TiE Chennai -TiE Essentials.

Session -5

Incorporation of One Person Company (OPC)

What we have learnt so far:

Different Forms of Organizations-

- Sole Properietorship,
- Partnership
- Limited Liability Partnership
- One Person Company
- Private Limited Company
- Public Company

Registration of Different Forms of Organization-

- Sole Proprietorship
- Partnership Firm
- Limited Liability Partnership
- Private Limited Company

Session -5 – Focus: One Person Company- (OPC)

Why, One Person Company:

We have discussed about Why LLP instead of Partnership Firm or Private Limited Company.

- It combines the Advantage of Partnership Firm's Flexibility and Limited Liability of the Private Limited Company.
- It eliminates the disadvantage of Partnership Firm's unlimited liability and private limited company's compliances requirement.

✓ **Same way, Why One Person Company (OPC)**

- Comfort of a Proprietorship
- Proper Registration for a Proprietorship
- Legal Status for a Proprietorship
- Limited Liability
- Less compliances comparing to the Private Limited Company

✓ **Characteristics or Features of One Person Company**

- Independent / Separate Legal Entity
- Limited Liability
- Only One Shareholder / Member
- No minimum paid-up capital requirement
- Uninterrupted Existence or Perpetual Succession
- Membership in only one OPC at a time
- Restricted rights to transfer of shares
- Only One Director
- External funding Not allowed

Consider the below points before deciding to choose OPC.

- When you need a separate “Legal Identity” for your business, and also want complete ownership and control.

- If you want to Limit your Liability (as opposed to a sole proprietorship concern)
- If you don’t want to use your personal assets as collateral for business loans
- If you decide to not have Employee Stock Options or ESOPs
- If you have decided not to have external investments or funding from Angel, Seed or Venture Capital Investors.

Various Provisions Relating to OPC:

✓ **Meaning:**

As per Section 2(62) of the Company’s Act 2013, ‘One Person Company’ means a company which has only one person as member.

✓ **Nominee:**

Apart from one Member, there should be one person who should be the nominee of the Member.

The rules for incorporation of one person company requires that the sole member of a One Person Company should include the name of a nominee in the Companies MOA, who will undertake the entity after the expiry or incapacity of the former.

Moreover, the document must contain the written consent of the nominee, which must also be filed with the Registrar during incorporation along with the MOA and AOA.

✓ **Member:**

Only a natural person (excludes minor) who is an Indian citizen and resident in India can be member and nominee of an OPC and such person shall not be a member and nominee of more than One OPC at any point of time.

Following persons shall not be eligible to become member of OPC

- Minor
- Foreign Citizen
- Non – Resident
- A person incompetent to enter into a contract
- Person other than Natural Person

- ✓ **Directors:**

OPC can have Minimum One and Maximum Fifteen Directors. They can appoint more than 15 directors after passing of Special Resolution.

- ✓ **Non Eligible Business:**

Non-Banking Financial Investment activities including investment in securities of any other body corporate.

Section 8 (Company with Charitable Objects) of the Act.

- ✓ **Limit on Share Capital and Turnover:**

If the Share Capital Exceeds 50 Lakhs and Average Turnover for two years exceed 2 Cr, then the OPC should be converted in to a Private limited Company

- ✓ **Voluntary Conversion:**

This can be done any time beyond two years from the date of incorporation

REGISTRATION PROCESS:

Step 1: Obtain Digital Signature Certificate or DSC

Step 2: DIN

Step 3: Name Approval / Reservation

In order to register or incorporate an OPC Private Limited Company in India, the name for the proposed company should be approved by the MCA

Authorities. Hence, it is recommended to apply for the Name Reservation before applying for incorporation.

SPICE+ (PART A) is a web based from used for reserving a name for New Company .

The proposed Company Name has to be unique and should not have been taken by any other business.

Also, the proposed company name should not be already trademarked by anyone else. You can check the Trademark availability.

Step 4: Application for issuance of Certificate of Incorporation

Once the name is reserved and approved, the same shall be valid for only next 20 days. The next step is to file an application for obtaining the Certificate of Incorporation using SPICe+ PART B forms has to be filed with the MCA (Within the valid time, if the name has been reserved).

Alternately, the name reservation step can be avoided, and the SPICe + (PART A) & SPICe + (PART B) forms can be filed simultaneously for obtaining the Certificate of Incorporation

Application for proposed Companies details, GST , Pan ,Tan, ESI & PF, Bank Account Opening to be applied while filing incorporation forms .

Sl.No	Particulars	Remarks
01	GST	Not Mandatory
02	PAN & TAN	Mandatory
03	ESI & PF	Mandatory
04	BANK ACCOUNT OPENING	Mandatory

Drafting Memorandum of Association (MoA)

Memorandum of Association is a legal document which showcases the Main Objectives of the OPC private limited company as well as information on the member shareholder and name of the Nominee to be mentioned in MOA.

Drafting Articles of Association (AoA)

Articles of Association is a legal document which has the rules and regulations for the general management of the OPC private limited company.

They define the rights, duties, powers of the management of the company and also provides the manner in which the operations and administration should be carried on.

Once the eForm is filed, it shall be processed by the MCA's Central Processing Centre. If found complete, the company would be registered and Corporate Identification Number (CIN) would be allocated along with a Certificate of Incorporation.

List of Documents Required for the Registration of an OPC Private Limited Company

Directors/Shareholders Documents:

1. PAN Card of the Shareholder / Director
2. ID Proof – Voter's ID / Passport / Driving License / Aadhaar
3. Address Proof – Latest Bank statement with transactions / Telephone bill / Mobile Bill not older than 60 days
4. Passport Size Photograph
5. Consent to act as Director
6. Declaration from the director non acceptance of Deposit.

Registered Office Documents:

1. Address Proof of the Premises:
2. Latest Electricity bill / Telephone bill / Gas bill
3. NOC from the owner of the premise

Disadvantages of One Person Company

A. MEMBERS:

- One-person Company can have Minimum or Maximum no. of 1 Member.
- A minor shall not be eligible to become a member or nominee of the One Person Company or can hold share with beneficial interest.
- Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a **One Person Company** and shall be a nominee for the sole member of a One Person Company.

B. SUITABLE ONLY FOR SMALL BUSINESS:

- OPC is suitable only for small business. OPC can have maximum Paid up share capital of Rs.50 Lakhs or Turnover of Rs.2 Crores. Otherwise OPC need to be converted into Private Ltd Company.

C. BUSINESS ACTIVITIES:

- One Person Company cannot carry out Non – Banking Financial Investment activities including investment in securities of anybody corporates.
- One Person Company cannot be incorporated or converted into a company under Section 8 of the Act.

D. PERPETUAL SUCCESSION:

- This is Very concept of a separate legal entity being created for a perpetual succession that is continuation of the company even after the death or retirement of a member is also challenged. Because the nominee whose name has been mentioned in the memorandum of association will become the member of the company in the event of death of the existing member.

- However it is doubtful that it would do any good for the company because the person is not being a member of the company and also not involved in the day to day operation of the company, would not be able to succeed the business after the death of the member.

- Though the Act extends slew of exemptions to a One Person company in terms of conducting AGM, EGM, Quorum of meetings, restriction on voting rights or filing its financial statements, yet the incorporation of such a company requires lots of paper work as compared to a sole proprietorship. These procedural complexities with respect to incorporation of One Person Company might make this concept less attractive for sole entrepreneurs

E. SPARATION OF OWNER AND CONTROL:

- This is one of the characteristics of the company, which is seriously challenged by the new Companies Act ,2013, where the line between the ownership and control is blurred.
- Which might result in unethical business practices.

F. OTHER DISADVANTAGES:

- A person shall not be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- NRIs not allowed incorporating One Person Company.
- Requirement to appoint a nominee for incorporating a One Person Company: