



Impact on Share Holder's Wealth and Interest: Analysis of Company Act, 2013 & Company Act, 1956

KEYWORDS

Companies Act 1956, Companies Act 2013, Governance, Share holder

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ABSTRACT To achieve economic growth of the countries like India which needs to formulate a better governance framework to counter the current globalised & growing market's challenges, difficulties and increasing responsibilities/ duties for the investor, stakeholder & society . For Indian point of view, Company Act, 2013 is making the first move for better governance and positive atmosphere in Indian business environment by introducing various provisions rules and regulation like enhance self-regulation, increasing the levels of transparency and protect interests of small investors, improve governance norms, enhance the corporate and auditor's accountability and a good legislative attempt to compete with international governance standard. This paper is focused on the impact and analysis of shareholder's interest & investor's wealth protection by comparing the two major companies act i.e. Companies Act 1956 & the recently introduced Companies Act 2013.

Introduction

The much awaited new company Act 2013 has been received Hon'ble president assent on 29 Aug 13 after passed by Lok sabha on 18 Dec 12 and in Rajya sabha on 08 Aug 13. To counter the challenges and in line with rapid developments, integrations, globalisation of financial markets and growing economy of the world, the new modified Company Act, 2013 replaced the old Company Act, 1956. The new act provides changes and improvised provision related to e-management, enforcement, enhanced disclosure norms, enhanced accountability, improved institutional structure; share holder protection, merger & acquisition and first time introduce the role of whistle blowers, one Person Company, and corporate social responsibility (CSR). This paper is analysing the Company Act 2013 regarding share holder & investors protection in line with global context and in improving the efficiency and smoothness of doing business. This new Act is a vital initiation of government to overcome the lapses and loopholes on previous governance standards.

Objectives

1. To review the provision made to protect investor & shareholder' interest by comparing Companies Act, 2013 and Company Act 1956.
2. To evaluate the challenges faced by the companies.
3. To assess the possible measures or necessary step to overcome the existing lapses in new Act, 2013.

Scope & Limitation

Scope of the study is limited on the new development on shareholder's protection as per Company Act, 2013. The new Company Act, 2013 has become fully implemented from 01 Apr 2014 so that the actual output, difficulties & challenges the corporate sector faced cannot be measured in this sort time horizon.

Research Methodology

This paper is an exploratory type research and based on the secondary data collected from the various sources like Research journal available online, Article published in magazine & news paper, various websites & blogs, media reports and personal interaction & interview of professional on media.

Literature review

1. While preparing the paper major direction taken from the 'Company Act, 2013: Rules, Circulars & Notifications' published by Ministry of Corporate Affairs, India, which emphasise the all aspect of company rule & regulation.
2. There are various agencies like Deloitte's 'Company Act, 2013, Fresh thinking for a new start', Oct 2013, PWC, India's report on ' Company Act,2013, Key highlights and analysis', Nov 2013, Ernst & Young LLP's report on 'India Inc Company Act 2013 an overview', Sep 2013 and KPMG India's analysis on 'Company Act 2013, New Rules of the game', Oct 2013, which were emphasise on the business friendly corporate regulation, improved CG norms, enhance accountability, raise levels of transparency and protect interest of investors as per new Act, 2013.

Back ground / Development of CG & Company Act

1. India in its pre independence era with England & frustration of stock exchange vide joint stock Companies Act, 1850 introduced the rules regulation for the business environment. But the most effective and all procedural act of India come in 1956 which is further replaced by latest Company Act, 2013.
2. The expedition of Companies Act, 2013

Year	Process
2008	On 23rd October 2008, Companies Bill, 2008 was introduced in the Lok Sabha to replace existing Companies Act 1956 by the recommendation of J.J. Irani committee
2012	The Companies Bill, 2012 was introduced and got its assent in the Lok Sabha on 18 December 2012.
2013	Companies Bill, 2012 was passed by the Rajya Sabha on 8th August, 2013. After having received the assent of the President of India on 29 August 2013, it has now become the much awaited Companies Act, 2013. The Act comprises of 29 chapters, 470 clauses & 7 schedules with extent of subordinated legislation which contain 300 references in the Act

Comparative Analysis

According to Company Act, 2013, model for Corporate Governance identifies mainly six functions these are Director, independent director, Audit committee, corporate social Responsibility (CSR), Administration and management, protection of minority shareholder's interest and the new regulator formed like NFRA, SFIO & NCLT. Regarding Protection of shareholder's/investor's wealth these are the key comparison:

Company Act, 2013	Company Act, 1956
<p>1. Related Party Transactions</p> <p>The Companies Act, 2013 has made major amendments on related party transactions Key highlights are as follows:</p> <p>(a) Company will not enter into certain transactions without approval of board</p> <p>(b) The Companies Act, 2013 will also cover the following related party transactions:</p> <ul style="list-style-type: none"> • Selling or buying property • Leasing of property • Appointment of agent for purchase or sale of goods, material, services or property • Related party's appointment in the company, its subsidiary companies and associate companies • Underwriting the subscription of derivative on securities of the company. 	<p>1.Under the Companies Act, 1956 restrictions apply only to transactions with specified persons/ parties</p> <p>2.Under the existing Companies Act, 1956 restrictions apply only to the following two transactions:</p> <p>(a) Sale, purchase or supply of any goods, material or services (b) Underwriting the subscription of any shares in, or debentures of, the company</p>
<p>2. Investments/Loans</p> <p>Provisions relating to caps on inter corporate loans and investments are extended.</p>	
<p>3. Mismanagement [section 241-246]</p> <p>Introduced empowering a specified number of shareholders and depositors to take legal action in case of any fraudulent action by the company or if the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors</p>	<p>No such provision exists under the Companies Act, 1956.</p>
<p>4. Fraud Risk Mitigation Specific definition of fraud has been introduced with emphasise on Increased responsibility on the directors and management, Auditor responsibility, Investigation into the affairs of the Company (SFIO), Penalties for fraud</p>	
<p>5. Investor Education and Protection Fund (IEPF) is modified</p>	
<p>6. New Class Action Suit concept introduced in case of oppression and mismanagement. Action taken like by restrain company/ directors from acting on void resolutions, restrain company from taking action contrary to any resolution passed by shareholders, claim damages or compensation and restrain company for breach of provisions of Memorandum of Association, Act or any other law</p>	<p>No such provision in Act, 1956</p>

Regulator

In company Act, 2013 there are introduced new regulator and also empowered the existing regulator in India. Main focus on three regulators which are as follows:

1. **National Financial Reporting Authority (NFRA):** The 2013 Act requires the constitution of NFRA, which has been empowered to issue the authoritative pronouncements, and also regulating the audit profession. National Financial Reporting Authority (NFRA) is an independent authority to be constituted to make recommendations to Central Government on formulation and laying down of accounting and auditing policies and standards, monitor and enforce compliance and the quality of service of relevant professions. NFRA having judicial powers to investigate matters of professional or other misconduct which are handled by the Institute of Chartered Accountants of India presently.
2. **Serious Fraud Investigation Office (SFIO):** The 2013 Act has imparted legal status to SFIO. Presently, the SFIO has been set-up by the Central Government under resolution No. 45011/16/2003-Adm-I dated 2 July 2003. In the new Act, 2013, statutory status will be conferred upon the SFIO. The Government assign investigation into the affairs of a company to SFIO (i) on receipt of a report of the registrar or inspector, (ii) on intimation of a special resolution passed by a company that its affairs are required to be investigated, (iii) in public interest, or (iv) on request from any department of the Central Government/state government.

SFIO will have given power to arrest in respect of certain offences, which attract the punishment for fraud after authorized by the Central Government. SFIO stipulates penalties for fraud-related offences and also share any information or documents, with any agencies.

Comments/Remarks on Company Act, 2013

- For related party transaction govt interference is not there which may affect the minority share holders interest
- Specific domestic transaction (SDT) is confine to limited type of income
- Concept of action suits is one of the better step taken for interest of small investor
- Act, 2013 does not contain any requirement for recouping past losses/depreciation for the year while declaring dividend out of the current year's profit/losses.

Problems and challenges of Corporate Governance in India

Corporate Governance practices in India are still evolving. Recently scandals in corporate India have raised question not only about the practices adopted by companies to solicit business but also about the standards of accountability, monitoring & administration.

Key challenges

- Access to capital to finance expansion & operating cost efficiencies
- Implementation new projects successfully
- Manage risks effectively across projects
- Effective integration post acquisition
- Improve and sustain quality
- Build brand and reputation
- Weak regulatory framework
- Under developed monitoring system

Measures to be taken for improvement

To overcome the problems, there needs to be clear separation of ownership, control and management functions. It is also important to address the interests of wider stakeholders including financial institutions, minority stakeholders, employees, customers, vendors, regulators and the society at large. Effective governance having following points

- Effective, diversified and independent board with Clearly defined roles that is able to challenge management on its strategic choices
- Constructive board meetings
- Robust strategic planning monitoring of business performance with focus on risk management
- Management assurance like management controls, internal and external audit
- Openness and transparency in dealings with stakeholders
- A constant effort to improve accountability
- The ability of the board, management & stakeholder to work together

Conclusion

For value creations and building corporations of the future, there is a greater need of adopting and sustaining good Governance practices as the global environment changing incessantly. Recent company act 2013 focused on self governance system which contains the measures practices regarding merger & acquisition fast track process, protection of shareholders interest etc. With introduction new act it is definitely take some time for implementation from which we can derive further more relevant information and result of company act. There are some part of this act which is still need to be relooked but overall while compare with other globally accepted company law like Japanese model, European model and American Anglo-Saxon model. Thus the act with incorporation of new regulation and provision from which one can expect better transparency, accountability & responsibility from company and industries in future.

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