



The companies act 2013: A the Oretical study of new provisions

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Abstract

While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

The changes in the 2013 Act have far-reaching implications that are set to significantly change the manner in which corporates operate in India. In the present paper an attempt is made to encapsulate the major changes as compared to the 1956 Act and the potential implications of these changes.

Keywords: companies act, amendments, approval

Introduction

The Companies Act 2013 is a new regulatory framework introduced by the Government of India for better governance practices of the corporate sector in response to the existing financial crisis, meeting international needs towards privatization, rising investment levels, greater stakeholder awareness and help the corporate sector to survive and thrive in unfavorable circumstances. The Act enables in designing better corporate governance structure and processes through strong implication of risk management, enhanced transparency and greater stakeholder engagement.

Scope of the study

This study analyses few important provisions introduced in the New Companies Act 2013 for listed and public companies and its impact on the overall performance of the companies which has resulted in better compliance, accountability and transparency in its operations.

Objectives

- To find out new provisions introduced for listed and public companies in the Companies Act 2013.
- To analyze the overall impact on implementation of new provisions introduced in Companies Act 2013.

Review of literature

C.A. Anil Sharma (5th September, 2013), presented on the topic "SWOT analysis of the Companies Act, 2013" and the PDF document shared by him contains a detailed report on the strengths, weaknesses, opportunities and threats of the New Companies Act 2013. It gives detailed information on the changes introduced by the New Companies Act and its implications.

CS B. Murali (22nd February, 2014), from Nestle India Limited presented on the topic "Companies act 2013 and its impact on the Listed and Public companies". The PDF document of the presentation provides detailed information on the new provisions introduced in the act and its overall impact on the public and listed companies.

Rajanikanta Khuntia, Junior Lecturer in commerce, Vikram Dev College, Jeypore presented a research paper on the topic "Companies Act, 2013 – A New Wave of Effective Regulation and Corporate Governance in India". This paper discusses about the need for the New Companies Act and tries to assess the risks and loop holes associated with the current corporate governance practices within the country it also talks about the revolutionary changes that are made through the introduction of the New Companies Act, 2013. SNG & PARTNERS (advocates and solicitors) analyzed and did a comparative study between the old Companies act of 1956 and the revised Companies act of 2013. They have observed the differences between the two acts and have given their opinion on 22 items.

Uniform financial year [2(41)]

As per the Companies Act 2013 under section [2(41)] financial year means the period ending on 31st march every year which is aligned with "previous year" under Income Tax Act 1961. The transition period for the existing company to align to section [2(41)] is within two years but an exception can be made by the National Company Law Tribunal, if the company being the holding or subsidiary of a company incorporated abroad whereby it is required to maintain accounts for a different financial year.

The significant impact of this section implies that the companies is following any other financial year is required to change its financial year by the end of march 2016 or

apply to the tribunal for exemption. It also requires preparation for transition and alignment of management, auditors and other stakeholders.

Appointment of internal auditors- section 138

According to section 138 under the head appointment of internal auditors, it is mandatory to appoint internal auditors for companies listed or whose paid up capital is more than 10 crores or public deposits or loans exceeding 25 crores at any time of the financial year. The internal auditor should be a qualified CA, CMA or such other professionals as may be decided and appointed by the board. And the Central Government will have to determine the intervals for conducting the internal audit.

This paves way for the audit committee to review the functions of internal auditors and their performance with the management. The Audit Committee or the Board is responsible for determining the scope, functioning, periodicity and methodology for conducting the internal audit.

Corporate social responsibility -Section 135

The new provision related to CSR states that any company having a net worth of 100 crores or more or turnover of 100 crores or more or net profit of equal to more than 5 crores are required to spend in every financial year at least 2 percent of their average net profits during the 3 immediate preceding financial years. The CSR committee should constitute 3 or more directors along with one individual director to recommend CSR policy, CSR expenditure and its monitoring. The board is required to approve CSR policy and ensure smooth functioning of activities undertaken. Schedule 7 of the act is to be referred for coverage of the activities permitted along and preferences to be given to the local areas of operation.

The boards report should disclose the CSR initiatives on the company's website and also should specify the reasons for failure to spend. This provision will ensure in reviewing and developing CSR policies. It will also help in identifying existing CSR activities with the criteria specified and expenditures thereon and determine the mode of internal and external spending by the company. This provision helps in advising the board and the management on applicability and actions to be undertaken which is in alignment with Business Report Statement (BRR) required by the listed companies.

Independent directors -section 149

Independent director is an individual with integrity and relevant experience or expertise. The new provision implies 1/3rd of total directors to be independent directors in the company where the paid share capital is more than 100 crores, turnover more than 300 crores, outstanding borrowings more than 200 crores. The term of the independent director is fixed to 5 years and can be extended to 5 new years with approval by special resolution passed by the shareholders. Schedule 6 of the act contains the code of conduct of the independent directors and the board should consist of at least one woman director. As per the new provision the retirement by rotation is not applicable.

Related party transactions -section 188

Section 188 lists various related party transactions in leasing of property of any kind and section 2(76) of Companies Act

2013 define the word "related party". The board report is required to provide details of those which are related party transactions and it does not apply to those transactions entered in to by the company in the ordinary course of business other than those which are not on arm's length basis.

This provision reviews the current transactions and ensures proper mechanism to identify the related parties. It prescribes the process to evaluate if the transactions are in the ordinary course of the business and at arm's length basis. It also supports the Audit Committee to approve the alignment of approach with other legislations. It also anticipates transactions and their quantum for a foreseeable time that requires shareholders' approval.

Board's report -section 134

As per the new provisions, the board's report should include particulars related to loans guaranteed, particulars of contract or arrangements with the related parties, statements related to risk management policy and other information which devise proper compliance with the provisions of all applicable laws and its effectiveness.

It ensures to capture all the requirements of the disclosure in the board's report elsewhere mentioned in the Companies Act and is in alignment with other disclosures in the corporate governance report to avoid duplication. It also reviews the existing compliance management system and examines all the related party transactions for its disclosure and justifications which also serve as the backup document.

Vigil mechanism -section 177

It is mandatory for the Audit Committee to ensure that the company has a vigil mechanism in place for the employees and directors of listed companies or with public deposits and bank borrowings more than 50 crores. The vigil mechanism provides adequate safeguards against victimization. It provides a provision for direct access to the chairman of the Audit Committee in appropriate or exceptional cases and it is the duty of the independent directors to ensure that the company has a vigilance mechanism.

This provision reviews the current "whistle blower policy" of the company and develop or review existing mechanism for proper management of complaints. And it aligns with the requirements such as incorporating the provision of access to the chairman of the Audit Committee in exceptional and appropriate cases.

Annual return -section 92

This provision implies that the report Of the AGM within 30 days. The new act has prescribed few additional contents to be present in the annual report which are as follows. Information related to registered office, principle business activities, securities and shareholding pattern, members and debenture holders, details of promoters, directors, key managerial personnel, meetings of members, board and committee remuneration of directors, penalty and punishment and details of compounding and shares held by or on behalf of FII. These Additional Contents ensure a proactive approach in Preparation of a detailed annual Return report.

Appointment of secretarial auditors

As per the new provision it is mandatory for the listed companies or companies with a paid up capital more than

100 crores. The Board of directors is responsible to appoint company secretary in practice to undertake secretarial audit report with its boards report. The secretarial audit report covers compliance of all other applicable laws to the company.

This provision ensures the secretarial audit takes place simultaneously when the annual accounts are auditors and it provides a wider mandate approach to the secretarial auditor to review all compliances.

One person company

The definition of one person company as per section 2 (67) means a company which has only one person as its member. As stated under section 3 of the act only a natural person who is a Indian citizen and a resident of India shall be eligible to be a nominee for the sole member of one person company.

The businesses which are currently operating under the sole proprietorship model would get converted into one person company without any difficulty due to this provision and it is also ensures fulfillment of the desire of limited liability.

Conclusion

The new Companies Act 2013 is a welcome step towards the new corporate era. It is more stringent and requires strict compliance by the companies and its non-compliance or irregularities in compliance may attract heavy penalties. On a macro basis the New Companies Act is condensed to 470

odd sections. The act promises an improved corporate governance norms, transparency, enhanced disclosure, increased accountability of the company’s management and auditors, facilitation of CSR and stricter enforcement processes.

After analyzing few important provisions introduced in the New Companies Act 2013, it is found that there is a positive impact on the company’s performance and ensures protection of interests of the stakeholders through an uniform financial reporting, effective vigilant mechanism, appropriate disclosures of related party transactions, a detailed board's report etc. The new provisions ensures a proper mechanism in place to monitor CSR initiatives which require the companies to spend on structured activities for the upliftment of the society which means there is a bigger scope for CSR consulting and the CSR economy in India is expected to grow in manifold. The new provisions will also envisage a much larger role in the areas of secretarial audit, restructuring, liquidation and valuation.

Therefore we can say that the New Companies Act 2013 is a milestone legislation introduced by the Government of India. The new provisions pertaining to independence of directors, auditors will also have a strict disclosure of transactions which will in turn have wider implications and will result in greater transparency and accountability in the functioning of the companies and minimize corporate frauds. The act is forward looking in nature and is in par with the international best practices.

Difference between Companies Act 2013 vs Companies Act 1956

Table 1

S. No	Point	Companies Act 2013	Companies Act 1956
1	Financial Year	Companies must have their financial year ending on 31 Mar every year	Companies were permitted to have financial year ending on a date decide by Company
2	Formats of Financial Statement	Schedule III	Schedule VI
3	Maximum No of Partners	As per rules, subject to Max 100.currently is 50.	10 in banking business and 20 in any other business.
4	Max Shareholders in Pvt Ltd Company	200 excluding past and present employees	50 excluding past and present employees
5	One Person Company (OPC)	Company which has only one person (natural person) as its member	Did not exist
6	Issue of Share at discount	Section 53 prohibits issue of shares at a discount However, Section 54 permits issue of ESOPs to its employees at a discount.	Section 79 permitted issue of shares at a discount.
8	Security Premium Reserve	Utilisation of Securities Premium Reserve is provided in Section 52(2)	Utilisation of Securities Premium Reserve was provided in Sec 77A and 78
9	Article of Association	Table F applies where Companies Limited by shares does not adopt their own Articles of Association.	Table A applied where Companies did not adopt their own Articles of Association.
10	Interest in Calls in Arrears	In the absence of a clause in the Articles of Association, the maximum interest chargeable on Calls-in-arrears is 10% p.a.	In the absence of a clause in the Articles of Association, maximum interest chargeable on Calls-in-arrears was 5% p.a.
11	Interest in Calls in Advance	In the absence of a clause in the Articles of Association, the maximum interest payable on Calls-in-advance is 12% p.a.	In the absence of a clause in the Articles of Association, the maximum interest payable on Calls-in-advance was 6% p.a.
12	Minimum Subscription	Sec39 a company shall not allot <i>Securities</i> unless the amount stated in the prospectus as minimum subscription has been subscribed & the sum paid	Sec 69 the requirement of minimum subscription was with respect to <i>Shares</i> only

Major Areas of Exemptions Available to Private Companies Under the Companies Act, 1956 and The Companies Act, 2013.

Table 2

S. No.	CA 1956	CA 2013	Description
1	3 (1) (iii) & 3(1)(iv)	2 (68)	Minimum Capital- Rs. 1 Lac
2	12	3(1) (b)	Minimum two persons
3	77	67	No prohibition from giving financial assistance for purchasing its own shares or shares of its holding company
4	252	149	Minimum two directors
5	255	152	Retirement by rotation at annual general meetings is not applicable to private companies
6	262	161	Need not follow procedure prescribed in Section 262 for filling casual vacancies
7	274	164	Disqualification of appointment of Director- additional grounds are allowed if provided in AOA
8	283 (3)	167	Vacation of office- additional grounds are allowed if provided in AOA
9	292A	177	No Audit Committee is required
10	309, 310, 388	196, 197	No restriction on remuneration payable and no Government approval required

Conclusion

There is a marked increase in the compliance requirements mandated for private companies under the 2013 Act. While some of these will go a long way in increasing the accountability of private companies, there are also concerns as to the need for increasing the complexities in private companies in which the public at large is not interested.

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