



NEW COMPANIES ACT, 2013 – THE CAT IS FINALLY OUT

October 2013

The long awaited new Companies Act, 2013, after a lot of expectations and speculations, was finally notified in the Gazette of India on August 30, 2013. The new law, which is more comprehensive than its predecessor with 470 sections spread over 29 chapters and 7 schedules, replaces the six decade old Companies Act, 1956. The 2013 Act intends to promote self-regulation and introduces novel concepts including one-person company, small company and dormant company. It also promotes investor protection and transparency by including concepts of insider trading, class action suits, creation of a National Financial Reporting Authority and establishment of Serious Fraud Investigation Office for investigation of fraud. Further, a mammoth section 2 containing 94 definitions has been added for better clarity. There are 37 new definitions in the new Act when compared to the 1956 legislation.

In the first phase of implementation, Government has notified 98 sections on September 12, 2013. There appears to be little coherency in selection of the notified sections i.e. the basis of picking them versus others. The sections were notified in a haste and it was unclear if these provisions will operate in addition to the corresponding provisions of the 1956 Act. On September 18, 2013, Ministry of Corporate Affairs, through its General circular No.16/2013 has clarified that the sections of the old Act that correspond to the 98 provisions notified on September 12, will cease to have effect. But it is worth noting that the Ministry has left it to the companies and their advisors to identify these corresponding provisions, as it is not specified in the notification.

Below is a selective overview of the new notified sections/provisions:

- 1. Definitions:** Most of the 94 definitions are notified barring 12 definitions relating to accounting and auditing standards as well as other fiscal matters.
- 2. Formation:** It is interesting to note that the provisions with respect to the incorporation of a company and corresponding provisions relating to charter documents etc. are yet to be implemented.
- 3. Governance of Board:** Some sections covering the Board, like general restrictions on powers as well as a few specific restrictions on its contributory powers have been notified. Some other sections dealing with appointment of directors including those of additional, alternate and nominee directors as well as the right of managing or whole time directors for compensation in the event of loss of office are covered under the notification. However core matters concerning directors that cover their qualification/disqualification, duties, vacation of office, and removal are not in force yet. The sections pertaining to the appointment and remuneration of managerial personal are also yet to be enforced.

4. Governance by shareholders: Some basic provisions regarding mode of conduct of general meetings including statement to be annexed to the notice, special business, quorum, chairman of the meeting, voting, etc. have been implemented, so also the criteria for distinguishing ordinary and special resolutions. But sections specific to the annual general meeting are yet to be notified.

5. Share capital: Some provisions regarding share capital, debentures, numbering of shares, provision for proportional payment of dividend and certain penal provisions including failure to distribute dividends, remedies for refusal of registration of share, prohibitory provisions with respect to buy back have also found place in the current notification.

A few sections on the applicability of the Act to foreign companies, some basic compliance by the foreign companies like display of name, country of incorporation etc. outside its office premises, in its business letters and bill heads are in force now. The provisions with respect to service on foreign companies have also been covered by the new notification.

6. New regulatory authorities: The notification has covered a few provisions like constitution pertaining to the two regulatory authorities National Company Law Tribunal and Appellate Tribunal. But a large number of the sections with respect to special courts are yet to be implemented. So the regulatory system envisaged under the new legislature is yet to receive full power.

7. Penal provisions: The Ministry has further included a majority of the penal provisions contained in Chapter XXIX of the new Act such as punishments for fraud, false statement, false evidence and withholding of property. It has also included the sections dealing with the condonation of delay, powers of the Central Government to exempt certain companies from the provision of the 2013 Act and to make rules etc. in the current notification.

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