

Ease of doing business: Suggestions and recommendation of the Companies Law Committee

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Introduction

The Companies Act, 2013 (the Act), was one of the most significant legal reforms in India in the recent past, aimed at bringing Indian company law at par with global standards. It was incorporated after taking into consideration the recommendations made by various committees such as the J. J. Irani Committee, and the Naresh Chandra Committee. Before bringing forth the Act, the Companies Bill was prepared, and views and suggestions were invited from various chambers, professional institutes, other regulators, stakeholders, etc. The Bill was thoroughly examined by the Parliamentary Standing Committee and finally it was enacted. Initially, the Act was brought into force with the provisions which are required in the day-to-day affairs of the corporate sector and keeping pending the provisions for the establishment of the National Company Law Tribunal (NCLT).

The aim

The Act aimed at introducing significant changes in the Indian corporate scenario, focusing on accountability, disclosures, investor protection and corporate governance. On the introduction of new changes, the stakeholders faced several difficulties from time to time in the process. All the four chambers, namely, the CII, FICCI, ASSOCHAM and PHDCCI arranged a seminar with the participation of Government officials and expressed industries' point of view. Similarly, all the three professional bodies raised their concern on the practical difficulties being faced during implementation.

Constitution of the Companies Law Committee

The Government issued various Orders, Notifications and Circulars from time to time. Even exemption notifications from some of the provisions of the Act for private companies, section 8 companies, Government companies and Nidhis were issued in June 2015. During the same period, the

Government constituted the Companies Law Committee (CLC) under the chairmanship of the Secretary, Ministry of Corporate Affairs, with the Joint Secretary (Policy) as its convener. A former Judge of the Delhi High Court, the presidents of all the three professional institutes and two industry nominees were the other members of CLC. The Committee co-opted representatives from the RBI and the SEBI as its members.

Duties of Companies Law Committee

CLC was constituted with the mandate of:

- (a) Making recommendations on issues arising from the implementation of the Act, and
- (b) Examining the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on Corporate Social Responsibility, the Law Commission of India and other agencies.

The Committee during its deliberations studied the recommendations and suggestions received from various stakeholders as well as international best practices.

The report prepared by the CLC recommends several changes to the Act for proper and effective implementation and to remove the ambiguities in the provisions keeping in view the concept of “ease of doing business.”

Working process of the Committee

The CLC had more than eight meetings between July, 2015 and January, 2016. The CLC invited suggestions from the public on an online e-platform specifically created for this purpose. The industry chambers and professional institutes were requested to collate suggestions and submit these through the online platform after necessary vetting. The Secretary General of the Supreme Court of India and the Registrar Generals of all High Courts were also requested to bring it to the notice of the Judges as well as the Bar Association to submit their suggestions on the e-platform. The Comptroller & Auditor General (C&AG) and various regulators, viz., CCI, RBI, SEBI, NHB, TRAI, CERC, and IRDA, were also approached to give their suggestions to the Committee.

Six review groups

Over two thousands comments were received from industry chambers, professional bodies, companies and individuals. Six groups were set up to review the suggestions received during the public consultation. Each group

was convened by the member of the committee and included subject matter expert and representatives from other professional bodies and industry.

- The first group studied the registry-related issues, which included the provisions on the incorporation of companies, registration of charges, registration offices and fees payable to the MCA/RoC.
- The second group examined the issues relating to the raising of funds, such as prospectus and allotment of securities, acceptance of deposits by companies, share capital and debentures, declaration and payment of dividend, and registered valuers.
- The third group considered issues relating to accounts, audit and enforcement, including inspection, inquiry and investigation and Nidhis.
- The fourth group studied issues relating to corporate governance, which included including management and administration of companies, meetings of Board and its powers, appointment and qualifications of directors, and appointment and remuneration of managerial personnel.
- The fifth group examined issues relating to the sections yet to be notified owing to litigation on the National Company Law Tribunal. They considered, among others, issues related to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, revival and rehabilitation of sick companies, winding up companies, and winding up of unregistered companies
- The sixth group studied the penalty provisions in the Companies Act, 2013.

Guiding principles for the review groups

The groups were requested to keep in mind the following guiding principles while examining the suggestions received from stakeholders:

- Need to balance the interest of various stakeholders like companies, professionals, investors, regulators, etc.;
- Need to simplify processes or doing away with unnecessary procedures;
- Need for greater transparency and disclosures in view of lesser regulatory interference and greater self-regulation;

- Bringing greater clarity in language of the provisions of the Act, wherever required;
- Pros and cons of addressing issues through subordinate legislation, i.e., Rules versus amendment in the Act;
- Compliance requirements for various classes of companies versus public interest;
- Levels of punishment for non-compliance and the necessity to improve compliance.

The MCA engaged the Vidhi Centre for Legal policy for assisting the committee in reaching informed decisions by carrying out research, consulting businesses, practitioners and corporate law academics as well as international practitioners.

Based on the inputs given by the groups, Vidhi and in-house inputs available with the MCA, every relevant issue was examined and analysed.

Structure and overview of the report

The report is divided into two parts. Part-I, dealing with the suggested amendments in the Act; and part-II, proposing changes to rules issued under the Act. The recommendations would result in changes in 78 sections, and more than 100 changes in the Act.

Recommendations are in for changes and improvements in some of the definitions with an aim to remove ambiguities and make the definitions more objective.

Such amendments would make the process of incorporation simpler and provide greater flexibility for carrying out business and would fall in line with ease of doing business.

As far as the chapters relating to raising of capital are concerned, the recommendations of the Committee are aimed at simplifying the disclosure regime, streamlining the private placement mechanism, and synchronising the provisions of the Act with the regulations issued by other sectoral regulators.

The recommendations of the Committee relating to declaration and payment of dividend are aimed at harmonising the provisions in the Act and Rules to provide correct interpretation and for addressing some loopholes to ensure that businesses do not misuse the provisions to pay dividend out of the company's capital.

The Committee's recommendations on corporate governance are aimed at striking the right balance among objectives such as improving corporate governance, incentivising individuals to take up positions of responsibility, and reducing the cost of compliance.

The remaining recommendations proposing amendments to the Act deal with issues relating to compromises and arrangements, registered valuers, companies incorporated outside India, registration offices and fees, Nidhis, National Company Law Tribunal, Special Courts and penalties.

The Committee has also, as part of its deliberations, recommended certain changes specifically for encouraging startups. In addition, there are certain recommendations which, though being changed/ modified for other classes of companies would create a positive environment for startups.

These recommendations relate to incorporation, raising of capital, and certain compliances. Specifically, the recommendations have been made for reducing compliance burden on account of the private placement procedure, simplifying the procedure to convert a LLP into a company, addressing concerns with regard to insider trading provisions, increasing the thresholds for private companies to comply with having an independent director, audit committee, nomination & remuneration committee, doing away with the requirement for Government approval for managerial remuneration, and increasing the limits with regard to sweat equity that can be issued by a company from 25 per cent of paid up capital to 50 per cent.

Conclusion

The Government is taking all steps in the direction of ease of doing business. The recent development is to encourage startups with much incentives and tax concessions. The suggestions of the CLC are laudable and in the same direction of Government's thinking. Improving corporate governance with individuals' responsibilities and cost reduction would encourage corporates to achieve their milestones. Recommendations are also made in the acceptance of deposits, payment of dividend and so on, which would protect the interest of investors.

The suggestions for changes relating to accounts and audit are to improve transparency and the quality of information in relation to financial position of the company. It has also explained in simple language about the provisions and the rules which are clear in nature and do not require any changes and the corporates and professionals can take advantage of such clarification for their compliance and performance.

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