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It shall have a minimum of one member in its register of members. It shall also have a minimum of one director and a maximum of fifteen directors in its Board;

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of, any document referred to in sub-clause (i) to sub-clause (iv);

Provided that the financial statement, with respect to One Person Company (OPC), small company and dormant company, may not include the cash flow statement;

Section 2 (68): Definition of “Private Company”: “Private company” means a company having a minimum paid-up share capital of one lakh rupees (₹1,00,000/-) or such higher paid-up share capital as may be prescribed, and which by its articles,

(i) Restricts the right to transfer its shares;

(ii) except in case of One Person Company (OPC), limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- A. Persons who are in the employment of the company; and
- B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

Section 3: Formation of One Person Company (OPC)

(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 (OPC) 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 (OPC) shall indicate the name of the other person, with his prior written consent in the prescribed form, 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 (OPC) along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company (OPC) may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company (OPC) 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 such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also, that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- (2) A company formed under sub-section (1) (i.e., One Person Company/Private Limited Company/Public Limited Company) may be either—
- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

Section 4(1)(f): Memorandum : The memorandum of a One Person Company (OPC) shall state – the name of the person who, in the event of death of the subscriber, shall become the member of the company.



Section 12 (3) Proviso: Registered Office of the One Person Company (OPC): *Provided further that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.*

Section 92 (1) Proviso: Annual Return: *Provided that in relation to One Person Company (OPC) and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.*

Section 96 (1): Annual General Meeting (AGM): *Every company other than a One Person Company (OPC) shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.*

Section 122: Applicability of Chapter-VII (Management & Administration) to One Person Company (OPC)(1) The provisions of the below sections shall not apply to a One Person Company (OPC) -

Section 98: Power of Tribunal to call meetings of members, etc.

Section 100: Calling of extraordinary general meeting

Section 101: Notice of meeting

Section 102: Statement to be annexed to notice

Section 103: Quorum for meetings

Section 104: Chairman of meetings

Section 105: Proxies

Section 106: Restriction on voting rights

Section 107: Voting by show of hands

Any joint stock company is known for its democratic decision making through different genres of meeting by virtue of its stipulation of more than one member. This is one of the basic characteristics of a company.

Section 108: Voting through electronic means

Section 109: Demand for poll

Section 110: Postal ballot

Section 111: Circulation of members' resolution:

(2) *The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (3).*

(3) *For the purposes of section 114 (Ordinary and Special Resolutions), any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 (Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot) and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.*

(4) *Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 (Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot) and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.*

Section 134: Financial statement, Board's report, etc.

Section 134 (1): *The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by*

the Board or by two directors out of which one shall be managing director and the Chief Executive Officer; if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director; for submission to the auditor for his report thereon.

Section 134 (4): The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Section 137 (1): Copy of financial statement to be filed with Registrar third Proviso: *Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.*

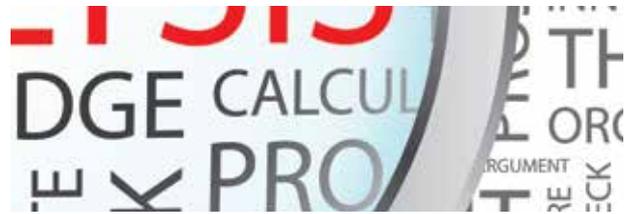
Section 149: Company to have Board of Directors: (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—
(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
(b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Section 152: Appointment of Directors: (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the

One of the characteristic of a company in the Companies Act, 1956 is that the separation and ownership of a company is distinctly separated. Even in private limited companies, we have noticed that there is a separation between the shareholders who invest in the company and own it, and the directors who run the company.



memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

Section 173: Meetings of Board: (5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this sub-section and in section 174 (Quorum for meetings of Board) shall apply to One Person Company in which there is only one director on its Board of Directors.

Section 193: Contract by One Person Company (OPC): (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract:

Provided, that nothing contained in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

(2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

CHARACTERISTICS:

To simplify, the characteristics of a One Person

Company, based on the aforementioned Sections of the Act, can be summed up as:

- 1) It shall be treated as a private company, subject to the under-mentioned exceptions;
- 2) It shall have a minimum of one member in its register of members. It shall also have a minimum of one director and a maximum of fifteen directors in its Board;
- 3) The words *One Person Company* shall be mentioned in bracket at the registered office of the company;
- 4) Its memorandum of association shall include the name of a person, who shall become a member of the company at the incapacity of the member;
- 5) It shall enjoy the following relaxations:
 - i) The annual report along with the director's report be signed by only one director of the company;
 - ii) Decline to hold an annual general meeting as every other company;
 - iii) Its financial statements may not include a cash-flow statement;
 - iv) Restriction to vote either by show of hand, electronic means, poll, postal ballots or by circulation;
 - v) No one shall have the power to call for any meeting, give notice about a meeting and annexure thereto, call for a quorum, appoint a chairman and proxies for a meeting;
- 6) The sole member may transact any business which may require a resolution- ordinary or special, by means of a communication through a member of the company and entering it in the minute book.

One Person Company as coined by the various Sections of the Companies Act, has some restrictions like entering into contracts, as well as some exemptions like meetings of a company and contents of financial statements. When we closely look at its characteristics, we can very well compare it with proprietorship form of an organisation. It would be very correct for us to observe if this form of organisation gives us any advantage over the prevalent proprietorship form of organisation.

ANALYSIS

However, on a comparative analysis of the two forms of organisation, we find that *One Person Company* suffers from some serious disadvantages. They are:

1. *Democratic Decision-Making*: Any joint stock company is known for its democratic decision-making through different genres of meeting by

virtue of its stipulation of more than one member. This is one of the basic characteristic of a company. However, a *One Person Company* suffers from the departure of this very basic characteristics because by virtue of the Section 96(1) and the Section 122. Moreover, it is also not practical, where there is only one person carrying on the business. Meetings stipulated by the erstwhile Companies Act, 1956 instilled a sense of accountability of the operations of a company. Voting powers also involved a democratic atmosphere where proper decisions could be taken and investor's money was secured. Therefore, in the absence of such restrictions, *One Person Company* could be seen as an autocratic form of organisation without any iota of accountability.

2. *Perpetual Succession*: The very concept of a separate legal entity being created for a perpetual succession that is continuance of the company even after the death or retirement of a member is also challenged. Though, it is included in the Section 3 and the Section 4 (1)(f) that a name of a person shall be mentioned in the memorandum of association of a *One Person Company*, that in the event of death of the existing member, he shall become the member of a *One Person Company*. However, it is doubtful that it would do any good because the person named therein the memorandum of association not being a member of the company and not involved in the day-to-day operations of the company, would not be able to succeed the business after the death of the member. In such an eventuality, it is most likely that such succeeding member would wind up the company. Moreover, as it is said that the only thing constant is change. Therefore, even though a person may be named in the memorandum of association as a succeeding member, we also have to consider that what is such a person is not in a position to become a member, as we assume that no person would remain idle for years, waiting for his turn of succession.

The mandate of mentioning in the stationery and sign board of a company the words *One Person Company* would mar the whole idea of forming a company and take away its credibility. Moreover, as discussed above, in the absence of separate ownership and control, the advantage of limited liability and the danger of poor corporate governance might pose some serious threats to the investors.

3. *Separation of Owner and Control*: One of the characteristics of a company in the Companies Act, 1956 is that the separation and ownership of a company is distinctly separated. Even in private limited companies, we have noticed that there is a separation between the shareholders who invest in the company and own it, and the directors who run the company. However, this is also one of the characteristics of a company, which is seriously challenged by the Companies Act, 2013, where the line between ownership and control is blurred. Disadvantage of such a departure might result in unethical business practices and risk for other stakeholders of the company, which would in turn have serious corporate governance issues.
4. *Marketability of a One Person Company*: In the Indian scenario, we can say that the joint stock form of organisation or a registered company enjoys higher credibility as compared to any other form. Credibility would encompass easier capital availability, market acceptance and business growth. If we try to see it in a practical way, most financial institutions would gauge a *One Person Company* on the same grounds as that of a proprietorship firm because of its characteristics, lack of democratic decision-making and accountability and, hence, would be reluctant to extend any kind of loan or credit facility, more so if it is a newly-formed company without any past credibility. The mandate of mentioning in the stationery and sign board of a company the words *One Person Company* would mar the whole idea of forming a company and take away its credibility. Moreover, as discussed above in the absence of separate ownership and control, the advantage of limited liability and the danger of poor corporate governance might pose some serious threats to the investors.
5. *Limited Liability*: We know that one of the most favoured advantage of the company form of organisation is that the liability of members are limited. Now, this might pose a serious problem to both sides. On one side, if the limited liability

Moreover, surveys also reveal that the highest revenue is generated from such One Person Companies, due to its low operational cost. Even during the economic crises, such companies fared better than the big companies.



- concept is taken seriously and holds good, it might be dangerous for investors and other stakeholders, as it would open ways for frivolous and fraudulent activities. In a country like India, which is already overflowing with tax evaders and fraudulent cases pending in various courts and scams, this would just be another means to give way to such unscrupulous people. However, if on the other side, the concept of limited liability would fail and the court as in many previous cases has applied the concept of lifting the corporate veil, it would be useless to incorporate a *One Person Company*. Though, we have seen in the past that such a concept has been applied on a case to case basis, but it would be very difficult to do so in a *One Person Company*, where one member is responsible for all operations of a company and his decisions can make or break the fate of a company.
6. *Compliance Cost*: If one of the main advantages of a *One Person Company* would be the limited liability concept, one main disadvantage would be the high incorporation cost and cost of statutory compliance, which is of a recurring nature. If we see the concept of limited liability, we would see that it comes to the rescue only at the time of closure of a company. Now, how many people would start a business beginning with thinking of their liability that might accrue at the time of winding up? It is rather absurd to think of it in its very inception, unless otherwise there is a frivolous motive behind incorporating a company. However, the compliance cost of a company is higher than that of a proprietorship company. Moreover, a proprietorship firm is easy to form as well as easy to wind up and without much compliance cost or procedure.
7. *Tax Benefit*: As the Income-tax Act, 1961 is still silent on the taxability of a *One Person Company*, it could be rightful to decide that, in the absence of an explicit pronouncement, a *One Person Company* would be taxed at the same rates as that of all other companies. This would again be disadvantageous as a proprietorship firm enjoys the tax rate applicable to that of an individual which is much lower than that of a company. This would result in higher cash flow for the organisation. Moreover, minimum applicable tax would also be applicable and a *One*

Person Company would have to forego all the tax benefits that a proprietorship firm enjoys over that of a Company.

One Person Company is an encouraged concept in many countries, since it is prevalent in some of the developed economies of the world like the United States of America and the United Kingdom, and it is also a preferred way of incorporation of businesses too. Moreover, surveys also reveal that the highest revenue is generated from such *One Person Companies*, due to its low operational cost. Even, during the economic crises, such companies fared better than the big companies.

However, when we compare our concept with those under the US and UK laws concerning the difference between a *Sole Proprietorship* and a *One Person Company* or a *One Person LLC*, we see that the statutory cost related to a *One Person LLC* is offset by the favorable taxation rates. In US, the law allows a *One Person LLC* to opt for being taxed at the same rate as that of a *Sole Proprietorship* firm or an individual. Even in UK, the net tax outgo for a LLC is much lower than that of an individual. These provide a suitable incentive for the promotion of the concept of a *One Person Company*. More so, by being incorporated as

a limited liability company, the organisation comes under a higher level of corporate governance and better security to the national economy.

CONCLUSION

To conclude the discussion, it would be rightfully said that the concept of a *One Person Company* in the upcoming Companies Bill, 2013 suffers from more disadvantages than advantages. We need to understand that a *One Person Company* has only one member because it lacks funds, capital and professionalism attached to a limited company. It is just one notch above a sole proprietorship firm which has registered itself in striving for better market, economic and management opportunities. Therefore, it would be a bit too heavy a burden on such organisations, if we start taking them at par with other limited companies. We also need to understand that this concept holds good in a matured economy, where corporate governance is an integral part of all organisations. However, even after the implementation of the Companies Act, 2013, we strongly believe that such amendments would be ushered in to facilitate and encourage the incorporation of more *One Person Company* in the future. ■

