

Applicability of Chapter VII to One Person Company (Sec 122)

1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 122.— This new clause seeks to provide that the provisions of some sections of Chapter VII i.e. Management and Administration, shall be applicable to One Person Company to the extent and the manner as provided under the clause.”

2. Applicability of Chapter VII to OPC

Sub-section (2) of section 122 provides that the provisions of the following sections shall not apply to an OPC:

Section 98: Power of Tribunal to call meetings of members, etc.

Section 100: Calling of extraordinary general meeting.

Section 101: Notice of meeting

Section 102: Statement to be annexed to notice

Section 103: Quorum for meetings

Section 104: Chairman of meetings

Section 105: Proxies

Section 106: Restriction on voting rights

Section 107: Voting by show of hands

Section 108: Voting through electronic means

Section 109: Demand for poll.

Section 110: Postal ballot

Section 111: Circulation of members' resolution

Further, sub-section (1) of section 96 provides that an OPC is not required to hold its annual general meeting.

3. Conducting of business required to be transacted at general meeting

Clause (a) of sub-section (2) of section 102 provides the following ordinary businesses to be transacted in an annual general meeting

- i. the consideration of financial statements and the reports of the board and auditors;

- ii. the declaration of any dividend;
- iii. the appointment of directors in place retiring directors;
- iv. the appointment of, and the fixing of the remuneration of, the auditors.

Sub-section (3) of section 122 provides the manner in which such businesses are to be transacted in case of OPC. It further deals with the matters which are required to be transacted by an ordinary or special resolution at a general meeting of members pursuant to section 114. Such businesses are deemed to be transacted when the resolution is communicated by the member to the company and entered in the minutes book required to be maintained under section 118 and signed and dated by the member.

The manner of communication by the member can be any manner prescribed under sub-section (1) of section 20 read with rule 35 of the Companies (Incorporation) Rules, 2014. The date of signing the minutes shall be deemed to be the date of the meeting for all the purposes under this Act. The scope of Secretarial Standard on General Meetings (SS-2) provides that the said standard is not applicable to OPC.

4. Conducting of business required to be transacted at board meeting

In case where the OPC has only one director, the matters which are required to be transacted at a board meeting pursuant to any provisions of the Act, such businesses are deemed to be transacted when the resolution is entered in the minutes book required to be maintained under section 118 and signed and dated by the director. While the requirement of communication of resolution is not expressly provided, it could be inferred from the fact that the resolution will be entered into minutes book only after the same is communicated. The date of signing the minutes shall be deemed to be the date of the meeting for all the purposes under this Act. The scope of Secretarial Standard on Board Meetings (SS-1) provides that the said standard is not applicable to OPC where the OPC has only one director.

5. Punishment and Compoundability

This section does not prescribe any penal provision for contravention of the section. Hence, Section 450 of the Act will be applicable. Accordingly, the punishment for contravention, the company and every officer of the company who is in default shall be punishable with a fine upto Rs. 10,000, where the contravention is a continuing one then the fine shall be Rs. 1,000 for every day of contravention. The offenses committed by company and officer, being punishable only with fine, are compoundable under section 441 of the Act.

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.