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# COMPARATIVE ANALYSIS OF COMPANIES ACT, 2013 AND COMPANIES ACT, 1956

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## Abstract

*The current economy has witnessed sea changes after the liberalisation. The information technology is playing a great role in the administration of all kinds of business houses. The current economic and regulatory environment in India needs effective law to suit the changing needs of companies. Constant efforts are being made to amend and adapt the laws to suit the demands of modern times. The existing companies Act 1956 has been amended several times to bring about changes required under present situations. As per records the present act has been amended 78 times to bring changes. Even then certain provisions are found to be outdated and inadequate.*

Keywords :*information technology , business houses , modern legislation , globally compliant .*

## Short Profile

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## INTRODUCTION

The main focus of all major reforms is directed towards simplification of the legal system and to have more and more transparency to ensure that it is easy to understand, implements and enables business. A need has been felt to update and make it globally compliant and more meaning full in the context of investor protection and customer interest. In order to bailout the deficiencies in the company act 1956 and bring about reforms in the efficient administration and control of companies, Government of India enacted a law called Companies Act 2103. It has received the assent of President in August 2013. The new Act is a historic piece of legislation aimed at improving transparency and accountability in India's corporate sector. The new Companies Act will give this country a modern legislation, which will contribute to the growth and development of the corporate sector in India. Still it is not fully operational. Ministry of Corporate Affairs is making all out efforts to make all the provisions fully operational. The 2013 Act marks a major step forward and appreciates the current economic environment in which companies operate. It goes a long way in protecting the interests of shareholders and removes administrative burden in several areas. The 2013 Act is also more outward looking and in several areas attempts to align with international requirements. These changes would need to be explained to all stake holders who are interested in the company affairs. The present paper deals with the major differences between Companies Act 1956 and Companies Act 2013. Though there are numerous differences, some of them are explained below for common understanding

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| Point of Difference | Companies Act, 2013 | Companies Act, 1956 |
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| Number of Members for Formation of Company | Minimum number of members required for public company is 7 and maximum is no limit. However, it is 2 and 200 in case of private company.<br>One person company concept is introduced wherein only one member can open a private company. | Minimum number of members required for public company is 7 and maximum is no limit. However, it is 2 and 50 in case of private company.<br>There was no provision for one man company concept |
| Issue of shares at discount | This act prohibits issue of shares at discount except for sweat equity shares. Sweat equity shares can be issued at discount. | There is provision for issue of shares at discount with certain conditions. |
| Issue of Preference shares for more than 20 years | Issue of preference shares for a period of more than 20 years is allowed for infrastructural projects only | Issue of preference shares for a period of more than 20 years is not allowed for any project. |
| Applicability of Rights issue provisions | This provision applies to all companies whether it may be private or public | This provision applies to public companies only. |
| Right shares offer period | The rights shares offer period should be kept open for minimum 15 days and maximum 30 days | The rights shares offer period should be kept open for minimum 15 days and maximum no limit |
| Rights offer Notice through electronic mode | Under this act issue of notice of rights issue can be sent through electronic mode | There is no such provision in this act. |
| Offer of further shares to outsiders other than existing shareholders | Offer of further shares to outsiders before offering them to existing shareholders is allowed by passing special resolution. Other mode prescribed under existing act is removed. | Offer of further shares to outsiders before offering them to existing shareholders allowed under two circumstances:<br>• By Passing special resolution<br>• By passing ordinary resolution with the approval of central government. |
| Quorum of the public company for AGM and EGM | Under this act quorum fixed for conducting meeting is as under:<br>• Up to 1000 members quorum is 5 members present personally<br>• Up to 5000members quorum is 15 members present personally<br>• More than 5000 members quorum is 30members present personally | Under this act quorum fixed was 5 members |

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| Notice of Board meeting | This act prescribes at least seven days notice for calling a board meeting. It can be sent by electronic mode to every director at his address registered with the company. | This act has not prescribed any time limit to call board meeting. |
| Financial year | This act has made it mandatory to have accounting year beginning on April 1 and ending on 31 March every year. | There was no such provision in this act |
| Financial Statements | As per the Companies Act, 2013 the term "financial statements" include:<br>(i) Balance sheet,<br>(ii) Profit and loss account,<br>(iii) Cash flow statement ,<br>(iv) Statement of change in equity, *if applicable*, and<br>(v) Any explanatory note forming part of the above statements.<br>For one person company, small company and dormant company, financial statements may not include the cash flow statement. | Neither the Companies Act, 1956 nor any notified AS defines the term "financial statements." However, the Companies Act, 1956 requires all companies to prepare the balance sheet and the profit and loss account, to place the same before the AGM. In addition, some companies require to prepare cash flow statement. |
| Preparation of Consolidated financial statements | This Act mandates preparation of consolidated financial statements for all companies that have one or more subsidiaries. These would be in addition to the separate financial statements and are required to be prepared in the same form and manner as the separate financial statements. For the purpose of this requirement, the word subsidiary would include associate companies and joint ventures. | This act does not contain any such provisions relating to preparation of consolidated financial statements. However preparation of consolidated financial statements is mandatory only for listed companies under the Securities and Exchange Board of India regulation. |

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| Corporate social responsibility | Every company having net worth of Rs 500 crores or more or turnover of Rs 1000 crores or more or a net profit of Rs 5 crores or more in any financial year shall constitute a committee and spend in every financial year at least 2% of the average net profits of the company made during the 3 preceding financial years. Under the draft CSR rules, net profit is defined to mean 'net profit before tax' as per books of accounts and shall not include profits arising from branches outside India. | There were no provisions relating to the corporate social responsibility. |
| Unpaid Dividend Account | Dividend declared by the company but has not been claimed by the shareholder within 30 days shall be transferred to Unpaid dividend account. It shall also prepare a statement containing the names and their addresses and the amount due and place the same on its website | Dividend declared by the company but has not been claimed by the shareholder within 30 days shall be transferred to Unclaimed dividend account. |
| Rights of investors to make a claim of unclaimed dividend | Under this act a share holder can claim the unclaimed dividend even after completion of seven years from appropriate authority dealing with Investors education protection fund. | Under this act there is no such provision. A shareholder is not allowed to claim the amount of dividend once it is transferred to investors education and protection fund account. Normally dividend unclaimed for 7 years is transferred to the above fund. |
| Internal Audit | Class/classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant or such other professional as may be decided by the Board. Central Government may frame rules, prescribe the manner and intervals in which the internal audit shall be conducted. | This act contains no such provisions relating to mandatory internal audit. |

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| Filing of returns about changes in Promoters' stake by listed companies | Every listed company has to file a return in the prescribed form with registrar of companies with respect to any change in the shareholdings position of the promoters and top ten shareholders of such company. It is to be filed within 15 days of such change. | It is not required under this act. |
| Mode of Notice of General Meeting | This act permits issue of notice of general meeting through electronic mode | No such express provisions permitting notice through electronic mode. |
| Consent of members to shorter notice | In case of AGM and EGM consent of 95% members is essential to give shorter notice | For EGM consent of 95% members is essential But for AGM consent of all members is essential. |
| Maximum Number of Directors | Maximum number of directors in public company as well as private companies is 15. A company may appoint more than 15 directors after passing a special resolution. It is not necessary to get the Central Government approval as required under the 1956 Act to increase number of directors beyond permissible limit.<br>At least one director should be a person who has stayed in India for a total period of not less than 182 days in the previous calendar year. Certain class of companies to have at least one women director. The draft rules state that every listed company & other public company having either paid up share capital of more than 100 crore or turnover of more than 300 crore to appoint a women director. | No such requirement for private company. Maximum number of directors prescribed for public company is 12. If it wants to increase the number of directors to more than 12, it need approval of Central Government. |
| Frequency of Board meeting | The time gap between two board meetings shall not be more than 120 days. | According to this act the meeting of its Board of directors shall be held at least once in every three months. |

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| National Company Law Tribunal (NCLT) | 2013 Act replaces the High Court with a Tribunal to be known as NCLT, which will consists of Judicial and Technical members, as Central Government may deem necessary, to exercise and discharge the powers and functions conferred including approval of merger, corporate reorganization, capital reduction, extension of financial year etc. | |
| Transfer of Profits to General Reserve | Mandatory transfer of profits to reserves before declaration of dividend is removed. Companies may voluntarily transfer a portion of its profits to reserves according to their convenience | Under this act it is mandatory to transfer prescribed percentage of profits to general reserves before declaring any dividend |
| Books of Accounts | It is permitted to keep books of accounts under electronic mode | There is no such provision in the existing act. |
| Payment of dividend through electronic mode | Expressly allowed to distribute dividend in electronic mode | No express provisions relating to payment of dividend in electronic mode |

## CONCLUSION:

The new companies act has been enacted to suit the current business environment. It is shareholders friendly law. More stringent provisions are inserted to curb frauds and malpractices. Internal Audit is made mandatory. One person company concept is introduced to boost business with limited liability. At the same time it prohibits directors involving in insiders trading. It also focuses on e-governance and women participation in board.

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