

Eligibility of a Non-Resident Indian (NRI) and Overseas Citizenship of India (OCI) to incorporate a One Person Company

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I am a sole proprietor who wishes to carry out business without anyone else, but still need a corporate identity. Is this a possibility under Companies Act? The answer is a yes and that is where One Person Company (OPC) comes to our rescue.

Given the India story to move to a five trillion-dollar economy by 2025, many non residents are looking to set up shop in India and OPC is being seriously looked at as an option as well. Hence there is a felt need to understand the implications to Non residents, Non resident Indians and OCI Card holders for the purpose of being a member of an OPC.

This article attempts to give the reader a quick understanding of the provisions under Companies Act 2013 with reference to OPC from a non resident perspective.

Features of OPC

- **“One Person Company”** means a company which has only one person as a member.
- **Persons eligible to incorporate a One Person Company (OPC)**
 - A natural person who is
 - **an Indian citizen and**
 - **whether resident in India or otherwise** (a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.)
- The above persons shall be nominee for the sole member of a One Person Company.

Who is a Non-Resident Indian (NRI)?

An Indian Citizen

- i. who resides in India for less than one hundred & eighty two days during the course of the preceding financial year, or
- ii. who has gone out of India or who stays outside India for the purpose of employment, or
- iii. who has gone out of India or who stays outside India for carrying on business or vocation outside India, or

- iv. who has gone out of India or who stays outside India for any other purpose indicating his intention to stay outside India for an uncertain period.

Who is an OCI card Holder?

Overseas Citizenship of India (OCI) is a form of permanent residency available to people of Indian origin and their spouses which allows them to live and work in India indefinitely.

- i. It is an immigration status authorizing a foreign citizen of Indian origin to live and work in India for an indefinite period.
- ii. Despite its name, **OCI status is not citizenship** and does not grant the right to vote in Indian elections or hold public office. The Indian government can revoke OCI status in a wide variety of circumstances. In addition, the OCI Card is only valid with valid international passport.
- iii. The OCI scheme was introduced by The Citizenship (Amendment) Act, 2005 in response to demands for dual citizenship by the Indian diaspora. It provides overseas citizens with many of the rights available to resident citizens.

Note: *OCI status is not available to anyone who has ever been a Pakistani or Bangladeshi citizen, or who is a child, grandchild, or great-grandchild of such a person.*

Difference between Overseas Citizenship of India (OCI) and Non-Resident Indian in a One person Company

Criteria for the purpose of OPC	NRI	OCI
Understanding	A NRI is an Indian citizen who is ordinarily residing outside India and holds an Indian Passport	OCI is a person registered as Overseas Citizen of India (OCI) Cardholder under section 7A of the Citizenship Act, 1955. OCI status is not citizenship and does not grant the right to vote in Indian elections or hold public office. The Indian government can revoke OCI status in a wide variety of circumstances.

Eligibility to become a member	A NRI is a Indian citizen, so a NRI is eligible to become a Subscriber of OPC.	An OCI Card holder is not a Indian citizen and thus ineligible to become subscriber of OPC
Eligibility to act as Director	A NRI is eligible to Act as Director of OPC, Provided One more Indian Citizen who is a Resident Indian is appointed as Director of OPC to satisfy Section 149(3).	An OCI Card holder is also eligible to Act as Director of OPC but cannot act a as sole Director. Section 149(3) requires to be satisfied in case of OCI Card Holder as well. <i>Note: An OCI Card holder cannot become sole member of OPC.</i>
Eligibility to Act as Nominee	Since an NRI is an Indian citizen , A NRI is eligible to act as a nominee to the sole member of OPC	An OCI Card holder is not eligible to act as a Nominee to sole member.

Concluding thoughts

We can clearly conclude that, the Primary eligibility criteria to incorporate an OPC and to act as nominee to the sole member of a OPC is that the person should be a natural person and be an Indian Citizen.

Further we need to focus on the below factors to test the eligibility criteria for becoming a member of an OPC.

- a. Whether the person is Natural or Artificial?
- b. Whether the person is a Citizen of India?
- c. Whether the Person is Resident in India or a Non- Resident Indian?
- d. Whether the Person is a Minor or Major?
- e. Whether the person is a member in any other OPC?

It is essential to have a precise understanding about the eligibility of different kinds of Persons (including Artificial persons) to incorporate a company in India and act as member. We hope that our effort to clarify the ambiguity in Rule 3 of the Companies (Incorporation) Rules, 2014 will be helpful while advising on eligibility of different persons to incorporate a OPC in India.