



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

# *e-CS Nitor*

## **Inauguration of New Building of Bangalore Chapter of ICSI**

Shri D V Sadananda Gowda, Hon'ble Minister for Railways and Hon'ble Justice Shri M N Venkatachaliah (former Chief Justice of India) inaugurating the new building of the Chapter

*Standing at the Centre* : CS R Sridharan, President, ICSI



## **Foundation Stone Laying Ceremony of ICSI-Centre of Excellence at Hyderabad on September 14, 2014**

Shri M. Venkaiah Naidu, Union Minister for Urban Development, Housing and Urban Poverty Alleviation and Parliamentary Affairs, addressing at the foundation stone laying function for ICSI- Centre of Excellence, in Hyderabad on September 14, 2014.

*Sitting from L to R* : CS Sudhir Babu C., Council Member, ICSI and CS R. Sridharan, President, ICSI.



- > Message from the President
- > One Person Company : New Mantra – One is a Company, Two is a Crowd
- > One Person Company (OPC)
- > One Person Company under the Companies Act, 2013
- > Points of View : Class Action Suits : Is it a Legal Tool to Curb Malpractices of Corporate?
- > 14<sup>th</sup> London Global Convention, 28-31 October, 2014 at Millennium Hotel London Mayfair, 44 Grosvenor Square, London W1K 2HP
- > Circulars, Notifications, Orders, Amendment, Rules under Companies Act, 2013  
*(since last issue of e-CS Nitor)*

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## Message from President



**Dear Member,**

*“Innovation is the specific instrument of entrepreneurship. The act that endows resources with a new capacity to create wealth.”*  
**-Peter Drucker**

In the last few years, globalization process experienced by most economies has unleashed the importance of the innovative capacity of firms, for competitive advantage and efficiency. Further, the new technological dynamics imposed on business environments, paved way for creation of new forms of organization and innovative business models. Limited Liability Partnership [LLP], One Person Company and Small Company are some of the new forms of organization.

In fact, one of the main objects of the Companies Act, 2013 is to enable the corporate sector in India to operate in a regulatory environment of best international practices that foster entrepreneurship, investment and growth. Introduction of new form of business entities such as One Person Company provides a corporate platform as an alternate to the proprietorship form of business entity. This development will enhance the corporatisation of the Indian business and also facilitate business expansion such as broad base of source of finance, business continuity, market confidence and so on.

In the current dynamic business environment, it is no doubt a welcome move, that the entrepreneurial capabilities of people are given an outlet for participation in economic activity through the creation of an economic person in the form of a Company.

There have been various aspects that are discussed under the Companies Act, 2013 relating to one person company which can be broadly discussed under the heads such as privileges & exemptions, specific compliances such as nominations, conversion procedures, other routine compliance aspects etc.

In this issue of e-CS Nitor, we have covered various aspects relating to One Person Company, including compliances and privileges. I hope you will find it interesting and informative.

With regards,

**CS R. Sridharan**  
President  
[president@icsi.edu](mailto:president@icsi.edu)



## Contents

- Message from the President
- One Person Company : New Mantra – One is a Company, Two is a Crowd
- One Person Company (OPC)
- One Person Company under the Companies Act, 2013
- Points of View : Class Action Suits : Is it a Legal Tool to Curb Malpractices of Corporate?
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## One Person Company : New Mantra – One is a Company, Two is a Crowd

**Shagoofa Rashid Khan\***

*Vice President, Group Legal Department, Tata Services Ltd.*

Peter Drucker said, '*Business has only two functions - marketing and innovation.*' Business exigencies have led to creation of new forms of doing business. Traditional concept of joint stock companies paved way for limited liability companies, limited liability partnerships (LLPs), limited partnerships, protected cell companies, S corporations, business trusts to name a few.

However, the bedrock of corporate structures is the privilege of 'limited liability' which is a legal invention. The President of Columbia University, as quoted in 1917, called it the 'greatest single discovery of modern times', even more important than steam and electricity!

The Companies Act, 2013 has, for the first time in India, introduced the concept of One Person Company (OPC) by conferring the privilege of limited liability on a single member. At first blush an OPC structure appears counterintuitive - why should law confer limited liability protection on a single member, wouldn't it lead to abuse of this protection? An empirical analysis however reveals that in essence 'covert' sole shareholder structures have existed since time immemorial and there is a plethora of rulings setting out judicially tailored reasoning that defend privilege of limited liability for such companies.

In the famous case of *Salomon vs Salomon* (1897) it was held that Salomon and Salomon & Co were distinct and separate persons. In this case, Lord Herschel famously remarked: "*It is said that the respondent company is a 'one man' company, and that in this respect it differs from such companies as those to which I have alluded. But it has often happened that a business transferred to a joint stock company has been the property of three or four persons only, and that the other subscribers of the memorandum have been clerks or other persons who possessed little or no interest in the concern. I am unable to see how it can be lawful for three or four or six persons to form a company for the purpose of employing their capital in trading with the benefit of limited liability, and not for one person to do so, provided in each case, the requirements of the statute have been complied with and the company has been validly constituted. How does it concern the creditor whether the capital of the company is owned by seven persons in equal shares, with the right to equal share of the profits, or whether it is almost entirely owned by one person, who practically takes the whole of the profits?*" It was therefore held that the 'purpose' behind achieving limited liability was of no relevance, since limited liability is a legitimate and permissible object of incorporation, conferred by statute.

### **Historical background of OPC regime**

Introduction of OPC regime was mooted in the JJ Irani Committee report on Company Law (May 2005) to enable entrepreneurial individuals to participate in economic activity in the form of a company. Further, the Committee observed that company law should recognize the potential for diversity in forms of companies and rather than seeking to regulate specific aspects of each form, it should seek to provide for principles that enable economic interaction for wealth creation on the basis of clear and widely accepted principles. The Committee therefore recommended classification of companies on the basis of:

- size: small companies, other companies
- number of members: OPC, private companies, public companies

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\* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



- control: holding companies, subsidiary companies, associate companies
- liability: limited by shares or guarantee, unlimited
- manner of access to capital: listed companies, non-listed companies

The Committee's OPC recommendation found expression in the Companies Bill, 2009 (2009 Bill). The 21<sup>st</sup> report of Parliamentary Standing Committee on Finance reveals that reservations were expressed by PHD Chambers of Commerce & Industry (PHDCCI) on introduction of OPC regime stating that the same was not in the overall interest of the corporate sector. PHDCCI expressed that it wasn't necessary to introduce new OPC concept as sole proprietors had alternative options such as LLPs or private companies. PHDCCI's concern also stemmed from the fact that there are already several lakhs of companies set up mostly as private companies. So, introduction of OPC regime could lead to much more proliferation of corporations with no tangible benefit to the country and the government administration may not be geared up to cope such increase in company population.

The OPC regime was, however, defended as beneficial for professionals, individual experts and other entrepreneurs which make up small and medium sector of the economy and which sector is critical for economic growth. OPC regime was retained in 2009 Bill, carried forward to Companies Bill, 2011 and finally enacted as part of the Companies Act, 2013 (2013 Act).

### **OPC regime under 2013 Act**

Section 2(62) of 2013 Act defines an OPC to mean a company which has only one person as its member. However, only a natural person who is an Indian citizen and 'resident in India' can act as the sole member of an OPC or as a nominee of the sole member of an OPC. The term 'resident in India' is defined to mean a person who has stayed in India for a period of not less than 182 days during immediately preceding one calendar year.

Thus, 2013 Act clearly restricts eligibility under OPC regime to only Indian citizens and residents. This is in contrast with OPC regime in other countries, such as Singapore, where even foreign nationals or corporate are allowed to set up single member companies. Considering that corporate members are permitted in partnerships/LLPs and that exchange control regulations have been liberalized to permit foreign direct investment in LLPs and overseas direct investments by LLPs, there appears to be no rationale for prohibiting corporate members or restricting OPC regime to residents. One hopes that artificial barriers to forms of doing business are removed to provide a level playing field coupled with robust supervision by relevant regulators to check abuse.

Other restrictions under OPC regime are: no individual can set up more than one OPC or become nominee in more than one OPC; a minor cannot be a member or nominee of an OPC directly or indirectly through beneficial interest; an OPC cannot carry out non-banking financial activities including investment in securities of any body corporate and an OPC cannot be incorporated as or converted into a section 8 company.

### **Incorporation of OPC, nomination and other requirements**

An OPC can be formed as limited by shares or by guarantee or as an unlimited company. The memorandum of association of an OPC should indicate the name of another person who shall, in the event of the death or incapacity of the sole member, become the sole member of the OPC. The nomination and consent of nominee, in prescribed forms, need to be filed with the registrar of companies (ROC). A sole member can change nomination any time so also the nominee can withdraw his consent at any time, subject to compliance with requirements prescribed under the Company (Incorporation) Rules, 2014 (Incorporation Rules). Further, the words 'One Person Company' must be mentioned in brackets below the name of an OPC, wherever its name is printed, affixed or engraved.



An OPC is entitled to have only one director. A sole member can also act as the sole director of an OPC. An OPC can, however, have more than one director subject to the maximum cap of 15 directors for a company. The requirement under section 149(3) of 2013 Act that every company must have at least one director who is resident in India would apply to an OPC as well. Thus, if it is intended that an OPC have a foreign national as a director then care must be taken to appoint one resident director as well.

### **Conversion of an OPC**

As per the Incorporation Rules, an OPC cannot voluntarily convert itself into any kind of company until expiry of 2 years from its date of incorporation, except if its paid up share capital exceeds Rs 50 lakh or its average annual turnover during the relevant period exceeds Rs 2 crores. Further, the Incorporation Rules stipulate requirements and manner of conversion of an OPC into a public or private company, as the case may be.

Once again, Indian OPC regime appears restrictive as it prescribes merely a limited set of scenarios for conversion. In contrast, section 123 of the UK Companies Act, 2006 recognizes that shareholding of a company limited by shares could fall to one member or shareholding of an OPC could increase by acquisition of additional members. The UK Act merely prescribes reporting obligations for such eventualities and does not over-regulate through threshold tests or lock in period before conversion.

### **Relaxations conferred on OPCs**

1. An OPC is not required to include a cash flow statement as part of its financial statements,
2. For an OPC, report of the Board of Directors shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made in the auditor's report,
3. The annual return can be signed by the company secretary, or where there is no company secretary, by the Director of the OPC,
4. An OPC is exempted from holding annual general meetings (AGMs),
5. Section 98 and sections 100 to 111 of 2013 Act do not apply to OPCs,
6. For resolutions to be passed at AGM or extra ordinary general meeting, it shall constitute sufficient compliance under 2013 Act if the resolutions are communicated to the sole member and are recorded in the minutes book,
7. In the case of an OPC having only one director, shall constitute sufficient compliance under 2013 Act; if Board resolutions are recorded in the minutes book. The resolutions should be signed and dated by the Director and such date shall be deemed to be date of the Board meeting,
8. The financial statement of an OPC can be approved and signed by only one director,
9. An OPC can file a copy of its financial statement duly adopted by its sole member within 180 days from closure of its financial year.

### **Contracts by an OPC**

As per section 193 of 2013 Act, if an OPC (limited by shares or by guarantee) enters into a contract with its sole member who is also the director, the OPC 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 held next after entering into such contract. The OPC is also required to necessary intimation with the registrar of companies. However, compliance with section 193 is not required for contracts entered in the ordinary course of business by an OPC.

### **Tax implications**

With the codification of OPC regime under 2013 Act one can expect entrepreneurs opting for OPC structure to take benefit of the limited liability protection. However, this choice may be weighed down by the double layer of tax that an OPC structure would entail on its sole member. This is because the Income-tax Act, 1961 has not



embraced the OPC concept. From a tax perspective, an OPC being an incorporated company shall be taxed as such despite it being a sole member company. Thus, an OPC shall be subject to corporate tax, minimum alternate tax (MAT) and dividend distribution tax (DDT). For tax efficiency, entrepreneurs may therefore still prefer sole proprietorship or LLP structures over an OPC. One hopes that the government recognizes this anomaly and exempts OPCs from the rigors of MAT and DDT.

### **Compliance burden**

While OPCs have been granted several relaxations, as per section 3 of 2013 Act an OPC is to be treated as a private company. Thus, the sole member-director of an OPC must ensure compliance with various administrative provisions of 2013 Act however pedantic or inappropriate they may be. In *Neptune (Vehicle Washing Equipment) Ltd v Fitzgerald* (1995) the court held that, in the case of sole director companies, a sole director has to make the necessary declaration of interest to himself and record the declaration in the minutes. If a meeting was attended by anyone else (e.g. the company secretary), the declaration must be made out loud and in the hearing of those attending, and also recorded in the minutes.

### **Concluding remarks**

Business structures have surely come a long way from the 17th century when joint stock charters, awarded by British crown to monopolies, were detested for limitation of liability and regarded as a drop in standards of probity! The next cycle of evolution of business structures may lead to newer mechanisms for owner shielding and/or entity shielding.

## One Person Company (OPC)

**Chitranjan Pal\***

*Assistant Education Officer, ICSI*

### INTRODUCTION

The introduction of One Person Company (OPC) in the legal system is a move that would encourage corporatization of micro businesses and entrepreneurship with a simpler legal regime so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances. This will not only enable individual capabilities to contribute economic growth, but also generate employment opportunity. With the implementation of the Companies Act, 2013, a single national person can constitute a Company, under the One Person Company (OPC) concept.

### DEFINITION



*As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member.*

### SALIENT FEATURES OF OPC

The salient features of OPC are:

- Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.
- Personality driven passion and implementation of a business plan.
- The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
- Personal commitment to the business which is a sole idea of the person and close to his heart.
- It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.
- A One Person Company is incorporated as a private limited company.
- It must have only one member at any point of time and may have only one director.
- The member and nominee should be natural persons, Indian Citizens and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
- One person cannot incorporate more than 1 OPC or become nominee in more than 1 OPC.
- If a Member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.
- OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in 3 immediate preceding consecutive years.

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\* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



- No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013 .
- Such Company cannot carry out Non Banking Financial Investment activities including investment in securities of any body corporate.
- No such company can convert voluntarily into any kind of company unless 2 years are expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into one person company by passing a special resolution in the general meeting.

### **PRIVILEGES AVAILABLE TO OPC**

Some of the privileges and benefits identified with OPCs are:

- OPCs would provide the start-up entrepreneurs with new business idea .
- OPC provides an outlet for the entrepreneurial impulses among the professionals.
- 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.
- 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.
- Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.
- Business currently running under the proprietorship model could get converted into OPCs without any difficulty.
- 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 company .
- Mandatory rotation of auditor after expiry of maximum term is not applicable.
- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.
- For the purposes of holding Board Meetings, in case of a One Person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, atleast one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days.
- The financial statements of a One Person Company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company needs to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.



- Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

## **GLOBAL DEVELOPMENT**

One person companies are in existence in certain countries. In India this novel concept has been mooted by the Ministry of Corporate Affairs by allowing One Person Companies in India in line with UK, China, USA, Australia, Singapore, Qatar, Pakistan and several other countries. It is a right thinking in right direction by the Ministry of Corporate Affairs. One Person Companies have been 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.

### **United Kingdom**

Historically, England is the first one, which paved the way to the one man company through a precedent set in its famous case *Salomon v Salomon & Co (1897) AC 22*.

Section 7 of the UK Companies Act, 2006 deals with method of forming company. It provides that -

- (1) A company is formed under this Act by one or more persons—
  - (a) subscribing their names to a memorandum of association (see section 8), and
  - (b) complying with the requirements of this Act as to registration (see sections 9 to 13).
- (2) A company may not be so formed for an unlawful purpose.

### **Other Countries**

In USA several States permit the formation of a single member Limited Liability Company (LLC). Singapore permits One Person Company under Companies Amendment Act of 2004. China has introduced One Person Company in 2005.

In Turkey, according to Turkish Commercial Code since 2012, a joint stock company or limited liability company may be established with one or more shareholders. The code also sets forth certain obligations and conditions for such companies. In addition, limited liability companies and joint stock companies can have a board of directors that consists of only one board member. In Pakistan "Single Member Companies Rules, 2003" provides for incorporation of single member company.

## **ORIGIN OF THE CONCEPT IN INDIA**

The concept of OPC was mooted, briefly, in the report of Dr. J.J. Irani Committee. The Irani Committee briefly referred to OPC in its report. In Chapter III titled "Classification and Registration of Companies" the committee suggested:

*"One Person Company (OPC)"*

*6. With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.*



6.1 The concept of 'One Person Company' may be introduced in the Act with following characteristics:-

- a) OPC may be registered as a private Company with one member and may also have at least one director;
- b) 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.
- c) Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies."

### IMPACT OF OPC IN INDIAN ENTREPRENEURSHIP

The concept of One Person Company is still in its nascent stage in India and would require some more time to mature and to be fully accepted by the business world. With passage of time, the OPC mode of business organization is all set to become the most preferred form of business organization. The benefits emanating from this novel concept are many, to name a few –

- Minimal paper work and compliances
- Ability to form a separate legal entity with just one member
- Provision for conversion to other types of legal entities by induction of more members and amendment in the Memorandum of Association.

The One Person Company concept would hold a bright future for small traders, entrepreneurs with low risk taking capacity, artisans and other service providers. The OPC would act as a launch pad for such entrepreneurs to showcase their capabilities in the global arena. The foreign joint venture capitalists are going to find it quite feasible to deal with a sole entrepreneur rather than having to even it out with numerous shareholders / directors leading to chances of discrepancy in ideas, concepts and understanding of the business.

The counterparts of Indian OPCs in Europe, United States and Australia have resulted in further strengthening of the economies in the respective countries. OPCs in India are aimed at structured organized business units, having a separate legal entity ultimately playing a crucial role in further strengthening of the Indian economy.

### OPC OR PROPRIETORSHIP: A COMPARISON

ONE PERSON COMPANY	SOLE PROPRIETORSHIP
<i>Separate Legal entity</i>	<i>Not a Separate Legal Entity</i>
<i>Limited Liability</i>	<i>Unlimited liability</i>
<i>Perpetual succession</i>	<i>No perpetual succession</i>
<i>Loan -not the sole responsibility of the owner</i>	<i>Loan-sole responsibility of the owner</i>
<i>Registration required</i>	<i>Registration not required</i>
<i>Finance -credit record of the OPC</i>	<i>Finance -credit record of the Owner</i>

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 botheration of litigations and liabilities getting attached to the personal



assets. One Person Company has a separate legal identity from its shareholders i.e. the company and the shareholders are two different entities for all purposes. On the other hand proprietorship does not have a separate legal identity from its members. The existence of a One Person Company is not dependent upon its members and hence, it has a perpetual succession i.e. death of a member does not affect the existence of the company and the Sole proprietorship is an entity whose existence depends on the life of its members and death or any other contingency may lead to the dissolution of such an entity.

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.

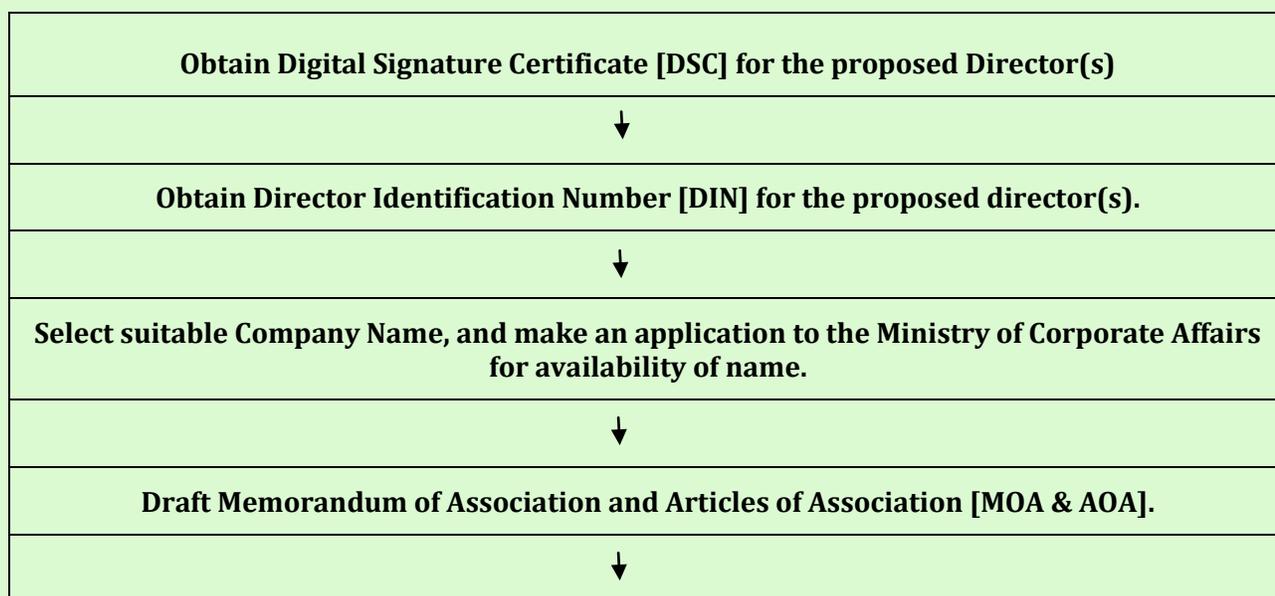
#### **CONTRACT BY ONE PERSON COMPANY**

- 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 terms of contract or offer is in writing or contained in a memorandum or recorded in the minutes of the Board meeting held next after entering into the contact.
- Inform the Registrar about every contract entered into by the company within a period of fifteen days from the date of approval by the Board of Directors.
- Contracts in ordinary course of business not required to comply with the above.

#### **FINANCIAL STATEMENT**

- The financial statement, signed by one director, for submission to the auditor for his report thereon.
- The report of the Board of Directors to be attached to the financial statement.
- Board of Directors Report of OPC means 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.
- Filed with ROC within 180 days from the closure of the financial year.
- Financial statement may not include the cash flow statement.

#### **PROCESS OF INCORPORATION OF ONE PERSON COMPANY (OPC)**





<b>Sign and file various documents including MOA &amp; AOA with the Registrar of Companies electronically.</b>
↓
<b>Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.</b>
↓
<b>Scrutiny of documents at Registrar of Companies [ROC].</b>
↓
<b>Receipt of Certificate of Registration/Incorporation from ROC.</b>

### **CONVERSION OF OPC INTO PUBLIC OR PRIVATE COMPANY AND VICE-VERSA**

One Person Company to convert itself into a public company or a private company in certain cases.-

- (1) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
- (2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
- (3) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
- (4) The One Person Company shall within a period of sixty days from the date of enhancement of above ceiling limit, give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit.

It may be noted that "relevant period" means the period of immediately preceding three consecutive financial years;

- (5) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.



- (6) If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

#### **CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY**

- (1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
- (2) Before passing such resolution, the company shall obtain No objections in writing from members and creditors.
- (3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.
- (4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
- The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;
  - the list of members and list of creditors;
  - the latest Audited Balance Sheet and the Profit and Loss Account; and
  - the copy of no Objections letter of secured creditors.
- (5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

#### **WITHDRAWAL OR DEATH OF NOMINEE OR MEMBER OF OPC**

- The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company:
- The sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. INC.3.
- The company shall within thirty days of receipt of the notice of withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and the written consent of such another person so nominated in Form No. INC.3.
- The subscriber or member of a One Person Company may, by intimation in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No INC.3.



- The company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and with the written consent of the new nominee in Form No.INC.3 within thirty days of receipt of intimation of the change.
  
  - Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No. INC.3.
-



## One Person Company Under The Companies Act, 2013

**Shailendra Singh\***

*Practicing Company Secretary*

***The (Indian) Companies Act has taken a major step forward to bring the Indian law(s) at par with the Corporate Laws of the European countries by the enactment of the provision of One Person Company in the (Indian) Companies Act, 2013.***

Whenever we work with a foreign company incorporated in the country like United States of America, China, Singapore, Hong Kong, etc. to incorporate a wholly owned subsidiary company in India and we asked them to provide board resolution for appointment of authorized representative pursuant to Section 187 of the (Indian) Companies Act, 1956, or at the time of incorporation of wholly owned subsidiary company the concerned Registrar of Companies (“**ROC**”) asked us to submit the board resolution of the parent company and thereupon when ask the foreign companies to provide the board resolution to authorize its attorneys’ to represent on behalf of aforesaid foreign company before the government authorities, often the answer given by them is that we do not have the Board in the company or it’s a sole director company or it’s a sole shareholder company meaning thereby it has only one director and one shareholder.

The (Indian) Companies Act has taken a major step forward to bring the Indian law(s) at par with the Corporate Laws of the European countries by the enactment of the provision of One Person Company (“**OPC**”) by insertion of enabling provisions in the (Indian) Companies Act, 2013 (the “**Act**”).

OPC means a company which has only one person as a member (“**Subscriber**”). The frequent question comes to us that if the OPC has only one member then what about the concept of going concern in the cases like where the Subscriber’s death or his/her incapacity to enter into contract.

The Act provides the resolution of the aforesaid cases/problems i.e. the memorandum of OPC shall indicate the name of the other person who shall in the event of the Subscriber’s death or his/her incapacity to contract become the member of the company and the written consent of such person shall also be filed with the ROC at the time of incorporation of the OPC along with its memorandum and articles.

Provided further that such other person may withdraw his consent in such manner as may be prescribed. Also that the member of One Person Company 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 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, and the company shall intimate the Registrar any such change.

Pursuant to the provisions of the Act in case of OPC an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in the company.

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\* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



**Provisions relating to OPC under the Act:** The Act provides the following provisions in relation to OPC, namely:

1. The minimum authorized and paid-up share capital of the OPC shall be rupees one lakhs;
  2. Only a natural person who is an Indian citizen and resident in India-
    - (a) shall be eligible to incorporate OPC;
    - (b) shall be a nominee for the sole member of a OPC
- Explanation-** For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.
3. No person shall be eligible to incorporate more than a OPC or become nominee in more than one such company.
  4. Where a natural person, being member in OPC becomes a member in another such Company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria specified in point 3 above within a period of one hundred and eighty days.
  5. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
  6. OPC cannot be incorporated or converted into a company under section 8 of the Act.
  7. OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.
  8. No OPC can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

#### **INCORPORATION PROCESS-IN BRIEF**

The incorporation process of OPC can be categorized in the following broad heads, namely:



- (i) **Directors Identification Number and Digital Signature Certificate:** Before applying for name availability, the proposed director of the OPC is required to obtain Directors Identification Number ("DIN") from the Ministry of Company Affairs by making an online application and to obtain Digital Signatures for online filing of incorporation related e-forms including the aforesaid DIN application. Digital Signatures application is made with similar documents as required in case of DIN application.
- (ii) **Approval for reservation of name:** After obtaining the DIN, an application for availability of the proposed name (in the prescribed Form INC 1), along with six proposed names (maximum) in order of preference, each one indicating, as far as possible, the main objects (principal activities) of the



company, shall be submitted online to the ROC. The name of the OPC should end with the words "Private Limited".

- (iii) **Consent of nominee:** The OPC is required to obtain consent from the nominee who, in the event of death of the subscriber, shall become the member of the company in Form No INC.3.
- (iv) **Drafting of Memorandum & Articles of Association ("MOA and AOA"):** MOA and AOA are to be drafted in compliance with the provisions of the Act. The MOA and AOA must contain the name of the person who, in the event of death of the subscriber, shall become the member of the company. Thereafter, the subscribers sign the MOA and AOA of the OPC.
- (v) **Incorporation documents to be filed with the ROC:** On completion of step no. (i); (ii); (iii); and (iv), the following forms are required to be e-filed with the ROC after having been digitally signed by the proposed director. The aforesaid forms require certification either by an advocate, or a company secretary, or a chartered accountant (in whole time practice):

**(a) Form INC 2** - Application for incorporation of OPC in E-Form INC 2 along with the following documents as attachment to the form shall be made with the ROC:

- (a) Memorandum of Association;
- (b) Articles of Association;
- (c) Proof of identity of the subscriber and the nominee;
- (d) Residential proof of the member and the nominee;
- (e) Copy of PAN card of member and nominee;
- (f) Consent of Nominee in Form INC-3;
- (g) Affidavit from the subscriber and first Director to the Memorandum of Association in Form INC-9
- (h) List of all the companies (specifying their CIN) having the same registered office address, if any;

**(ii) Form INC 22** - Notice of situation of the registered office of the OPC in E-Form INC 22 along with the following documents as attachment to the form shall be filed with the ROC:

- (a) The registered document of the title of the premises of the registered office in the name of the OPC; **or**
- (b) The notarized copy of lease or rent agreement in the name of the OPC along with a copy of rent paid receipt not older than one month;
- (c) The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the OPC as its registered office; **and**
- (d) The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.



**(iii) Form DIR 12** - Particulars of Director of the OPC along with the consent of the proposed director is required to be filed with the ROC.

The ROC then scrutinizes the above-mentioned forms along with the documents as may be required to be attached with the forms and if necessary, provides its observation on the aforesaid forms including attached documents and directs the authorized person accordingly to make necessary corrections under his initials in the aforesaid forms including attached documents.

After removal of the deficiencies, if any, observed by the ROC, issues the Certificate of Incorporation of the Company, which is the conclusive evidence of registration of the OPC.

**(iv) Form INC 21** – A declaration is required to be filed by OPC prior to the commencement of business or exercising borrowing powers in E-Form INC 21 along with the Specimen signature in Form No. INC-10.

#### **CONTRACT BY ONE PERSON COMPANY**

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 terms of contract or offer is in writing or contained in a memorandum or recorded in the minutes of the Board meeting held next after entering into the contact. OPC is also required to inform the ROC about every contract entered into by the OPC within a period of fifteen days from the date of approval by the Board of Directors however, the contracts entered in the ordinary course of business not required to comply with the above.

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## *Points of View*

### **CLASS ACTION SUITS : IS IT A LEGAL TOOL TO CURB MALPRACTICES OF CORPORATE ?\***

In this globalised world of mass production and consumption, it is very common that many individuals may be harmed in identical ways by certain unethical corporate practices. Usually individual claims are small, but in the aggregate, these small individual harms may yield large illegal profits to the corporate. Class actions can provide a solution to this obstacle by gathering many individual claims together into a single lawsuit that can support the cost of litigation.

The term Class action owes its origin in the US law which is used to describe a '*sui generis*' area of litigation. A Class action is a procedural device enabling one or more plaintiffs to file and prosecute a litigation on behalf of a larger group or class, where in such class has common rights and grievances. Class actions can be a way of leveling the playing field for poor or economically less powerful individuals. Normally an individual, who is poor, is at a great disadvantage in a court case against a well-financed corporate opponent who can afford high-priced lawyers. But when claims are brought together in class action form, the aggregate amount may be large enough to make it possible to engage the services of equally skilled counsel.

The first time class action suit came to the spotlight was when the Satyam scam broke out in 2009. At that time, the investors in India could not take any legal recourse against the company while their counterparts in the US filed class action suits claiming damages from the company and the auditing firm. In India, the concept of Class action is first time introduced by the Companies Act, 2013 in sections 245 and 246. These sections contain provisions under which, class-action suits may be filed by investors if they are of the opinion that the affairs of the company are being conducted in a manner prejudicial to the interest of the company, its shareholders or depositors. Class action suit will give the stakeholders additional rights and grounds to fight for their rights and any abuse of powers by the company, its management or for that matter even the auditor and consultant. The deposit holders, who had no option but to file a civil suit so far, can also take action against any wrongful act by the company or other specified persons. This will make them feel more secure about their investment.

Introducing class actions is a large change in a procedural system. The main objective behind the provision of class action suits is to safeguard the interests of the minority shareholders and to empower the investors. So, class action suits are expected to play an important role in addressing numerous prejudicial and abusive conduct committed by the Board of Directors and other managerial personnel. These developments mark an important phenomenon in Indian corporate governance, thereby inducing greater transparency to corporate decision-making.

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\* Contributed by Akansha Rawat, AEO, Dte. of Academics, ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.

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- **Helen Brand OBE**, Chief Executive, Association of Chartered Certified
- **Dr. A S Durga Prasad**, President, The Institute of Cost Accountants of India
- **Andrew Ratcliffe**, Deputy- President, The Institute of Chartered Accountants of England & Wales (ICAEW) & Sr Partner, PricewaterhouseCoopers LLP
- **Roshni Nadar**, Executive Director and the CEO of HCL Corporation Trustee, Shiv Nadar Foundation
- **John Griffith-Jones**, Chairman, Financial Conduct Authority (FCA), UK
- **Professor Sir Andrew Likierman**, Dean, London Business School(LBS),UK
- **Dr. R. Seetharaman**, Group Chief Executive Officer, Doha Bank, Qatar
- **Dr. Sanrput Misra**, CEO, Carbon Black Business and Director, Group HR, Aditya Birla Group
- **R. Sridharan**, President, The Institute of Company Secretaries of India
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**Circulars, Notifications, Orders, Amendment, Rules  
under Companies Act, 2013**  
*(since last issue of e-CS Nitor)*

File No. 10/36/2001-CLB

**GOVERNMENT OF INDIA**  
**COMPANY LAW BOARD**

Paryavaran Bhawan, 3<sup>rd</sup> Floor, B-Block, C.G.O. Complex, Lodhi Road  
New Delhi – 110003

Dated: 28/08/2014

**ORDER**

In exercise of the powers conferred by sub-section (4B) and sub-section (6) of Section 10(E) of the Companies Act, 1956 (1 of 1956), the Company Law Board hereby, makes the following Regulations further to amend the Company Law Board Regulations 1991, namely:-

1. In CHAPTER IV of the Company Law Board Regulations, 1991,-  
“In Annexure-I, S. No. 3, in the entries under the heading States/Union territories, the word “Telangana” shall be inserted after the word Andhra Pradesh”.
2. This order shall come into force with immediate effect.

By Order of the Company Law Board

Sd/-

**(P.K. Malhotra)**  
Secretary, Company Law Board  
Telephone: 24363451

1. P.A. to Hon’ble Chairman, Company Law Board, New Delhi.
2. Hon’ble Members, Company Law Board, New Delhi Bench, Kolkata Bench, Mumbai Bench and Chennai Bench.
3. Bench Officers, Company Law Board, Principal Bench, New Delhi Bench/Kolkata Bench/Mumbai Bench/Chennai Bench.
4. All Regional Directors/All Registrars of Companies/All Official Liquidator.
5. Sr. PPS to Secretary, Ministry of Corporate Affairs, New Delhi.
6. PS to Shri Amardeep Singh Bhatia, Joint Secretary, MCA.
7. Shri N.K. Dua, Deputy Director, MCA.
8. Secretary, DGIR, New Delhi.
9. Secretary, Competition Commission of India, New Delhi.
10. Director, S.F.I.O., New Delhi.
11. CLB, web site/Notice Board.
12. The Institute of Chartered Accountants of India, ITO, New Delhi.
13. The Institute of Company Secretaries of India, ICSI, House 22, Institutional Area, Lodhi Road, New Delhi – 110003.
14. Corporate Law Adviser, 158, Basant Enclave, Palam Road, New Delhi- 110057.
15. Taxman Allied Services Ltd., 59/32, New Rohtak Road, Delhi.
16. The All India Reporter Pvt. Ltd., 31-D ‘B’ Block, Delhi High Court, New Delhi.
17. Bar Councils New Delhi/Kolkata.

**GOVERNMENT OF INDIA**  
**MINISTRY OF CORPORATE AFFAIRS**

**ORDER**

New Delhi, the 4th September, 2014

**S.O.** Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on the 29th August, 2013 and section 143 of the Act, which provides for the powers and duties of the auditors and auditing standards, came into force with effect from 1st April, 2014;

And whereas sub-sections (5) and (7) of section 139 of the said Act provide for power of the Comptroller and Auditor-General of India to appoint an auditor duly qualified to be appointed as an auditor in a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

And whereas sub-section (5) of section 143 of the said Act which provides for power of the Comptroller and Auditor General of India to conduct supplementary audit does not specifically cover companies 'owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments';

And whereas difficulties have arisen in implementation of the provisions of sub-section (5) of section 143 for companies referred to in sub-sections (5) and (7) of section 139 of the said Act;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

1. Short title and commencement.-

(1) This order may be called the Companies (Removal of Difficulties) Seventh Order, 2014.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In section 143 of the Companies Act, 2013 in sub-section (5), for the portion beginning with the words "In the case of a Government company" and ending with the words "required to be audited and", the following shall be substituted, namely :-

"In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and".

[F. No. 1/33/2013-CL.V]

Sd/-

**AMARDEEP SINGH BHATIA, JOINT SECRETARY**

[To be published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i)]

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

New Delhi, the 12th September, 2014

**G.S.R..... (E).** — In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (6), after the words "but such expenditure" the words and comma "including expenditure on administrative overheads," shall be inserted.

[F. No. 1/18/2013 -CL-V-Part]

Sd/-

**MANOJ KUMAR**, Jt. Secy.

**Note:** The principal notification was published in the Gazette of India *vide* No. G.S.R. 129(E), dated 27.02.2014.



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- Bonus Shares
- Board Disclosures
- Incorporation
- Incorporation conversion
- Non Profit Organisation
- Preferential issues
- Rules under Companies Act, 2013
- Resolutions to be filed under Companies Act, 2013
- Shareholders democracy
- Winding up
- Women Director

***We invite the members to contribute their "Points of View" on any topic under the Companies Act, 2013 for inclusion in the coming issues of e-CS Nitor at [ecsnitor@icsi.edu](mailto:ecsnitor@icsi.edu). It should ordinarily contain around 500 words.***



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