ONE PERSON COMPANY

By Ram Sharma
From Symbiosis Law School, Pune

Introduction

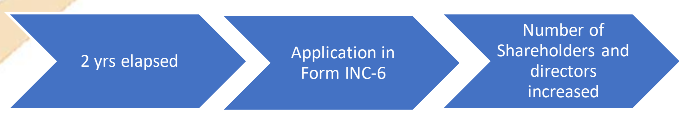
One person at a time, one company at a time

\- By Marc Benioff

Even though the term company has no technical or legal definition or meaning,[1] the same is defined under the Companies Act, 2013[2] as a company formed and registered under the Companies Act. The same may be referred to as any legal device which is used for the attainment of any social or economic end, and has a legal personality of its own. The companies can be divided into various classifications, one of the most important classifications being on the basis of ownership. Under this classification, one of the types of companies is one person company[3].

Talking about One Person Company, such companies were introduced in light of the recommendations made by the JJ Irani Committee[4]and incorporated in the Companies Act 2013, which gave such companies great importance to such companies to ensure that small private companies were provided with greater flexibility for carrying out its operations. They have been defined by the Companies Act[5] as a company which has its own legal identity, has only one person as its member and for the functioning of the company, only one director is necessary[6]. Such a company can be incorporated in the form of a private company for any type of lawful purpose,[7] which has to be registered with the Registrar through a written consent. The one person can also be substituted by some other person after the member gives notice and informs about such a change to the company and Registrar, to avoid any kind of confusion or chaos in the company.[8] Another important aspect which needs to be considered is that Director of the Company and the Nominee Director both are required for the incorporation of the company. Along with that, all the shares of the company can be held by the sole member only,[9] and any OPC can be converted into a private[10] or a public company by increasing the number of members.

Voluntary Conversion of OPC into Private/Public Company



[1] *Stanley ,re,*(1906) 1 Ch 131,134
[2] Companies Act,2013, S.2, Cl.,(20)
[3] Ishita Chaudhary and Vanshika Taneja, *Analysis of Company Law Amendments: As a Progressive Step Towards Better Corporate Governance*, 5 RFMLR (2018) 241
[4] Ministry of Company Affairs, *Report of Expert Committee on Company Law*, May 2005
[5] Companies Act,2013, S.2, Cl.,(62)
[6] Companies Act, 2013, S.149,Cl.(3)
[7] Companies Act, 2013, S.3, Cl.(1)
[8] Avtar Singh, *Company Law*, 557 (15th ed., 2018)
[9] A Ramaiya, *Guide to the Companies Act*, Vol.1, 242(18th ed., 2019)
[10] Companies(Incorporation) Rules, 2014, Rule 7

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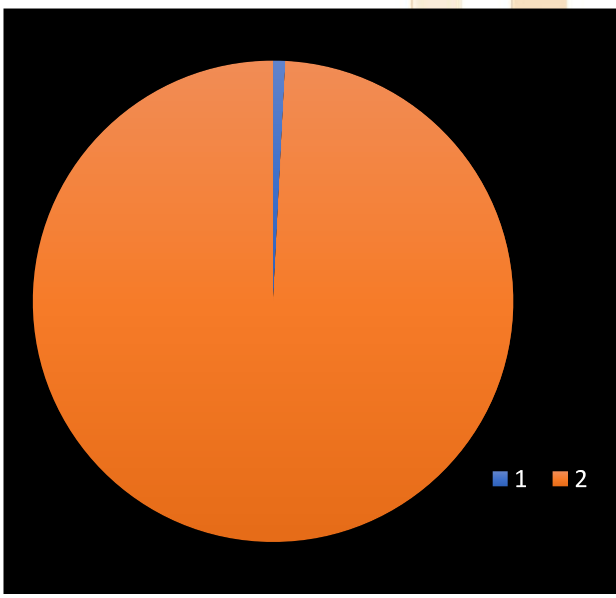
The different types of OPC are-

- OPC limited by shares
- OPC limited by guarantee
- OPC limited by guarantee and share capital
- OPC unlimited with share capital
- OPC unlimited without share capital

Now an important question which is in front of us is that whether the system of OPCs been successful in our country?

Looking at the statistics, we see that in India today there are more than 10 thousand OPCs which are registered in India, with a collective authorized capital of more than 350 crores.[11] But even though the OPCs have reached a large number in terms of registered companies, they are still less than one percent of the total incorporated companies.



No. of registered companies in India

Blue represents One Person Companies (0.81%) and Red represents other type of registered companies (99.19%)

This implies that even though there is a large number of OPCs in our country, the same is not preferred to be the best type of company to undertake your business with.

<u>Features</u>

The features of a One Person Company are-

1. *Nature:* The one person company is usually private in nature.
2. *Number of Members:* There is only one member of the company, who also acts as the sole shareholder of the company. Being the sole shareholder, he has the power of determining the administration of the company[12].
3. *Nominee:* During the time of the registration of the company, a nominee needs to be appointed by the member of the company. The nominee will become the member of the company in the event of the death of the member or in case of a situation where the member can't function in a proper manner, rather than some family relative of the member taking charge in his place. It is then upon the nominee to either accept or to reject the appointment as a member.
4. *Number of directors:* For a one person company, only one director is necessary for carrying out the functions of the

[11] The Economic Times, *Nearly 17 lakh companies registered till September end*, Updated: Nov 01, 2017, 01.41 AM IST (https://economictimes.indiatimes.com/news/economy/policy/nearly-17-lakh-companies-registered-till-september-end/articleshow/61377507.cms?from=mdr)

[12] *Bacha F. Guzdar* v. *CIT*,(1955) 1 SCR 876

company. But the maximum number of directors which can be appointed for the company is 15.

5. *No minimum amount of paid- up share capital:* Paid up capital refers to the amount of money which is received by a company in exchange for shares of stock from the shareholders. Under the One Person Company, no such minimum amount of paid up share has been specified for the incorporation of the company.
6. *No minimum capital amount*: No minimum amount of capital for the incorporation and registration of a one person company has been specified under the Companies Act, 2013. The main reason for the same is to promote and encourage small private companies to engage in business activities, and not to stop the same due to the bar of a specific capital amount.
7. *Registration only by an Indian*: The registration of the company can be done only by an Indian citizen or a national of India. The same can't be managed by any NRI or foreign national.

<u>*Disadvantages*</u>

Along with all the features and the advantages, the one person companies have a lot of disadvantages as well. Some of them are-

1. *Autocratic Rule of Member:* A one person company can often go on to become autocratic in nature, with the sole member not being accountable or answerable to any person in the company.[13]
2. *No more than one OPC*: No person can be allowed to make more than one OPC or become the nominee of more than one OPC.[14]
3. *Non banking activities*: Any OPC can't carry out any type of non banking financing activities. The same also involves putting the shares of the company in any other corporate body or investing in the shares of some other corporate body.
4. *No rights to a minor*: No minor can hold any type of shares in an OPC for beneficial interest. Along with that, any minor can't become a member or a nominee of a One Person Company, even though there is no such legal bar in any other type of company[15].
5. *Compulsory conversion:* Any OPC is to be compulsorily converted into a private or public limited company within 6 months after they reach the threshold limit of turnover, which is 2 crore rupees.[16] Due to this, the OPC often loses its identity after it reaches this threshold.
6. *Section 8 companies:* An OPC can never be converted into a company under Section 8[17] of the Companies Act[18].
7. *No FDI:* An OPC will not allow FDI from any country and will lose out on its own nature, if the same is allowed.

<u>*Privileges-*</u>

[13] Aashna Jain, *An Expository Analysis of One Person Company Concept: Is it an Arrow Shot in the Dark or is it Serving its Purpose*, 2015

[14] Companies(Incorporation) Rules, 2014, Rule 3

[15] *Dewan Singh* v. *Minerva Films Ltd.* (1959) 29 Comp Cases 263 (P&H)

[16] Companies(Incorporation) Rules, 2014, Rule 6

[17] Companies Act, 2013, Sec.8

[18] Dr. Tabassum Chaudhary, *One Person Company Under the Companies Act, 2013-Journey from 'Minimum two Person' to 'One Person': A Critical Reappraisal*, 23 ALJ (2015-16) 379

Being a company with just one member, such companies often enjoy a lot of privileges. Some of these privileges are-

1. The one member of the company has the sole authority to take any type of decision in relation to the working and functioning of the company.
2. In the Companies Act, specific emphasis is given on the contracts which are entered by One Person Company with the sole member of the company.[19]
3. The provisions of the Chapter VII of the Companies Act, Section 98[20] and Sections 100 to 111 will not apply on such companies, which talks about the management and administration of the company. This implies that the administration and the management of the company takes place in a much more independent manner.
4. Such one person companies find it very easy to get a loan from the banks to a certain limit without depositing any type of security. Furthermore, very low rate of interest is charged on such loans. A loan may even be given if the OPC has a bad credit rating.
5. Any type of remuneration which is paid to the director of any OPC will be treated as a deduction as per the income tax law of the country, giving tax flexibility and saving benefits to the company.
6. Along with this, it is not necessary to present a report at the Annual General Meeting.
7. If the buyer of the OPC is to receive any payment, and the same is being made after a stipulated time period, then the buyer is entitled to charge interest on the same.[21]

__Difference between One Person Company and Sole Proprietorship__

Even though the OPC and Sole Proprietorship may be conceived to be similar in nature, there are many differences between both of them. Some of the differences are-

Basis	One Person Company	Sole Proprietorship
Registration	Registration needs to be done under the company act	Registration is not necessary
Liability	Limited liability of owner as company is a separate entity	Unlimited liability as the assets of owner may be used to pay off a debt
Taxation	Same will be taxed in the manner of private limited company	Same will be taxed in the manner of individual income
Succession	Succession is often by nominee appointed by member	Succession may be through will or perpetual succession

[19] Companies Act, 2013, Sec. 193
[20] Companies Act, 2013, Sec. 98
[21] Enterprises Development Act, 2006

Legal Status	Separate legal entity	Not a separate legal entity

International Perspective

Just like India, the concept of One Person Company has been adopted in many other countries as well. Some of the example of the countries which adopted the concept are-

i) *United States of America*

- All such corporations are lawful in United States and provided with full limited liability protection.
- The owner must a natural US citizen
- They may be taxed as an entity or as a corporation, whatever the owner may deem fit.

ii) *Singapore*

- A company in Singapore may be registered by a single shareholder as well. Such a shareholder can be an individual or a corporation.
- There is no requirement of the shareholder to be a resident or national of Singapore.[22]
- The liability of the shareholders is limited to the amount of the shareholder.
- No amount of minimum capital is required for the incorporation of such a company.

iii) *China*[23]

- The sole shareholder may be a natural or a legal person.
- The minimum amount of capital required for the incorporation of a company is 10000 RMB
- Natural persons can invest only in one company, and the company can't invest in any other one member companies.

iv) *Russia*

- The company is known as Russia Limited Liability Company (LLC).
- The LLC should have atleast one shareholder or member.
- The registration process is to be completed in about thirty days.
- The minimum authorized capital for the same is of 330 US Dollars.

Landmark Case

One of the most important cases in relation to the One Person Company is of *Saloman* v. *A Saloman & Co. Ltd*. [24]. Passed by the House of Lords, the case was responsible for setting up a precedent which went on to evolve as the concept of one Person Company.

The facts of the case are that Saloman transferred his business to a company named Saloman & Co., the price for which was paid through shares and debentures. After a point of time, Saloman came to recover the amount when the business failed.

Now the issue in question was that can a controller or a shareholder be held liable for a debt higher than the capital contribution. When the case went to the Court of Appeal, it was declared that the company formed in the present case has been formed against the provisions of law. But when the case went to

[22] Pearlie Mc Koh, *For Better Or For Worse — The Statutory Derivative Action In Singapore*, (1995) 7 SAcLJ 74

[23] Special Provisions on One Person Limited Liability, 2013,Sec. 3

[24][1896] UKHL 1

the House of Lords, the ruling was reversed and held that the company is an independent person with its own rights and liabilities.

This case not only recognized the concept of one person company, but it also gave them seprate legal identity.

Conclusion

To conclude, we can say that one person companies play a very vital role in promoting new businesses and to help them prosper in business. Along with that, the same involves very less formalities as compared to other type of companies and privileges like low taxation etc. But, on the other hand, the member often has to face a lot of restrictions if they are made the member or nominee of one OPC, which often acts as a major hurdle for them. So, some changes need to be made to ensure that such companies function in a better and proper way. Some of the suggestions are-

- The compulsory conversion of the company into a private or public company after a threshold is reached needs to be changed to ensure that the identities of such companies is not lost.
- The FDI which comes to such companies needs to be allowed to ensure that the companies may profit more.

After incorporating some more changes the concept of one person company may work in a much better way than it works at the present time.

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