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Corporate Jigsaw: Assembling Together the Dynamics of Company Law in India

**Apoorva Krishna Pandey, B.A. LL. B
Dr. Axita Shrivastava, Assistant Professor**

Amity Law School
Uttar Pradesh Lucknow Campus
Amity University

Abstract

The regulatory structure of companies plays a key role in the progress and development of the economy. In the Indian context, this structure is embodied in the Companies Act 2013. The purpose of this research is to conduct a comprehensive study of Indian corporate law, trace its evolution, understand its current form and assess its impact on the business environment. The origins of Indian corporate law can be traced. Because of India's colonial history of the British legal system. However, since independence in 1947, India has made significant progress in adapting its corporate laws to reflect its distinctive socio-economic environment. The Companies Act, 2013, which replaced the Companies Act, 1956, is the current comprehensive law governing companies in India and marks a new phase in India's corporate legal structure. This document deals with various aspects of companies. 2013 Act, including its provisions on incorporation, director's duties and responsibilities, shareholders' rights, audits and social responsibility. The role of the Securities and Exchange Board of India (SEBI) in enforcing corporate law and ensuring corporate governance is particularly highlighted. Finally, this article provides a comparative study of Indian corporate law with that of other major economies. This comparison highlights the strengths and weaknesses of India's corporate legal framework and provides valuable information for policy makers, lawyers and businesses.

Keywords: *Corporate Jigsaw, India, Companies Act 2013, Corporate Governance, Securities and Exchange Board of India (SEBI)*

Introduction

The Indian Companies Act is a comprehensive legal framework that governs the incorporation, operation and liquidation of companies in the country. The main legislation governing companies in India is the Companies Act, 2013, which replaced the earlier Companies Act, 1956

The Companies Act of 2013 is divided into 29 chapters containing 470 sections and 7 schedule. The law brought significant changes to the regulations related to the management, administration and operation of companies.

Types of companies - The law regulates the establishment of various types of companies, such as joint stock company, public stock, sole proprietorship and non-profit companies. It describes the formation process, including the requirement for a memorandum and articles of association.

Directors and board meetings the law requires that every company have a certain minimum number of directors.

It also defines the duties, responsibilities and liabilities of directors. The Act adds a number of new provisions relating to board meetings, including video conferencing and director participation.

Audit and accounting -The Act makes significant changes to the provisions for audits and auditors. It tightens the responsibilities of auditors and strengthens the role of audit committees.

Corporate governance and corporate social responsibility -The law introduces several regulations to increase transparency and governance. It provides for the appointment of independent directors and female directors and the establishment of a nomination and remuneration committee. The Act also includes provisions for Corporate Social Responsibility (CSR), making India one of the few countries that have mandated CSR.

Regulators - The Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) are the two main regulatory agencies that oversee the implementation of the Companies Act in India. SEBI supervises the securities market while MCA handles administrative functions. Insolvency and Bankruptcy Code, 2016 The Insolvency and Bankruptcy Code (IBC), enacted in 2016, is another important piece of legislation in the Indian corporate legal framework.

Procedure for incorporation

The company incorporation process in India is governed by the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014. The Act and Rules provide a comprehensive procedure for setting up various types of companies, including joint-stock companies, joint-stock companies, sole traders and non-profit organizations. Types of companies The Law on Companies allows the establishment of different types of companies, each of which has its own company requirements:

Joint-stock company: a joint-stock company is a company with a minimum of two and a maximum of 200 members. It limits his right to dispose of his shares and prohibits him from inviting the public to subscribe to his shares or bonds.

Joint-stock company: A joint-stock company is a company with at least seven members, the maximum number of which is not limited. He can invite the public to subscribe to his shares or bonds.

One Person Company (OPC): An OPC is a company with only one person as a member. The concept of OPC was introduced in India through the Companies Act 2013 to support entrepreneurs who are able to set up a business on their own by enabling them to create a one-person financial entity.

Non-profit Corporation (Section 8): A corporation under Section 8 is a corporation established for the promotion of business, art, science, sports, education, research, social welfare, religion, charity, environmental protection or any similar object. Profits or other income are used only to promote the activities of the company, and no dividends are distributed to its members.

Obtaining a Digital Signature Certificate (DSC): The first step in the registration process is to obtain a digital signature certificate for directors who are required to submit electronic forms for registration

.6. Obtaining a Director Identification Number (DIN): Every person intending to be appointed as a director of the company must apply for a DIN.

Confirming the name: The next step is to decide on the name of the company and check its availability.

Filing of Incorporation Forms: Once the name is approved, the next step is to register the Incorporation Forms with the Registrar of Companies (RoC). This includes Memorandum of Association (MoA) and Articles of Association (AoA).

Issuance of Certificate of Incorporation: After verification, the RoC issues the Certificate of Incorporation and the company begins operations. Summary Establishing a company in India is a well-defined process under the Companies Act, 2013. The law provides a comprehensive framework for the establishment of various businesses that promote entrepreneurship and economic growth

Forms required for incorporating a company

Registering a company in India requires several forms to be filled and submitted to the Ministry of Corporations (MCA). Here is an overview of the main forms involved in the process:

Form INC-1: Application for Reserve Name The first step in company incorporation is to reserve a unique name for the company. For this, Form INC-1 is sent to the MCA. The form requires the applicant to submit a maximum of six names in order of preference, each of which must comply with the naming guidelines of the Limited Companies Act, 2013.

Form INC-7: Incorporation of a Company Once the name is approved, the next step is to submit Form INC-7, which is the basic form of company incorporation. This form requires detailed information about

the company, including details of its registered home address, its directors/promoter and the proposed business.

Form INC-22: Notice of Change of Circumstance or Location of the registered place of business of the company is not provided at the time of incorporation, INC Form -22 must be filed within 30 days of the date of incorporation or commencement of business, whichever occurs earlier. This form requires a company to provide details of its registered office.

INC-9 is an insurance memorandum for subscribers and directors of a corporation. The form certifies that all the requirements of the Companies Act, 2013 and the rules made thereunder have been met in the registration of the company. Form INC-20: Notice of Commencement of Business Finally, if a company is incorporated, it must file

Post incorporation compliances

After incorporation, an Indian company must comply with various statutory requirements under the Companies Act, 2013. Here is an overview of the main post-incorporation provisions:

Appointment of auditor -According to section 139 of the Companies Act, 2013, every company must appoint person or firm as its first auditor within 30 days of incorporation. The auditor acts from the end of this meeting until the end of the sixth general meeting. Form ADT-1 must be submitted to appoint an auditor

Commencement of business - According to Section 10A of the Companies Act, 2013, a limited company cannot commence business or exercise the power of credit unless the director gives notice in Form. INC-20A to the Registrar of Companies within 180 days of the incorporation of the company.

Issue of share certificates According to section 46 of the Limited Companies Act 2013, a company must issue share certificates. signatories to the protocol within two months from the date of incorporation.

Statutory records and documents the company is required to maintain various statutory records and accounts under the Limited Companies Act 2013. The parts of the registers kept by the company are the share register, the register of members, the register of the board, etc.

Submission of annual statements and financial statements -Every company must submit the annual report within 60 days of its day. preservation the actual general meeting and the annual report within 30 days after the general meeting with the company register. The annual report is presented in form MGT-7 and the annual report in form AOC-4. Conducting the actual general Laws related to prospectus of a company. A prospectus is a legal document issued by companies offering securities for sale. The Companies Act 2013 sets out the law relating to the prospectus and contains regulations on its content, issue and registration Contents of the prospectus.

Section 26 of the Companies Act 2013 –

A prospectus published by a company must contain all relevant information that investors and their advisers would reasonably expect to make an informed judgment about the company's assets and liabilities, financial position, profit and loss and future prospects and related rights. Securities

Issue of prospectus-

Section 23 of the Companies Act, 1992 provides that a public company may issue securities through a prospectus (public offer) under the Act and the Stock Exchange Board of India Act, 1992. On the other hand, a private company may not issue a prospectus to the public.

Registration of Prospectus

Section 26 of the Companies Act requires every company issuing a prospectus to file a copy with the Registrar of Companies (ROC). It can be distributed to the public.

Misleading information in the prospectus -

Section 35 of the Companies Act 2013 provides for civil liability for misrepresentations in a prospectus. It states that any person who subscribed for the company's securities based on a prospectus containing a false or misleading statement must be compensated by the company. Section 36 of the Companies Act 2013 provides for criminal liability for incorrect statements in the prospectus.

Framework for listed companies in India

The framework for listed companies in India is primarily governed by the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA).

SEBI supervises and regulates the management of listed companies in India. The main regulations governing listed companies in India are the Listing Obligations and Disclosure Requirements (SEBI) Regulations, 2015 and the Companies Act, 2013.

Board of directors of a company

The board is an important part of the company's management structure. They are responsible for overseeing the overall strategic direction of the company, ensuring that the company fulfills its legal and fiduciary obligations and acts in the best interests of shareholders. The Limited Companies Act 2013 provides a comprehensive framework for the appointment, duties and responsibilities of directors.

Appointment of the Board of Directors

The process for appointing board members is described in § 149 of the Limited Companies Act 2013. Every company must have at least three directors in the case of a joint-stock company, two managers in the case of a private company and one manager in a sole proprietorship. A company may appoint more

directors, but the maximum number shall not exceed fifteen. However, a company can appoint more than fifteen board members after a special resolution.

Duties of the board

The duties are set out in section 166 of the Limited Companies Act. 2013 on directors. . The law provides that a director of a company must act in accordance with the rules of the company. A director must act in good faith to further the purpose of the corporation for the benefit of its members as a whole and to protect the corporation, its employees, shareholders, the community and the environment.

Provisions related to buy-back of shares

A share buyback is a corporate event in which a company makes a public announcement of a buyback offer to buy shares from existing shareholders over a period of time. The company announces a buyback offer, which is usually higher than the current market price.

Mandatory buyback rules:2013.

Section 68 of the Companies Act gives the company the right to buy certain shares or other securities. parts cases.

Section 69 of the Limited Liability determines the accounting treatment of proceeds from repurchases.

Section 70 of the Limited Companies Act places restrictions on the repurchase of shares in certain circumstances. Therefore, the restrictions are set out in Section 68. **Sections 69 and 70** of the Limited Liability Companies Act, 2013, together with **Regulation 17** (Share Capital and Debentures) of the Companies Act, 2016, as amended, governs the process of buyback of shares in an unlisted company. Buyback of shares listed on a recognized stock exchange is done as per regulations issued by SEBI.

Reasons for share buyback:

There are several reasons that require a company to notify a buyback. Undervalued shares Excess cash with few project opportunities Strengthening promoter ownership in the company To achieve an optimal capital structure.

Share purchase can be done as follows:

Share purchase from existing shareholders in proportion

Share open market repurchase

ESOP or repurchase of securities issued to employees of shares.

National Company Law Tribunal

The National Company Law Tribunal (NCLT) is a quasi-judicial body in India that was established under the Companies Act, 2013. Its primary function is to adjudicate on matters relating to corporate law, including disputes between companies and their shareholders, mergers and acquisitions, insolvency and bankruptcy, and other related matters. The NCLT bench is chaired by a Judicial member who is supposed to be a retired or a serving High Court Judge and a Technical member who must be from the Indian Corporate Law Service, ICLS Cadre.

No criminal court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

National Company Law Appellate Tribunal

The National Company Law Appellate Tribunal (NCLAT) is a quasi-judicial body in India that hears appeals against the decisions of the National Company Law Tribunal (NCLT). It deals with the issues related to companies themselves under the Companies Act, 2013 and the Insolvency and Bankruptcy Act, 2016.

Layout NCLAT was established under the Companies Act, 2013 and became operational in June 2016. It is headquartered in New Delhi.

Court The NCLAT primarily hears appeals against NCLT decisions relating to the provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Act, 2016. It has appellate jurisdiction throughout the country.

Composition The NCLAT shall consist of a Chairman and such number of Legal and Technical Members as the Central Government may deem fit to appoint. The President is usually a retired Judge of the Supreme Court of India or a retired Chief Justice of the Supreme Court.

Powers NCLAT has powers to hear and decide appeals against orders of NCLT. It can also deal with appeals against decisions of the Competition Commission of India (CCI) and orders of the Insolvency and Bankruptcy Board of India (IBBI).

Significance- NCLAT plays a crucial role in resolving corporate disputes and insolvency proceedings in India. Its decisions have far-reaching implications for companies, creditors, shareholders and other stakeholders. Overall, the NCLAT serves as an important appellate forum for resolving disputes arising under Indian company and insolvency laws, thereby promoting efficiency and effectiveness. of legislation regulating state-owned companies.

Conclusion

India's corporate law, enshrined in the Companies Act, 2013, is the backbone of the country's vibrant business world. This legal framework has undergone a remarkable transformation as it has left its colonial origins and embraced a new era in harmony with India's unique socio-economic structure. The cornerstone of this change is the law's unwavering focus on transparency and good governance. This commitment is manifested through a multifaceted approach. Corporate boards are now authorized to include independent directors who act as impartial watchdogs. Audits are subject to stricter regulations that ensure the accuracy and integrity of financial reporting. In addition, the law requires enhanced disclosure of financial information, which promotes a culture of transparency and accountability in companies.

However, the law expands its scope beyond mere financial transparency. It recognizes the importance of a holistic approach and prioritizes the well-being of various stakeholders. Shareholders who trust their capital to grow the company are better protected. Employees, who are the backbone of the organization, are guaranteed their rights and welfare. The environment, a key component of sustainability, is given a voice legally through corporate social responsibility (CSR) initiatives. These mandatory CSR programs encourage companies to contribute to social causes and environmental sustainability, which promotes a sense of shared responsibility.

But the road to effective policing is rarely smooth. The main challenge remains to ensure that the law moves from text to action. Regulators and companies must work together to close the gap between theory and practice. The ongoing process is to find a delicate balance between strong regulation, which is critical for stakeholder protection and market integrity, and flexibility, which allows companies to adapt and innovate. In addition, the impact of the law on SMEs requires careful monitoring. Streamlining compliance procedures specifically related to these important economic engines is critical to their continued growth and India's economic prosperity. As the Indian business world evolves, commercial law will undoubtedly adapt and improve and play a key role in creating an accountable, transparent and dynamic business environment in the country.

References

- <https://www.mayerbrown.com/en/insights/blogs/2021/06/india-imposes-new-esg-reporting-requirements-on-top-1000-listed-companies>
- <https://www.azbpartners.com/bank/esg-reporting-in-india-where-do-we-stand/#:~:text=The%20ESG%20reporting%20landscape%20in,Core%2C%20which%20requires%20third%2Dparty>
- https://www.ey.com/en_in/climate-change-sustainability-services/bsr-reporting-and-the-evolving-esg-landscape-in-india
- <https://iclg.com/practice-areas/environmental-social-and-governance-law/india>
- <https://www.controlrisks.com/our-thinking/insights/india-the-long-and-winding-road-to-indias-esg-regulations-framework>
- <https://www.india-briefing.com/news/esg-reporting-india-new-disclosure-requirements-sustainability-23471.html/>

<https://www.businesstoday.in/technology/news/story/an-introduction-of-esg-disclosures-in-indian-regulatory-space-part-1-371707-2023-02-28>

<https://www.xbrl.org/news/unlocking-the-potential-of-esg-disclosures-in-india-a-must-read-analysis/>