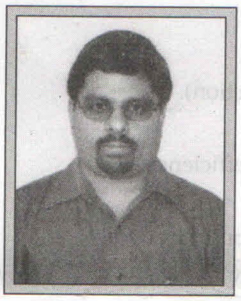

One Person Company – A Solution for Ills of Proprietary Concerns

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One person companies are in existence in certain countries. In India this novel concept has been rooted by the Ministry of Corporate Affairs. How formation of such companies would be beneficial, is what has been explained here.

Recently the Ministry of Corporate Affairs has mooted the idea of allowing One Person Companies in India in line with UK, China and several other countries. It is a right thinking in right direction by the MCA. Pending the enactment of Companies Bill MCA would do well to immediately introduce an amendment to the Companies Act, 1956 and allow formation of One Person Companies (OPCs).

OPC structure would be similar to that of a proprietorship concern without the ills generally faced by the proprietors. One most important feature of OPC is that the risks mitigated are limited to the extent of the value of shares held by such person in the company. This would enable entrepreneurial minded persons to take the risks of doing business without the botheration of litigations and liabilities getting attached to the personal assets.

Under the Companies Act, 1956, currently two persons are required to form a private limited company. This forces the entrepreneur to find yet another like minded person with whom he will be able to do business. He is also required to share the business information with another person without the guarantee of business secrecy and commitment. Such a situation quite often de-motivates the entrepreneurial minded persons from venturing into a business.

In OPC the business head is the decision maker, he is not dependent on others for suggestions or implementation of suggestions etc., resulting in quicker and easier decision making. He is the sole person who runs the business and hence, the question of consensus or majority opinion etc., does not arise.

One Person Companies are in existence in UK for several years now. China allowed formation of OPCs as recent as in 2005. A few other countries have also given the legal status for OPCs. In India, The J J Irani Committee in its report had suggested the new structure. Only now it is being taken up for consideration. It is only hoped that unlike the well discussed "Companies Bill" which is waiting to see its "Day" the OPC will be introduced through an amendment to the existing Companies Act, 1956 which is only the surest and fastest way to introduce OPCs in India.

The typical characteristics of OPCs are :

1. Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.
2. Personality driven passion and implementation of a business plan.
3. The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
4. Personal commitment to the business which is a sole idea of the person and close to his heart.
5. It is run by individual yet OPCs are a separate legal entity similar to that of any registered corporate.

Some of the benefits identified with OPCs are :

1. OPCs would provide the start-up entrepreneurs and professionals the much needed flexibility in setting up a business in India without losing the professional control over the business idea for the professional.

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Carbon markets

Carbon credits earned by operating unit shall be traded in Co_2E exchange in UK, CDM exchange in Europe and Chicago Climate Exchange which has announced license agreement with Multicommodity Exchange in India. The unit price of the carbon credit depends upon the quality, certification, verification and substantially of the economic growth etc. Presently it is being priced between 14 Euros to 30 Euros. For trading carbon credit there are various types of transactions such as spot purchase, forward contract, options and direct investment in projects are existing in the carbon market.

Carbon Tax

Trading of carbon credit is subject to tax which is in the nature of indirect tax and the rates vary between country to country of trading.

Scenario of Carbon credit business in India

Nearly 40% of the carbon credit under the CDM project is issued to India and India stands at No.l position by registering around 260 projects across the country.

The following are some of the entities which have earned carbon credit in multimillion by execution of CDM project : -

1. Jindal Steel Work (JSW) has been awarded four million carbon credit for reducing the Gas emissions between 2001-06 (manufacturing operations).
2. Torrent Power AEC (energy).
3. Gujarat Floro Chemical (gas).
4. Indian Aluminium (gas reduction).
5. Lanco (fuel substitution)
6. Chennai Petroleum (energy efficiency).
7. Orissa Sponge Iron (energy)
8. Kalpataru Power Transmission (renewals)
9. Indogulf Corporation (energy).
10. Grasim Industry (energy efficiency).

CONCLUSIONS

From the above study, we could understand that uncontrolled Green House Gas Emission would cause adverse global climate change over a period of time resulting in de-stabilization of the normal life of living organisms. In order to protect the ENVIROMENT, most importantly, it is urged to make further awareness among the public, industries and other sectors about Global climate change and its impact on human life so that a realistic approach/view to control the gas emissions among the polluters could be created to enable them to undertake such projects for reducing Gas emissions (CDM). □

Attention Members!

SECRETARIAL COMPLIANCE REPORT

The accent of regulatory intervention is now on stricter compliance of statutory requirements and procedures, greater disclosures and transparency. It is increasingly being felt that companies that do not comply with meaningful governance procedures have to pay a significant risk premium when competing for scarce capital in today's markets, besides losing investors' trust and confidence. In this scenario, the concept of **Secretarial Compliance Report** assumes great significance as it helps build all round confidence in the corporate sector by ensuring due compliance of laws and informing the shareholders and other stakeholders as to whether the company is being managed on sound corporate governance principles. Secretarial Compliance Report creates awareness among companies to comply with the provisions of various laws in their own benefit and also provides a mechanism for self-regulation by companies.

It is heartening to note that some progressive company managements, realising the benefits of Secretarial Compliance Report and its value addition to managements, investors and the Government, have voluntarily introduced Secretarial Compliance Report as part of their Directors' Report.

In order to encourage companies to voluntarily obtain Secretarial Compliance Report from Practising Company Secretaries, and to publish them in their Annual Reports, the Council of the Institute has decided to give publicity to such initiatives. Accordingly, it is decided that the following would be published in Chartered Secretary :

1. The names of companies voluntarily obtaining Secretarial Compliance Report from Practising Company Secretaries.
2. Extracts from Compliance Reports containing information of non-routine nature where an information bearing a new dimension has been depicted.

Companies voluntarily obtaining Secretarial Compliance Report and reporting the same in their Annual Reports are requested to send copies of the Annual Reports to the Institute for consideration for publication in Chartered Secretary.

The Annual Reports may be sent to Shri B. K. Kulkarni, Director, Academics and Professional Development, The ICSI, 22, Institutional Area, Lodi Road, New Delhi – 110 003 (E-mail: dbkk@icsi.edu).

2. OPCs provide the much required freedom to the professionals who would like to come out of the shackles of big corporate and be independent.
3. OPC provides an outlet for the entrepreneurial impulses among the professionals.
4. The advantages of limited liability. The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability.
5. OPCs are not proprietorship concerns, hence, they give a dual entity to the company as well as the individual, guarding the individual against any pitfalls of liabilities. This is the fundamental difference between OPC and sole proprietorship.
6. Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.
7. Business currently run under the proprietorship model could get converted into OPCs without any difficulty.
8. OPCs require minimal capital to begin with. Being a recognized corporate, could well raise capital from others like venture capital financial institutions etc., thus graduating to a private limited or public limited company under the Companies Act, 1956.

The concept of OPC is more suitable to Professionals specifically from the Service Sector like our Company Secretaries in Practice. They can corporatise their profession by converting the individual practices into OPC without bargaining with other co-professionals. OPC model of corporatisation would be a much better alternative to the currently discussed another hot subject i.e., Limited Liability Partnership (LLP). While each individual professional could incorporate an OPC, he could well be a shareholder in another private limited company or be a partner in another LLP. Several OPC could come together to form an LLP thus reach out to a larger section of clients without sacrificing their individual clients.

OPC, if introduced would solve one more issue. When multi-national companies incorporate a company in India, as every one knows, one of its Indian officials is given one share, that too, as a nominee of the MNC for the simple purpose of fulfilling the legal requirement of having two shareholders. In other words, the company is owned 100% by the MNC only which is in no way different than the OPC itself. OPC would legalise it.

FALLOUTS

Given our legal system and capabilities to find loopholes in any best written statute, care must be taken to ensure that the concept of OPC is not misused by unscrupulous people with an intent to defraud creditors and other business doers. Government should take more care while drafting the amendment allowing setting up of OPCs. A few important things to be considered are as follows :

1. OPCs should be formed only by individuals and not by any corporate.
2. Statutory compliances, however minimal it may be, should be clearly set out.
3. OPCs should know clearly that personal transactions are not to be mixed up with that of OPC.
4. OPCs should have an exigency plan for its continuation in case of death of the single owner. This is very essential.
5. OPC should be prohibited from providing any invitation to the public for participation in its capital.
6. Similarly, OPCs should not be allowed to issue any kind of debt instruments like debentures, bonds etc.
7. OPCs should be prohibited from carrying on insurance, banking and such other business where the investments on behalf of third parties are required to be managed.

OPPORTUNITIES FOR COMPANY SECRETARIES IN PRACTICE

OPCs throw open a very new arena of professional opportunity to Company Secretaries in Practice. A few of them could be :

1. OPCs should be incorporated only upon an Audit report of a Practising Company Secretary who would audit and provide a report on the compliance of all statutory requirements by the individual aiming at forming an OPC.
2. A concurrent or periodical audit by the Practising Company Secretary is compulsory to ensure that all the legal and statutory compliances are being made by the OPCs including maintenance of proper books, registers and other related records.
3. It could be made compulsory for an OPC to appoint a Company Secretary in Practice where the turnover of the business is above say Rs.5.00 lakhs.
4. Since OPCs would also get their registrations done only through the Registrar of Companies, it should be made mandatory that the basic registration papers are prepared only through a Company Secretary in Practice.
5. A Practising Company Secretary may be allowed to represent an OPC in all its issues relating to compliance under the Companies Act, 1956, Income Tax Act, 1961 or any such other statutes that may be applicable to the OPCs.

CONCLUSION

The concept of OPC is a need of the hour and it is very essential for MCA to immediately move an amendment to the Companies Act, 1956 and make OPC possible in India. At the same time, it is essential to look into the possible grey areas in order to protect gullible investors, traders and such others who are required to do business with an OPC. Given an opportunity, an independent individual could very well utilize this concept and do a flourishing business with the tag of unlimited liability and corporate stature which otherwise he may not be able to do under the present circumstances. ❑