

New Dimensions of CSR- Companies Act 2013:

*Dr. Mrs. Sonal Rai
*Dr. Mrs. Rupali Ahluwalia
*Dr. Mrs. Tarvinder Kaur

Introduction

Economic environment is a dynamic factor. Over the years there has been a change in international, national environment and the expectation of stakeholders from the corporate sector. These factors have contributed to the need for a new law, for making it more compatible and relevant to the present and future needs of the companies.

There have been quite a few changes in the administration portion of the 1956 Act and has now become the Companies Act, 2013, which is set to have far-reaching implications and to significantly change the manner in which corporate operate in India. The 2013 Act has introduced several new concepts and has also tried to streamline many of the requirements by introducing new definitions.

Highlights of structural changes in both the act

Companies Act 1956	Companies Act 2013
13 parts	29 chapters
658 sections	470 clauses
15 Schedules	7 Schedules

In this paper, we have encapsulated the major changes brought about in Company Act 2013, as compared to the 1956 Act and the potential implications of these changes. We have also included, some major and vital aspects related to M & A, Dividend policy, Corporate Social Responsibility etc.

Corporate Social responsibility

Corporate social responsibility has been a noteworthy area of concern for companies. This had not been included in the company's act 1956. In 2009 the Ministry of Corporate Affairs (MCA) had introduced the Corporate Social Responsibility Voluntary Guidelines.

These guidelines have now been incorporated within the 2013 Act and have obtained legal status. Section 135 of the 2013 Act, seeks to provide that every company having a net worth of 500 crore INR, or more or a turnover of 1000 crore INR or more, or a net profit of 5 crore INR or more, during any financial year shall constitute the corporate social responsibility committee of the board. This committee needs to comprise of three or more directors, out of which, at least one director should be an independent director. The composition of the committee shall be included in the board's report. The committee shall formulate the policy, including activities specified in Schedule VII, the basic theme of CSR activities will be:

- Poverty Eradication
- Promotion of Education

- Promoting gender equality
- Reducing child mortality and improving maternal health
- Ensuring environmental sustainability

It is mandatory according to Companies Act 2013 that these companies would be required to spend at least 2% of the average net-profits of the immediately preceding three years on CSR activities, and if not spent, explanation for the reasons thereof would need to be given in the director's report (section 135 of the 2013 Act). After stating the requirement of the act regarding CSR it can be said that, the concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc from the society. By performing the task of CSR activities, the companies are giving something back to the society. The introduction of CSR provision in the Companies Act is a welcome step and all companies which satisfy the CSR criteria will have to undertake CSR activities under the new CSR regime during current financial year. Only such CSR activities will be taken into consideration as are undertaken within India. Activities which are not exclusively for the benefit of employees of the company or their family members shall be considered as CSR activity. Companies shall report, in the prescribed format, the details of their CSR initiatives in the Directors' Report and in the company's website. These steps will boost much required social projects with some professional management of the private sector.

*Department of commerce, St. Aloysius College (Auto.) Jabalpur M.P.

Like any other provisions the CSR provisions also have a degree of ambiguity and areas which may not yield the desired outcome. To mention a few, companies may collaborate or pool resources with other companies to undertake CSR activities. There is a debate as to whether any penal consequences will emanate on failure to spend, or an explanation in the directors' report on the reasons therefore are only warranted. There may be reluctance in compliance, especially in case of companies which are not profitable, but fall under the designated category due to triggering net worth or turnover criteria. It is not clear what all constitutes CSR activities as the list specified under Schedule VII of the Act seems like an inclusive list and not exhaustive. Thus these areas required analysis and clarification of CSR Policy.

It can be said that the inclusion of CSR which was a voluntary contribution in the 1956 act as a law will create a healthy and positive environment for economic as well as sustainable social development by the Indian corporate sector in the Indian society.

Dividend

The Companies Act 2013 Act proposes to introduce significant changes in respect of declaration of dividend. The requirement of the 1956 Act with regard to the transfer of a specified percentage of profits not exceeding 10% to reserve, that is, (Transfer of Profits to Reserve) Rules, 1975 has not been acknowledged in the 2013 Act and thus companies are free to transfer any or no amount of profits to reserves [section 123 (1) of the 2013 Act]. Similar to the existing provisions of the 1956 Act, the 2013 Act also provides that no dividend shall be declared or paid in case of inadequate profits by a company subject to the Rules yet to be notified. These provisions of the 2013 act shall provide relief to the companies as in the case of insufficient profit the companies need not make arrangements for the declaration of dividend. The company also cannot declare or pay dividend from its reserves other than free reserves, [section 123(1) of the 2013 Act]. As per the provisions of the 1956 Act, dividend includes interim dividend and all provisions of the 1956 Act which applies to the final dividend equally apply to interim dividend. The 2013 Act, however, imposes a further restriction on the declaration of interim dividend. The 2013 Act specifically provides that in case a company has incurred loss during the current financial year, up to the end of the quarter immediately preceding the date of declaration of the interim dividend, then the interim dividend cannot be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [section 123(3) of the 2013 Act]. The 2013 Act states that if a company fails to comply with the provisions of acceptance of deposits and repayment of deposits accepted

prior to the commencement of this 1956 Act, it will not be able to declare any dividend on equity shares, as against the non-compliance of section 80A of the 1956 Act regarding redemption of irredeemable preference shares, etc [section 123(6) of the 2013 Act].

The dividend rules according to the Companies Act 2013 will put aside some of the financial burden on the company caused due to the provisions of the Company Act 1956. This will also help to curb the practice of creating fictitious reserves and window dressing of balance sheet.

Conclusion

For more than five and a half decades Companies law in India had been governed by Companies Act, 1956. Enactment and introduction of Companies Act, 2013 was a step to renew the existing corporate legal mechanism and to ensure better governance of the companies. In the present article we analyzed the provisions related to company act 1956 against 2013. We found that the 2013 Act has ushered in a new era of corporate democracy making a paradigm shift from "government control" to "self-governance". The 2013 Act has a number of measures for protection of minority holders like various norms on companies from raising public deposits, filing class action suit etc. The introduction of concepts of KMP, independent director and woman director are aimed at introduce quality professionals at management/board level. The provisions relating to transactions with related parties have been simplified; at the same time scope of it being misused to the disadvantage of minority shareholders have been prevented. The 2013 Act contains several favorable measures to boost M & A activities by allowing merger of Indian companies with foreign companies, putting in place a fast track mechanism for merger between wholly owned subsidiaries and holding company/merger between small companies and exit to minority shareholders at price determined by the valuer. Thus it can be concluded the companies' act 2013 is certainly a step in the right direction for the corporate sector.

References:

- Section 391, 393 and 394 A of Companies Act, 1956
- Section 230(5) of Companies Act, 2013
- Section 234 of Companies Act, 2013
- Small companies is defined in section 2(85) of Companies Act, 2013
- Section 233 of Companies Act, 2013
- Section 232(3) (h) of Companies Act, 2013
- Prasad, Suresh. "Complete list of Sections of Companies Act, 2013". AUBSP. Retrieved August 7, 2016.