Abstract:
The Parliament passed the new Companies Act, 2013 in September, 2013. The new Companies Act, 2013 aims to align the existing company law with the corporate realities of today. Corporations have become really large and global and therefore the standards of Corporate Governance and their Management, including their size, representation of women, resident and independent directors on Board, also needed to step up to the call. This article summarizes the key changes being brought by the new Companies Act, 2013 in relation to the current Companies Act, 1956. As the article is meant for business management community, an endeavour has been made to present only the key highlights of the new Company Law in a simple and lucid manner for the non-legal audience. New initiatives on Corporate Social Responsibility and setting up of National Financial Reporting Authority and the National Company Law Tribunal are some of the other major steps towards stepping up accountability of corporates towards their investors and society at large. Serious Fraud Investigation Office has been vested with wider powers to prevent the recurrence of frauds like that of Satyam Computers Ltd in recent years.
Key words – Company Law, Company Regulations, Corporate Laws, Company Legislation, Company Management

INTRODUCTION
India has recently got a new Company Law after a period of 57 years after the current Companies Act, 1956 came into force. The country has experienced tremendous growth in this period not only in corporate sector but in all other spheres of the economy. Liberalisation measures in 1991 were path breaking thus opening the Indian economy and integrating it with the global corporations. This made the Indian corporates go through a massive change in their operations, capital financing, corporate governance and the use of technologies. With this changing frame of corporate world, there were lots of amendments made to the Companies Act, 1956 in order to meet the needs of changing requirements. But the time had come now when a new Company Law was the need of the hour which would provide for the changing needs with a fresh outlook with a total focus on improved Corporate Governance, better transparency and participation and protection of interests of investors.

The first legislation in India governing the companies was enacted as early as 1857. This was followed by several Acts in 1866, 1882 and 1913. Finally, subsequent to Independence of India, a Company Law Committee was setup in 1950, based on whose recommendations, the current Companies Act, 1956, which is in force was enacted. This Act has been amended 24 times since 1956 and the biggest amendments were made by Companies Amendment Act, 1988 and 2002.

With the passage of time, the Indian Economy grew manifold and it led to emergence of very large corporates in India. The ownership patterns changed with the scene of mergers and acquisitions for business advantages. The role of Government has also been changing quite drastically and rapidly over time. With a greater role of public sector in the earlier years, the control was being released to private sector gradually. Finally, in 1991, the big Economic Reforms came in India, whereby the Indian economy was liberalized in a big way and a host of bureaucratic controls were removed.

The above changes and the some of the corporate failures and frauds led to emergence of new institutions like SEBI (Securities and Exchange Board of India), which were given independent role of protecting and safeguarding the interest of investors. The need for better Corporate Governance norms has been felt increasingly ever since India saw a very large corporate debacle in the case of Satyam...
Computers Limited where the management of the company misappropriated a huge sum of company’s net worth and the company law in force could not get an inkling about it. All this type of events led the Government to consider replacing the existing Companies Act with a better piece of legislation for companies which could address the areas of corporate governance, transparency of operations, better corporate accountability and more independent checks in various areas of corporate management and administration. This led to the birth of the new Companies Bill, 2013.

The Parliament had passed the Companies Bill, 2013 on 8th August, 2013. On receiving the asset of the President of India on 29th August, 2013, it was notified on 30th August, 2013 as the Companies Act, 2013. So, the new Company Law took birth. But the point to note is that it would come into force on such date(s) as may be notified by the Central Government. Hence, the new Companies Act would become the law of the land only when the Central Government notifies the date(s) from which it shall come into force. Currently, the rules are being framed and reviewed to assist the implementation of the new law.

The new Companies Act, 2013 consists of 470 Sections as against 658 Sections in the existing Companies Act, 1956. The new Act, amongst other aspects, provides for business friendly corporate regulations, pro-business initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms, stricter enforcement, audit accountability and enhanced accountability of management.

**CHANGES INTRODUCED BY NEW COMPANIES ACT, 2013**

The Changes in the new Companies Act, 2013, for the purpose of understanding can be classified in the following broad themes:

1. New Business Entities with ease of Corporate Compliances
2. Strengthening of Corporate Capital
3. Improved Corporate Governance and Company Management
4. Compliance towards Social Obligations by Corporates
5. Better Accounts and Audit regulations to prevent Serious Frauds
6. Prevention and safeguarding of interests of Small Investors
7. Improved Corporate Disclosures and Transparency
8. Relaxed Regulations for Global Mergers, Acquisitions and Business Arrangements

The above themes have been briefly explained below together with an explanation and summary of major changes brought by the new Act under each of the themes.

**New Business Entities with ease of Corporate Compliances**

A number of new concepts have been introduced with One Person Company (OPC) being the most path breaking. This provides a corporate avatar to a sole proprietor which provides him the advantages of limited liability. This new entity provides the much needed safety to an individual business owner with very minimal compliance requirements. This form of business is already prevalent in some of the developed countries of the world, namely, USA, Singapore and some of the European countries. OPC need not conduct a Board Meeting, if there is only one director. It shall have to file its annual accounts with Registrar within 180 days of the close of the financial year. There are no formalities regarding conducting of AGM or other types of meetings applicable to private and public companies.

**Small Company Concept –** It has been defined as a company other than a public company which has a -

- paid-up share capital not exceeding 50 lakh rupees or such higher amount as may be prescribed not exceeding Rs 5 crores; or
- turnover not exceeding 2 crores or such higher amount as may be prescribed not exceeding Rs 20 crores.

Besides OPC and Small company concepts, two other new concepts are introduced, which are as under:
Associate Company – A company would be considered to be an Associate company of the other company if the other company has significant influence over it, not being a subsidiary or it is a joint venture company. Significant influence would mean a control of at least 20 per cent of total share capital of a company or of its business decisions under an agreement.

Dormant Company – Where a company is formed for a future project or to hold an asset or intellectual property and has no significant accounting transactions of its own, then such a company may make an application to the Registrar for obtaining the status of a dormant company.

The definition of Private Company has been changed. The limit on maximum number of members increased from 50 to 200. Similarly, the maximum number of persons in an association or partnership (without incorporation) has been increased up to 100.

**Strengthening of Corporate Capital**

The new Companies Act, 2013 seeks to make critical changes in various share capital related clauses with a view to protect the capital base of a company. Besides, it also ensures that capital needs for very long term infrastructure projects are also met by providing suitable financial instruments, like, Redeemable Preference Shares which may be redeemed for periods exceeding twenty years.

Some of the key provisions of the new Act are given below.

- A company limited by shares cannot issue any preference shares which are irredeemable. The company can issue redeemable preference shares which are liable to be redeemed within a period not exceeding 20 years from the date of their issue.
- A company may issue preference shares which are redeemable for a period exceeding 20 years for defined Infrastructural projects. This shall be subject to redemption of such percentage of shares on an annual basis as may be prescribed at the option of the preference shareholders.
- Reduction of share capital to be made subject to confirmation by the National Company Law Tribunal (discussed later in this article under Corporate Governance).
- Shares cannot be issued at a discount except sweat equity shares, ie, shares issued to management or employees of the company in recognition of their efforts as Employee Stock Option Plan (ESOP).
- The time gap between 2 buy-back of shares shall be a minimum period of 1 year.

**Improved Corporate Governance and Company Management**

Corporate Governance has been a subject of interest in the last decade or so in the whole world. The financial debacles seen in the developed countries like USA have forced the key economies of the world think about this aspect in their own countries. The Lehman collapse in 2008 in USA brought the subject in focus sharply, when the whole world faced a slow down due to economic sufferings in the USA. India has seen its own share of corporate frauds and disasters like Satyam Computers Ltd case.

The first set of changes propose to define the composition of the Board of Directors itself. There has been three categories of directors which are now required to be a part of the Board, which are as under:

- **Independent Director** – All listed companies shall have at least one-third of the Board as independent directors. Nominee Directors of Financial Institutions shall not be deemed as an Independent Director. They shall not be entitled to any stock options and remuneration except the sitting fees or reimbursement of expenses.
- **Resident Director** – Every company shall have at least one Director who has stayed in India for a total period of not less than 182 days in the previous calendar year. Companies to comply with this provision within one year of the date of commencement of this Act.
- **Woman Director** – At least one Women Director shall be on the Board of Listed companies and prescribed classes of companies. Companies to comply with this provision within one year of the date of commencement of this Act.

The objective behind the above requirements for listed and public companies has been to provide certain Independent Directors on the Board, who are professional directors and bring in significant expertise and professionalism in decision making on the Board. The restrictions on them reflect that
they would normally be devoid of any monetary or pecuniary relationship with the company or its personnel. They would normally not have any vested interests in the day to day functioning of the company. Similarly, a Women Director brings gender diversity to the Board along with diverse perspectives to various corporate issues. The requirement to have at least one Resident Director for all companies, whether public or private, is to have one person, who is available at all reasonable times in the corporate office of the company. The Companies can no longer take an excuse of all their directors being out of station for corporate work, if and when any untoward incident happens.

Other significant aspects related to Company Board of Directors and Corporate Governance

- **Number of Directors in Board of Directors** – Minimum – Public company - 3, Private company – 2, One person company – 1, Maximum number increased to 15 from 12 earlier.
- **Prescribed class of companies shall have the following whole-time Key Management Personnel (KMP):**
  - Chief Executive Officer (CEO) or Managing Director or Manager
  - Company Secretary
  - Chief Finance Officer (CFO)
  - Whole Time Director
  - Such other Officers as may be prescribed
- **The following Board Committees have been made mandatory for the listed and prescribed class of companies:**
  - Audit Committee
  - Stakeholder Relationship Committee
  - Nomination and Remuneration Committee
  - CSR Committee
- A Director on Board shall vacate his office by reason of not attending any meetings of the Board of Directors in the previous 12 months, whether it is with or without obtaining the leave of absence.
- To ensure wider participation of shareholders in Annual General Meeting and Directors in company meetings, Electronic voting for Board and shareholders meetings has been introduced. For Board meetings, participation of Directors through Video-conferencing, recording and storing of proceedings on electronic media has been provided.
- Prohibition on Insider Trading - A new clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included.
- Prohibition on Forward Dealings – Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company.

**National Company Law Tribunal (NCLT)**

The new 2013 Act replaces the High Court in the current Companies Act, 1956 with a National Company Law Tribunal (NCLT). This is a quasi-judicial body which will consist of both judicial and technical members. NCLT shall exercise and discharge the powers and functions conferred on it, including the approval of mergers, corporate reorganization, capital reduction, extension of financial year, etc.

**Compliance towards Social Obligations by Corporates**

The social responsibility of business is a very old and epic theme all over the world. Every business gets all its resources from the society at large. The society provides the necessary raw materials, labour and other such resources because of which the business is able to function properly and sustain its operations. So, a business owes its existence to society. In return, business must provide adequate pay back to society in various forms and support society in its various initiatives. With this end in view, the Companies Act, 2013 takes a bold step in this direction and goes on to make it compulsory for certain class of companies to contribute a certain percentage of its net profits to identified Corporate Social Responsibility (CSR) initiatives. If a company is not able to make the necessary contribution, it shall
be required to provide the reasons for not doing so in its Directors’ or Board Report. The Board shall constitute a CSR Committee who will define and monitor the CSR initiatives of the company. The intention of this change in law is to provide that an organization should take up its neighbourhood areas and adopt them for development under its CSR initiatives.

Salient Features of the Corporate Social Responsibility (CSR) under the new Companies Act, 2013

- All companies having a net worth of Rs 5 billion or turnover of Rs 10 billion or net profit of Rs 50 million shall constitute a CSR Committee, which shall consist of minimum three or more directors, out of which at least one director shall be an Independent Director.
- The CSR Committee shall formulate and recommend CSR policy, activities to be undertaken and the amount of expenditure to be incurred on CSR activities.
- In each Financial Year, the company shall ensure that it spends at least 2% of its average net profits of last 3 years. Where it fails to spend such amount, the Board shall, in its Report, shall specify reasons for not spending the prescribed amount. The approach taken here is “comply or explain”.
- For spending the amount on CSR, the company shall give preference to local areas where it operates.

Better Accounts and Audit regulations to prevent Serious Frauds

The new Companies Act, 2013 provides for necessary changes in the area of corporate accounting and audit laws with a view to prevent any collusion between management and its auditors, as was seen in the Satyam case in recent years in India, which led to a huge loss of capital to a large number of shareholders. The constitution of a “National Financial Reporting Authority” as an independent body which would be spearheading the domain of accounting and auditing standards for corporate India is a major step towards surveillance of corporate accounting and auditing standards and norms. This Authority would be responsible for all timely changes to such standards which would protect the interests of the company and its shareholders at all times.

The key changes in the law relating to Accounting and Audit are given below:

- Alignment of the financial year definition under Income Tax Act, which means that all companies will need to have a uniform financial year, i.e., ending on 31 March each year.
- Consolidation of Financial Statements of a company which has a subsidiary, associate or a joint venture has been made mandatory.
- National Financial Reporting Authority (NFRA) to be constituted by Central Government to provide for dealing with matters relating to accounting and auditing policies and standards to be followed by companies and their auditors.
- All listed companies shall appoint an Individual as auditor for not more than five consecutive years and in case of an audit firm, this period cannot exceed two terms of five consecutive years.
- Restrictions have been placed on provision of specified Non-audit services by an auditor with a view to ensure independence and accountability of the auditor.
- Prescribed classes of companies shall be required to appoint an Internal Auditor to conduct internal audit of the functions and activities of the company.
- Mandatory transfer of profits to Reserves for dividend declaration has been removed.
- Inability of a company to pay its debts will be considered as criteria for determining a sick company.
- Central Government shall establish a Serious Frauds Investigation Office (SFIO) for investigation of frauds relating to companies and given it a statutory status. The report of SFIO would be deemed as a report of a Police Officer.

Improved Corporate Disclosures and Transparency

The need for improved Corporate Disclosures which would bring in the necessary transparency in corporate reporting to its stakeholders can hardly be overemphasized. It is one of the founding pillars of the corporate form of organization due to separation between ownership and management. The
Management owes a big responsibility towards responsible, clear and concise disclosures towards its owners, namely the shareholders. The Companies Act always had provisions relating to disclosures in “Directors’ Report”. Now, the Companies Act, 2013 makes it more extensive. There is a clear and distinct focus on “Non-Financial” annual disclosures and reporting in the new Companies Act, 2013, viz, the Board in its Directors’ Report, inter-alia, shall annually report on the existence and effective operation of the systems on compliance with all applicable laws. The other significant additions to law are given below.

Secretarial Audit

- Secretarial Audit by a Company Secretary in practice has been made mandatory for listed and prescribed class of companies. The Secretarial Audit Report would be annexed to the Directors’ Report.

Related Party Transactions

- Every contract or arrangement entered into with a related party shall be referred to in the Board or Directors’ Report along with the justification for the same. The requirement of obtaining the Central Government approval for such transactions have been removed.
- Approval of the related party transactions by the Board of Directors at the Board meeting has been made mandatory.
- For companies having a prescribed paid-up capital and for transactions exceeding the prescribed limits, related party transactions shall also require a prior approval of shareholders by special resolution.

Inter Corporate Loans & Investments

- Loans, guarantee and security made to any person including body corporates would attract the conditions defined in the Companies Act, 2013. The list of exemptions has been curtailed.
- Rate of interest on loan granted cannot be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Securities, which is closest to the tenure of the loan.

Loans to Directors

- Any company would not make any loan, directly or indirectly, to any Director or related persons including any loan represented by a book debt or guarantee or security for a loan.
- The only exception to the above rule would be the case, if a loan is being made to a Managing Director or Whole Time Director, as a part of his service agreement which is extended to all employees of the company or it is approved by shareholders by special resolution.
- The provisions of loans to Directors would now be applicable to private companies also.

Prevention and safeguarding of interests of Small Investors

This is an area where the Corporate world owes a huge responsibility towards its innumerable small investors, who are its shareholders. This assumes more significance as an area of protection due to the fact that these investors are geographically spread in a large area and have very low level of corporate laws awareness. A large number of them do not have the necessary technical and business skills to assess a company’s financial statements, its performance and its policies. Therefore, the institutions like SEBI were formed, where the mandate is to protect the interests of the small investors, while they invest their hard earned money in primary and secondary stock markets. The specific investor protection measures are summarized below in appropriate headings.

Measures for Investor Protection

- Issue and transfer of securities and non-payment of dividend by listed companies shall be administered by SEBI by making regulations in this regard.
- Any act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than three times the amount involved in fraud.
- A suit may be filed by a person who is affected by any misleading statement or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement.
Class Action Suits – This is a very far-reaching and new provision with a view to empower any class of members or depositors to bring a suit against the management of the company. It is provided that specified number of member(s), depositor(s) or any class of them may file an application before the Tribunal on behalf of the members or depositors, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors.

Exit options for minority shareholders on re-organization have been provided.

Acceptance of Public Deposits

Stringent norms have been provided for acceptance of fresh deposits from members and public with a view to ensure that company has enough resources to repay past deposits and also has never defaulted ever in the past.

Any deposit accepted or interest due thereon before the commencement of the new Act shall be repaid within one year from the commencement of this new Act or the date on which they are due, whichever is earlier.

Credit rating has been made mandatory for companies for acceptance of public deposits.

Relaxed Regulations for Global Mergers, Acquisitions and Business Arrangements

The new regulations on Mergers and Acquisitions are summarized below.

A company can make investment through not more than two layers of investment companies. However, this shall not be applicable to a company incorporated outside India, if laws of that country allows more than two layers.

Cross border mergers have been allowed with any Foreign company under the new Act. The merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

Fast track merger for small companies and for wholly owned subsidiary and its holding company is now introduced.

Persons/group holding 90% or more equity shares by virtue of amalgamation, etc. can now purchase the remaining equity shares of the company from the minority shareholders.

Any valuation of shares/assets etc. under the new Companies Act, 2013, is to be performed by Registered Valuers only. The concept of “Registered Valuers” has been introduced by the Companies Act, 2013.

Conclusion

According to Mr D.S. Rawat, Secretary General, Assocham, “The new Act is a holistic piece of legislation aimed at improving transparency and accountability in India’s corporate sector. The new Companies Act will give this country a modern legislation, which would contribute to the growth and development of the corporate sector in India. The Act among other aspects provides a business friendly corporate regulation / pro-business initiatives, e-governance initiatives, corporate governance initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms and accountability of management, stricter enforcement, audit accountability, protection for minority shareholders, investor protection and activism and better framework for solvency regulation and institutional structure.” Responding to the debate in Parliament, Minister of State in Ministry of Company Affairs, Shri Sachin Pilot said, “I think by making a new Act on Companies, we are giving another push towards creating the impetus for growth, prosperity and betterment of our society. The core focus of this bill is to enhance transparency to give good corporate governance and ensure regulation that is complied with.”

Shri Mani Shankar Aiyar spoke on the new Companies Act, “the principal motive for this new Companies Act is to ensure that we function in a business friendly manner, and the private sector is able to function efficiently.”

According to the Helplinelaw.com, the pioneers of the legal portals globally now, “The new Companies Act, 2013 is a sweep change in the way companies operate and are regulated in the
country. In the new Companies Act, 2013 bucket various new provisions has been inserted which requires companies to spend on social welfare activities, empowers investors against any frauds committed by promoters, encourages companies to have women directors, and seeks to bring in greater transparency in corporate governance matters. It also provides about three dozen new definitions, including for terms such as frauds, promoters, turnover, small companies, associate companies and employee stock options.”

The provisions of the new Act aim to serve the corporate with greater freedom but with severe punishments for non-compliance. Contraventions will invite penalties of monetary fines as well as imprisonment. It is hoped that this would result in better compliance of law. The various provisions of the Act will go a long way in ensuring increased investor confidence vis-à-vis protection of rights of minority stakeholders coupled with principles of good corporate governance. It needs to be emphasized that any amount of legal reforms will not, by themselves, yield the desired results in practice, unless the law is implemented with sincerity and dedication. Thus the key to good corporate governance does not lie wholly in the provisions of the Companies Act but also in the minds and hearts of the persons performing their official or professional roles. These professionals should act as trustees for the investing public and other stakeholders including the lenders and the employees.

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