

One Person Company – A Holistic Outlook

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Abstract

Indian corporate law recognizes different kinds of companies under the Companies Act, 2013. One Person Company is a form of private limited company introduced by the Companies Act, 2013. The One Person Company is an alternative to the concept of sole proprietorship. It combines the benefit of sole proprietorship and the corporate form. With the growth of economy, the evolution of the new concept of One Person Company is significant to promote entrepreneurship and encourage people to enter into corporate domain. The One Person Company is provided with certain privileges with less compliance mechanism to provide opportunity to small and medium enterprises. As defined in Section 2(62) of the Companies Act, 2013, One Person Company is a company with only one shareholder as a member. The One Person Company was introduced to promote the ease of doing business in India. The law relating to One Person Company is provided under the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014. One Person Company can also avail the benefits under the start up India scheme. The One Person Company has its existence internationally. The concept of One Person Company provides opportunistic environment for the growth of Indian corporate sector and has several advantages. The One Person Company helps to overcome the problems of unemployment by making the youth self reliant through their innovative ideas.

Keywords: 1. Proprietorship 2. Entrepreneurship 3 Share Holder 4. Unemployment 5. Company

Origin of One Person Company

The inception of the “One Person Company” can be traced back in the famous case of Salomon v Salomon & Co. Ltd ¹ which sets up a precedent. In this case the Houses of Lords observed that "the company was in the eyes of the law, a separate person independent from Solomon and was not his agent. Salomon though virtually the owner of all the shares in the company, was also a secured creditor and was entitled to repayment in priority to the unsecured creditors". Thus, the Salomon case clearly established that company has its own existence separate and

1. ¹Salomon v Salomon & Co. Ltd. [1897] A.C. 22

distinct from its members. A shareholder cannot be held liable for the acts of the company. This case also recognized the concept of one man company.

The Companies Act, 1956 did not contain the concept of One Person Company. The Government of India constituted an Expert Committee on Company Law on 2nd December, 2004 under the chairmanship of Dr. Jamshed J. Irani. The Irani Committee presented its report to Government on 31st May 2005. The Committee expressed the view that the law should recognize the potential for diversity in the forms of companies and rather than seeking to regulate specific aspects of each form, seek to provide for principles that enable economic inter-action for wealth creation on the basis of clear and widely accepted principles. The Chapter III of the report suggested the formation of One Person Company as follows:- “With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.”² The Irani expert committee recommended the formation of One Person Company for the very first time in 2005. The recommendation of the committee was accepted and the concept of One Person Company was introduced by Companies Act, 2013.

One Person Company – An International Perspective

The concept of One Person Company is recognised internationally. In United Kingdom the concept of single shareholder company is recognised under the Companies Act, 2006. A single member companies in United Kingdom could be incorporated as public company also.³ The Companies (Amendment) Act, 2004 introduced the concept on One Person Company in Singapore. It provided that a company can be incorporated by a single person.⁴ A company shall at least one member.⁵ China recognized the legal status and adopted the single member

²2. Chapter III of Report by J J Irani Committee On Company Law dated 31st May 2005 [http://reports.mca.gov.in/Reports/Iranicommitteereport of the expert committee on Company law,2005.pdf](http://reports.mca.gov.in/Reports/Iranicommitteereport%20of%20the%20expert%20committee%20on%20Company%20law,%202005.pdf)

³3. Vinod Kothari, Nivedita Shankar, “One Person Companies: India Law in Global Perspective”, Chartered Secretary, August 2014, p.19

⁴4. Section 17(1) of the Companies (Amendment) Act, 2004 of Singapore

⁵5. Section 20 A of the Companies (Amendment) Act, 2004 of Singapore

⁶6. One Person Company under Companies Act, 2013, C.A. Rajkumar S. Adukia and C.A. Rishabh R. Adukia Bharat Law House Pvt. Ltd., New Delhi, 2014.p.148

company by legislation after new Company Law took into enforcement on January 1st 2006 which

is a significant legislative progress in the legislation history of China.⁶

One Person Company – A National Perspective

The law relating to One Person Company is provided under the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014. The One Person Company is incorporated as a private limited company under the Companies Act, 2013 with certain privileges and exemptions. While delivering the Union Budget 2021-2022 the Finance Minister Nirmala Sitharaman proposed to incentivize the incorporation of One Person Company to grow without any restrictions on paid up capital and turnover, allowing the conversion into any type of company at anytime and reducing the residency limit for Indian citizens from 180 days to 120 days. This will be a big boost to startups.⁷ Recently, certain important amendments had been made by the Companies Incorporation Second Amendment Rules, 2021 to the concept of One Person Company in India. Through this amendment any person including Non-Resident Indians can incorporate One Person Company in India, the residence status for stay in India for formation of One Person Company has been reduced from 182 days to 120 days during the immediately preceding financial year. By this amendment, the OPC can be converted into any other type of companies and the threshold limit to be attained for conversion was taken away. The amendment has been made to Rule 3, Rule 6 and Rule 7 of the Companies (Incorporation) Rules, 2014.

Section 3(1) of the Companies Act, 2013 provides that the formation of One Person Company can be done by an individual to carry out any lawful purpose by subscribing his/her name to the memorandum of association by meeting all the requirements pertaining to the registration under the Act. It provides that a single member or the shareholder of one person company should appoint another person as his nominee whose name shall be indicated in the Memorandum of Association. The name of One Person Company should be annexed mandatorily with One Person Company Private Limited.

The Companies Act 2013 provides certain privileges to One Person Company by granting exemptions. The Ministry of Corporate Affairs also issued notifications such as G.S.R. 464(E) dated the 5th June, 2015 and G.S.R. 583(E) dated 13th June 2017 in pursuance of power granted under Section 462 of the Companies Act 2013 providing exemptions to One Person Company. Section 2(40) of the Act provides an exemption to One Person Company by providing that it need not include the cash flow statement. the proviso to sub-section (1) of Section 92 relating to filing of Annual returns provides exemption by stating that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary,

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⁷7. Budget 2021 : FM announces changes in small companies threshold ; modifications for One Person Company, The Economic times, <https://m.economictimes.com>

by the director of the company. Section 96(1) provides that every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting. Section 149 of the Act provides that the every company shall have a Board of Directors consisting of individuals as directors and One Person Company shall have minimum of one director and maximum of fifteen directors. But whereas the public company shall consists of minimum three directors and whereas the private company shall consists of minimum two directors and maximum of fifteen directors. Section 173(5) provides that a One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors. Although the concept of One Person Company has several advantages, it contains some disadvantages such as it can be incorporated only by a natural person, mandatory conversion on attaining the threshold limit specified, mandatory appointment of nominee and tax liability.

Need for the Concept of One Person Company

There is an inevitable need of the business model such as One Person Company in the present era of entrepreneurship in India. Through this concept, every sector of individuals can contribute to the country by participating in the economic activity. 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.⁸ The concept of One Person Company is advantageous both for the regulators and the market players. From regulators perspective, One Person Companies by organizing the unorganized sector of proprietorship will make the regulation of these entities convenient and effective.⁹ The concept of One Person Company is expected to give big impetus to corporatization in the country.¹⁰ The conferment of the status of private limited company on a One Person Company will not only limit the liability of sole entrepreneurs but also provide access to market players to various credit and loan facilities and hence would encourage entrepreneurship.¹¹

One Person Company – The Reality Check

The fifth Annual Report of the Working and Administration of the Companies Act, 2013 (Annual Report 2019) states that 6,602 One Person Companies were incorporated during

⁸8. One Person Company, concept, opportunities and challenges in India, Ruchita Dang and Nishanth Sharma, International Journal for Research in Management and Pharmacy, Volume 4 Issue 3 April 2015

⁹9. One Person Company : A revolutionary Idea or a half baked concept, Swati Shanker and Shubham Gautam, India Law Journal

¹⁰10. One Person Company : An Analytical Study, Vinay Haswani, Dr.Krati Rajoria, An International Multidisciplinary Research Journal, Vol 5, Issue 7, July 2015, papers.ssrn.com

¹¹11. Relevance of One Person Company, Mary T.L, International Journal of Trend in Scientific Research and Development, Volume 2, Issue 1, December 2017

financial year 2018 – 2019. The Sixth Annual Report of the Working and Administration of the Companies Act, 2013 (Annual Report 2020) states that 7,655 One Person Companies were incorporated during financial year 2019 – 2020. The Seventh Annual Report of the Working and Administration of the Companies Act, 2013 (Annual Report 2021) states that 8,946 One Person Companies were incorporated during financial year 2020 – 2021.¹² The Annual Reports of the Working and Administration of the Companies Act, 2013 by the Ministry of Corporate Affairs, Government of India depicts the increasing number of one person company continuously showing the acceptance of the concept of One Person Company by the corporate world.

Conclusion

The concept of One Person Company has provided a greater benefit to the corporate world by encouraging entrepreneurship. In India the number of One Person Companies incorporated increases every year. The concept of One Person Company provides an opportunistic environment. The One Person Company encourages the corporatization by bringing people into the corporate domain.

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8. Relevance of One Person Company, Mary T.L, International Journal of Trend in Scientific Research and Development, Volume 2, Issue 1, December 2017

¹²12. <https://www.mca.govt.in/content/mca/global/en/data-and-reports/reports/annual-reports/companies-2013.html>