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UNDERSTANDING THE INDIAN COMPANIES ACT

-Sumit Mishra

INTRODUCTION

In India, the Companies Act governs the establishment, operation, and dissolution of corporations. Anyone interested in conducting business in the country must first understand its rules and repercussions. In this blog, we will look at many components of the Indian Companies Act and its relevance.



WHY WAS THE COMPANIES ACT 2013 INTRODUCED?

The Companies Act 2013 was enacted to suit the changing demands of the Indian corporate sector and to replace the outdated Companies Act 1956. The new Act sought to strengthen corporate governance and make it easier to do business in India by introducing business-friendly corporate regulations.¹ It was created to be more current and relevant to corporations, regulators, and other stakeholders, reflecting the growth of the Indian economy,

¹ Wikipedia, Companies Act 2013 (2023), https://en.wikipedia.org/wiki/Companies_Act_2013.

the rising complexity of company operations, and the need for more openness and accountability.²

WHAT ARE THE MAJOR CHANGES IN COMPANY ACT 2013?

Some novel concepts were introduced in Companies Act, 2013 such as woman director, mandatory corporate social responsibility (CSR), key managerial personnel (KMP), class action suits and entrenchment provision in the Articles of Association. It also brought new categories of companies namely One Person Company (OPC), Small Company and Associate Company.³

KEY PROVISIONS: THE COMPANIES ACT, 2013

Replacing the previous laws, the Companies Act, 2013 turned the tables on the regulatory structure of Indian enterprises. The following are some significant norms under the act:

1. Incorporation of Companies

- Compliance with companies Act- All the companies have to be registered under companies Act in order to operate in India.
- The registration of members and directors is subject to rules and conditions provided by the Act, including the minimum number of directors and members.⁴

2. Corporate Governance

- The Companies Act promotes skilled corporate governance, mandating openness, accountability, and ethical conduct.
- It mandates the nomination of independent directors and the formation of audit committees to maintain adequate monitoring.⁵

3. Capital Structure

- The Act prescribes the procedure for issuing shares / debentures by corporations, share capital, transfer, and dividends.
- If companies participate in share buyback or by giving bonus issues, they need to abide by the rules mentioned under the Act.⁶

4. Corporate Social Responsibility (CSR)

- All companies, subject to verification, may spend a portion of their revenues on CSR controlled by the Companies Act.

² PwC, Companies Act, 2013: Key Highlights and Analysis (2013), <https://www.pwc.in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf>.

³ BYJU'S, Why was the Companies Act 2013 introduced? (2023), <https://byjus.com/ias-questions/why-was-the-companies-act-2013-introduced/>.

⁴ Companies Act, No. 18 of 2013, §§ 3-22 (2013) (India).

⁵ Companies Act, No. 18 of 2013, §§ 149(4), 177(1)-(10) (2013) (India).

⁶ Companies Act, No. 18 of 2013, §§ 56-72 (2013) (India).

- That to every annual report shall be attached a note on the CSR projects and social responsibilities adopted by the company for the community development.⁷

5. Compliance and Reporting

- Compliance with all statutory compliance such as filing of annual returns, financial statements and other filings under the Act;
- Breach of which may result in the company and every officer in default merely being liable to a penalty and, for completion, a civil penalty on application of the Registrar or any creditor or contributory of the company.⁸

IMPORTANCE OF THE COMPANIES ACT

- The Companies Act regulates the corporate sector in India and promotes openness, accountability, and fairness in company operations. The Companies Act protects stakeholders' interests and fosters investment and progress by establishing a legal framework for the establishment of companies and governance.
- Businesses must comply with the Act to operate legally and ethically in India.⁹

SHORTCOMINGS OF THE COMPANIES ACT 2013

It is imperative to rectify the various glitches in the Companies Act of 2013. There are a couple of specific challenges faced — the biggest one is that CSR is defined so narrowly to one subset of businesses. Second, the penalties for non-compliance are not severe, which leads to an absence of corporate accountability. Similarly, the Act fails to transparently govern corporate governance dynamics, leaving the gates open for potential corporate police raj. It also offers little in the way of small stockholders' protection, and it can be easily abused by dominant stockholders. The resolution and reorganization of sick companies has a high transaction cost and there is the absence of adequate mechanisms for support of small and medium-sized enterprises (SMEs) required to recover including the institutional support system mentioned above. The Act should be amended to address these shortcomings in order to provide an alternative, comprehensive corporate governance mechanism and social responsibility.¹⁰

FUTURE DEVELOPMENTS

⁷ Companies Act, No. 18 of 2013, § 135 (2013) (India).

⁸ Companies Act, No. 18 of 2013, §§ 92-101 (2013) (India).

⁹ Companies Act, No. 18 of 2013, pmbl. (2013) (India).

¹⁰ PwC India. (2013). Companies Act, 2013: Key Highlights and Analysis. Retrieved from <https://www.pwc.in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf>.

The latest changes which have been introduced into the Companies Act, work towards bettering the corporate governance system in India and make doing business in India more transparent and less complicated. The SEC has proposed rule amendments to enhance corporate governance, preserve the independence of a company's statutory auditors, and permit companies to issue partial shares at a discount.¹¹ This will only be true for the corporate landscape of the country with such changes influencing it in the future stressing on the fact that the Companies Act is now something that companies in the country cannot afford to forget.

CONCLUSION

So, in conclusion, we can say Getting hold of Indian Companies Act is essential for everyone practising in corporate sector. While Companies Act, 2013 is a successor to Companies Act, 1956, the new law gave an enhanced focus on ethical business behaviour, transparency and accountability. There are defects on the face of the Act, despite its virtues, like restricted CSR Application and lack of protection for small shareholders. Changes in the future are envisaged to address these issues and to improve the corporate structure. Businesses which are experts in doing business and in compliance with the Companies Act can effectively navigate the complex legal landscape and also help in growing the economy of the country. Companies Act, 2013 is becoming an important tool to ensure commercial activities in India are legitimate and ethical.

¹¹ "Amendments to the Companies Act," Drishti IAS, available at Drishti IAS, (last visited June 2, 2024).