability structure.*

**KEYWORDS:** *One Person Company (OPC), Companies ACT – 2013, Sole Proprietorship.*

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### Introduction

According to the Companies Act 1956 there is no such idea of One Person Company. This idea was first suggested by the J.J Irani Committee in May 31, 2005. And now according to new organizations act 2013 One Individual Company can be framed. One individual organization can be framed distinctly with one individual that implies interestingly with other type of organizations one individual organization can appreciate certain advantages and exceptions. The paper endeavors to clarify the job, upsides and downsides of one individual organization in Indian Business. To make the comprehension of the subject clear paper is partitioned into different areas. First area that is the current segment is the presentation

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segment which clarifies the importance and highlights of this new idea. Second area contained Objectives and technique. Third segment talks about the cycle of consolidation of an OPC and the idea of Nominee. Fourth segment is the segment where the center zone of the paper is talked about that is advantages, openings and dangers. Ends and recommendations are talked about in fifth segment and references are contained in the last segment of the paper. Although this concept is new in India but in contrast U.K is practicing it since very long where it is known as SMPC.

#### Literature Review

**Dr. Madhu sudan das.(JUNE-2015)** Opportunity should consistently be controlled and henceforth the procedural necessities in consolidation and activity of a One Person Company are only to check the maltreatment of freedom and invulnerability given to single individual business substances. Henceforth, this idea, whenever executed appropriately, will go about as a major motivating force for little business visionaries and subsequently will support the monetary development of the nation.

**Ruchita Dang.(APRIL-2015)** The achievement of OPC is absolutely needy upon its execution yet the idea is a need in the changing industry field of the nation where business people are require facing challenge and simultaneously needs security to conceal that hazard.

**Dr. P. Govindan. (OCTOBER-2018)** It told the arrangement of OPC. IT had proposed that such an element might be furnish with a legal regine through exclusion so the little entrepreneur isn't constrained to commit extensive time, energy, and resources on complex legal substance.

#### Objective

The objective of our study is to analyze the impact of this new concept on small Entrepreneurs in India and to find out the possible opportunities and threats.

#### Methodology

The research paper is based on the information collected from various secondary sources, Articles, websites, Journals, Data available online, various books, Company Bare Act 2013 and Research Paper based on the descriptive research method.

#### Features

- **Private Company** : A company should be formed by a single person for any lawful purpose.
- **Single Member**: Only one member or shareholder can be had by one person company.
- **Nominee**: A company should have to mention the sole member as a nominee while registering the company.
- **No perpetual succession**: The death of the nominee will result in the nominee choosing or rejecting to become its sole member.
- **Minimum one directors**: OPC should have to have one member as a director.
- **No minimum paid up share capital**: There is no rule that describe that the OPC should have any amount as minimum paid up capital.
- **Special privileges**: OPC can enjoy several privileges and exemption under the Company's Act, 2013 that other kinds of companies can not.

#### Process of Incorporation of One Person Company (OPC)

- Obtain Digital Signature Certificate [DSC] for the proposed Director(s).
- Obtain Director Identification Number [DIN].
- 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.
- Sign and file various documents including Memorandum of Association & Article of Association with the Registrar of Companies electronically.
- Payment of fee and stamp duty to the Ministry of Corporate Affairs.
- Scrutiny of documents at Registrar of Companies [ROC].
- Receipt of Certificate of Registration/Incorporation from ROC.

### Concept of Nominee

As per the supply of section 3(1) of the businesses Act 2013 at the time of incorporation of OPC the member is required to appoint his nominee. The Nominee so appointed shall become member within the following cases:

- Within the event of the death of the member.
- At the time when member becoming incapacitated to contract.
  - Who can't become a private from an OPC or ac as Nominee in OPC:
    - Minor.
    - Foreign resident.
    - Non Resident.
    - a private debilitated to contract.
    - a private aside from a characteristic individual.
  - Circumstances for change of Nominee :
    - Nominee can himself withdraw :
      - ✘ Nominee can withdraw his consent by giving written notice to the OPC.
      - ✘ The member has got to nominate a replacement nominee within 15 days of the notice of the withdrawal.
      - ✘ OPC shall within 30 days of the receipt of withdrawal file a form INC 4 & INC 3 along side requisite fee to Registrar of company.
    - Change of nominee by the member:
      - ✘ The member of an OPC can change the nominee at any time by informing the OPC in writing.
      - ✘ The member will obtain a written consent of latest nominee in form INC 3.
      - ✘ Within 30 days of receipt of such intimation the OPC has got to file form no INC 4 along side requisite fee and written consent of latest nominee with the registrar of the corporate.
    - Death or incapacity of member :
      - ✘ just in case of death or incapacity of the member the nominee will become a member of the OPC. (b) The new member must nominate a replacement nominee within 15 days of becoming a member. (c) The OPC shall file with Registrar an intimation of nomination in form INC 4 with requisite fee within 30 days.

### Opportunities and Threats

- One person Company is completely a replacement concept in India it'll take a while to grow its wings in India. There are many opportunities also as threats related to one person company which we are getting to discuss one by one in our present section.
- Following are the privileges and exemptions available to OPC.
- OPC will provide greater opportunities to small Entrepreneurs because it requires lesser capital and other legal compliances. Page 1
- Any Foreign company through merger, venture can easily approach one person company to start out the venture with none delay in its legal proceedings.
- it's a coffee risk taking venture.
- It provides young entrepreneurs a replacement idea to start out a business.
- It combines the feature of both sole proprietorship and therefore the company.
- Legal formalities are less as compared to other business practices.
- Mandatory rotation of auditor after expiry of maximum term isn't applicable.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), concerning holding of general meetings, shall not apply to a 1 Person Company.

- As per section 92 of the businesses Act, 2013 annual Return shall be signed by Company
  - Secretary or where there is no Company Secretary then by the director of the company .
  - OPC isn't required to prepared earnings report .
  - Paper work is a smaller amount .
- On the opposite hand OPC attracts some disadvantages also
- A person shall not be allowed to include quite one OPC.
  - OPC can't be incorporated or converted into a corporation not for profit.
  - It cannot carry any non-financial activities. An OPC cannot convert voluntarily into any quite company unless two years have expired from the date of incorporation of OPC, except threshold limit (paid up share capital) is increased beyond Rs. 50 lakhs or its average annual turnover during the relevant period exceeds Rs. 2 crores.
  - The compliance cost is high as compared to sole proprietorship. Existing Private Ltd Company can't be converted into an OPC.

**Types of OPC:** AS PER SEC. 2 (62) Companies Act, 2013.

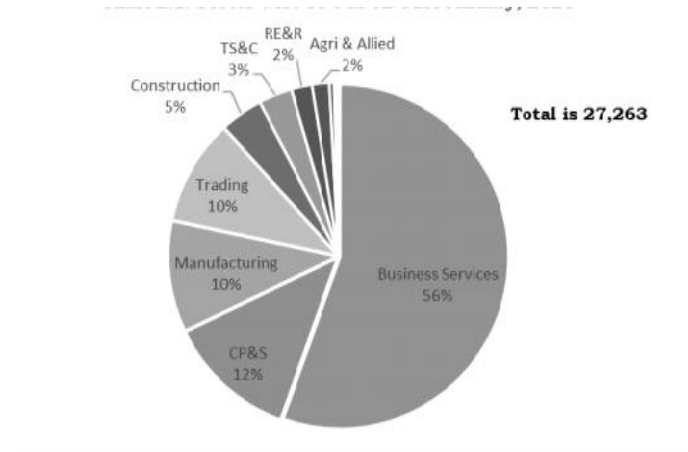
- A Company limited by shares.
- A Company limited by guarantee.
- An unlimited company.

#### **Growth of OPC**

This was looked upon as a barrier in forming personal company by businessmen WHO don't wish the other participant in their business. Since OPC could be a new idea and a present from the new Act, it's necessary to grasp a number of its salient options and the way best the professionals will expand their activities by forming OPC. until currently professionals are softer operating either as sole-proprietorships or partnerships or by forming 'limited liability partnership' or usually times, through Associate in Nursing unwritten code of understanding and arrangement between the partners. However, the new structure of doing business through OPC has spread out large opportunities before the professionals and alternative entrepreneurs. Broadly, the useful aspects of the OPC structure ar its separate legal entity, perpetual succession, financial obligation and freedom from compliant with varied formalities related to doing business otherwise through the standard financial obligation structure. individuals doing business as sole proprietors can avail the advantages of indebtedness because the Companies Act, 2013 ("the Act") has introduced the concept of "One Person Company" (OPC). Under the prevalent law in India, minimum two members are required to make a personal company and minimum seven members required for public company. This was looked upon as a barrier in forming private Ltd. by businessmen who don't want the other participant in their business. BENEFITS i.e. OPC provides advantage of both sorts of business - Proprietorship And Company. With OPC, business are often run same way as proprietorship, in fact by complying with limited by share guarantee, because the case could also be . At an equivalent time it's casted responsibility on the society and market players to acknowledge OPC as a corporation and not another sort of proprietorship business.

Small Entrepreneurs will setup OPC to directly access target markets instead of being forced to share their profits to middlemen. tiny entrepreneurs can grow in Indian entrepreneurship, be it weaver, traders, artisans, tiny to middle level entrepreneurs, OPC may be a bright future for them to grow and to urge a recognition globally. Foreign Investors are coping with one member to determine a company relationship and not with a score of shareholders/ administrators wherever there square measure additional probabilities for inequality in ideas, ideas etc. for a business to grow. Any foreign company UN agency needs to determine in Bharat through Associate in Nursing Investment, through a merger or through a venture can ought to simply lock the influence the member of Associate in Nursing OPC, and also the venture are expected to begin sooner with more practical results. In forthcoming years the impact of Associate in Nursing OPC are exceptional and it's a promising future for Indian Entrepreneurship. Expectedly, there'll be sensible Foreign One Person Company - A Mixed Blessing forty seven August 2014 Article Investments, Joint Ventures, and Mergers etc. Associate in Nursing OPC is doing well in European Countries, In u. s., Australia constant is leading to strengthening the economy of the countries.

The benefits could also be counted like : Up to thirty first Jan 2020, a complete range of twenty seven,263 One Person corporations (OPCs) were registered with collective approved capital of Rs. 802.72 crore. Economic activity wise classification of OPCs up to thirty first Jan, 2020 reveals that the very best range of OPCs were in Business Services (15,124) followed by Community, Personal & Social Services (3,382), producing (2,845) and mercantilism (2,712) (Chart ). throughout the month of Jan, 2020, a complete of 813 OPC were registered with approved capital of Rs. 26.93 crore. Economic activity wise classification of OPC throughout the month reveals that highest range of 309 OPCs were registered in Business Services, followed by 149 in producing, 124 in mercantilism and a hundred and fifteen in Community, personal & Social Services.



**Chart: Sector Wise OPC as on 31<sup>st</sup> January, 2020**

### Conclusion

The success of OPC is purely dependent upon its implementation but the concept is a necessity in the changing business arena of the country where entrepreneurs are require taking risk & at the same time needs protection to cover up that risk. The single entrepreneurs are in the need of a speedy mechanism to get incorporated in company form of a business & OPC seems to be the possible solution where the entrepreneurs are not required to fritter away their time, energy & resources on procedural matters. Though OPC appears a promising form of business but there is a long way to go since in India the outlook of sole traders is more traditional & they usually don't want to deviate from the way they have doing their business. Freedom must always be regulated and thus the procedural needs in incorporation and operation of a One Person Company square measure simply to see the abuse of liberty and immunity given to single person business entities. Hence, this idea, if enforced properly, can act as a giant incentive for little entrepreneurs and thereby can boost the economic process of the country.

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