The Companies Act, 2013
The dawn of a new era
The Companies Act, 2013 (‘2013 Act’) was enacted on 29 August 2013 on accord of Hon’ble President’s assent, and has the potential to be a historic milestone as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors, and for the first time legislates the role of whistle-blowers. The new law replaces the nearly 60-year-old Companies Act, 1956 (‘1956 Act’).

The 2013 Act provides an opportunity to catch up and make our corporate regulations more contemporary, as also potentially to make our corporate regulatory framework a model to emulate for other economies with similar characteristics. The 2013 Act is more of a rule-based legislation containing only 470 Sections, which means that the substantial part of the legislation will be in the form of Rules. There are over 180 Sections in the 2013 Act where rules have been prescribed.

To facilitate the ease of implementation, a phased approach is being followed by the Ministry of Corporate Affairs (‘MCA’). Accordingly, 282 sections have been notified and are in force as of 1 April 2014. Final Rules for 19 chapters have also been released by the MCA, which are applicable with effect from 1 April, 2014. The Rules for the remaining chapters are in draft stage.
Governance

- At least one woman director
- At least one India resident director
- Independent director (ID) legislated; roles and responsibilities defined
- Database of IDs to be maintained; may select IDs from this database
- One-person company permitted unlike the minimum two before
- Maximum number of directors increased to 15; any additional directors only through Special Resolution
- Maximum 20 directorships per person; maximum 10 public companies
- Stakeholders Relationship Committee introduced
- Mandatory appointment of Key Management Personnel (KMP)
- Directors responsible for design and operating effectiveness of internal financial controls
- Significantly enhanced penalties for directors

Accounts, Audit and Auditors

- Consolidated financial statements mandatory for all Groups, including Unlisted/Private companies, with more than one entity; includes associates or joint ventures;
- Mandatory rotation of audit firm for listed companies post 10 years
- Financial year for all companies to be March 31 (exception for subsidiaries of foreign entities)
- Re-casting and re-statement of financial statements can be ordered; Voluntary revision of financial statements for previous periods now permitted
- Increased restrictions on non-audit services provided by Auditors
- Auditor to also report on adequacy of internal financial controls system and the operating effectiveness of such controls
- Auditor to be a whistle-blower to Central Government, if becomes aware of any fraud
- The maximum limit of 20 companies per Partner in an Audit firm
- Prescribed companies to appoint internal auditor; manner, period and reporting to be prescribed by Central Government
- Significant enhancement of penalties for auditors

Grant Thornton can help dynamic businesses navigate complexities of the new legislation and simplify the regulatory maze through a bouquet of its assurance, business and risk advisory services. For any assistance, contact us at:
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Mergers and Restructuring

- Large companies to spend 2% of average net profit of preceding three financial years on CSR activities or explain why not spent

Other provisions

- Establishment of a National Financial Reporting Authority (NFRA), with the objective of monitoring and enforcing compliance of auditing and accounting standards
- Mergers without Tribunal approval, permitted between two small companies, or between a holding company and its wholly-owned subsidiary
- Valuation report mandatory along with notice to concerned parties in case of proposed mergers
- Mergers with Tribunal approval permitted between two small companies or between holding company and its wholly-owned subsidiary
- Valuations of any property, stocks, goodwill or any other assets, net worth of a company etc. must be performed by a registered valuer
- Class action suits introduced as a remedy for small investors against wrongful acts
- Scheme of compromise or arrangement must be in line with accounting standards; auditors' certificate attesting the same needed
- 'Reverse merger' of listed company into unlisted company now possible; exit option to be provided to listed company shareholders
- Holding of treasury shares directly or through a Trust, prohibited
- 2% of the average net profit of preceding three financial years to be spent annually on Corporate Social Responsibility (CSR) or explain why not; applicable for companies with net worth of Rs 500 crore or more, turnover of Rs 1,000 crore or more, or net profit more than Rs 5 crore
- Merger into foreign companies introduced
- Valuations of any property, stocks, shares, goodwill or any other assets, net worth of a company etc. must be performed by a registered valuer
- Class action suits introduced as a remedy for small investors against wrongful acts

"Obviously, the intent is towards simplification, which is critical for India to become more competitive on the ease of doing business. Whether this objective is finally delivered will depend on two things - the rules that supplement the Act and what they look like, and the change in attitude towards enforcement."

Vishesh C Chandiook, National Managing Partner, Grant Thornton India LLP
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For more information on the Companies Act 2013, visit http://www.grantthornton.in/companiesact2013 or write to us at CompaniesAct@in.gt.com
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