

THE COMPANIES ACT, 2013: AN ECONOMIC CHANGER

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ABSTRACT:

Change is a natural phenomenon and development is an on-going process. The Companies Act, 2013 is enacted to consolidate and aimed the law relating to companies. The new Act, 2013 is a landmark legislation, like all benchmarks its objective is to facilitate more business friendly corporate regulations to improve corporate governance norms to enhance accountability on the part of corporate and auditors, to raise levels of transparency and to protect the interests of investors particularly those who are small.

Key Words: *Accountability, Auditors, Corporate Governance, Investors, Independent Director, Transparency.*

INTRODUCTION:

The companies Act, 2013 is aimed at easing the process of doing business in India and improving corporate Government by making companies more accountable. The new Act, was passed by both the houses of the Parliament and Signed by the Honorable President of India in August 2013. This new law which replaced six decades old Companies Act, 1956, is a land mark legislation, that has the potential to improve transparency and governance in the corporate bodies. This act provides new measures for investor's protection, better corporate governance and corporate social responsibility, besides creating a proper environment for growth in the present global setting.

The earlier Companies Act was passed by the Government of India in 1956 on the recommendation of Bhabha Committee. This Act had 658 sections and 14 schedules and has amended 24 times. A Committee under

the chairmanship of M. Damodar was constituted for reforming the Regulatory Environment for doing business in India. The Committee submitted its report on 2nd Sep. 2013. Most of the recommendations of the Committee have been taken into account in the Companies Act, 2013.

The Companies Act, 2013 as a whole comes into force on 1st April, 2014 and extends to the whole India. The new legislation, the Companies Act, 2013, appears to bring an easy and efficient way of doing business in the corporate world, better governance to improve levels of transparency, to enhance accountability, to provide support to small and one person companies, to inculcate self-compliance and to make corporate socially responsible.

At least one third as independent director. The act is now enforcing on 1st April 2014, which contains 450 sections, 7 schedules and 29 chapters. Parliament approved the long-awaited overhaul of legislation governing Indian companies on 9 August 2013. The 2013 Act provides new concepts like one-person company. Small company, dormant company and corporate social responsibility etc. This Act introduces a nexus of changes in the provisions related to governance, e-management, compliance and enforcement disclosure norms, auditors, mergers and acquisitions, class action suits and registered values.

INTRODUCTION OF ONE PERSON COMPANY (OPC)

It is a private company having only one member and at least one Director. The basic pre-requisite to incorporate an OPC is that the only natural-born citizen of India. Including small businessmen, entrepreneurs, artisans, weavers or traders among others can take benefit of OPC concept outlined in the new Companies Act. The one person company shall have minimum paid-up capital of Rs. 1 lac and shall have no compulsion to hold Annual General Meeting (AGM).

Small Company: It means a company, other than a public company, paid-up share capital of which does not exceed Rs. fifty lac or such higher amount which shall not be more than Rs. five crore or turnover of which as per its last profit and loss account does not exceed Rs. two² crore or such higher amount which has not be more than Rs. twenty crore. The 2013 Act, Provide exemptions to small companies primarily from certain requirements relating to board meeting. Presentation of cash flow statement and certain merger process.

- **Accountability and Responsibility of independent directors –**

Some of the prime modification in Companies Act, 2013 related to Board governance are as follows:-

The 2013 Act defines the term “Independent Director” In case of listed companies, one third of the board of directors should be independent directors.

Mandatory appointment of independent directors on the board for listed companies and prescribed class of companies. There is clear guidelines that who can be independent director and how he can be selected and appointed. An independent director means a director, who in the opinion of the Board, is the person of integrity and possesses relevant expertise and experience. The new Act, 2013 also prescribes a code for independent directors, which lays down the guidelines for their professional conduct, roles, functions and duties. Apart from this, the independent directors meeting will also assess the Quality, Quantity and timeliness of information flow between the board and management. This is essential for the board to perform its duties in right manner and right mode.

- **Mandatory induction of women director –**

New Companies Act, 2013 make provisions relating to compulsory appointment of women director on the board; outlining of process for on-boarding of Board members. The role of women in Indian corporate house has received a much needed fillip under the new legislation. This Act says that any company having paid up capital of Rs. 100 crores or an annual turnover of Rs. 300 crores is required to appoint minimum one woman director on the board. This is for ensuring board diversity because most of the companies do not have a woman director.

- **Transparency in Financial Reporting**

In order to curb misunderstanding, Companies Act, 2013 insists on consolidation of financial statements. It has been made mandatory for all companies having subsidiaries (Indian/foreign), associates or joint ventures. This mandatory consolidation stipulation applies to all companies whether listed, unlisted, private or public. The new Company Act, 2013 prescribes that the Audit committee should approve party transactions. Audit committee as now required to evaluate effectiveness of internal financial controls and risk management system and sit up vigil mechanism for directors and employees to report genuine concerns.

- **More Accountability of Auditor**

With a strong commitment to negate corporate fraud, new Act 2013 clearly puts the onus on auditors to maintain safeguards. Among many key changes launched by the new Act 2013 is a need for mandatory rotation of auditors for certain classes of companies, stated follows. The regulation excludes one Person Company and small companies.

- Untested public companies with share capital of Rs. 10 crore or more.
- Private companies with share capital of Rs. 20 crore or more
- All companies with borrowing from bank or public financial institution or public deposit of Rs. 50 crore or more.

Companies meet the requisite criteria must adhere to the auditor rotation needs. As per this Act, an individual can't be appointed as an auditor for more than terms of five consecutive years. Further, an audit firm cannot be appointed as an auditor for more than two terms of five consecutive years. There has been debate as length on making auditor rotation mandatory. It has been believed that mandatory rotation may partially enhance auditor objectively and help market confidence.

- **Mandatory Corporate Social Responsibility (CSR)**

The companies Act, 2013 further aims to shore up government spending with corporate funding. The most path breaking provisions of this Act says that CSR spending is compulsory in certain set of situations. This Act further says that all profit or Rs. 1,000 crore or more turnover or Rs. 500 crore net-worth are require to spend at least 2% of its average net profit for the three preceding financial years in pursuance of companies CSR policy. This Act again says regarding the lists of the activities designated as CSR activities. Eradication of hunger and poverty, educational promotion and elevation of gender inequality, promoting social enterprises and ensuring sustainability of environment all comes within the ambit of CSR. Other activities included in list is heartening, for improving basic health standards. This contains the effort to improve maternal health and reduce infant mortality rate. HIV, AIDS, Malaria and secular other disease management programmes is also included in the list of CSR activities. Any company, which has net profit of Rs. 5 crore or more during any financial year will constitute

- A company presently cannot take up CSR projects outside the listed activities, in schedule VII and cannot claim for CSR expenditure.

- In the present form only those listed topics in schedule VII will Quality corporate social responsibility expenditure The CSR committee will evaluate that the CSR project is in alignment of CSR policy of the company subject to the condition that the policy covers subjects as in schedule VII.
- In the case of newly set up Qualifying companies having not completed three years shall have their CSR committee of the Board and CSR policy is in place.
- A company not only require to prepare CSR policy statement but company will prepare a detailed policy framework. Apart from overall vision and objectives, the CSR policy will include the list of projects, modalities of execution, implementation schedules and monitoring process.

OBJECTIVES

The significant objectives of the New Companies Act, 2013 could be stated as below:

- To accelerate the pace of the economics by encouraging enterprise efficiency, flexibility in creation and simplicity in the formation, and maintenance of Companies in India.
- To bring transparency in all operations, accountability and to ensure, highest standards of Corporate Governance.
- To protect the interest of all stakeholders, especially the small investors and at the same time introduction of new concepts and procedures to facilitate comfortable business performance.
- To ensure stricter and stringent action against fraud, non-compliance, negligence in complying the provisions of Companies Law.
- To recognise the role and responsibility of profession accountants/professionals and other experts and also to set up different institutional structure in the form of various authorities like statutory bodies etc., for better administration of the new Act.
- To focus on internal Audit, Corporate Governance and similar issues relating to compliance requirement relevant in the present economic environment.
- To promote corporate social Responsibility.

**Salient features of the Companies Act, 2013
(Comparison with the Companies Act, 1956)**

<i>Feature</i>	<i>Companies Act, 2013</i>	<i>Companies Act, 1956</i>
1. Arrangement of provisions	Total 470 sections and VII Schedules	Total 658 sections and XV Schedules.
2. Maximum number of members in a private company	Limited to 200 members.	Limited to 50 members.
3. New form of private company	Introduces One Person company for the first time.	No provision for One Person company.
4. Forms of M/A and A/A	It provides that the Memorandum and Articles of a company “shall be in respective forms specified in” different Tables of Schedule I. This, the form is absolute.	It provides that the Memorandum and Articles of a Company “shall be in such form in” the Schedule I as may be applicable to case of company, “or in a Form as near thereto as circumstances admit”. Thus, the form is flexible.
5. Statement in lieu of Prospectus (SLIP)	No provision for such a statement in this Act.	It provided for filing a statement in lieu of Prospectus where a company did not issue Prospectus.
6. Wider coverage under “definitions”	Many new terms have been included under “Definitions” in <i>Section 2</i> , such as : “accounting standards”, “Global Depository Receipt”, “Key managerial personnel”, “related party” with reference to a company, “small company”, “sweat equity shares”, total voting power”, “turnover”, “unlimited company”, “voting right”, “whole-time director”.	These terms were not defined in this Act.
7. Regulation in Table A		In this Act, there was provision for “adoption and application of Table A (containing 99 Regulations) in the case of companies limited by shares, where Articles were not registered etc.
8. Joint Stock Company	There is no such Table containing Regulations to be adopted.	It contained the “Definition of Joint-Stock Company” (Section 566) and also “Requirements for registration of joint-stock companies” (Section 567). A joint-stock company was a company having a permanent paid-up or nominal share capital of fixed amount
8A. Associate Company		
9. Deemed public	There is no provision with regard to	

company	Joint-stock company in it.	divided into shares of fixed amount, or held stock...
10. Certificate of commencement of business	No provision was there in it.	It contained a provision with regard to deemed public company that is, "Private Company to become public company in certain cases".
11. Statutory meetings	Introduced for the first time in it.	Such certificate was required from the registrar before commencement of business by a company, which was issued only when certain specified conditions were fulfilled by the company.
12. National Financial Reporting Authority	There is no provision for such a company in it.	There was a provision under which it was compulsory for a public company to hold a "Statutory Meeting".
13. Corporate Social Responsibility	No such certificate is required from the Registrar under its provisions.	Under Section 210A, there was a provision for the constitution of a National Advisory Committee on Accounting Standards (only), by the Central Government.
14. Code for Independent Directors	There is no requirement for a public company to hold a "Statutory Meeting".	Under Section 132, there is a provision for the constitution of a National Financial Reporting Authority by the Central Government in order to provide for matters relating not only to accounting standards but also to auditing standards.
15. Restriction on number of directorships	This Act introduces for the first time the Concept of Corporate Social Responsibility to render it a statutory obligation for some specified companies, public or private, falling within the specified parameters contained in Section 135, along with the constitution of the Corporate Social Responsibility Committee. This provision involves a financial burden of at least 2% of the average net profits of the company.	There was no such provision in this Act.
16. Duties of directors	Under the provisions of this Act, the	No such Code was present in this Act.
17. Committees of the Board of Directors	Under the provisions of this Act, the	It provided that no person shall hold

18. Acceptance of deposits by Companies	independent directors have to abide by a conventionalised set of principles and rules prescribed under the label of “Code for Independent Directors” included separately in the Schedule IV.	office as a director in more than 15 companies at the same time. There was so such separate provision for the duties of directors. There was no such provision in this Act.
19. Declaration and payment of dividend	It provides that no person shall hold office as a director in more than 20 companies at the same time. Section 166 specifically describes a list of duties of directors.	
20. Audit and Auditors	Section 178 makes a specific provision for the constitution of two new committees of the Board:	There was no such Chapter in it.
21. Meetings of Board and its Powers	(i) Nomination and Remuneration Committee,	
22. Company to contribute to bona fide charitable	(ii) Stakeholders’ Relationship Committee	There was no such chapter in it.
23. Political Contributions	It has introduced a separate chapter VIII on “Declaration and payment of Dividend”.	There was no such Chapter in it.
24. Provisions in regard to directors	It has introduced a separate chapter VIII on “Declaration and Payment of Dividend”.	There was no such Chapter in it.
25. Loan and investment by the Company	It has introduced a separate Chapter X on “Audit and Auditors”.	There was no such provision in this Act.
26. Related party transaction	It introduces a new provision whereby a company may contribute to bonafide charitable and other funds.	Under it, such a company could contribute such an amount only up to a maximum of 5% of its average net profits.
27. Secretarial audit for bigger companies	Now, a non-government company can contribute an amount to any political party up to a maximum of seven and a half per cent (7.5%) of its average net profits.	There was no such provision in it.
28. Functions of Company Secretary	It includes certain new provisions in regard to directors, such as: disclosure	There was no such provision in it.

29. Inspection, inquiry and in utilization	of interest by director and loan to directors. It introduces certain new provisions in this regard.	There was no such provision in it. It did not include such a provision.
30. Registered Values	It introduces “Related party transactions” as a separate provision. It includes a provision that every listed company shall annex with its Board’s report, a secretarial audit report, given by a company secretary in practice.	There was no such provision in it.
31. Removal of names of companies from the register of companies	It has incorporated a separate provision in regard to “functions of company secretary”.	There was no such Chapter included in it.
32. Winding-up of unregistered companies	It has included a separate Chapter XIV, on “Registered Values,” for purposes of valuation required of any property, shares, debentures, securities, or net worth, etc. of a company.	There was no such Chapter in it.
33. Separate new Chapters	It has introduced a separate Chapter XVII, on “Registered Valuers,” for purposes of valuation required of any property, shares, debentures securities, or net worth, etc. of a company.	It included no such Chapter.
34. Rehabilitation and Insolvency Fund	It has included a separate chapter XVIII, on “Removal of Names of Companies from the Register of Companies”.	There was no such separate part in it.
35. Class Action Suits by members or depositors of a company	It has included a separate Part II under a separate Chapter XXI, on “Winding-up of unregistered Companies”.	There were no such separate Chapters in this Act.
36. Issue of Bonus	It has introduced several “Government Companies”. “Registration of offices and fees, “Companies to Furnish information or Statistics”, Nidhis”, “Special Courts”, and “Miscellaneous-Punishments powers of Central Government, illegal association.” It provides for the first time for the formation of a Rehabilitation and Insolvency Fund for the purpose of	There was no such provision in it.

- Enhancement of liability of Auditors
- Disclosure and approval of Related Party Transactions
- Mandatory Auditing Standards
- Enabling Shareholders Associations/Group of Shareholders for taking class action suits and reimbursement of the expenses out of Investor Education and Protection Fund
- Constitution of National Financial Reporting Authority, and independent body to take action against the Auditors in case of professional misconduct
- Requirement to spend on Corporate Social Responsibility (CSR) activities
- Company Shall have maximum of 15 directors
- In the case of listed companies one third of the board of directors should be independent directors
- Company cannot have directorship in more than 20 companies including 10 public company
- Mandatory Constitution of certain Board level committees
- Strengthening corporate governance in line with leading global practices
- Mandates the constitution of a Nomination and Remuneration Committee
- Company shall have maximum 15 directors
- Mandatory appointment of one woman director
- Introduces the concept of one person company and small company
- Include entrenchment provisions within their articles of association
- Introduced status of dormant company
- Auditors are compulsorily required to attend the AGM
- Appointment of company secretary is not mandatory for private company

CONCLUSION:-

At the outset globalisation made many change in the economics and become instrumental in shaping the pattern of economic development. The Prevailing conditions make it essential that the policy maker should open new avenues for proper functioning of corporate houses. From the Nehruvian Socialist model, to a rampant license raj to finally a post liberalisation private sector revolution, Indian corporate sector has viewed many milestones, and many avatars. Keeping in view the rapid change and the transformation need of a central law was required to maintain pace of Indian industry. Unfortunately Companies Act, 1956 had become inadequate. In this light new companies Act was enacted. In August 2013 the president gave the official green signal and enacted the bill, the new companies Act became new guideline for Indian economy.

This Act among other aspects provides for business friendly corporate regulation, e-governance, initiative, Better Corporate governance, Corporate Social Responsibility. Enhanced disclosure norms, improved accountability of management, stricter enforcement audit accountability, protection for minority shareholders, investor protection for minority shareholders, investor protection and active and better framework for insolvency regulation and institutional structure. The new Companies Act, 2013 is a positive step towards modernising India's Company Law and aligning it to global standards. This legislation is a super highway in which a major thrust has been placed on corporate democracy and reducing government intervention and regulation for keeping it honest, strong and focused.

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