Companies act before and after 2013 – An overview

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Abstract

The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013. The Act consolidates and amends the law relating to companies. The Companies Act, 2013 has been notified in the Official Gazette on 30th August, 2013. Some of the provisions of the Act have been implemented by a notification published on 12th September, 2013. The provisions of Companies Act, 1956 is still in force not withstanding anything contained in the Act every company, international or indigenous will work under the provisions of the Act. This Act is general in nature and not subrogative. So if a special Legislation applies on a Company, then the Company has to, in addition to Companies Act, comply the special Legislation**.** This study includes history of companies act 2013 and 1956, objectives of companies act 2013, types of companies act and difference between companies act 2013 and companies act 1956.

Key words: Companies Act, Special Legislation, Consolidates and amends.

Introduction

Companies Act, 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors and dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 clauses as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act has replaced The Companies Act, 1956 (in a partial manner) after receiving the assent of the President of India on 29 August 2013. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of member was 50 and now it will be 200.a new term of one Person Company is included in this act that will be a private company and with only 98 provisions of the Act notified. On 27 February 2014, the MCA stated that Section 135 of the Act which deals with corporate social responsibility will come into effect from 1 April 2014. On 26 March 2014, the MCA stated that another 183 sections will be notified from 1 April 2014

Objects of Companies Act 2013

One of the effects of implementation of new Companies Act, 2013 is that the Companies can carry on business activities which are mentioned in its Main Objects clause of Memorandum of Association. In the earlier Act, the Companies which have diversified in other activities used to pass resolution in the Board of Directors meeting or in the General Meeting whereby the activities mentioned in other Objects i.e. at Clause III-C were invoked. The Private Companies used to pass the resolution and keep record in Minutes Book whereas the Limited Companies used to pass Special Resolution and file the declaration as required under the provisions of Section 149(2A) of the Companies Act, 1956 with the office of Registrar of Companies and carry on such activities. Now, with effect from 1st April 2014 all such Companies who were/are carrying of activities other than principal business activities as mentioned in the other objects are required to alter the main objects and include such activities therein otherwise such business activity shall be treated as ultra virus. Consequently, owing to multiple business activities, the Companies may also be required to change its name.

The Companies Act, 1956 is an act of parliament that was enacted in 1956

The Companies Act,2013 was recently passed by Rajya Sabha on 8th August 2013 and has received Presidential assent on 29th August 2013

The new Companies Act (hereinafter referred as CA2013) is replacing old Companies Act, 1956 (hereinafter referred as CA1956). The CA2013 makes comprehensive provisions to govern all listed and unlisted companies in the country. The CA2013 is partially made effective w.e.f. 12th September, 2013, by way of implementing 98 Sections and repealing the relevant sections corresponded with CA1956. Some of the Salient features of the CA2013 are as under:

1. **Democracy of Shareholders:** The CA2013 has introduced new concept of class action suits with a view of making shareholders and other stakeholders, more informed and knowledgeable about their rights.

2. **Supremacy of Shareholders:** The CA2013 focused and provide major aspect on approvals from shareholders on various significant transactions. The Government has rightly reduced the need for the companies to seek approvals to managerial remuneration and the shareholders have been vested with the power to sanction the limit.

3. **Strengthening Women Contributions through Board Room:** The CA2013 stipulates appointment of at least one woman Director on the Board of the prescribed class of Companies so as to widen the talent pool enabling big Corporates to benefit from diversified backgrounds with different viewpoints.

4. **Corporate Social Responsibility:** The CA2013 stipulates certain class of Companies to spend a certain amount of money every year on activities/initiatives reflecting Corporate Social Responsibility. There may be difficulties in implementing in the initial years but this measure would help in improving the Under-privileged & backward sections of Society and the Corporate would in fact gain in terms of their reputation and image in the Society.

5. **National Company Law Tribunal:** The CA2013 introduced National Company Law Tribunal and the National Company Law Appellate Tribunal to replace the Company Law Board and Board for Industrial and Financial Reconstruction. They would relieve the Courts of their burden while simultaneously providing specialized justice.

6. **Fast Track Mergers:** The CA2013 proposes a fast track and simplified procedure for mergers and amalgamations of certain class of companies such as holding and subsidiary, and small companies after obtaining approval of the Indian government.

7. **Cross Border Mergers:** The CA2013 permits cross border mergers, both ways; a foreign company merging with an India Company and vice versa but with prior permission of RBI.

8. **Prohibition on forward dealings and insider trading:** The CA2013 prohibits directors and key managerial personnel from purchasing call and put options of shares of the company, its holding company and its subsidiary and associate companies as if such person is reasonably expected to have access to price-sensitive information (being information which, if published, is likely to affect the price of the company's securities). Earlier these provisions were contained in regulations framed by SEBI, as the capital market regulator. Now, it has also been informed that SEBI is expected to discuss changes in certain norms for listed firms so as to make them in line with the rules in the new Act.

9. **Increase in number of Shareholders**: The CA 2013 increased the number of maximum shareholders in a private company from 50 to 200.

10. **Limit on Maximum Partners:** The maximum number of persons/partners in any association/partnership may be upto such number as may be prescribed but not exceeding

one hundred. This restriction will not apply to an association or partnership, constituted by professionals like lawyer, chartered accountants, company secretaries, etc. who are governed by their special laws. Under the CA1956, there was a limit of maximum 20 persons/partners and there was no exemption granted to the professionals.

11. **One Person Company**: The CA2013 provides new form of private company, i.e., one person company is introduced that may have only one director and one shareholder. The CA1956 requires minimum two shareholders and two directors in case of a private company.

12. **Entrenchment in Articles of Association:** The CA2013 provides for entrenchment of articles of association have been introduced.

13. **Electronic Mode**: The CA2013 proposed E-Governance for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, etc.

14. **Restriction on Composition**: Every company shall have at least one director who has stayed in India for a total period of not less than 182 (one hundred and eighty two) days in the previous calendar year.

15. **Independent Directors**: The CA2013 provides that all listed companies should have at least one-third of the Board as independent directors. Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors. No independent director shall hold office for more than two consecutive terms of five years.

16. **Serving Notice of Board Meeting**: The CA2013 requires at least seven days' notice to call a board meeting. The notice may be sent by electronic means to every director at his address registered with the company. The CA1956 did not prescribe any notice period to call the board meeting of a company.

17. **Duties of Director defined**: Under the CA1956, a director had fiduciary duties towards a company. However, the CA2013 has NOW defined the duties of a director.

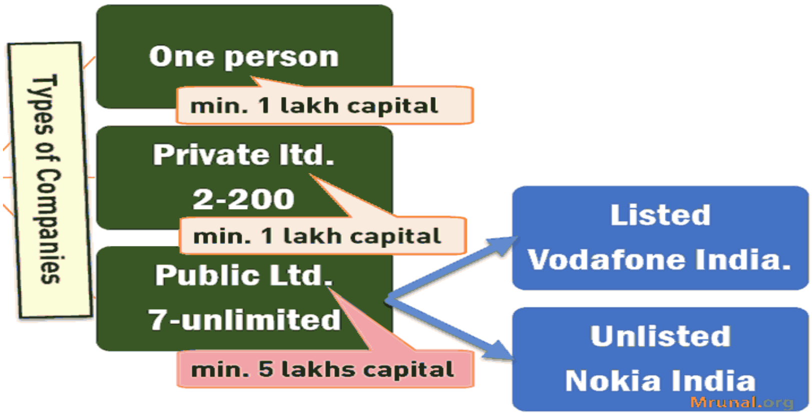
18. **Liability on Directors and Officers**: The CA2013 does not restrict an Indian company from indemnifying its directors and officers like the CA1956.

19. **Rotation of Auditors**: The CA2013 provides for rotation of auditors and audit firms in case of publicly traded companies.

20. **Auditors performing Non-Audit Services**: The CA2013 prohibits Auditors from performing non-audit services to the company where they are auditor to ensure independence and accountability of auditor.

21. **Financial Year**: Every company's financial year will be the period ending on 31 March every year.

22. **Rehabilitation and Liquidation Process**: The entire rehabilitation and liquidation process of the companies in financial crisis has been made time bound under CA2013.



Companies Act 1956

➢ The Companies Act 1956 is an Act of the Parliament of India, enacted in 1956, which enabled companies to be formed by registration, and set out the responsibilities of companies, their directors and sectreties.

➢ The Companies Act 1956 is administered by the Government of India through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) handles incorporation of new companies and the administration of running companies.

Difference between Companies Act 2013 and Companies Act

S.NO	CAPTION	OLD COMPANIES ACT 1956	NEW COMPANIES ACT 2013
1	Members	There are maximum of 50 members	There are maximum number of 200 members
2	One person company	Does not exist.	The concept of one person company was introduced to form a private limited company.
3	In corporation	It cannot be treated has conclusive evidence.	It can't be treated has conclusive evidence because action can be taken even after incorporation.
4	Memorandum of association	It consists of name clause, situation clause, object clause, subscription clause, etc.	It consists of all the clauses but in object clause the sub-clause named other objectives is excluded.
5	Articles of association	It has companies limited by share, limited by guarantee & unlimited companies.	No changes have been done in this regard.
6	Resident director	No such provision existed.	Every company shall have one director who lives in India for a period of 180 days for last calendar year.
7	E-Governance	No such provision existed.	Inspection of documents in electronic form is made.
8	Women director	No such provision existed.	In prescribed companies classes or class women can be a director.
9	Maximum no. of directors	Maximum of director are 12 not beyond them with approval of central government	Number increased to 15 but by passing with special resolution.
10	Applicability of law	It is acceptable whole india except in Sikkim has they has their own company's act	It is applicable to whole india
11	Issue of bonus shares	No such provision existed however rules framed in unlisted public company	Private limited companies are not permitted to issue bonus shares. (clause 63 and 23)
12	Exit option of shareholder	No such provision existed	Share holders can have exit option money raised has not been unlisted.

Conclusion

The new companies' act 2013 is a welcome step it is more stringent and requires strict compliance by corporate sector. The non compliance or irregularity in compliance may attract heavy penalties.

The new Indian Companies Act is a positive step towards modernizing India's company law and aligning it to global standards. It has given increased decision making powers to the company, and introduced provisions giving minority shareholders additional rights and protections. The introduction of one person companies and small companies should alleviate some of the administrative burdens that small businesses have to bear, but larger companies should prepare themselves for further administrative burdens as a result of changes in the appointment of auditors and directors.

Further clarity will be required as the provisions of the Companies Act come into force and we will watch with interest as this area of law develops.