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# ONE PERSON COMPANY- OVERVIEW

Section 2 (20) of the Companies Act, 2013 defines a company as “A company incorporated under this Act or under any previous company law.”

Section 2 (62) of the Companies Act, 2013 defines One Person Company as “A company which has only one person as a member.”

## SIMPLE GUIDE TO UNDERSTAND ABOUT ONE PERSON COMPANY (OPC):

- Only a Natural Person who is an Indian citizen (whether resident or otherwise)\* shall be eligible to incorporate an One Person Company;

\*NOTE: Prior to 01-04-2021, only a natural person who is an Indian citizen and resident in India could incorporate an OPC. This relaxation has been made by Companies (Incorporation) Second Amendment Rules, 2021.

- There can be a natural person who is a citizen of India appointed as Nominee of the person who is constituting the One Person Company;

\*NOTE: Prior to 01-04-2021, the requirement was that the Nominee shall be resident of India. Effective from 01-04-2021 the Nominee could be a resident of India or otherwise.

- “RESIDENT IN INDIA” shall mean a person who has stayed in India for a period of not less than 120 days\* during the immediately preceding one calendar year.

\*NOTE: Prior to 27.07.2018, the above period of stay was 182 days. This condition has been relaxed through the Companies (Incorporation) Third Amendment Rules, 2018 with effect from 27.07.2018.

- An OPC cannot carry out non-Banking financial investment activities including investment in securities of any Body Corporate.

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- If a person is a member of an OPC and he becomes a member of another OPC by virtue of being a nominee in the other, he should meet the eligibility criteria as above within a period of 180 days.

#### BRIEF IN SIMPLE LANGUAGE OF ABOVE POINT-

- a) Suppose a person Ram is a member of ABC (OPC) Private Limited, and also Nominee in XYZ (OPC) Private Limited;
- b) Ram become member in XYZ (OPC) Private Limited by virtue of death of member of XYZ (OPC) Private Limited;
- c) As per Rule 3 of Company Incorporation Rules, 2014 a person cannot become member in more than OPC;
- d) Hence, Ram has to cease his position as member from any one of the one person Company within a period of 180 days.

## PROCEDURE FOR CHANGE IN MEMBER/NOMINEE (OPC)

- ✓ Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract;
- ✓ and his nominee becomes the member of such One Person Company;

Such new member shall nominate within 15 days of becoming member, a person (Nominee) who shall in the event of his death or his incapacity to contract become the member of such company; and

The company shall file with the Registrar an intimation of following:

- Cessation of member ( Due to death or incapacity);
- Appointment of new Member (Former nominee who become member by virtue of death of member);
- Nomination of new Nominee (For new member a person designated by the sole promoter or member of the company to take over his position in the event of their death or incapacity)

in Form INC-4 along with the fee as provided in Companies (Registration offices and fees) Rules, 2014 within 30 days of the change in membership and with the prior written consent of the person so nominated in Form INC-3.

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Documents required to be attached with Form INC-4 are:

- Consent of the nominee in signed Form INC-3 along with all the enclosures. (Mandatory)
- Certified copy of PAN card of the new nominee and/or new member. (Mandatory)
- Proof of identity of the new nominee and/or new member. (Mandatory)
- Residential proof of the new nominee and/or new member. (Mandatory)
- It is mandatory to attach notice of withdrawal of consent in case withdrawal is by nominee.
- It is mandatory to attach copy of intimation for change in nominee in case intimation about change in the name of the nominee.
- It is mandatory to attach proof of cessation of member in case of intimation of cessation of member.

Any other information can be provided as an optional attachment(s).

#### OTHER FACTS-

**No Person shall be eligible to incorporate more than 1 OPC or become Nominee in more than one such Company.**

**A minor cannot be a member or nominee in an OPC nor can be hold shares with beneficial interest;**

**An OPC cannot be incorporated or converted into Section 8 (Not for profit) Company.**

## STEPS TO BE FOLLOWED FOR INCORPORATION:

### 1) APPLICATION FOR RESERVATION OF NAME-

- Application for reservation of name should be made through the web service available at [www.mca.gov.in](http://www.mca.gov.in) by using web service Spice+Part-A available on website of Ministry of Corporate Affairs.
- Such application may be accepted or rejected by the Registrar after allowing re-submission of such application *within 15 days of rectification of defect.*

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- In determining whether proposed name is identical to others, provisions of Rule 8, 8A and 8B of Companies (Incorporation Rules) 2014\* have to be considered.

Provisions of name extension, Resubmission, etc., are same applicable for One Person Company are discussed in our Article 2 (Incorporation of Public Company)

## 2) APPLICATION FOR INCORPORATION IN SPICE+PART-B (INC-32)-

Attach with the application for incorporation in Spice+Part-B (INC-32) the following documents:

- Affidavit and Declaration by First Subscriber and directors; (Only one member in OPC and Minimum 1 director)
- Proof of Registered Office Address (Lease Deed/ Rent Agreement/ No Objection Certificate / Board Resolution in case registered office property taken on lease from any body corporate )
- Copy of Utility Bill (not older than two months);
- Copy of approval in case proposed name contains any words or expressions which requires approval from Sectoral Regulator;
- Proof of Identity and Proof of Address of both member and his nominee;
- Consent to act as Nominee also required to be attached in Form INC-3;
- Paid up share Capital and Authorized share Capital of OPC. (Now there is no ceiling under law)

\*Prior to 01-04-2021 as per Rule 6 (1) of Companies (Incorporation) Rules, 2014, the paid up share capital of an OPC shall not exceed 50 lac and its average turnover in the relevant period could not exceed 2 crore.

This requirement has been withdrawn with effect from 01-04-2021 through substituted of Rule 6 by Companies (Incorporation) Second Amendment Rules, 2021.

Minimum Number of Director in case of One Person Company is 1; and maximum 15 and it can be more than 15 by passing a special resolution under Section 149(1) of Companies Act, 2013.
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### 3) FORMS REQUIRED TO BE FILED FOR INCORPORATION-

For Incorporation, of Company an application has to be filed with Registrar having Jurisdiction in

- Form INC-32 (Spice+ Part-B) along with;
- AGILE-PRO-S
- e-Memorandum (e-MOA) in form INC-33 and;
- e-Articles of Association (e-AOA) in form INC-34)
- INC-9 (Auto generated form regards Declaration by Subscriber and First Directors)

Along with fees as may be provided under act for registration of Company.

### 4) FILLING OF REGISTERED ADDRESS OF THE PROPOSED COMPANY(ALONG WITH SPICE+ PART-B):

- NOC From owner/ Lease holder (If the Registered office is Rented or taken on Lease)
- Address Proof (Electricity bill /Gas bill /postpaid mobile bill /broadband bill) not older than 2 months.
- Rent agreement or lease deed, if any
- BR passed in case of Company, LLP Resolution in case of Limited liability Partnership, and Resolutions in case of Trust, Partnership and Society, by the Entity giving NOC\* for the purpose of usage of Place as registered office of Proposed Company (NOC has to be received on letter head)

\*Entity giving NOC can be Company/LLP/Society/Trust, etc.

### 5) FILLING OF FIRST DIRECTORS DETAILS AND SUBSCRIBER DETAILS (ALONG WITH SPICE+ PART-B)

- Identity proofs- Driving license/Voter ID/Passport) along with PAN(Mandatory)
- Address proofs- Bank statement, Utility bill (Not older than 2 months).
- Specimen Signature of Aforesaid.

6) If, application is found to be in order in all respects Registrar will issue Certificate of Incorporation in Form No. INC-11.

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### LAW BASED PROVISION (OPC)

SECTION 3 OF COMPANIES ACT, 2013 READ WITH RULE 4 OF COMPANY (INCORPORATION) RULES, 2014 DEALS WITH FORMATION OF COMPANY:

3(1) A Company may be formed for any lawful purpose by—

- a) seven or more persons, where the company to be formed is to be a public company;
- b) two or more persons, where the company to be formed is to be a private company; or
- c) one person, where the company to be formed is to be One Person Company that is to say, a private company.

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

PROVIDED THAT the memorandum of One Person Company shall indicate:

- The name of the other person (nominee), with his prior written consent in the Form INC-3, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

PROVIDED FURTHER that such other person (nominee) may withdraw his consent in such manner as may be prescribed in Rule 4 of Company (Incorporation) Rules, 2014\*;

\*Rule 4 says that old member shall nominate another person as nominee within fifteen days of the receipt of the 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 so nominated in INC-3 which shall be filed in form of a declaration in Form No. INC-4.

PROVIDED ALSO that the member of One Person Company may at any time change the name of such other person (nominee) by giving notice and filing of Form INC-4 along with consent of nominee in Form INC-3.

PROVIDED ALSO THAT it shall be the duty of the member of One Person Company to:

- Intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within 15 days of becoming member;

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- a person who shall in the event of his death or his incapacity to contract become the member of such company, and;
  - The company shall file with the Registrar an intimation of such cessation and nomination in Form No. INC.4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 within 30 days of the change in membership and with the particulars of consent of the person so nominated in form no. INC-3.

## UNLOCKING THE BENEFITS: Advantages of Establishing a One Person Company (OPC)

From Layman point of view, a question arises that why should we incorporate One Person Company whether we get any benefits or any sought of exemptions by incorporating it.

- ❖ The Concept of One Person Company was introduced to get the Business manner and business culture organized instead of unorganized business culture being inherently followed previously.
- ❖ Before the introduction of One Person Company (OPC) structure, majority of business organizations were often closely held, meaning they were owned and operated by a single owner. The OPC framework provides a legal structure that allows a single person to own and manage a company, providing flexibility for small businesses and entrepreneurs.
- ❖ Absolutely, the One Person Company (OPC) structure can indeed serve as a stepping stone for first-generation entrepreneurs, especially within family business. It provides a formalized and organized framework for solo entrepreneurs, making it easier for them to establish and operate their businesses.
- ❖ Moreover, the successful implementation of OPC can set a precedent and act as a guiding influence for subsequent generations, encouraging the adoption of a more structured and corporate culture in the family business.
- ❖ Thus, following are some advantages / Benefits of One Person Company:

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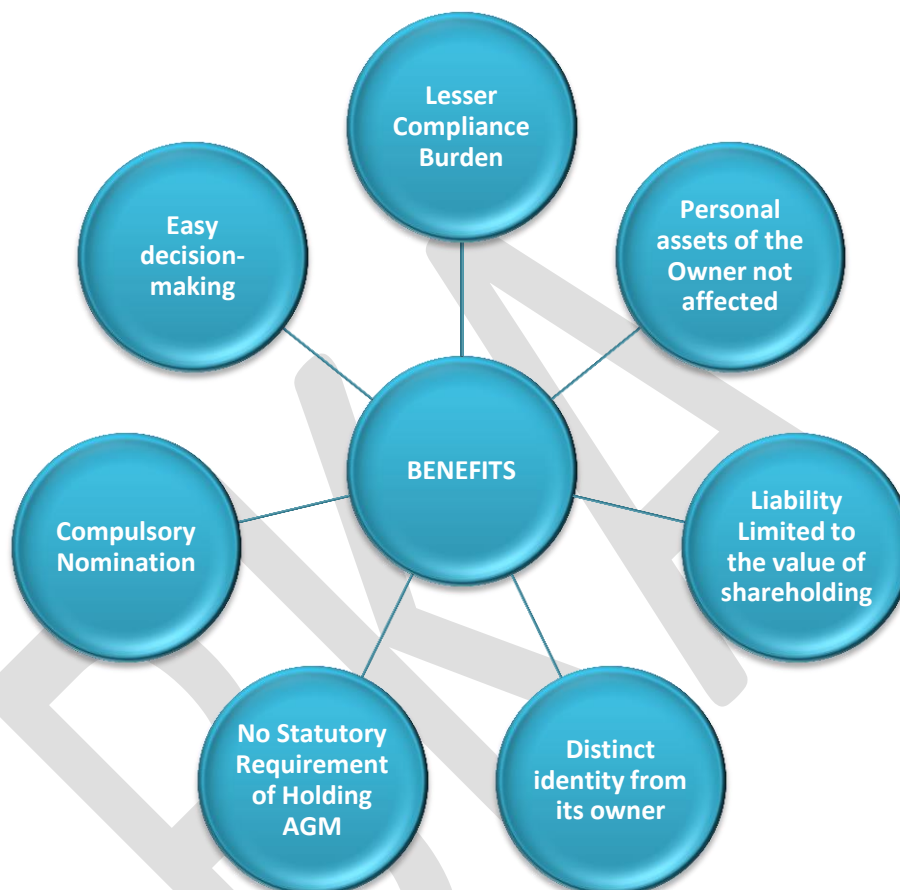
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### NO STATUTORY REQUIREMENT OF HOLDING AGM

Section 96 of the Companies Act, 2013, provides that every company, other than an OPC, is required to hold an Annual General Meeting (AGM) every year.



## DIFFERENCE BETWEEN SOLE PROPRIETORSHIP AND OPC

<u>PARTICULARS</u>	<u>SOLE PROPRIETORSHIP</u>	<u>OPC</u>
Registration	No registration mandate	Must be registered under the Companies Act, 2013
Legal Status	No separate legal status	Has a separate legal status
Members Liability	Owner has unlimited liability	Shareholder has limited liability
Nominee	Nominee is not required	Requires a minimum of one nominee
Directors	No directors required	Minimum of one director is mandatory

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Foreign Ownership	Not allowed	Allowed when one is the director and the other is the nominee
Transferability	Cannot be transferred	Can be transferred to the nominee
Survival	Comes to an end upon the death or retirement of the sole proprietor	Will continue upon the member's death
Annual Filings	Filing of ITR only	ROC and ITR filings are necessary
Audit	Not Compulsory for Sole proprietorship to get its account audited But depends upon the limit of turnover which may attract Income tax Audit under Income Tax Act, 1961.	It is compulsory for an OPC to get its accounts audited every year as per Companies Act, 2013 and Income tax Audit may also applicable subject to limit of turnover as per Income Tax Act, 1961.

- ❖ OPC can be a good option for small businesses and entrepreneurs who want limited liability and the benefits of a corporate structure while being the sole owner of the company. It provides a separate legal entity, perpetual succession, and limited liability to the owner.
- ❖ OPC is taxed as a separate legal entity, and its income is subject to corporate tax. The tax rate for OPCs is determined based on the applicable tax laws and the company's income. An OPC can engage in any lawful business or activity, subject to the restrictions and regulations applicable to the specific industry or sector.

## COMPLIANCES OF ONE PERSON COMPANY

COMPLIANCES OF OPC		
S.NO.	EVENTS	DUE DATE AND PARTICULARS
1	Board Meeting	At least one Board of Director meeting to be held in each half of calendar year and the gap between the two meetings shall not be less than 90 days. 7 days prior notice of Board Meeting (Date of sending the notice and date of meeting should be excluded); Notice (including Shorter Notice shall be given in case OPC have more than one Director);

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		Provisions relating to quorum for meeting of Board and Notice (including shorter notice) shall not apply to OPC in which there is only one director on its board of Directors;
2	Filing	<p>Form MBP-1 (Notice of Director's interest ) should be filed by Director's at first Board Meeting of every year or whenever there is any change in disclosure;</p> <p>Form DIR-8 (Notice of Director's qualification) should be filed by Director's in Board Meeting.</p> <p>E-Form AOC-4 is to be filed within 180 days from the closure of financial year; Hence, due date is 30th September.</p> <p>E-form MGT-7A is to be filed within 180 days from the closure of financial year; Hence, due date is 30th September.</p>

## SKIP THE HASSLE: One Person Company Registration Made Easier With These Exemptions

### THE FOLLOWING ARE THE EXEMPTIONS FOR AN OPC IN INDIA:

- An OPC has no obligation to prepare a cash flow statement as a part of the financial statement.
- The annual return can be certified by the director of the company if an OPC does not have a Company Secretary.
- A One Person Company (OPC) is not obligated to hold an annual general meeting; A One Person Company is exempted from holding the Annual General Meeting of the company. As there is only one director for a One Person Company, compliance with the provisions of conducting the board meetings is impossible and is therefore granted an exemption.
- Unlike Private Limited Company, the One Person Company (OPC) requires only one director to run or manage the company but the maximum limit for directors is 15. This relaxation is available only to One Person Company since every other type of company requires a minimum number of two directors.
- One Person Company, like Private Limited Company, does not require holding 4 board meetings. An OPC may hold only 2 board meetings if such company has more

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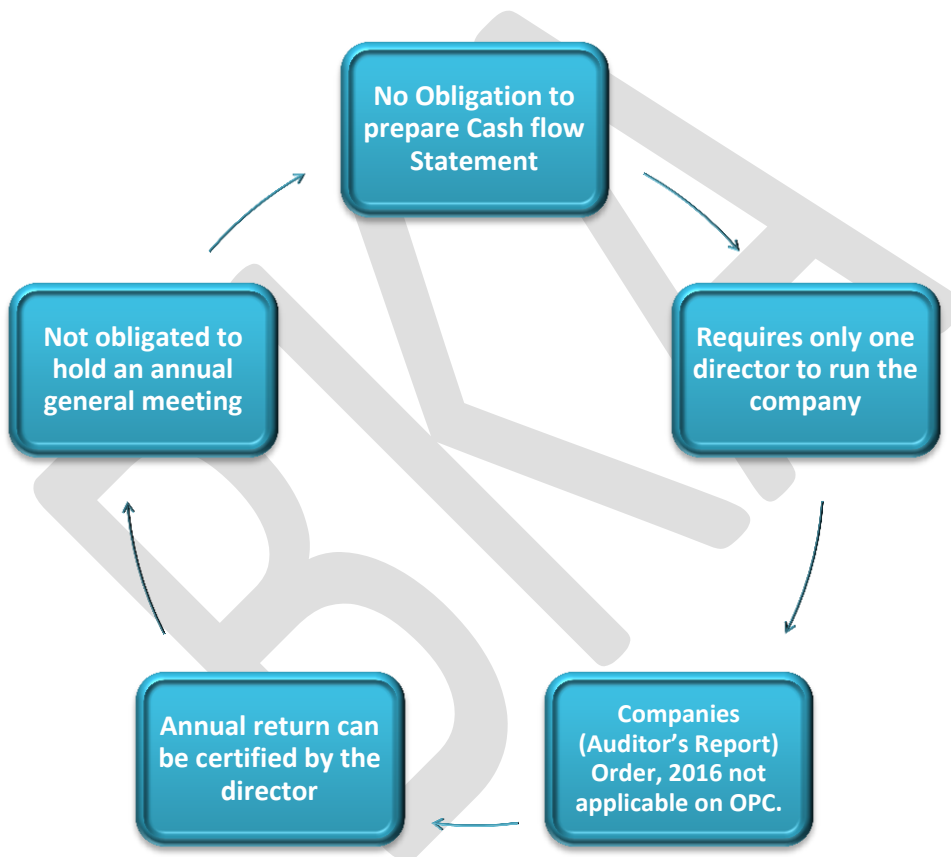
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than one director, each meeting to be held in each half of the calendar year with a minimum gap of 90 days between the two meetings.

- It is compulsory for an OPC to get its accounts audited every year. But here is an exemption given to One Person Company with regards to Internal financial Control as it is not a mandatory part in Audit Report with reference to financial statements and the operating effectiveness of such controls.
- Companies (Auditor's Report) Order, 2016 not applicable on One Person Company (OPC).



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## CONCLUSION:

From reading and observing about One Person Company (OPC) it was concluded at the end:

- ❖ The One Person Company has a separate legal identity and existence from its shareholders. This would encourage entrepreneurial persons to take the challenge of doing business without bothering about liabilities getting to the personal assets as compared to that of Sole-proprietorship or partnership firms. OPC framework provides a legal structure that allows a single person to own and manage a company, providing flexibility for small businesses and entrepreneurs.
- ❖ The Companies Act, 2013, recognizes the unique nature of OPCs and provides certain exemptions and relaxations, including the exemption from holding Annual General Meetings (AGMs).
- ❖ OPCs are required to hold Board Meetings instead of AGMs to discuss and approve key matters, such as financial statements, appointment of auditors, declaration of dividends, and overall performance review.
- ❖ Annual filing for One Person Companies is essential to ensure compliance with legal requirements. While OPCs enjoy certain exemptions, understanding the filing process, deadlines, and nuances is crucial. Adhering to these obligations not only maintains limited liability but also fosters transparency and good corporate governance.
- ❖ Mistakes during the company registration process can lead to delays in getting the Registration Certificate. It is recommended for promoter of the Company to hire a professional for incorporating a One Person Company as it is a complex process, which requires the preparation of various legal documents, such as the Memorandum and Articles of Association, and adherence to specific regulatory requirements.
- ❖ Wherever Company's name is printed, attached, or engraved, the words "One Person Company" must be placed in brackets beneath the company name. For example- ABC (OPC) Private Limited.
- ❖ Section 2(62) of Companies Act, 2013 states that an OPC refers to a company which has only one person as its member. As stated in Section 3(1)(c) of Companies Act, 2013 the One Person Company is a Private Company.

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