Limited scope for formation of one person company

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Concept of one person company

The Companies Act, 2013 (the Act) introduced so many new concepts, and one among them is the formation of one person company (OPC).

The concept was first discussed and recommended by J J Irani Committee way back in 2005. In the United States, several States permit registration of OPC as a company with limited liability.

The concept was introduced in Singapore in 2004 followed by China in 2005. Such concept of OPC is in existence in some other countries including the UK, Mauritius. Pakistan too amended its Companies Act to give effect for registration of OPC.

Single shareholder

One person company has been defined in the Act as a company which has only one member. A single person holds entire 100 per cent shareholding. Corporate entities like limited liability partnership, private limited company and public limited company require two or more people to partner and it is different in OPC.

The Companies (Incorporation) Rules, 2014 (the Rules) provides that only a natural person who is a resident and citizen of India can form OPC. It means that other legal entities like companies or societies or other corporate entities cannot form OPC and cannot be a shareholder of OPC.

Further, it also means that non-resident Indians or foreign citizens cannot form OPC. The rules further specify that a person can be a shareholder in only one OPC at any given time. It simply means an individual cannot have two different OPCs in his name.

Limited liability

The major difference between a sole proprietor and an OPC is that in the case of an OPC, the liability of the shareholder is limited to only the business assets, in case the business fails. In the case of a proprietorship, the liability is unlimited and the creditors can even take hold of personal assets of the proprietor in order to settle the business liabilities.

Number of directors in OPC

An OPC may have only one director. But at the same time there is no bar on a higher number of directors. However, as per the Act, the total number of directors shall not be more than 15.

Nominee

One important concept where the person forming the OPC has to nominate a person as a nominee with his written consent who, in the event of his death or inability to contract as the owner of the company, shall come forward and take over the reins of the company.

Only a resident and citizen of India can be a nominee. If the person so nominated becomes the member of such OPC and is already a member of another OPC, at the same time, in terms of the Rules he has to decide within 6 months which OPC he intends to continue.

On the death of the sole member, the nominee shall be the person recognised by the company as having title to all the shares of the member. Such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable. On becoming member, such nominee shall nominate any other person, who is resident and citizen of India with the prior written consent of such person who shall, in the event of the death of the member, become the member of the OPC.

Level of compliance

OPC gets freedom from complying with many requirements as normally applicable to other private limited companies. Certain sections like sections 96, 98, and 100 to 111 are not applicable for one person company. Some of these are mentioned below:

– No requirement to hold annual or extraordinary general meetings. Only the resolution shall be communicated by the member of the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of meeting.

– For the purposes of holding Board meetings, in the case of an OPC which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a company at a Board meeting are entered in a minutes book – signed and dated by the member and such date shall be deemed to be the date of the Board meeting for all the purposes under the Companies Act, 2013.

– No requirement of preparing cash flow in the annual financial statements.

– Annual returns can be signed by the director himself without company secretary.

_ The newly introduced Secretarial Standards are also not applicable to OPC if it has only one director on its Board.

Conversion from one person company to private limited and vice versa

It is provided in the Act that when an OPC reaches its paid-up capital of Rs 50 lakh or more or when the average turnover of the company which is Rupees two crores or more for a period of 3 years, then such OPC shall be converted into a private limited company after making the necessary changes in the memorandum of association and articles of association and shall comply with all the requirements of a private limited company.

Similarly, a private limited company which does not have a paid-up capital of more than Rs 50 lakh or where the average annual turnover for the past 3 years is less than Rupees two crores can convert itself into a one person company and enjoy the benefits as such. However, at the time of conversion it has to ensure compliance with all conditions of OPC, such as only one shareholder who is a resident and citizen of India, appointment of nominee and so on.

Conclusion

The concept of OPC is yet to take a lead. Though it is said that only one person is needed to form OPC, actually it requires two persons since there shall be a nominee at the time of incorporation and all the time to continue. The limitations such as foreign promoter participation, mandatory conversion to private limited company in OPC do not attract entrepreneurs.

The taxation angle is to levy tax on the entire profits of the company as a company and not as an individual -- another dis-advantage at this point of time. The lenders normally do not leave the individual shareholder without seeking collateral security while extending credit facilities, and that turns out to be unlimited liability when the business runs into rough weather. The Act is undergoing changes and it is right time to consider and address the limitations so as to give a boost to the concept of OPC.

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