Compliances with Companies Act, 2013 in relation to One Person Company – Part XIII

*A new business model, **One Person Company ("OPC")**, has been conceptualised by the Ministry of Corporate Affairs (MCA) to help fill-in the gap between a proprietorship and a private company set-up. This framework will not only help organize and corporatize the unorganized sector of proprietorship firms, but also help fledgling entrepreneurs take ground in their businesses and instil confidence in their clients.*

The Minister of State, Shri Sachin Pilot has said – "*The intent behind having this new initiative is the fact that in India we have a lot of people who are artisans, craftsmen, weavers and they work as Individual workers, we want these people to have the same rights, the same credit facilities, the same recognition as companies without having the multiplicity of Compliances.*"

*This write up seeks to examine the advantage and disadvantages of incorporating an OPC under the Companies Act, 2013 ("**Act**").*

Prevalent globally since many years in countries like Australia, Pakistan, Singapore, UK and several countries of the European Union, OPC was first recommended in 2005 in India by the JJ Irani Committee which was set up for the sole purpose of incorporating necessary changes in the Companies Act, 1956. OPC was subsequently introduced in the Act.

OPC has been defined under Section 2 (62) of the Act as "a company, which has only one person as its member". Key features of the OPC as provided in the Act:

(1) Rule 3 (1) of Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**") provides that OPC is a one shareholder company, so long as the shareholder is a natural person and an Indian citizen residing in India and not a minor. The minimum paid up share capital of an OPC shall be INR 1,00,000. Consequently, legal entities like companies; societies or any other corporate body, non-resident Indians or Foreign citizens cannot form an OPC.

(2) Section 149 of the Act provides that the Board may comprise a minimum of one director ("**First Director**"). However there is no prescription for appointment of additional Directors by the First Director.

(3) The Act mandates that, in case of his death or incapacity, the sole shareholder requires to nominate another person to become shareholder in his stead at the time of incorporation. Written consent by the nominee to act as such is also mandated. But it also provides that the Nominee may withdraw his consent at any time and concurrently the First Director can change the Nominee at any time after giving him notice to that effect. Rule 3(2) of Incorporation Rules provides that one person cannot incorporate more than one OPC or become nominee in more than one OPC.

(4) OPC cannot be a not for profit company under Section 8 of the Act.

(5) The words "One Person Company" must be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(6) A private company that does not meet the prescribed thresholds may apply to the ROC for conversion into an OPC by passing a special resolution in a general meeting (Rule 7 of the Incorporation Rules).

The OPC structure comes with its advantages and disadvantages:

BENEFITS	ISSUES
(1) Legal status and social recognition like any other company (2) Limited liability as for any company (3) Perpetual succession through the nomination process (4) One man administrator (5) Better ability to raise finance (6) Proviso Section 96(1) and Section 122(1) of the Act, convening annual or extra ordinary general meetings is not mandatory (7) As per Section 2(40) of the Act, preparing cash flow in the annual financial statements is not required (8) Provision for mandatory rotation of auditor in Section 139(2) is not applicable	(1) Attracts higher incidence of taxation (base tax rate of a company being approximately 30%) and dividend distribution tax under the Income Tax Act, 1961 (2) A cool off period of 2 years from the date of its incorporation is prescribed for conversion of OPC into any other kind of company (3) Conversion to a private or public company, would be necessitated on account of increase in paid up share capital beyond prescribed thresholds (presently at INR 50 Lakhs of paid up share capital or its average annual turnover during the relevant period exceeding Rs. 2 Crores) (4) Rule 3(6) of Incorporation Rules restricts carrying out of certain business activities such as financial investment activities and investment in other body corporates (5) Under Section 193 of the Act, every contract entered into by the OPC with the sole member of the company who is also the director of the company, unless the contract is in writing, has to be communicated to the registrar of companies

Conclusion

The concept of OPC has an edge over Limited Liability Partnership Act, 2008 in that one does not need to scout for a partner to do business or establish a structure. It not only limits the liability of the entrepreneurs, but by conferring the status of a company also extends to them various immunities and enhances access to finance. The law also provides flexibility to private companies to convert themselves into an OPC where the minimum prescribed thresholds are not met.