

## Companies Act suggestions: A step in line with the times

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India's Companies Act, 2013, has had a chequered and a sluggish start. While it received presidential assent on 29 August 2013 and appeared in the official gazette the next day, only 98 of its 470 sections were notified on 12 September 2013. A further 183 sections, along with rules implementing the notified sections, were notified into effect on 1 April 2014. Until all the sections are notified, the provisions of the Companies Act, 1956, that do not contradict the notified provisions of the 2013 act will continue to apply.

While the 2013 act is well intentioned, parts do not seem to have been thought through in terms of practical impact. For instance, the move to raise compliance requirements for private limited companies to the same level as public companies received much opprobrium, and was rolled back in 2015 to nearly the same position as in the 1956 act.

Similarly, multiple representations have been made seeking amendments to section 135 of the 2013 act, on "voluntary" corporate social responsibility (CSR). These resulted in the constitution of a high level committee to examine implementation of section 135, which submitted its report in September 2015.

In view of the constant complaints around the implementation of the 2013 act, the government constituted a committee on 4 June 2015 to provide recommendations on issues that have arisen, and to consider the reports of the committees on CSR and bankruptcy law reform, and the Law Commission. This latest committee submitted its report on 1 February and its recommendations to streamline and reform the 2013 act have been received like a breath of fresh air. The report's guiding principles include: (a) balancing the interest of companies, professionals, investors, regulators and other stakeholders; (b) simplifying processes and doing away with unnecessary procedures; (c) providing "greater

transparency and disclosures in view of lesser regulatory interference and greater self-regulation"; and (d) clarifying the provisions of the 2013 act.

For starters, the report recommends that in view of the new definition of "charge" (which includes a lien), the charge registration rules incorporate exceptions to the registration of a lien. From a fundraising perspective, to remove the confusion created by the definition of "debenture", which appears to encompass instruments such as commercial papers, the report recommends that, in consultation with the Reserve Bank of India and the Securities and Exchange Board of India (SEBI), the central government should carve out the instruments that they regulate.

Further, as the definition of a "listed company" includes companies that have non-convertible debentures listed but no equity shares listed, the report recommends providing exemptions for such companies. This is of particular importance for companies established as special purpose vehicles, which have not listed any equity shares, and have raised funds by issuing listed non-convertible debentures.

Notably, addressing a common bugbear of Indian corporate groups, the report recommends that loans to a "person in whom director is interested" (*sic*) may be allowed as long as these are authorized by way of a special resolution. In a similar vein, to facilitate "legitimate business structuring", the report also recommends removing the requirement that companies not have more than two layers.

Significantly, to ease the process of issuance of securities through a private placement, the removal of the requirement to file a "private placement offer letter" with the registrar of companies has been recommended. Further, to protect investors, it is proposed that

the application form include disclosures such as the objects of the issue, the number of securities to be issued and the pricing methodology. Another welcome recommendation is that section 42 of the 2013 act be amended to explicitly allow the simultaneous offering of more than one type of security by way of private placement.

From a streamlining perspective, the removal of provisions on insider trading and forward dealing as these are already covered in SEBI's regulations has been recommended. To this extent, the report also recommends aligning prospectus disclosure requirements in the 2013 act with SEBI's prescriptions. Presumably in support of the government's "Make in India" initiative, the report also recommends allowing promoters who are employees or directors to benefit from employee stock options and the raising of sweat equity issuance ceilings from 25% to 50% for startups.

The report is balanced and its recommendations reflect due consideration and deliberation by persons who have actual experience in the day-to-day functioning of Indian companies. Many hope the report will usher in wide-ranging changes to the 2013 act to make it more "business friendly" while simultaneously ensuring that the interests of stakeholders are not compromised.

The report has been placed on the website of the Ministry of Corporate Affairs, and was open for public comments until 15 February. With the time for providing comments being so limited, it is hoped that the government may just choose to accept most (if not all) the recommendations and introduce appropriate amendments.

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