ONE PERSON COMPANY

No longer will one search for business partners or shareholders to form a company. Forming a company will not require company of anyone else and one can fulfill his or her dream of having a company on his own by there being just one member of that company. The concept of One Person Company (OPC) has been introduced in the new Companies Act, 2013.

FORMATION OF OPC

It may be formed for any lawful purpose by one person as a private company by subscribing his name to a memorandum and complying which the requirements of this act in respect of registration.

To comply with the basic requirement of perpetual succession and golden rule "**member may come and go, but company must go on**" provision has been made in the law to appoint nominee of original subscriber. Company has to file with registrar, consent of one other person (nominee) who shall become member of the company in case of death or incapacity of the original subscriber of the company. Such nominee can withdraw consent by following procedure which shall be prescribed in the rules. At the same time subscriber can also change the nominee by giving prescribed notice.

TYPES OF OPCS

One person company may be

(a) A company limited by shares or

(b) A company limited by guarantee or

(c) An unlimited company

Thus, OPC may be of the following 5 types

(i) One person company (OPC) limited by shares

(ii) OPC limited by guarantee and having share capital

(iii) OPC limited by guarantee and having no share capital

(iv) OPC unlimited having share capital

(v) OPC unlimited not having share capital

MEMORANDUM OF ASSOCIATION

The memorandum shall state

(a) The name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company.

(b) The State in which the registered office of the company is to be situated.

(c) The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

(d) The liability of members of the company, whether limited or unlimited with detail as specified in section 4(1)(d).

(e) The amount of share capital with which the company is to be registered and the division thereof as specified in section 4(1)(e)(i).

(f) The number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share.

(g) The number of shares each subscriber to the memorandum intends to take indicated opposite his name.

(h) In the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

EXEMPTIONS TO OPC

(a) OPC is not required to hold annual general meeting.

(b) Provisions of section 98 and sections 100 to111 shall **not apply to the company:**

- 98 Power of Tribunal to call general meetings other than an annual general meeting of members
- 100 Calling of Extraordinary General Meeting
- 101 Notice Of General Meeting
- 102 Explanatory statement annexed to the notice of general meeting
- 103 Quorum for general meetings
- 104 Chairman of the general meetings
- 105 Provisions relating to Proxies
- 106 Restrictions on voting rights
- 107 Voting by show of hands
- 108 Voting through electronic means
- 109 Demand for poll
- 110 Postal ballot
- 111 Circulation of members' resolutions

(c) Deemed passing of ordinary or special resolution by entry in minute's book

AUDIT AND AUDITORS

Compulsory rotation of auditors – Not applicable

Provision for compulsory rotation of auditor in section 139(2) are not applicable to OPC as they apply to listed companies and companies belong to such class or classes as may be prescribed (unless central govt. applies it to OPCs through notification).

DIRECTORS

(a) Number of Directors

The company shall have a minimum one director and maximum of fifteen directors such directors being individuals.

The company may appoint more than fifteen directors after passing a special resolution.

(b) One director to be resident director

The company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

(c) First Director

Where the first director is not appointed by the articles in case of a One Person Company, an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member.

(d) Meeting of the Board of Directors

If OPC has more than one director on its Board, the company shall be deemed to have complied with the provisions of section 173 if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. If OPC has only one director, it is exempted from holding Board meetings.

(e) Contract with the sole member

Where 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 company 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 of Directors of the company held next after entering into contract.

The provision of section 193(1) shall not apply to contracts entered into by the company in ordinary course of its business.

(f) To inform the registrar about the contracts

The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under section 193(1) within a period of fifteen days of the date of approval by the Board of Directors.

ACCOUNTS OF COMPANIES

(a) Signing of Financial Statement

The financial statement shall be signed only by one director for submission to the auditor for his report thereon.

(b)Report of Board of Directors

The report of Board of Directors 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.

(c) Signing of the Board's Report

The Board's report and any annexure thereto shall be signed by its chairperson of the company if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors, one of whom shall be a managing director or by the director where there is one director.

(d) Filing of copy of financial statement

One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.

FEATURES OF ONE PERSON COMPANY:-

The following are the important features of the One Person Company (OPC)

- One Person Company is one of the type of Company on the basis of number of members
- One Person Company has only one person as a member/shareholder.
- One Person Company is a Private Company
- Minimum paid up share capital of One Person Company is one lakh rupees (Rs. 1,00,000)
- One Person Company may be either a Company limited by share / a Company limited by guarantee / an unlimited Company
- The words "One Person Company" should be mentioned in brackets below the name of the One Person Company

- One Person Company shall indicate the name of the nominee/other person in the memorandum, with his prior written consent
- The written consent above, shall be filed with the Registrar at the time of incorporation of the One Person Company along with its M&A (Memorandum and Articles)
- The nominee/ other person can withdraw his consent at any time
- The member/Shareholder of One Person Company may change the nominee/other person at any time, by giving notice to the other person and intimate the same to Company. Then the Company should intimate the same to the Registrar
- In case of the death of member/shareholder or his incapacity to contract, then nominee/other person become the member of the Company
- Member/Shareholder of the One Person Company acts as first director, until the Company appoints director(s)
- One Person Company can appoint maximum 15 directors, but minimum should be one director
- One Person Company need not to hold any AGM (Annual General Meeting) in each year
- Cash Flow Statement may not include in the financial statements of One Person Company
- One Director is sufficient to sign the Financial Statements/Director's Report
- Within 180 days from the closure of the Financial Year, One Person Company should file the copy of the Financial Statements with Registrar
- One Person Company should inform to the Registrar about every contract entered and also should record in the minutes of the meeting with in 15days from the date of approval by the BOD (Board of Directors)

FORMS OF COMPANY:-

Some of the form required to be filed are:-

1. Form No.2.1 : Nomination of the person who shall, in the event of subscriber’s death or his incapacity to contract, become the member of OPC

2. Form No. 2.2 : Consent of the person who shall, in the event of subscriber’s/member’s death or his incapacity to contract, become the member of OPC

3. Form No. 2.3 : Notice of withdrawal of consent by the nominee of OPC

4. Form No. 2.4 : Intimation about change in the name of the nominee of OPC

5. Form No. 2.5 : Intimation of cessation

6. Form No. 2.6 : Notice to the Registrar by one person company giving intimation of ceasing to be such company

7. Form No. 2.7 : Application form for reservation of name

8. Form No. 2.8 : Notice of provisions of entrenchment in Articles of Association

9. Form No. 2.9 : Application for incorporation of a company

CONCLUSION:

The concept of OPC shall boost corporate culture in India and more so in smaller towns where a large number of business entities are sole proprietorship firms or partnership firms. While it will promote entrepreneurship, it will also redefine how small businesses could be professionalized and more efficiently managed. With OPCs, compliance levels will also go up and it will bring in greater transparency in the business dealings. It is hoped that there will be positive change in the business spectrum all over.

LIMITED LIABILITY PARTNERSHIP VS PRIVATE LIMITED COMPANY

Since LLP has been introduced in India, apart from incorporating a traditional Limited Liability Company, it has become an option for entrepreneurs, business owners and investors starting new ventures to start their business as an LLP. In light of this, it is important to understand the advantage of each of these formations, the differences between them and consider carefully which ones suits the need of the business best.

Limited Liability Partnership	**Private Limited Company**
PREVAILING LAW	
Companies are prevailed by 'Companies Act, 1956'	Limited Liability Partnership are prevailed by 'The Limited Liability Partnership Act, 2008' and variou Rules made there under.
NAME OF THE COMPANY	
Name of a private company should be end with the words "private limited".	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix
CAPITAL CONTRIBUTION	
Private company should have a minimum paid up capital of Rs. 1 lakh and Rs.5 lakhs for a public company.	Not specified.
NO. OF SHAREHOLDERS / PARTNERS	
Minimum of 2. In a private company, maximum of shareholders	Minimum of 2. No maximum.
MEETINGS	
Quarterly Board of Directors meeting, annual shareholding meeting is mandatory.	Not required.
AUDIT:	
Compulsory, irrespective of share capital and turnover.	Required, if the contribution is above Rs.25 lakhs o annual turnover is above Rs. 40 lakhs.
BANKERS' PERCEPTION OF CREDITWORTHINESS OF THE ENTITY	
High creditworthiness, due to stringent compliances and disclosures required.	Creditworthiness is higher compared to that of a partnership but lesser than a company.
DISSOLUTION	

Very procedural. Voluntary or by Order of National Company Law Tribunal.	Less procedural compared to company. Voluntary or by Order of National Company Law Tribunal.
FOREIGN INVESTMENT	
Foreign investment allowed on automatic or approval basis on various sectors in accordance with FDI policy. There are percentage restrictions, and performance linked conditions, such as minimum capitalization in various sectors.	Foreign investment in LLPs has been allowed on May 11, 2011, but it is restricted to only those sectors where 100% foreign investment for companies is permitted, and which do not have any performance linked conditions. All foreign investment in LLP on approval basis.
DIFFERENCES IN TAXATION	
Company is liable to pay tax on the income of the corporate. Income tax on a limited liability company is levied at the rate of 30%. A company is subjected to dividend distribution tax when it pays dividend. Under the Income Tax Act, Dividend distribution tax is charged at the rate of 16%. Third kind of tax applicable on a company is Minimum Alternate Tax. The rate of MAT is 18% according to the latest Finance Act.	Taxation structure for **LLP** is simpler. LLP is subjec only to Income tax and Alternate Minimum Tax. Tax is levied on the firm at the rate of 30%. Dividend Distribution is not applicable on LLP. Alternate Minimum Tax (AMT) at the rate of 18.5% on the adjusted total income of Limited Liability Partnerships.

IMPLICATIONS OF COMPANIES ACT, 2013

The Companies Act provides an opportunity to catch up and make our corporate regulations more contemporary, as also potentially to make our corporate regularity framework a model to emulate for other economies with similar characteristics. The 2013 Act is more of a rule based legislation.

The 2013 Act contains a number of provisions which have implication on accounts, audit and auditor which are discussed below.

Key Changes and Requirement	**Analysis and Implications**
Consolidated Financial Statement	
The 1956 Act does not require preparation of Consolidated Financial Statement. Only listed companies are required to prepare it as per SEBI Regulation. Now The 2013 Act mandate preparation of CFS for all companies having Subsidiary Company(s). Further subsidiary include associates and joint ventures. In addition, the 2013 Act: • Prescribe the format for preparation of CFS • Requires monitory interest to be presented separately within equity o the balance sheet	The requirement to prepare CFS is largely consistent with internationally accepted practices. However, internationally, such requirements apply only to listed companies. The existing Indian and International Accounting practices do not require preparation of CFS when the company has investment only in associates and joint ventures. The requirement to present minority as part of equity is currently not required under the existing Indian Accounting Practices. However, the international practices are consistent with the 2013 Act.
Financial Year	
As per the 1956 Act, it is a company's or boc corporate's election to choose the financial year. The 2013 Act provides that the financi year for all companies and body corporates should end on 31st March. However, exempt may be granted at the specific request of the reporting entities where the financial	The 2013 Act eliminates the current flexibility in having year different than 31st March, as well as in making amendments to the year-end to suit requirements.

<table>
<tr><td>statement of such entities is required for consolidation outside India.
 A transition period of 2 years has been provided for this change.</td><td></td></tr>
<tr><td colspan="2">Restatement of financial statement.</td></tr>
<tr><td>Currently under existing accounting practices, a Company cannot restate its previously issued financial statements to correct for an error or misstatement. Such correction should be disclosed in the current period financial statements. The 2013 Act provides for the following:
• Mandatory restatement: in case of fraud and when a Court/ the Tribunal passes an order for restatement
• Voluntary Restatement : to comply with the accounting standard with the approval of the tribunal.</td><td>The concept of restatement is new and is an internationally required practice. Further SEBI has recently mandate that it may require companies to restate financial statement in case of justified audit qualifications. Accordingly, the provision under the 2013 Act will enable the implementation of the SEBI requirements.</td></tr>
<tr><td colspan="2">Estimated useful life of assets</td></tr>
<tr><td>The 1956 Act provides for minimum useful lives of fixed assets. For a class of companies, to be prescribed, the 2013 Act removes the minimum thresholds and provides indicative useful lives and residual values under Part C of Schedule II to the 2013 Act. Any variation from the indicated life needs to be justified.

In case of other companies the useful life of asset may not be longer than the indicated prescribed useful life.</td><td>This may leads to different useful life for the same asset by similar companies.

Such provisions are restrictive and are indirectly pushing companies to follow the useful life as indicated in the 2013 Act instead of making an appropriate assessment of the useful life of the asset.</td></tr>
<tr><td colspan="2">Tenure and re-appointment of Auditors</td></tr>
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An auditor/ audit firm is eligible for reappointment after expiry of five years since completion of previous tenure. An audit firm having common partners with another firm which has completed its term is not eligible for re-appointment for a period of five years from the completion of other firm's term.	The proposal may result in effectively protecting the tenure of the Auditor for the five years by including stringent provisions on removal of auditors. While rotation affects the long term continuity of the compan auditor relationships, the 5 year appointment, bring in stability for limited period. The tribunal's authority to suo-moto change the auditor and consequent ineligibility of such auditor, to act as an auditor for any company is quite punitive and could be disruptive to the audit profession. This could result in disproportionate punishment for a minor intentional/ unintentional act and could potentially shut down large accounting firms overnight.
Mandatory Rotation	
In case of listed companies (or a company belonging to such class or classes of companies as may be prescribed) the term of appointment of an individual auditor/ an audit firm is restricted to a period of five years/ ten years. An auditor/ audit firm should mandatorily rotate at the expiry of the term. Shareholders, at their discretion, may determine that an audit partner may rotate such interval as may be resolved by them, or that the audit may be conducted by more than one auditor (joint audit).	Mandatory rotation is a new concept and is expected to change the Indian audit market structure significantly as several large companies have retained their auditors for more than 10 years. Mandatory rotation could possibly result in both positive and negative influences on the quality of the Financial reporting processes and on overall audit quality.
Whistle blower – Fraud Reporting	
The 2013 Act provides that the auditor should immediately inform the Central Government within a period, to be prescribed, timeframe and manner if he has reason to believe that an offence involving fraud is being or has been committed	The term "Fraud" as defined under the 2013 Act is very wide and perhaps encompasses every act of omission or commission. Further, there is no materiality limits set under the 2013 Act for reporting to the Central Government. The 2013 Act may

against the company by its officers or employees.	require an auditor to report even trivial matters, making it an ineffective exercise.
Eligibility	
Under the 1956 Act, a Chartered Accountant holding a certificate of practice or a firm of Chartered Accountants (only) can be appointed as auditor(s) of a company. The 2013 Act, in addition, proposes that a firm wherein a majority of the partners practicing in India are qualified for appointment, may be appointed to be an auditor of a company.	The introduction of LLP as an auditor and ability to operate with partners who are not Chartered Accountants is a welcome change and in line with International practices. This will also pave the way for multi-disciplinary partnership firms.
Disqualification	
The 2013 Act includes the following additional disqualification: • Any person who has a business relationship with the company/ its subsidiary/associate/its holding company/subsidiary or associate of its hold company (business relationship disqualification); • A person whose relative is a non-executive/ executive director or key managerial personnel of the company; • A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction; • A person who is in full-time employment elsewhere; • Any person whose appointment will result in the person being the auditor of more than 20 companies; and • Any person whose subsidiary or associate or any other form of entity is engaged in providing non- audit services as on the date of appointment. (non-audit services disqualifications).	Some of the disqualifications seem to be quite punitive and may be difficult to implement. It is also not clear whether a person/firm that engaged in providing non-audit services is disqualified to be the auditor of any company such person/firm is disqualified to be the audi of only the company to which such non-audit services are rendered. Further, it seems that the non-audit services may be provided in the year of the appointment without affecting eligibility provided the engagement is terminated prior the date of the appointment.

Restriction on number of audit	
The 1956 Act and the Institute of Chartered Accountants of India ('ICAI') restrict the number of companies in which a person/ firm can be appointed as auditor. An individual cannot be appointed as auditor for more than 30 companies. The 2013 Act restricts the number of audits to 20 companies for an individual/ partner.	The 2013 Act does not provide any restrictions based on nature/ size of the companies. Now private companies will also be considered for calculating the limit of 20 audits per partner.
Reporting Requirement	
In addition to the 1956 Act reporting requirements, the 2013 Act includes the following matters for auditor reporting; • Adequacy of the internal financial controls system and the operating effectiveness of such controls [in a similar context with respect to directors report, internal financial control has been defined to mean the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information]. • Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith. It is notable in this context that only for listed entities, in the director's report, the 2013 Act requires directors to provide a	The auditors are subjected to wider and onerous responsibility of providing a comfort on internal controls and on operational effectiveness of the conduct of the business, in addition to the true and fair opinion on financial statements. There seems be a focus to bring in global best practices in terms of reporting by auditors on effectiveness of internal control over financial reporting and maintenance of accounting records. Further, for unlisted entities the requirements related to reporting in internal financial controls apply only to auditors and not to the directors which is inconsistent with the company's / director's primary responsibility for implementing such controls. Scope of audit inquiries/testing may no longer be restricted to financial information and may include more qualitative operational assessments as well.

similar report on internal financial controls.	
Restricted Services	
Currently, whether non-audit services can be rendered to an audit client is determined by applying the Code of Ethics and the Guidance Note on Independence of Auditors issued by the ICAI. Unlike 1956 Act, the 2013 Act contains specific provisions that prohibit auditors of a company to render non-audit services to an audit client (or its holding company or its subsidiary company) **Transition Period** One year from the date of enactment of the 2013 Act.	The list of prohibited services is quite wide and also vaguely worded. This results in restricting the ability of an audit firm to provide most non-audit services. It should be noted that the list appears to be more restrictive than international practices. The requirements appear to be quite onerous and indeed would appear to prohibit an audit firm from providing a wide range of services, even when those are non-material.

Thus from the above it seems that, there are many adverse effects after such changes particularly due to conflicts between Accounting Standard and New Companies Bill and IFRS.