

**RECASTING OF COMPANIES ACT, 1956  
COMPANIES ACT 2013 & COMPANIES AMENDMENT ACT 2015**

**Ms. Deepika Kathuria,  
Assistant Professor in Commerce, D.A.V. (PG) College, Karnal  
Ms. Monika Bansal,  
Assistant Professor in Commerce, D.A.V. (PG) College, Karnal**

**ABSTRACT**

Self regulation of corporate sector is the basic intent of Companies Act 2013. The Companies Act 2013 has replaced the more than six decades old Companies Act 1956. The Companies bill was passed by Lok Sabha on 18<sup>th</sup> December 2012 (called Companies Bill 2012) and passed by Rajya Sabha on 8<sup>th</sup> august 2013 (became Companies Bill 2013). It received the assent of the President of India on 29<sup>th</sup> Aug, 2013 and became the much awaited Companies Act 2013. Section 1 of Companies Act came into effect from 30<sup>th</sup> Aug, 2013. It contains 470 Sections, 29 chapters, 7 schedules as against 658 sections, 15 schedules of 1956 Act. The Companies Act 2013 has introduced many new provisions which contribute to the growth and development of corporate sector. The new act provides for business friendly corporate regulations, good corporate governance, self governance instead of control or regulations by others, social responsibilities of companies (CSR), enhanced annual return disclosures, enhanced level of accountability on the part of corporate and auditors, raised level of transparency as well as protection of interest of investors. This paper attempts to understand the new concepts and provisions of new Companies act, 2013. An effort has been made to explain the various new provisions like One Person Company (OPC), Dormant Company, Independent director, Woman director, Secretarial audit, Corporate social responsibility etc. Recently to improve the ease of doing business in India and as well as to address the concerns of stakeholders, the new Companies act 2013 has also been amended by Companies Amendment Act 2015. This paper also includes the highlights of Companies Amendment Act 2015.

**Keywords** - Companies Act 2013, Companies Amendment Act 2015, Disclosures, Corporate.

## **INTRODUCTION**

The New Companies Act was the basic requirement for the development of corporate sector in India on healthy lines because corporate form of business organization constitutes a very important sector of the economy. The basic thought behind the Companies Act is to incorporate the international practices into the Companies legislation based on the models suggested by the United Nations Commission on International Trade Law (UNCITRAL) and to provide a framework responsible for self governance by the companies with strong and increased disclosures. The Central Government has decided to enforce the provisions of Companies Act 2013 in stages. The Companies Act was partially made effective by implementing 98 sections w.e.f. 12<sup>th</sup> Sep, 2013 by Ministry of Corporate Affairs (MCA). On 27<sup>th</sup> Feb, 2014 the provisions of sec 135 (CSR) were notified to come into force w.e.f .1 April 2014 along with Companies (CSR Policy) Rules 2014 and schedule vii. Thus various new provisions are notified time to time. The new act was enacted to bring flexibility, efficient enforcement of law, self regulation with more disclosures, and stringent punishment for violation and healthy growth of Indian economy, increased level of transparency, to adopt internationally accepted practices etc. Recently to amend the Companies Act, 2013 the Companies (Amendment Bill 2014) came into force. The amendment received an assent from President on May 25, 2015 and was notified in the official gazette on May 26, 2015. The amended law mainly endeavors to improve the ease of doing business in India.

### **Objectives**

- To understand the new concepts and provisions of Companies Act 2013.
- To understand the implications of new act.
- To comprehend the various developments of Companies Act, 2013 and its role.
- To analyze the role of new act in ensuring better governance in the country.
- To throw a light on the glimpses of Companies Amendment act, 2015.

### **Methodology**

This research paper is based on the information collected from various secondary sources such as research journals available online, books, bare act, articles, various websites and personal interaction with professionals like Chartered Accountant, Company Secretaries etc.

### **New Provisions of Companies Act 2013**

**One Person Company (OPC)** - The Companies Act 2013 has introduced the concept of OPC u/s 2(62). It means only one person as a member of company. It is incorporated as a Pvt. company. The OPC shall not be required to hold annual general meeting. The financial statement of OPC may not include the cash flow statement and shall be signed only by one director. The OPC can't be incorporated or converted into a company u/s 8.

**Prohibition of issue of shares at discount** - Earlier Companies have power to issue shares at discount u/s 79 of Companies Act 1956. But now the new act does not permit the issue at discount u/s 53 except

sweat equity shares. Now if a company contravenes the provisions of sec 53 then co shall be punishable with fine not less than one lakh rupees which may extend to five lakh rupees.

**Maximum no. of members for Private Companies** - The limit of maximum no of members in private Co has been extended from 50 to 200. Thus more number of members is required to form a Pvt. Co.

**Dormant Company** - As per Sec 455 a Co which is formed and registered under this Act, for a future project or to hold an asset or intellectual property and has no significant accounting transaction such a Co or an inactive Co may make an application to the Registrar for obtaining the status of a dormant Co.

**Secretarial audit** - This is a new concept introduced in Companies Act. According to sec 204 of Companies Act, 2013

- Every listed company
- Every public Co having paid up share capital of 50 Cr or more.
- Every public Co having turnover of 250 Cr rupees or more.

has to obtain secretarial audit report in form no. MR - 3 from practicing company secretary. If anyone contravenes Sec 204 then every officer of the company or the (PCS) company secretary in practice, who is in default shall be punishable with fine minimum one lakh and maximum five lakh rupees. The basic aim behind introducing this concept is to have check and report on compliances and to point out non compliances and inadequate compliances.

**Women Director** - Following class of companies shall appoint at least one women director.

- Every listed company
- Every other public company having
  - paid up share capital of 100 Cr or more,
  - turnover of 300 Cr or more.

The existing companies are required to comply with this provision within 1 year from date of commencement of Companies Act 2013.

**Independent Director** - As per Companies Act, 1956 there was no requirement to have independent director. Now independent director is recognized in the law. The purpose of appointing ID on the board of directors of listed companies is to ensure adherence to good corporate governance standards. Thus, he must be the one who is not having any conflict of interest. He should be independent in letter and spirit.

**Corporate Social Responsibility (Sec 135)** - CSR is an activity which is done to improve the quality of people's life. This activity is not related to philanthropy. Every Co. having

- Net worth 500 Crore or more,
- Turnover 1000 Crore or more. ,
- Net profit 5 Crore or more during any F.Y. shall constitute CSR committee of board.

**Highlights of Companies Amendment Act 2015**

To amend Companies Act 2013, the Companies Amendment Bill, 2014 came into force. The MCA recently issued Companies Amendment Act, 2015 thereby amending certain sections of Companies Act, 2013. The basic premise behind amending the act was to improve the ease of doing the business in India.

**Amendment in Sec 2(68)and2(71)** - The requirement of minimum paid up share capital one lakh for private company and five lakh for public company has done away with.

**Common Seal made optional (Sec 9, 12, 22, 46, and 223)** - The requirement of having common seal has been made optional.

**Commencement of Business (Sec 11 omitted)** - The requirement of filing a declaration before commencement of business has been omitted. Earlier, before commencement of business or exercising any borrowing powers, the directors of a company having share capital was required to file with ROC a declaration that every subscriber to Memorandum has paid the value of shares committed by him/her and that the paid up share capital of company is not less than the amount prescribed.

**Declaration of Dividend Sec 123(1)** - An additional proviso has been added in sec 123. According to this proviso, no company shall declare dividend unless it has set off its carried over past losses and depreciation in past year or years against current year profit of the company.

**Empowered Audit Committee to give Omnibus approval for related party transactions [Sec 177(4)]** - Vide the amendment, an audit committee may give omnibus approvals for related party transactions subject to conditions as may be prescribed.

**Obtaining Copies of Board Resolutions** - No person shall be entitled under section 399 to inspect or obtain copies of Board Resolutions passed by a company under section 179(3) filed with the Registrar u/s 117(3).

**Punishment for Contravention of Sec 73 and Sec 76 of companies Act, 2013 for acceptance of Deposits by Companies (New section 76A inserted)** - The amended law has inserted a new section 76A after Section 76 which introduces penal provisions for contravention of Provision of sec 73 and sec 76 (pertaining to acceptance of deposits by a company) or rules made there under, or if a company fails to repay deposits within time specified.

- In addition to payment of the amount of deposits or part thereof and the interest due, a company shall be punishable with fine which shall not be less than one Crore rupees but which may extend to ten Crore rupees.
- As per amendment, every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with a fine which shall not be less than twenty five lakh rupees but which may extend to two Crore rupees or with both.

**Related party transaction (Section 188)** - According to the amendment, the requirement of passing special resolution for approving certain related party transactions has been done away with. With this, now certain related party transactions can now be approved through a 'resolution' instead of 'special resolution'.

### **Conclusion**

The corporations play a vital role in the economic development and social progress of the country. So it was the basic need to amend the six decade old Companies Act, 1956 so as to align with the internationally accepted norms. It would also help in minimizing the incidents of corporate frauds. Enhanced disclosures and accountability, better corporate governance, increased level of transparency, protection of investor interest, and development of corporate sector are some of the consequences of the new act. Companies and the stakeholders should analyze and evaluate the positions according to the new act and make policies and strategies accordingly. The act is forward looking in nature and is according to internationally adopted companies law in various countries. The Ministry of Corporate Affairs has issued certain circulars, notifications and clarifications for the effective and smooth implementation of new act. The MCA has also recently issued some amendments in Companies Act, 2013 to address the various concerns faced by stakeholders and to reduce the complexities in doing business in India. However, there are numerous major changes in new act but in this paper we have made a small effort to throw light on some basic concepts of Companies Act, 2013 and basic highlights of Companies Amendment Act, 2015. At last we can conclude our paper on the basis that this act is framed with a positive and forward looking approach to modernize the company law of India

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