

Company Laws of India - A Brief Analysis

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ABSTRACT; The purpose of this paper is to highlight the changes in the field of Corporate Governance due to the enactment of The Indian Companies Act 2013. This paper basically focuses on how the inadequacies of The Companies Act 1956 are met by the latest statute. As a consequence of various scandals and ongoing concerns in corporate sector, Corporate Governance had turned out to be an area that require various policy reforms and considerable academic research. The 2013 Act has ushered in a new era of corporate democracy making a titanic shift from “Government Control” to “Self Governance” and those areas having a clear impact is discussed in brief here. Since the new act is expected to facilitate more business friendly corporate regulations and raise the levels of transparency, it will set the tone for a more modern legislation which enables growth and greater regulation of the corporate sector in our country.

Date of Submission: 26-12-2018

Date of acceptance: 11-01-2019

LIST OF ABBREVIATIONS

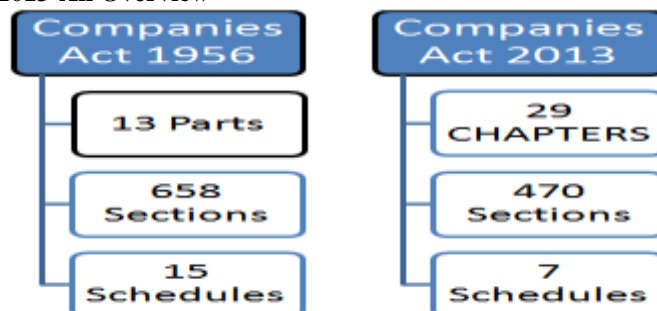
BOD : Board Of Directors
CEO: Chief Executive Officer
CFO: Chief Financial Officer
CS : Company Secretary
MD: Managing Director
WTD : Whole Time Director
NACAS : National Advisory Committee on Accounting Standards
MD&A : Management Discussion & Analysis
JV : Joint Ventures
AGM : Annual General Meeting
RPT : Related Party Transactions
CSR : Corporate Social Responsibility

I. INTRODUCTION

The recently enacted Companies Act 2013 is a landmark piece of legislation and likely to have far reaching consequences on all companies incorporated in India. The erstwhile Companies Act 1956 was in existence for well over 50 years and was lately seeming quite ineffective at handling present day challenges of a growing industry and the complexity related with growing stakeholders’ interests.

The New Act promises to substantively raise the bar on governance and in a comprehensive form purports to deal with some very relevant themes. On the flip side, it appears to be quite pervasive and thrusts greater responsibility and obligation on the Board of Directors and Management in Indian Companies. There is a lot to note in the new Companies Act as it brings in sweeping changes in the way the corporates are governed in India. Also, by mandating a woman director on the board, the intent of the Act is to improve gender diversity and increase transparency.

Companies Act 1956 & 2013-An Overview



1.1 Arrangement Of Clauses

CHAPTER	TITLE	CO.ACT 2013	CO. ACT 1956
I	Preliminary	1,2	1 to 10
II	Incorporation of Companies	03 - 22	11 - 54
III	Prospectus & Allotment of Securities	23 - 42	55 - 81
IV	Share Capital & Debentures	43 - 72	82 - 123
V	Acceptance of Deposits by Companies	73 - 76	58A -58B
VI	Registration of Charges	77 - 87	124 - 145
VII	Management & Administration	88 - 122	146 - 197
VIII	Declaration & Payment of Dividend	123 - 127	205 - 207
IX	Accounts of Companies	128 - 138	209 - 223
X	Audit & Auditors	139 - 148	224 -233B
XI	Appointment & Qualification of Directors	149 - 172	252 - 284
XII	Meeting of Board & its Powers	173 - 195	285 - 308
XIII	Appointment & Remuneration of Managerial Personnel	196 -205	309 - 311
XIV	Inspection, Inquiry & Investigation	206 -229	234 - 251
XV	Compromise, Arrangement & Amalgamation	230 - 240	390 - 396A
XVI	Prevention of Oppression & Mismanagement	241 - 246	397 - 409
XVII	Registered Valuers	247	-
XVIII	Removal of Names of Companies from Register	248 - 252	560
XIX	Revival & Rehabilitation of Sick Companies	253 - 269	424A - 424I
XX	Winding Up	270 - 365	425 - 559
XXI	Companies Authorized to Register under this Act & Winding Up Of Unregistered Companies	366 - 378	565 - 581 582 - 590
XXII	Companies Incorporated Outside India	379 - 393	591 - 608
XXIII	Government Company	394,395	617 - 620
XXIV	Registered Offices & Fees	396 - 404	609 - 614A
XXV	Companies to Furnish Information & Statistics	405	615
XXVI	Nidhis	406	620A
XXVII	NCLT & NCALT	407 - 434	10FB - 10GF
XXVIII	Special Courts	435 - 446	-
XXIX	Miscellaneous	447 - 470	621 - 658

II. KEY AREAS OF IMPACT IN CORPORATE GOVERNANCE

The Companies Act 2013 contains a number of provisions which have significant implications on governance of the companies. In this paper we analyse some of the key provisions and have identified certain action steps and challenges associated with the implementation of these provisions for the companies to consider.

2.1. Board Structure & Responsibility

The latest statute had enhanced the responsibility on the BODs and its committees. Besides the setting up of Audit Committees, the constitution of Nomination and Remuneration Committees has also been made mandatory in the case of listed companies. In the backdrop of global corporate, the changes relating to participation of directors by audio visual and electronic means are a welcome step, aimed at keeping pace with technological advancements. Moreover it had been made mandatory regarding the appointment of Independent Director, Woman Director and Key Managerial Personnel-CEO/MD/WTD/CFO/CS. In terms of appointment of directors the Companies Act 2013 provides that the company shall have a maximum of fifteen directors on the BOD and appointing more than fifteen directors would require approval of shareholders through a special resolution.

2.2. Disclosures And Reporting

The disclosures and assertions in the Directors Report with respect to risk management, internal control for financial reporting, legal compliance, RPT, CSR etc. had been enhanced as a result of the implementation of new statute. The new act also recommends the setting up of a National Financial Reporting Authority which in turn replaces the NACAS. In the case of a listed company, the boards need to disclose information under three heads, viz., Board Report, Directors Responsibility Statement and MD&A. Disclosures with respect to shareholding

pattern, public money lying unutilized and other disclosures such as consolidation of accounts, summary statements of JVs/Associates/Subsidiaries had been made compulsory.

2.3. Risk, Controls And Compliance

The enterprise risk management was not mandatory according to the Companies Act 1956. However, as per the new law, there are specific requirements that a company needs to comply with. In addition, the board and audit committee have been vested with specific responsibilities in assessing the robustness of risk management policy, process and systems. The Directors Responsibility Statement from now onwards shall state that the directors have devised proper system to ensure compliance and such measures were adequate and operating efficiently. As per the provisions of Section 205(1) the CS shall be required to report to the board about the compliance with the provisions of the Act, the rules made thereunder and other laws applicable to the company.

2.4. Secretarial Compliances

The introduction of Secretarial Audit helps to check compliances made by the Company under Corporate Law and other laws, rules, regulations, procedures etc. It is actually a mechanism to monitor compliance with the requirements of stated laws and processes. Periodically examination of work is necessary to point out errors and mistakes and to make a solid compliance mechanism system in an organization. According to Section 204(1) of the Act, every listed company and public company having either a minimum of 50 Crore rupees as Capital or 250 Crore rupees as Turnover. Further the penalty for non compliance of the provisions may range from 1 lakh to 25 lakh rupees. While the Act of 2013 has opened up a significant area of practice for CS, it casts immense responsibility and poses a great challenge to justify fully, the faith and confidence reposed in them.

2.5. Rpt, Loans And Investments

The approval of Central Government will no longer be required for entering into Related Party Transactions. Rather, companies will need to pass special resolution at the General Meeting, if the transaction is not in the ordinary course of business or not at arm's length. Unlike the existing Act, the Companies Act 2013 does not contain any specific exemption/exclusion with regard to loan given by a private company or by a holding company to its subsidiary or for guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company. Prohibition on having more than 2 layers of investment companies may require many groups to reconsider their investment structures. However it seems that the same restriction/prohibition may not apply on making investment through other than investment companies.

2.6. Audit And Auditors

As per the provisions of the recent statute, though the auditor will be appointed for 5 years, the matters relating to such appointment will be placed for ratification at each AGM. Companies will now need to comply with the onerous requirement of taking an approval from the CG to remove the auditor during his term and a Special Resolution is required to be passed at the General Meeting in this regard. All listed companies which have long-term relationship with auditors, need to gear up for rotation. Since the enactment of new act, the reporting responsibilities of the auditor will increase significantly. For example, the auditor will be required to report on adequacy and functioning of internal financial control system in all areas. So to avoid adverse comment, the management will need to ensure adequacy and effectiveness of internal financial control in all the areas.

2.7. Corporate Social Responsibility

The Companies Act 2013 requires that every company with net worth of Rs. 500 Crore or more, or turnover of Rs. 1000 Crore or more or a Net Profit of Rs. 5 Crore or more during any financial year will constitute a CSR Committee. The Board will ensure that company spends in each year, at least 2% of its average net profits made during the three immediately preceding financial years in pursuance of CSR policy. The company will give preference to local area and areas around where it operates, for spending the amount earmarked for CSR activities. The Board will approve the CSR policy and disclose its contents in the board report and place it on the company's website.

III. CONCLUSION

The Companies Act 2013 envisages radical changes in the area of Corporate Governance and is set to have far-reaching implications. The new regime is expected to significantly change the manner in which corporates operate in India. While the bar for corporate governance has been raised, the penal consequences have been exponentially increased with a large number of sections reserving provisions for the prosecution of directors, officers in default and key managerial personnel. There is a clear shift towards closely monitoring

unlisted public companies and large private companies with enhanced compliance requirements encompassing disclosures, transparency and governance procedures. After all the act provides an opportunity to catch up and make our corporate regulations more contemporary, as also potentially to make our corporate regulatory framework a model to emulate for other economies with similar characteristics.

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Surbhi Dubey" Company Laws of India - A Brief Analysis" International Journal of Business and Management Invention (IJBMI) , vol. 08, no. 01, 2019, pp 06-09