

IMPACT OF RECENT AMENDMENTS ON COMPANY LAW IN INDIA

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ABSTRACT

The recent changes enacted under the Companies Act in India have heralded an era of transformation for corporate governance and business practices in the country. These amendments, centered on increasing transparency and accountability as well as the ease of doing business have been a key contributor to many changes that affect many corporate entities. One of the pillars addressed by these amendments is compliance standards strengthening. Adopting tighter norms and enhancing disclosure requirements reduces fraudulent activity, instilling confidence among investors and stakeholders. The amendments also stress corporate responsibility, thereby promoting Indian businesses according to international standards and supporting their credibility internationally. The regulatory framework has gone through a digital transformation, simplifying the process of registration and compliance channels. This shift towards digitalization not only eliminates bureaucratic complexities but also creates a more business-friendly atmosphere, especially for startups and entrepreneurs. The amendments go further to help corporate restructuring, making it more convenient and suitable for the changing demands of enterprises. Although the effects of these amendments have been mostly positive, dynamic review and adjustment will be essential to confront evolving challenges. The balancing act of nurturing business development and protecting stakeholder interests is a continuous pursuit. Essentially, the recent amendments under the Companies Act objectives to build up a sturdy, ethical, and congenial corporate sector in India with goals of continuous economic development as well as perfection in corporate governance. In this paper, we are going to go through some of the amendments.

Keywords: Amendment(S), Companies, Regulatory Framework.

BACKGROUND OF COMPANIES ACT

The Companies Act 1956 came into effect on the recommendations of the Bhaba Committee which was established in 1950 to merge existing corporate legislation and provide a new foundation for business operations to function smoothly in newly independent India. The passing of this law in 1956 resulted in the abolition of the Companies Act of 1913. Faced with

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the challenge of restructuring their economies in response to the realities of a changing economic environment, many countries have undertaken significant reforms to their corporate laws. In the 1980s, they made revisions to British company law.

Since then, many countries with British-derived legal systems, such as Australia, New Zealand, and¹ Canada, have also reviewed their corporate laws and implemented some major reforms. The Government accordingly believed that it was necessary to have the proposals in concept paper and those submitted there under-assessed by an independent body of experts. Drs. were appointed as the chairman of the current committee formed on December 2, 2004 by the Government. JJ Irani, director of Tata Sons made up to advise the government on proposed alterations in the Companies Act 1956. The mission of this exercise is to make regulations clearer and adapt them to changes in the national and international environment. It also aims to incorporate internationally recognized standards and facilitate the flexible creation of new regulations. The government wants concise legislation as a result. To adapt to new business model requirements.

Modern company laws for meeting the demands of a competitive economy in India are an initiative welcomed. There is widespread agreement that reforming and updating the fundamental legal framework for business entities is essential to enable sustainable economic reform. The Companies Act of 1956 was a watershed moment in the history of Indian corporate law. This legislation, enacted on January 18, 1956, amended the Indian Companies legislation of 1913 and implemented substantial modifications to handle rising corporate concerns. Indian corporations were under the control of the English Corporations Act of 1862, although the Companies Act traces back to the British colonial era. This statute, originating from Britain, formed the cornerstone of contemporary corporate law. Some features were incorporation and management structure, transfer of shares and limited liability. As we look forward, as India proceeded towards greater self-government, the necessity for a specialized regulatory framework for Indian firms prompted the passage of the Indian Firms Act in 1913. This legislation, which took effect on April 1, 1914, included critical measures that created the Indian business environment.

¹ <<https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/background.html>>accessed on 20 January 2024

THE AMENDMENTS AND THEIR IMPACT SO FAR

The new Companies Act is an affirmative step towards modernizing Indian business law and aligning it with global standards. It has enhanced the company's decision-making capabilities and included clauses that provide minority shareholders extra rights and safeguards. Introducing one-person corporations and small enterprises could reduce some of the administrative constraints that small businesses face, but bigger organizations should brace themselves for additional administrative burdens as a result of changes in auditor and director appointments.

The Companies Act 2013 has had five very significant amendments. The effectiveness of the Companies (Amendment) Act 2015 and 2017 was to improve efficiency, thereby promoting the ease of doing business. The same was amended by the Insolvency and Bankruptcy Code of 2016 and also Finance Act in 2017. The Insolvency and Bankruptcy Code, of 2016 sectioned out a number of these sections which were missing from the Act in 2013 including Section 253 to Section 304 as well as others like Sections 235. Hence this does not occur in the case that is lodged against any other organization. Section 182 of the Finance Act 2017 has also been amended to deal with the prohibitions and restrictions regarding donations for political purposes. The last amendment was brought about by the Finance Act 2020, which sought to facilitate the listing of Indian companies in foreign listed stock exchanges.

COMPARISON OF CA 2013 AND 1956

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A few of the new concepts under the Companies Act, 2013 are Concepts of Woman Directors, Corporate Social Responsibility (CSR), Key Managerial Personnel (KMP), and Class Action Suits including the Entrenchment clause in the Articles Of Association. It also created new forms of companies such as OPC, Small Companies, and [an] Associate company. Dormant Company is a new concept of the Companies Act 2013. This Act has supplemented the vigil mechanism. The former Act had the term 'Promoter' but this new Act defined it. Section 447 of The Companies Act, 2013 also defines the term 'Fraud' in an explanation that follows Sec. Therefore, amendments to the Companies Act, 2013 were done in a year (2015, 2017, 2019), and so on by the Amendment Act of the year 2020.

KEY CHANGES

The team altered the concept in key managerial personnel. The term 'total share capital' was substituted with 'total voting power'. Section 3A was inserted which is about the liability of

continuing members in case of a reduction in the number of members below the minimum requirement.

There is now a test for Independent Directors consistent with the Companies (Creation and Maintenance of Data Bank of Independent Directors) Rules, 2019, independent directors need to undertake an online proficiency self-assessment test conducted by IICA in Manesar. These new regulations came into effect on December 1, 2019.

The amendment has changed the 7th Schedule, specifying the activities for which companies, to whom s 135² relating to CSR applies, can allocate funds. The scheme “Prime Minister’s National Relief Fund” is substituted by the wordings: Prime Minister’s Citizen Assistance and Relief in Emergency Situation Fund.

In light of situations like the COVID-19 pandemic, we took measures such as extending the compliance timeline and granting exemptions. Meetings were held online like the Annual General Meeting (AGM) and also the Extra-ordinary General Meeting (EGM) through Video Conferencing and other audio-visual means is allowed. These are the stop-gap solutions aimed at solving the issues caused by pandemics.

A common seal was made optional. NCLT and The National Company Law Appellate Tribunal have come into force. It is NCLT that has taken the powers from the Company Law Board or Court concerning companies. A review of the order issued by NCLT is possible before the National Company Law Appeal Tribunal.

The MCA observed that some Section 8 companies change their object clause when conducting microfinance operations by passing a special resolution, changing the code of practice, and then filing an electronic Form MGT-14 with the relevant ROCs, although they were originally incorporated. ROC (CRC) does not allow The merger of companies according to the instruction of Ministry No. No. 33.5.2017-CL.V 10.2.2020 and letter 31.8.2020. Clarification that the ROCs require immediate legal action, including changes to their objectives, to prevent such companies from engaging in microfinance activities. The DGCoA office will further ensure that all ROCs strictly follow the instructions given by the Ministry in the earlier letters on the subject. Further, ROCs give these instructions to all officers to ensure legal investigation while

² The Companies Act 2013, s135

processing e-forms related to incorporation and change of objects of companies registered under companies. Act, 2013.

Submission of forms GNL-2 (filing of prospectus-related documents) and MGT 14 (resolutions relating to the filing of Prospectus Related Documents as a consequence of migration migrating variously between V2 Version -V3 version in platform Service made with respect during January 7 th, till January 20thTurnequal Rightfully Due particularly.

The firms planning to submit (i) Form GNL-2 and (ii) MGT-14 concerning the prospectus-related documents from 7th January 2023 till January 8, are supposed to file such forms in physical mode duly affix by concerned that along with a copy thereof filed electronically including an appropriate signature of persons who report

Such filing shall be followed by an undertaking from the company stating that once the online facility to make such Forms is available via the MCA 21 eFiling Portal, it will fill those particular forms in electronic form likewise with the payment of relevant fees as per Companies (Registration Offices and Fees) Rules, 2014.

The disabled filing period shall not attract any extra fees.

COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2022³

Companies Act section 12 new rule 25B - physical inspection of a company's registered office
The Board approved the third amendment to the Companies (Companies) Rules 2022 to provide a clear procedure for the physical inspection of registered addresses. MCA added new rule 25B (Physical inspection of the registered office of the company) after rule 25A. Under the new directive, the ROC will physically inspect the premises of the company in the presence of impartial witnesses. During the physical inspection, the registrar must also photograph the location of the company. ROC confirms the existence of the agency by comparing it with the supporting documents collected during the physical inspection and officially confirmed by the owner of the building. The ROC collects supporting documents during the physical inspection and officially confirms the existence of the agency by comparing them, then generates a comprehensive report with detailed information such as location information and images. If the

³ (Notifications Ministry of Corporate Affairs, 31 May 2022)<<https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/notifications.html>> accessed on 22January 2024

registered office is found unable to receive all notifications, the ROC will notify the company and all administrators.

MCA HAS ISSUED A NOTIFICATION TO NOTIFY THE COMPANIES (ACCOUNTS) THIRD AMENDMENT RULES, 2022

With this notification, MCA has once again deferred the last date of submission of Form CSR-2 for FY 2021 - else June. Before May 31, 2022, was extended up to March 31 from the previous date.

All companies entitled to CSR are required to file Form CSR-2 and should specifically ensure that while filing it for the preceding financial year of 2019-20, i.e., the form is filed on or before May 31st in case they have been doing so by an individual/one corporation as a group then only do not apply if AOC -4.⁴

In addition, for the financial year 2021-2024 also Form CSR -3 will be filed separately on or before March 31, in a manner as provided in clause (a) of sub: rule(5).

MATTERS TO BE CONDUCTED VIA VIDEO CONFERENCING

The MCA introduced Companies (Meetings of Board and its Powers) Amendment Rules 2020 by inserting sub-rule (2) through which meetings on issues referred to in the aforementioned one may be conducted using videoconferencing or any other audio-visual means until September,31st after commencing an implementation date. Therefore, meetings for the following matters can be held through video conferencing or other audio-visual means:

- The consent for annual financial statements;
- The approval of the board's report.
- the approval of the prospectus;
- the approval on the matters relating to amalgamation, merger, demerger, acquisition, and takeover.

audit committee meetings for discussion of financial statements inclusive consolidated financial statements if any, that will be ratified by the board under sub-section (1) section 134 of the Act. The issues regarding amalgamation, merger, demerger acquisition, and takeover.

⁴ *ibid*

MCA HAS ISSUED A NOTIFICATION TO NOTIFY THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2022⁵

The appointment of any person, including a citizen or national from the country that shares a boundary with India as director in an Indian Company is now covered by tighter norms adopted by MCA.⁶

Therefore, if the person applying for appointment is a national of any country that shares a land border with India also necessitates security clearance from the Ministry of Home Affairs Government of India to be attached along with consent.

Furthermore, citizens of countries that share borders with India who are applying for a Director Identification Number must attach security clearance from the Ministry of Home Affairs Government of India along with their application, otherwise, no application number will be generated.

MCA HAS NOTIFIED THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) OF SECOND AMENDMENT RULES, 2022⁷

The amendment is done within Rule 6⁸ dealing with requisite compliances for a person, who has the ability and willingness to restore his name in an independent director databank. Any person who has had their name removed from the databank can return by paying one thousand rupees. The institute will include such a category but only if the person has taken an online proficiency self-assessment test and passed it within the one-year timeframe beginning with the resumption.

⁵(Ministry of Corporate Affairs , January 2022)

33004/99<<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE5MTY5MDUx&docCategory=Notifications&type=open>> accessed on 23 January 2024

⁶ (ICSI)<https://www.icsi.edu/media/filer_public/f2/dc/f2dcd29f-0c5e-4bc0-9438-f207a7fe8a11/final_presentation_on_company_law.pptx#:~:text=The%20Finance%20Act%202017%20amended,in%20foreign%20recognized%20stock%20exchanges.> accessed on 22 January 2024

⁷ *ibid*

⁸ The Companies Act 2013, Rules, r6

AMENDMENTS IN THE YEAR 2023⁹

On 27th October, MCA notified two crucial amendments to the rules under the Companies Act. The first is related to MA Rules 203 and the second one relates to Prospectus Allotment Securities for which companies (Prospects) solarism All these amendments have been enacted to enhance the transparency of corporate affairs and they are effective from the date that can be found in Official Gazette, which prevents protracting.

However, under the MA Rules 2023 with its amendments beneficial ownership in shares of a company where beneficiary owns stand differently are being introduced to 'designated person'. Through the amendments as per MA Rules, 2023 Rule 9 of Companies (Management and Administration) Rules, 2014 has been extended further with sub-rule (4) to(8). As per the Sub-rule (4), every company shall appoint a person responsible for disclosing beneficiary interest in their shares to the Registrar or any authorized officer. It is under sub-rule (5) that the avenues on how to appoint a responsible person are outlined, which may be either through a company secretary or key managerial personnel other than those who need not provide account and explanation for its transactions with every director where no qualified one exists.

The second is about The PAS Rules 2023 incorporates automatic dematerialization on all securities belonging to every private company except small companies and government companies. The provision applies only to public companies at present. From the date of the amendment within six months effectively the companies need to make a request to the existing shareholders who have shares in physical or materialized form to surrender and convert them to dematerialized form. This notice had to be published on the official website of the concerned company and published in the local and English newspapers. The failure to surrender such share certificates will transfer to the Investor Education and Protection Fund. The regulations are effective immediately from the date of issuance, and 18 months is offered to meet subsequent dematerialization criteria by such companies starting at financial year closure. To clarify further, for instance, a private company (other than the small companies as of 31st March 2023) is required to dematerialize securities within 18 months of FY- treatment will be done on Fair value. Purchase consideration would have been treated in OFS – net price payout and that needs to be discussed with them regarding transfer effectiveness.

⁹ Xerxers Antia et al., ' India: Update Companies Act Amendments October 2023' (*Mondaq*, 1 November 2023)<<https://www.mondaq.com/india/shareholders/1383996/update-companies-act-amendment-october-2023?>> accessed on 27 January 2023

In addition, Private companies covered by these rules need to make sure the whole of the shares of promoters directors and Key Managerial Personnel have been dematerialized before any issue for offer or buyback securities as well as issuance of Bonus Shares rights.

CONCLUSION

The various amendments brought under the Companies Act of India have evolved a remarkable shift in corporate culture by bringing more transparency, accountability, and investor-friendliness. These reforms mirror the aspiration to ensure that corporate governance standards adopted by Indian businesses are consistent with those followed in other parts of the world. It promises higher performance and a reputation for conducting business across borders where competition is expected at high levels.

This legislation has addressed many aspects of the working of corporate organizations; some facets include stricter compliance regulations and strengthened disclosure criteria, among others. They have contributed significantly to the fight for ethical business practices, prevention of fraudulent behaviors, and preservation of investors' interests. Particular emphasis on responsible corporate citizenship has worked not only to raise the confidence of investors but also contributes in a substantial way to both realizing growth and development for the Indian economy.

In this regard, the regulatory framework incorporated under these amendments has simplified business transactions, minimized bureaucratic barriers and promoted entrepreneurial culture. The trend towards automated and streamlined registration, licensing and compliance processes has made a huge difference for companies especially startups as it was not a long time before entrepreneurs lived in fear of either ongoing punishments or eventual lack of business continuity.

Though the effect of these amendments has often been beneficial regulatory bodies, businesses and the rest of stakeholders should keep on assessing themselves against changing nature every now and then. Single-handedly establishing the right equilibrium between supporting business emergence and being watchful at the same time preserving the interests of all those involved with the Companies Act in India will remain an important challenge for its continued success.

In the end, changes introduced by the Companies Act have not only modernized the environment in itself but also opened the way to an emerging and flexible business sector within India. With the continuous change of business environment, efficient and continuing

monitoring amendment and transformation will be inevitable for them to ensure that they are promoting sustainability development in economic activities track while also ensuring corporate excellence over a prolonged period.

