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DIRECTOR'S PROFILE: AN ANALYSIS OF COMPANY ACT, 2013 & PREVIOUS VERSION

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ABSTRACT

Countries like India 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 and last but not the least the economic development with rapidly changed environment. Here with an effective Governance of the companies shows the board of management, director's area of thrust and responsibility towards the organisation. Company Act, 2013 is a initiation of better governance and positive atmosphere in Indian business environment which introduced various rules, regulation and provisions like improve governance norms, enhance self-regulation, enhance the corporate and auditor's accountability, increasing the levels of transparency and protect interests of small investors. In line with international standard the Company Act, 2013 is a good legislative attempt by the government. This paper is focused on the key changes and analysis of the role of Director/ Independent Director by comparing the two major companies act i.e. Companies Act 1956 & the recently introduced Companies Act 2013.

KEYWORDS: Companies Act 1956, Companies Act 2013, Corporate Governance, Director.

INTRODUCTION

After passed by Lok sabha on 18 Dec 12 and in Rajya sabha on 08 Aug 13, the much awaited new company Act 2013 has been received Hon'ble president assent on 29 Aug 13 having main objective to counter the current 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 corporate governance Provision related to e-management,

enforcement, enhanced disclosure norms, enhanced accountability, improved institutional structure, shareholder protection, merger & acquisition and first time introduce the role of whistle blowers, one Person Company, and corporate social responsibility (CSR) changes. This paper is analyse the Company Act 2013 regarding the selection criteria, job profile & responsibility changes of Director/ Independent Director in line with global context and in improving the efficiency and smoothness of manage the business in India.

OBJECTIVES

The objectives of this paper are as follows:-

- a) Establish a comparison between Companies Act, 2013 and Company Act 1956 regarding Director/Independent Director.
- b) To evaluate the key challenges for industries and companies in the new regulation
- c) To sort out the possible measures or necessary step to overcome the existing lapses

SCOPE & LIMITATION

Scope of the study is limited to study the new regulation and focusing on the new development. The new Company Act, 2013 has become fully implemented from 01 Apr 2014, so the actual output, difficulties & challenges the corporate sector faced cannot be measured in this sort time horizon.

RESEARCH METHODOLOGY

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

LITERATURE REVIEW

1. Major guidance 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. Various agencies which were emphasise on improved GOVERNANCE norms, the business friendly corporate regulation, enhance accountability, raise levels of transparency and protect interest of investors like:-
 - (a) 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,
 - (b) Ernst & Young LLP's report on 'India Inc Company Act 2013 an overview', Sep 2013
 - (c) KPMG India's analysis on 'Company Act 2013, New Rules of the game', Oct 2013,

BACK GROUND / DEVELOPMENT OF COMPANY ACT, 2013

In India though the Company Act was introduced since 1850 i.e. in British era but the most effective and all procedural act of India come in 1956 which is further replaced by latest Company Act, 2013. The expedition of Companies Act, 2013 as follows:-

2008-On 23rd October 2008, Companies Bill, 2008 was introduced in the Lok Sabha to replace existing Companies Act 1956. It is based on the recommendation of J.J. Irani committee.
2009-Companies Bill, 2009 was re-introduced on 3rd August 2009 in the Lok Sabha. Bill was referred to the Standing Committee on Finance of the Parliament for examination and report
2010-Report of the Standing Committee on Finance on Companies Bill, 2009 was introduced in the Lok Sabha on 31st August 2010.

2011-Companies Bill 2011 introduced in the Lok Sabha on 14th December 2011.

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. The key high lights of Company Act, 2013 are the extent of subordinated legislation.

Which contain 300 references in the Act to rules which may be prescribed to implement and operational.

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. The major changes in term of Director and Independent Director as follows

A. Director

Company Act, 2013	Company Act, 1956
1. Under the Companies Act, 2013, each company will need to have minimum one director who stayed in India For at least 182 days in the previous calendar year.	The Companies Act, 1956 does not contain this requirement.
2. The Companies Act, 2013 will require prescribed class of companies to have at least one woman director on the board. Existing companies will be given a one-year transition period to comply with this requirement.	The Companies Act, 1956 does not contain this requirement.
3. Act, 2013, only listed companies will be given an option to have one director elected by the small shareholders.	Whereas under the Companies Act, 1956 a public company either with (a) paid-up capital of `5 crore or more, or (b) 1,000 or small shareholders, may have a director elected by the small shareholders. Under the Company Companies
4. Under the Companies Act, 2013, this limit has been set at 15 and will be applicable to all companies. For any further increase in number of directors, a company will need to pass a special resolution at its General Meeting. There will not be any need to obtain an approval from the Central Government.	Under the Companies Act, 1956 a public company or a private company, which is a subsidiary of a public company, can have a maximum of 12 directors or the number mentioned in its Articles. Any further increase in the number of directors requires an approval from the Central Government.
5. Under the Companies Act, 2013, a person will be able to become director of 20 companies. However, out of this, not more than 10 companies can be public companies.	Under the Companies Act, 1956 a person cannot hold directorship in more than 15 companies
6. Companies Act, 2013 has prescribed duties of directors. A director of the company will (i) act in accordance with the articles of the company, (ii) to promote the objects of the company, (iii) exercise his duties with care, skill and diligence, (iv) not get involved in a conflicts (v) not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates, and (vi) not assign his office.	The Companies Act, 1956 does not elaborate this requirement.

B. Independent director

Company Act, 2013	Company Act, 1956
1. The Companies Act, 2013 states that every listed company will have at least one-third of total number of directors as independent directors, with any fraction to be rounded off as one. Unlike the listing agreement, the Companies Act, 2013 does not contain any specific requirement for 50% independent directors if the Chairman of the board is an executive director.	But as per current clause 49 of the listing agreement requires that a board of a listed company will have an optimum combination of executive and non-executive directors with not less than 50% of the board comprising non-executive directors.
2. The Companies Act, 2013 does not have the rule about the listing agreement requires that the board of all the material non-listed subsidiaries of a listed parent company will have at least one independent director from the board of directors of the parent company	Whereas Company Act, 1956 have this requirement
3. Under the Companies Act, 2013, the Central Government will have the power to prescribe minimum number of independent directors in other class of public companies.	The Companies Act, 1956 does not contain any such requirement.
4. The meaning of the term "independent director" given in the Companies Act, 2013 contains most of the attributes prescribed in the listing agreement with some additional criteria, e.g.,: (a) An independent director should be a person of integrity and possess relevant expertise and experience. (b) Amendment in clause 49 regarding "independent director" (c) The Companies Act, 2013 also prohibits a person from being appointed as "independent director" if that person's relative is/was a partner/executive in the said firm. (e) Under the Companies Act, 2013, the Central Government may prescribe additional qualifications for an "independent director." (f) The Companies Act, 2013, however, states that an independent director will be a director other than the nominee director.	(c) Clause 49 prohibits a person from being appointed as "independent director," if that person is/was a partner/Executive in statutory audit firm, internal audit firm, legal firm and/or consulting firm(s), which have association with the company. (f) Clause 49 states that the nominee directors appointed by an institution, which has invested in or lent to the company, is deemed to be an independent director.

COMMENTS/REMARKS ON COMPANY ACT, 2013

Director/Independent director:

- ⇒ Regarding this till date SEBI is not amended as per Company Act, 2013 which is more difficult for those companies going for listing.
- ⇒ The Company Act, 2013 is not clearly mentioned how a company handle stock option provision regarding its director/independent director.
- ⇒ The Act,2013 insist on various restriction on appointment of independent director
- ⇒ For first board meeting the new modified rule help all the directors to understand their agenda of company
- ⇒ Fine regarding board meeting will help in better management.

PROBLEMS AND CHALLENGES OF CORPORATE GOVERNANCE IN INDIA

Governance practices in India are still evolving around the participation of various stakeholders and management, communication, exchanging and validating ideas and discussion. 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 & administration.

Problems in Corporate Governance in India mainly three reason. These are as follows:-

- (i) Demand for information
- (ii) Monitoring costs:
- (iii) Supply of accounting information:

The enforcement is weak though India has numerous regulations. Challenges like true independence, developing the institution and pool of personnel sets who can provide board service and improve corporate functioning and taking concrete measures to improve their functioning through a combination of orientation, training, clear roles and adequate remuneration.

KEY CHALLENGES:-

- 👉 Implementation new projects successfully
- 👉 Manage risks effectively across projects and verticals
- 👉 Effective integration post acquisition
- 👉 Improve and sustain quality
- 👉 Build brand and reputation
- 👉 Weak regulatory framework
- 👉 Under developed monitoring system

People	Structure	Process
<ul style="list-style-type: none"> ➤ Hiring the right people ➤ Succession planning ➤ Performance management Systems ➤ Mapping competency 	<ul style="list-style-type: none"> ➤ Governance structures aligned to growth needs ➤ Reliable assurance ➤ Risk management aligned to strategic priorities 	<ul style="list-style-type: none"> ➤ Standardization process ➤ Effective IT infrastructure ➤ Strong finance function ➤ Robust reporting system ➤ Managing compliance requirements

MEASURES TO BE TAKEN FOR IMPROVEMENT

To overcome the problems in Corporate Governance, there needs to be clear separation of ownership, control and management functions. Successful corporate are those that balance the entrepreneurial approach with right blend of professionalism and empower professional managers to act decisively. Effective governance having following points

- ★ Effective, diversified and independent board that is able to challenge management on its strategic choices
- ★ Clearly defined roles for board and management

- ★ Constructive board meetings
- ★ Robust strategic planning with monitoring of business performance & focus on risk management
- ★ The ability of the board and management to work together in defining the optimum business model for success
- ★ The ability to identify, access and manage emerging risks

CONCLUSION

As the global environment changing continuously, there is a greater need of adopting and sustaining good Corporate Governance practices for value creations and building corporations of the future. With introduction new act we needless to say that the governance regulation is more improved version than previous. 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. Whereas no model/rule/regulation are perfect and better but the initiative taken for improvement must be considered as the first step towards growth and flourishing keeping the view of current changing scenario. The company act 2013 is a foundation of good law practice in the history of company bill which is elaborate good governance Companies have no other choice other than to adopt. Thus the act with incorporation of new regulation and provision relating the governance from which one can expect better transparency, accountability & responsibility from company and industries.

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