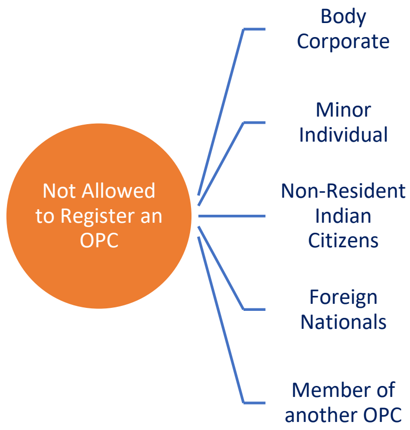
ONE PERSON COMPANY, a new concept for small businesses

1 Shareholder | 1 Director | 1 Nominee | Limited Liability | Separate Entity | Less Compliances

The One Person Company (OPC) as a business structure is recently introduced in India through Companies Act, 2013 to administer the proprietorship businesses and promote in an organised way.

BASICS OF an OPC

- **Shareholder:** An individual can form a company for any lawful purpose.
    - Entity is owned by a single individual.
    - Individual must be Indian citizen and resident of India.
    - Individual should be competent to contract.
    - A minor cannot form an OPC.
    - Shareholder must be a natural person and not the corporate or other artificial body.
    - Individual and OPC are considered as separate legal entities.
    - An Individual is not eligible to incorporate more than one OPC.



- **Minimum Share Capital:** An OPC can be incorporated with any amount of Capital. However, minimum fee for Rs. 1 lakh Authorized Capital must be paid to the Government during the incorporation of an OPC.

- **Nominee:** While registering the company as OPC, an individual is required to mention a nominee.
    - The nominee also must be an Indian citizen and Indian resident.
    - The appointment of a nominee must be made at the time of OPC registration with his written consent.
    - A minor cannot be a nominee of an OPC.
    - The nominee once appointed can be changed at a later stage, if required.
    - In case of the death of the owner of OPC, the nominee has the right to choose or reject to become the sole owner of the company.
    - The nominee to one OPC shall not be eligible to become a nominee for more than OPC.

- **Directors:** The minimum number of directors required is ONE. OPCs can have a maximum of 15 directors. The director and shareholder can be same individual.

- **Status of OPC:** As per the Companies Act, 2013, OPCs are private companies. Under the Income Tax Act, 1961, OPCs are categorized as companies for taxation purpose.

- **Taxation:** Under the Income Tax Act, OPCs are taxable under the tax bracket of 30% on total income excluding cess and surcharges. However, the small companies are covered under the tax bracket of 25% on total income.

- **Compliances:**
    - OPC is exempt from holding of Annual General Meetings in addition to other meetings. The Resolution signed by the Director and entered in the minutes book is sufficient, instead of the annual general meeting.

- Audit is mandatory for OPC registered under Indian Companies Act, 2013. OPC shall appoint a statutory auditor within 30 days of registration. Mandatory rotation of auditor after expiry of maximum term is not applicable.
- Annual compliance will include filing Forms with MCA for each financial year.
- Require to file the income tax return for each financial year.
- In case of an OPC, a cash flow statement is not required.

- **Restrictions:**
  - If an OPC company has an average hattrick turnover of Rs. 2 crores and over or acquires a paid-up fund of Rs. 50 lakh and over, it has to be converted to a private limited company or public limited company within six months.
  - There are certain business activities prescribed, for which the OPC Company Registration is not permitted. Activities such as Non – Banking Financial Activities, investment in securities, etc. cannot be carried on by any OPC as an organisation.
  - OPC cannot be incorporated or converted into a company under Section 8 of the Companies Act.
  - Further, if the promoter wants to covert the OPC voluntarily into other company, a minimum period of 2 years shall pass since OPC Registration.
  - OPC Registration in India by a foreign national as a member is not permitted as only Indian resident can become a member of the company.

PROS

- For incorporating an OPC only one individual is required
- OPC can have one shareholder and one director. Shareholder and director can be the same individual.
- OPC is considered to be a separate legal entity.
- The business gets a legal status and recognition for the business.
- The liability of the members is limited.
- OPCs can raise funding and are eligible for government schemes.
- OPCs allow the transferability of shares.
- Tax flexibility and Savings. Any remuneration made to the director will be allowed under deduction under Income Tax Law, unlike Proprietorship.
- Less compliances as compare to private limited company.

CONS

- 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.
- An individual not eligible to incorporate more than a OPC or become nominee in more than one such company.
- A minor is not eligible to become a member or nominee of an OPC or cannot hold share with beneficial interest.
- NRIs not allowed to incorporate an OPC.
- Requirement to appoint a nominee for incorporating an OPC.
- OPC cannot carry out Non – Banking Financial Investment activities including investment in securities of anybody corporates.
- OPC cannot be incorporated or converted into a company under Section 8 of the Companies Act.
- There can be no opportunity for contributing to employee stock options.
- Fundraising from investors is not possible in the form of equity investment.

MEASURES IN UNION BUDGET 2021-22

Budget 2021-22 has proposed certain relaxations for OPCs by allowing them to grow without any restrictions.

- OPC will be allowed to convert into any type of company at any time, givenaway the earlier restriction of 2 years.
- Increased threshold for paid-up capital to Rs. 2 crores from earlier Rs. 50 lakhs and turnover limit to Rs. 20 crores from earlier Rs. 2 crores.
- The residency limit for Indian citizens to set up an OPC is now reduced to 120 days from earlier 182 days.
- The measure also allows Non-Resident Indians (NRIs) to incorporate OPC in India. For said to be an Indian citizen the proposed period of residency is lowered to 120 days from 182 days for NRIs.

DIFFERENCE BETWEEN ONE PERSON COMPANY AND PRIVATE LIMITED COMPANY

Particulars	One Person Company	Private Limited Company
Law Applicable	Companies Act 2013	Companies Act 2013
Minimum share capital	No requirement for minimum share capital. If capital exceeds 50 lakhs, OPC gets converted to Pvt. Ltd.	No requirement for minimum share capital
Members required	Minimum 1 Maximum 1	Minimum 2 Maximum up to 200
Directors required	Minimum 1 Maximum 15	Minimum 2 Maximum 15
Board meeting	One meeting in each half of the year. The gap between the 2 meetings must be at least 90 days	One meeting in each quarter of the year. The maximum gap between the 2 meetings can be 120 days
Statutory Audit	Compulsory	Compulsory
Annual Filing	Financial Statements and Annual returns to be filed with RoC	Annual accounts and Annual returns to be filed with RoC
Liability	Limited	Limited
Transferability of shares	Can be made by altering MOA	Can be easily transferred
Foreign Direct Investment	Not eligible for FDI	Eligible via automatic route
Suitable to which type	Individuals whose capital requirements are 50 lakhs and turnover is less than 2 crs	Business, trade, manufacturers, large industrial establishments
Company Name	Should end with (OPC) Pvt. Ltd./ (OPC) Ltd.	Should end with Pvt. Ltd.

HOW TO INCORPORATE AN OPC

Our expert team can help you in registration of a One Person Company in quick and professional manner. You may contact us via www.labhyansh.com or e-mail us at info@labhyansh.com .

About Us: LABHYANSH is a professionally managed Accounting, Taxation and Compliance Outsourcing services provider having presence in India. Provides services that are Timely, Accurate and Cost Effective using well defined processes. Our services enable client's business to enhance operational and financial agility by streamlining and optimizing key processes.

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