

"NEW CONCEPTS" IN COMPANIES ACT 2013

PRESENTATION BY
P. SRIRAM

PROWIS CORPORATE SERVICES

CONCEPTS COVERED

1. One Person Company (OPC)
2. Small Company
3. Dormant Company
4. Class Action Suit
5. Key Managerial Personal (KMP)
6. Independent Director(ID)
7. Women Director
8. Entrenchment Provisions



ONE PERSON COMPANY (OPC)

What is One Person Company ?

A business entity in the form of a company having an upper limit for number of members as “1” excluding the nominee member.

Status of OPC in Other Jurisdiction

- Various countries permit this kind of a corporate entity.
- In most countries, the law governing companies enable a single member to have more than one director and grants exemptions to such company from holding AGMs, though record & documents are to be maintained.

CHINA

- Introduced this concept in October 2005.
- The term “One Person Limited Liability Company” company having only one **natural person shareholder or legal person shareholder.**
- **Minimum capital of 1, 00,000 Yuan.**
- The amended law of china prescribes that the owner should **pay the investment capital at one time &**
- **Bars him from opening a second company of the same kind.**



QATAR

- The country Qatar also permits the formation OPC
- The minimum paid up capital requirement is **QR 200,000 (Qatari Riyals)** paid in full.
- Such share capital may include **share in kind, whose value is estimated by professional experts.**
- Companies' owner shall be responsible for his own assets for company obligations
- **Unless he separate his personal interests from that of the company**



PAKISTAN

- The amended company law of Pakistan permits one person to form a single member company by filling with registrar, at the time of incorporation, a nomination in the prescribed form indicating **at least two individuals to act as nominee director and alternate nominee director**

UNITED STATES

- In US, several states permit the formation and operation of a single member liability limited Company





SINGAPORE

- Singapore companies Act was amended in 2004 to enable the use of companies for small, one person businesses.
- It is now possible to form a company that has only one member and one director and the sole director may also be the sole member of the company.
- OPC may be registered as a private company with one member and may also have at least one director. Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as nominee director.
- On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.
- 'OPC' to be suffixed with the name of one-person companies to distinguish them from other companies

How OPC is defined under the CA 2013 ?

As Per Section 2(62) of CA 2013

“One Person Company” means a company which has only one person as a member



Indian Perspective

- One Person Company (OPC) Concept has been first recommended by the Expert Committee (Dr. J.J.Irani) in 2005
- Expert Committee examined that how the global changes given a chance to an individual to participate into economic activity. And how can such economic activity may take place through the creation of an economic person by the Company Law and the Committee recommended that the law should recognize the formation of a single person economic entity in the form of **'One Person Company'** (OPC)

Advantages of OPC

- The biggest advantage of a one person company is that its **identity is distinct** from that of its owner.
- Therefore, if the firm is embroiled in a legal controversy, the **owner will not be sued**, only the company will.
- Another advantage is **limited liability**.
- Since the company is distinct from that of its owner, the **personal assets** of the shareholders and directors remain **protected** in case of a credit default. However, a proprietorship offers no such advantage

Can OPC formed as Public Limited Company?

- ✓ NO
- ✓ As per Section 2(68) “private company” means a company having a minimum paid-up share capital of one lakh rupees(ii) except in case of One Person Company, limits the number of its members to two hundred:.....”

Can OPC formed as Public Limited Company?

3. (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 that is to say, a private company

WHAT ARE THE FORMS OF OPC ?

OPC Can be a Company in any of the forms

- Limited By Shares
- Limited By Guarantee & Not Having a Share Capital
- Limited By Guarantee & Having a Share Capital
- Unlimited Company & Not Having Share Capital
- Unlimited Company & Having Share Capital

Section 8 Company ?

WHO CAN INCORPORATE OPC ?

- ✓ Natural Person,
- ✓ Indian Citizen &
- ✓ Resident Indian



All the 3 conditions to be satisfied.

Specific Provisions applicable to OPC ?

- ✓ OPC to mandatorily appoint a Nominee member.
- ✓ Such Nominee, at the demise or incapacity of the original member becomes the member of the company
- ✓ OPC is treated as a Private Company for compliance of the provisions of Act except otherwise exempted

Any Cap For Incorporation of OPC ?

- ✓ An individual can Incorporate a **maximum of 5 OPC**.
- ✓ If he becomes member of more than 5 OPC by virtue of his nomination the same to be reduced to below 6 within 180 days of such increase.

Constitution of OPC



Member & Directors

- ✓ As per Section 2(68) can have a maximum of 1 member
- ✓ Member includes Nominee Member
- ✓ Nominee member as per Section 4(1)(f)” the person who in the event of **death of the** subscriber, shall become the member of the Company”
- ✓ As per section 149 (1)(a) **Minimum 1 Director** and **Maximum of 15 Directors.**

Provisions to MOA

Provisions to Memorandum

Nomination clause

- ✓ Nomination clause to form part of MOA - Sec 4(1)(f)
- ✓ Applicable only to OPC.
- ✓ Alteration of this clause *does not amounts to alteration of MOA*
- ✓ As per rule 2.1(1) only Natural person, Resident Indian and Citizen of India Can become nominee
- ✓ Nominee can be changed by the Member (Rule 2.2(3))
- ✓ Nominee can withdraw his consent to act as nominee member.(Rule 2.2(3))

Who can be a Nominee ?

Has to fulfil the following conditions

- Natural Person,
- Indian Citizen &
- Resident Indian

Can nominee Withdraw his consent ?

- ✓ Yes
- ✓ By giving notice in **writing** to the sole member and to the **Company**
- ✓ Company within **30 days** of such notice intimate the **ROC**
- ✓ New member to be nominated by the sole member.
- ✓ **Sole Member** voluntary can change the nominee by appointing new nominee member.

What happens if the member dies or incapable of entering into contract ?

- The nominee member becomes the member of such One Person Company,
- Further he has to nominate another nominee member within 15 days of becoming the member of OPC
- The company shall file with the Registrar an intimation of such cessation and nomination within 30 days of the change in membership

Provisions to Memorandum

Name Clause

Section 12 -Mandates the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Provisions to Board Meetings

How Many Board Meetings to be conducted in a year?

- *As per Section 173(5)*
 - ✓ At least one meeting of the Board to be conducted in each half of a calendar year
 - ✓ Gap between two meetings is not less than 90 days

Provisions to General Meetings

What are the special provisions to OPC with respect to General Meetings?

- ✓ Section 96(1) exempts OPC to hold AGM
- ✓ Section 122(1) says Provisions of 98 & 100-111 such as
 - ✓ Power of tribunal to call meeting ,
 - ✓ Convening of EGM,
 - ✓ Notice,
 - ✓ Quorum ,
 - ✓ Chairman,
 - ✓ Proxies,
 - ✓ Voting ,
 - ✓ Postal Ballot
- ✓ Explanatory statement to Notice **are not applicable to OPC.**

How to Determine GM/BM Date?

The **date of signing** of resolution & intimation to the company by sole Director/member shall be **deemed to be the date of the Board or General meeting** for all the purposes under this Act and same shall be entered in the minutes book.

(Section 122 (3) & Section 122 (4))

Annual Return & Financials

What are the Provisions of Annual Return?

- Annual Return **can** be **signed** by the **Director** of the company or **Company Secretary**
- **No certification required**
- To be filed with ROC within 60 days of AGM (i.e date of such communication to the Sole Member.)

Financials

- Financial statement to be signed by **One Director** of the company (Sec 134(1))
- As per Section 2 (62) it is **not mandatory** to include **Cash Flow Statement** with the Financials

What are the Contents of Board Report?

Boards Report (Sec 134(4))

Need not contain

Extracts of Annual Return, Number of BM held, Director Responsibility statement, State of the Company's Affair, Transferred to reserves

What are the Contents of Board Report ?

Must contain

Explanations or comments by the Board on the

Qualification

Adverse remark

Reservations &

Disclaimer remarks made by Auditor in his report

Must be signed by one director

Other Exemptions

Can OPC be a Subsidiary ?

- ✓ As per the rule 2.1(1) **only natural persons** can **incorporate** a OPC.
- ✓ Since there is restriction on Incorporation that only natural person can incorporate OPC, we can say that OPC can not be a subsidiary company

Can Member of OPC Transfer their shares.

- No Restrictions are imposed in Transfer of Shares.

Can a Auditor be appointed for more than 5 years / 10 Years ?

- ✓ Section 139 (2) is not applicable to OPC as per Draft Rule 10.3
- ✓ A OPC Can Appoint any Individual or Firm for a period more than 5 years/ 10 years as the case may be

Does CSR applicable to OPC ?

✓ No

✓ As per Section 135 CSR is applicable only to the Companies having

A net worth of Rs. 500 crore or more, or;

Turnover of Rs. 1000 crore or more or;

A net profit of Rs. 5 crore or more

✓ Since OPC can not have aforementioned turnover or net worth or net profit **CSR** provisions is **not applicable** to **OPC**

Conversion of OPC

Can an OPC be converted to other forms ?

- ✓ Yes
- ✓ It can be converted into a Private Company or Public Company.



What are the methods of conversion?

- ✓ Voluntary Conversion
- ✓ Mandatory Conversion



Voluntary Conversion

Steps to be taken for conversion?

- ✓ OPC can get itself converted into a Private or Public company
- ✓ On conversion it has to
 - Increase the Directors to 2 or 3
 - Increase the Members to 2 or 7
 - Increase the Capital to Rs. 1Lks or Rs. 7 Lks
- ✓ Has to do due compliance of section 18 of the Act for conversion.

Conversion to OPC by Existing Co's

- A Private Company can convert itself into OPC with approval of Registrar of Companies
- A Public Company can convert itself into OPC with the approval of Tribunal
- OPC is treated as a Private Company for compliance of the provisions of Act except otherwise exempted

Mandatory Conversion

On what Grounds an OPC stands converted to other kind of Co.?

- ✓ On exceeding any of the following ceilings an OPC Stands converted to other kind viz., Private or Public

Paid up capital exceeds Rs. 50 lakhs

Average Annual Turn Over exceeds Rs. 2 Crores

Close of the FY

where the Balance Sheet Total exceeds Rs. 1 Crore

Time Line for Conversion

- ✓ **Within 6 Months** from the date of crossing any of the aforesaid ceilings an OPC has to convert
 - ✓ Either as a Private company with minimum of two members and two directors
- Or
- ✓ Public company with minimum of seven members and three directors



SMALL COMPANY

WHAT IS A SMALL COMPANY?

– Private Company with a paid up capital of not more than Rs. 50 lakhs or turnover not more than Rs.2 crores shall deemed to be small company.

IS SMALL COMPANY DEFINED?

Section 2 (85) of Companies Act, 2013 defines Small Company.

“small company” means a company, other than a public company,—

(i) paid-up share capital - not exceeding Rs.50 lakhs or such higher amount as may be prescribed not be more than Rs. 5 Crores ; or

(ii) Turnover as per last profit and loss account not exceeding Rs. 2 Crores or such higher amount as may be prescribed which shall not be more than Rs.25 Crores.

DEFINITION-SMALL COMPANY ?

Provided that nothing in this clause shall apply to—

- (A) a **holding** company or a **subsidiary** company;
- (B) a company registered under **section 8**; or
- (C) a company or **body corporate** governed by any special Act;

SECTIONS THAT MENTIONS ABOUT SMALL COMPANY

- Section 2 (40) – Definition of “Financial Statement”
- Section 2 (85) – Definition of “Small Company”
- Section 92 – Annual Return
- Section 173 – Meetings of Board and its Powers

INCORPORATION OF A small CO.?

Based on the criteria prescribed an existing company or a new private Limited company to be Formed will be termed as a Small co., & lose its status upon non-fulfilment of the criteria and Continue as a **PRIVATE Co.**,



HOW MANY BOARD MEETINGS ?

(SECTION 173)

- Small Company shall conduct at least one (1) board meeting in **each half of a calendar year** and the **gap** between two board meetings shall **not be less than 90 days.**
- Other provisions relating to Board meetings remains same.

APPOINTMENT / REAPPOINTMENT OF AUDITORS

- No listed company or any other Company, excluding one-person companies and small companies shall appoint or re -appoint -
 - an individual as auditor for more than *one term* of 5 consecutive years;
 - an audit firm as auditor for more than *two terms* of 5 consecutive years

CAN A SMALL COMPANY AMALGAMATE ?

- A Scheme of merger or amalgamation may be entered between two or more smaller companies as per section 233 (1) of the Act & following the process & procedures prescribed.



EXEMPTIONS OF A SMALL COMPANY

- **Only one director to sign the Annual Return**
- **Provisions of CSR, KMP, Woman director & Independent Director are not applicable**
- **No mandatory requirement to follow Section 230 & 232 for Corporate Restructuring.**
- **2 Board Meetings for a Financial year**
- **No need to attach Cash Flow Statement in the Balance Sheet.**

DORMANT COMPANY



DEFINITION

No Specific definition under Companies Act, 2013

Sec. 455 of the Act states that a Company registered under this Act for

- a future project or to **hold an asset** or intellectual property and
- has **no significant accounting transaction**, such a Company or
- **an inactive Company**

may make an application to the Registrar for obtaining the status of a dormant company.

WHAT IS SIGNIFICANT TRANSACTION

- ✓ “*significant accounting transaction*” means any transaction other than—
- (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfill the requirements of this Act or any other law;
 - (c) allotment of shares to fulfill the requirements of this Act; and
 - (d) payments for maintenance of its office and records.

WHAT IS AN INACTIVE COMPANY

✓ *“inactive company”* means

- a company which has not been carrying on any business or operation, or
- has not made any significant accounting transaction during the last two financial years, or
- has not filed financial statements and annual returns during the last two financial years;

DEALING SECTIONS

- Section 2 (40) - Definition of “Financial Statement”
(Also applicable to OPC and Small Company)
- Section 173(5) - Meetings of Board (Also applicable to OPC and small company)
- Section 248(1) (c) - Removal of names of Companies from the Registrar of Companies
- Section 455 - Dormant Company

WHO CAN REGISTER AS DORMANT COMPANY

(Section 455 and Draft Rule 29.5)

- Every Company which propose to undertake a future project or to hold an asset or intellectual property and
- has no significant accounting transaction &
- An inactive company

Such Companies shall make an application to RoC for obtaining the status of a dormant company

WHAT IS THE PROCEDURE FOR REGISTRATION?

- Company to pass a special resolution in the general meeting & shall make an application with ROC
- ROC after considering the application filed by the company shall issue a Certificate for allowing the Company status as Dormant.

WHAT IS THE MINIMUM NUMBER OF DIRECTORS

Minimum Directors in a Dormant Company (Draft Rule 29.8)

- Public - 3
- Private - 2
- OPC - 1



Note: Provisions of the Act in relation to the rotation of directors shall not apply to dormant companies.

IS SECRETARIAL AUDIT APPLICABLE ?

Applicable for -

- Every Dormant Listed Company
- Every Dormant Company, if a public Company having a paid-up share capital of Rs. 100 Crores or more

Not Applicable for -

- Dormant Private Company
- Dormant OPC



BOARD & GENERAL MEETINGS

Board Meetings - Section 173(5)

- Dormant Company shall conduct at least one meeting in each half of a calendar year and the gap between the two meetings is not less than ninety days

Annual General Meeting - Section 96

No Specific exemption provision prescribed

SHOULD DORMANT CO FILE ANNUAL RETURN ?

- *No Specific provision for exemption is provided for filing Annual return (Section 92 and Draft Rule 7.9) .*

Annual return shall be certified by a Company Secretary in practice if it is filed by the following company:

- a listed company or;
- a company having paid-up share capital of five crore rupees or more and
- turnover of twenty five crore rupees or more.

The extract of the annual return to be attached with the Board's Report shall be in Form No. 7.9.

WHAT ARE ANNUAL FILING ?

- Dormant Companies are exempted from preparing Cash Flow Statement

OTHER RETURN FOR DORMANT COMPANY ?

- A dormant company shall file a declaration annually in Form No. 29.4 within 30 days from the end of each financial year, till such time it remains as a dormant status

OTHER PROVISIONS

- Every Dormant company has to file the **return(s) of allotment** as per provisions of the act, whenever the company allots any security to any person. **(Draft Rule 29.9)**
- For **making a company active**, Application under section 455(5) shall be made in Form No. 29.5, accompanied by a return in Form No. 29.4 for the financial year shall be filed. **(Draft Rule 29.10(1))**
- Dormant Company shall strike off by the RoC, if the company **remains as a dormant** for a **period of consecutive five years**. **(Draft Rule 29.10(1))**
- Dormant company does or omits to do any act mentioned in the Grounds of application in Form no. 29.2, **affecting its status of dormant company**, the directors shall **within seven days from such event**, file an application, for obtaining the status of an active company. **(Draft Rule 29.10(2))**

OTHER PROVISIONS

- If any dormant company has been functioning in any manner, directly or indirectly, then Registrar may initiate enquiry proceedings under Section 206 and if found that the company has **actually been functioning**, the **Registrar may**
 - *remove the name of such company from register of dormant companies* and treat it as an active company;
 - or
 - take action under chapter XVIII of the Act.
- Chapter XVIII deals with **removal of names of companies** from the Register of Companies.
 - If a company not carrying business or operation for a period of two immediately preceding financial years and not made any application for obtaining dormant status, then RoC shall send notice to company to remove the name of the company from registrar and request company to represent before with relevant documents within 30 days of notice **(Section 248(1)(c))**

OTHER PROVISIONS (CONTD.)

- The Registrar shall maintain a register of dormant companies in MCA portal or any other website notified by the Central Government. **(Section 455(3))**
- The Registrar shall issue a notice and enter the name of a company in the register maintained for dormant companies, if a company has not filed financial statements or annual returns for two financial years. **(Section 455(4))**
- Every dormant company shall pay annual fee to the RoC to retain its dormant status in the register. **(Section 455(5))**
- The Registrar shall **strike off the name of a dormant company** from the register of dormant companies, which has failed to comply with the requirements of section 455. **(Section 455(6))**

CLASS ACTION



CLASS ACTION SUIT - SECTION 245

- Members / Depositors / Class of them
- File application before Tribunal seeking orders
- Restraining certain acts (to declare resolution, altering MoA & AoA as void etc)
- To claim damage/ compensation/demand action against Company/ Directors/ Auditors (including Firm) / Expert/ Advisors for unlawful/ wrongful act
- May seek compensation from Audit Firm. *Liability is of the firm and not the company.*
- Requisite number of members - With Share capital - 100 members or such % of total number of members which ever is less as may be prescribed
- In case of Company not having Share capital - 1/5th of the total number of members.
- *Not applicable to Banking Company*

KEY MANAGERIAL PERSONNEL (KMP)

KEY MANAGERIAL PERSONNEL

(KMP)

- As per Section 2(50) “key managerial personnel”, in relation to a company, means—
 - the Chief Executive Officer or the Managing Director or the manager (*CEO/MD/Manager*);
 - the company secretary (*CS*);
 - the whole-time director (*WTD*);
 - the Chief Financial Officer (*CFO*); and
 - such other officer as may be prescribed
- The term ‘officer’ includes KMP as per Sec 2(59) and he is an officer in default as per Section 2(60)

KMP - (contd.)

- Every Listed Company and every other company having paid up capital of Rs. 5 crores shall have a **Whole Time KMP** (Draft rule 13.6)



KMP - (contd.)

- Any transaction entered with **KMP** or with **his relative** shall attract the provisions of Related party transaction (sec 2(76))
- **Section 92 - Annual Return to give the details of KMP**
- **Section 102 -** In the statement to be annexed with the **notice** for passing any special business at a general meeting; the **nature and interest of the KMP** in connection with the proposed business to be disclosed.
- **Section 170 - Register of share holding by Directors and KMP** to be maintained & a return to be filed with ROC within 30 days of Appointment / change in the **KMP**.

KMP - (contd.)

- Section 203 - Mandates appointment of following **Whole time KMP** in the Company:
 - MD/ CEO / Manager
 - CS and
 - CFO
- A person *cannot be appointed* as :
 - Chairman & Managing Director or
 - Chairman & Chief Executive Officer

at the same time.

KMP - (contd.)

- Every whole-time KMP of a company shall be **appointed** by means of a **Board resolution** containing the terms and conditions of the appointment including the remuneration.
 - **No person** can be appointed as **Whole-time KMP** in more than 1 co. except in its subsidiary at the same time
 - KMP shall *be appointed as Director* of another Co. with the **permission of the Board**

KMP - (contd.)

- If the office of any whole-time KMP is vacated, the resulting vacancy shall be filled by the **Board** at its meeting **within** a period of **6 months** from the date of such vacancy



Independent Director

Applicability

- ✓ Listed Company
- ✓ Public Company
 - Paid Up Share Capital - 100 cr (or)
 - 300 Crs Turn Over (or)
 - Loans/ Borrowings/ Debentures/Deposits exceeding 200 Crs
- ✓ In case of any **fall in limits** above, the **ID shall continue till tenure**

Time line for complying this provision.

All the companies to which this provision applies has to comply this provision within 1year from the date of notification of the rules

Restrictions on ID

- ✓ ID not entitle to any **stock option** except to receive remuneration by way of fee or reimbursement and profit related commission as may be approved by the members
- ✓ Not to hold office for **more than two consecutive terms**, but *can be appointed after expiry of three years* from the date of cessation

Other Provisions

- ✓ **1/3rd of the Board to be ID**
- ✓ **Boards report u/s 134 to include statement that in its opinion the ID possess the requisite skill as required**
- ✓ **Can to hold office upto five consecutive years and eligible for re-appointment on passing special resolution and disclosure in Board's Report**

Women Directors

Women Director.

- Section 149 (1) Mandates appointment of Women Director on the Board of the following Companies.
 - Every Listed Company &
 - Every public Company having
 - Paid up capital of Rs. 100 Cr or more or
 - Turnover of Rs. 300 Cr. or more
- Has to have One women director in its board within 3 years from commencement of Sec 149(1)

Entrenchment Provisions

Section 5 (Section 26,27,28,29)

- ✓ Implies to provide more restrictive procedure than passing a Special resolution for altering the Articles.
- ✓ e.g) the Article could mandate that certain provisions can be altered only if agreed by all the members.
- ✓ Registrar to be informed about such proviso

Any questions?





Thank you