

# A Descriptive Analytical Study on Possible Impact of Changes Brought In By Companies (Amendment) Act 2017 on Companies



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## Abstract

The Companies (Amendment) Act 2017 is basically a change brought in to rectify the loopholes in the Companies Act 2013. Though the Companies 2013 Act is a significant move towards ensuring better financial disclosure, investor protection, corporate governance and finally ease of doing business, still it lacks some important weapons to ensure all these above goals and specially the problem of multiple conflicts and overreach among the various legislations governing company activities; leading to difficulties in implementation. Since its enactment 100 amendments have been made to the Act.

Researcher collect the information regarding the amendments brought in by the Companies (Amendment) Act 2017 and logically analyze those changes to identify whether it has a positive or negative impact on the various aspects of companies which ultimately impact ease of doing business in India. It has been found that the changes brought in by the Companies (Amendment) Act 2017 are to a great extent is successful in ensuring better financial disclosure, investor protection, corporate governance and finally ease of doing business. Still; with changing business environment there is always a need for constant revision of the provisions for better results from implementing those provisions.

**Keywords:** Ease of Doing Business, Corporate Governance, Financial Disclosure, Amendments, Investor Protection

## Introduction

The companies in India are mainly governed by the Companies Act. The Companies Act 1956 is the main act which governed the Indian companies for last fifty five to sixty years, till the enactment of Companies Act 2013. The Companies Act plays a great role in keeping the Indian companies in a transparent path by ensuring better financial disclosure, investor protection, corporate governance and finally ease of doing business. With the passage of time the business complexities has been more strengthened and the provisions of the past decades are not full proof in combating unethical activities in Indian corporate houses. The flexible and justified company laws not only bring proper environment for business development but also ensure overall economic wellbeing of the country. Keeping these things in mind the government decided to bring in a new Companies Act and finally a new Act came, The Companies Act 2013. Not even before the passage of two years the government realized with the first changing business scenario some amendments in the new Companies Act is very urgent to ensure reduction in conflicts among various provisions of various authorities, better financial disclosure, investor protection, corporate governance and finally ease of doing business. For this Companies (Amendment) Act 2017 has been enacted the idea of which developed in 2015 and the Bill has been raised in 2016. It is very important to know how these amendments will impact business performance in terms of various aspects in a positive way and thus ensure economic wellbeing of the country.

## Review of Literature

“Analyzing Companies Act: A move towards better Governance” by Nishant Sharma, Ruchita Dang in IOSR Journal of Business and Management (IOSR-JBM)(May 2014) a descriptive analytical study looks

at, how far new Companies Act is successful in solving the problems of Companies Act 1956 by a comparative analysis and conclude that though new act is much better still implementation issues and timely revision is the need of the time.

“The Indian Company’s Act 2013 – a boon or bane to Sustainable Development” by CS. Mala Kumari Upadhyay in IOSR Journal of Business and Management (IOSR-JBM) (July 2017) the paper looks into why a new Companies Act has been brought into and how far it is beneficial for the company; specially in respect to corporate governance practices and conclude that new Act is a titanic shift for better corporate governance and specially for protection of minority shareholder’s interest and ensuring of women representation in boards.

“A Comparative Study of UK Companies Act, 2006 and Indian Companies Act, 2013” by Dr. Rajesh Kumar Agarwal in International Education & Research Journal (November 2015) the paper is a descriptive analytical study looks into in what respect Indian Companies Act has an edge over UK’s Act, how far both the Act are successful in ensuring proper corporate governance and finally what are the changes needed in the Act. The paper concludes that though both the acts are basically based on local customs; Indian act is much more modern and more at par with present business scenario whereas UK act is backdated to a certain extent. New Companies Act of India is a game changing step in ensuring proper corporate governance and investor protection.

There are also various reports and news in various newspapers regarding key changes and possible impact brought in by the Companies Act 2013 for companies operating in India and those reports basically termed new act a game changer for transparency and ease in business activity, though they also mentioned to reap full benefits from it implementation issues have to be looked into and proper revision is required.

After going through the review of existing literature researcher consider that logical and descriptive analysis of amendments of Companies Act 2013 in form of Companies (Amendment) Act 2017 is the need of the time to find out how far those changes are beneficial for ensuring better financial disclosure, investor protection, corporate governance and finally ease of doing business and also whether any revision is necessary or not, as no research work has not yet been conducted on it as per my review of existing literature.

#### **Objective of the Study**

The objective of this study is to find out by logical descriptive analysis that how far new changes brought in by the amendments of the 2013 Act ensures smooth and transparent functioning of the companies operating in India by removing the loopholes of the Companies Act 2013.

#### **Research Methodology**

Researcher collected information regarding new provisions that were brought in by the Companies (Amendment) Act 2017 and logically analyze those changes to determine whether those changes will ensure smooth and transparent

functioning of Indian companies in terms of cost of compliance, investor protection, conflicts among contradicting provisions of different authorities and finally easing of business operations. The results of these analysis will be matched against some international rankings(index) regarding smooth and transparent business operations to show how far our analysis are logical and how far implementation issues are looked into seriously. Finally based on all above procedures researcher conclude.

For the purpose of this research work. researcher considered 15 most important changes brought in by the amendments of the act as per our opinion based on various news reports and experts’ view.

Indexes that are taken into consideration are as follows:

1. Ease of Doing Business index by the World Bank.
2. Global Competitiveness Index Developed by World Economic Forum.

#### **Analysis of Data**

Following are the changes in the provisions of the Companies (Amendment) Act 2017.

#### **Associate Company**

As per 2013 Act Associate company has been defined as a company in relation to another company; where that another company has “significant influence” on that company and included a joint venture company.

“Significant influence” has been defined as; at least 20% control on total share capital or business decisions under an agreement.

*Under new amendment “Significant influence” has been redefined as controlling at least 20% of the voting power in place of total share capital and taking part in at least 20% of the business decisions, not only control of business decisions.*

#### **Analysis**

The new change brought in by the Amendment Act 2017 make the business process more transparent; as previously in the name of ‘associate relationship’ the another company to whom other company is associate and the associate company take various benefits, whereas in real sense the another company has not even control 20% of the voting power and not even takes part in 20% of the business decisions of the associate company, so shareholders or investors who invested in this another company relying on this relationship are betrayed. It is a good step for investors protection also.

#### **Holding Company**

As per Companies Act 2013 Holding Company has been defined as any company in relation to one or more other companies, that such one or more other companies are subsidiary companies of that company. Holding company is any company which has been incorporated under 2013 Act or under any previous Companies Act of the country but does not refer to any entity incorporated outside India.

Under new amendment Holding Company includes any Body Corporate, irrespective of its place of incorporation.

**Analysis**

Under new amendment a foreign company can be a holding company of an Indian company, previously an Indian company can be a subsidiary of a foreign company but a foreign holding company is not recognized under Indian law, so various restrictions which guided the relationship between holding and subsidiary for ensuring transparency in their activities can be now ensured henceforth. Specially ensures transparency in appointment of auditors and giving of loans in between holding and subsidiary.

**Subsidiary Company**

As per 2013 Act Subsidiary Company in relation to another company means, where that another company control more than 50% of the total share capital of that company.

*As per new amendment control of total share capital has been eliminated and control of voting power has to be considered for determining holding subsidiary relationship.*

**Analysis**

Control of voting power is the main guiding force in determining how far a company controls the function of the another company, previously as it has been said that control of share capital, in many cases both holding and subsidiary companies take benefits of relationship, under some restrictions due to that relationship and finally investors invested in holding or subsidiary based on those relationship but in actual sense the holding company did not enjoy majority of voting power or decision making power. This situation hampers investor's confidence and industry prospect, thus new Act bring change to solve this problem.

Issue of shares at a discount:

As per Companies Act 2013 issue of shares at a discount to the face value is prohibited.

*As per new Companies (Amendment) Act 2017 company can issue shares at a discount to its creditor under statutory resolution plan or under debt any restructuring scheme in accordance with any guidelines or regulations or specifications provided by the RBI.*

**Analysis**

The new amendment will help a lot the sick and financially weak companies to turn around by restructuring their capital base and by smoothing their operations. But allowing only to selected group of companies is not fare as many small companies are very much in need of this benefit.

**Issue of Sweat Equity Shares**

As per 2013 Act, Sweat Equity Shares could not be issued within one year from the date of commencement of the company.

*As per new amendment this provision has been deleted.*

**Analysis**

This Amendment can be considered as a game changer for newly incorporated companies and for start-ups as it will help them to bring talent and technical know-how, apart from managerial skills without payment or making any cash outflow, hence it will definitely support ease of doing business in a country.

**Public Offer**

As per 2013 Act; in case of public offer the matter to be stated in the prospectus overlaps with SEBI regulations regarding the same.

*New amendment provided for elimination of those disclosure requirements which overlaps with SEBI regulations regarding this and said that company will provide such information as required by the SEBI in consultation with the Central Government.*

**Analysis**

This Amendment will bring down the complexity of regulatory compliance work and thus automatically ensure reduction of compliance time and cost.

**Liability for the misstatement in the prospectus**

2013 Act prescribed civil liability for directors and promoters for giving misleading statements after relying on statements made by experts, whether name of those experts are identified or not.

*New amendments prescribed that promoters and directors cannot be prosecuted under civil liability if those directors and promoters can prove that he had made the statements based on the statements of the expert and he had adequate ground to believe that expert is competent to make that statement, the expert had given the consent to issue prospectus, had not withdrawn that consent before the registration of such prospectus and such expert was identified in the prospectus.*

**Analysis**

This Amendment will act as a moral boost for the promoters and directors of the company, it will relieve them from unnecessary legal hackles where they performed their works diligently and on other hand it will make experts more responsible for their work. This will bring a good balance in responsibility among the organizational people and will thus ensure transparency and smooth functioning of the organizations and better information disclosure through prospectus.

**Under 2013 Act every listed company required to file a return with the ROC for intimating any change in shareholding of the promoters and top 10 shareholders of the company.**

*New act has removed this provision.*

**Analysis**

The new change though brings down the compliance cost and time but it will to some extent hamper the transparency in business operations as any major change in share holding is a big change for the company and for its investors, so abolition of reporting obligation may hamper its proper disclosure.

**Key Managerial Personnel**

As per 2013 Act key managerial personnel means managing director, CEO, manager, company secretary, whole time director and chief financial officer.

*The new amendment permits BOD to designate any officer who reports directly to a director in the whole time employment of the company, as a key managerial personnel.*

**Analysis**

The new change will ensure the BOD to designate any person who plays a very important role

## Remarking An Analisation

in company leadership as KMP then he will get all authority, responsibility and benefit of a KMP, but use of words create an ambiguity as to who will be in full time employment director or officer, it will be better if the terms is used for officer. A person to be KMP of a company ought to be its whole time employee for company welfare. This change is good for better organizational performance.

### Prohibition for Insider Trading

2013 Act prohibited Insider Trading of any form by any person, including directors and key managerial personnel.

*The Amendment act removed the provision.*

### Analysis

This new change is a very good step as SEBI has exhaustive provisions for that so conflict among laws hampering ease of doing business can be reduced and private and unlisted companies are also benefitted as they can be from now onwards are free from insider trading regulations and in general insider trading is not harmful for stakeholders of private and unlisted companies.

### Restrictions Regarding Loans to Directors and To Some Other Specified Persons

2013 Act absolutely prohibits all companies from giving any loan or providing any security relating to a loan to a director or to specified persons in which directors was interested.

The new act allows giving of loan subject to (a) prior approval of the company by a special resolution. (b) utilization of the loan by the borrowing entity for its principal business activity.

Amendment of the act also widen the scope of the penalty for the contravening company utilizing loans, guarantee or security.

### Analysis

The new change will help the easing of business processes, as cases where these type of transactions are very much in need for business welfare will no more be restricted. The new amendment has brought in enough measure to check the corporate mis-governance in this respect.

### Convening of Meeting

As per 2013 Act AGMs of a company need to be held in the registered office of the company or at a place situated in the same town, city or village where registered office is situated, while EGMs of a company need to be held in India.

*The Amendment Act 2017 allows AGMs of an unlisted company to be held in any place of India if its' all the members has given consent in advance. The Amendment Act also allows a wholly owned subsidiary of a foreign company to hold its EGMs outside India.*

### Analysis

The new change brought in by the act will ensure reduction of unnecessary regulatory compliance on unlisted companies if its' all the members has given consent in advance, as for unlisted companies stakeholders are not so diverse and large in number; inconvenience in attending AGMs will not be an important factor. EGMs basically deals with matters not so much of importance as matters discussed in AGMs so allowing wholly owned

subsidiary of a foreign company to hold its EGMs outside India is a moderately good step in easing business operations but still it would be much better if members of the companies' approval are needed to be taken for this.

**The 2013 Act requires that for the continuation of the auditor, at the end of each AGMs a ratification by the members are required by an ordinary resolution**

*The new act abolishes the requirement of such ratification.*

### Analysis

This Change on one hand ensure auditor's independence as they can work continuously and independently for 5 consecutive financial year without any authority of members to remove them by ordinary resolution and on other hand the old provision was also inconsistent with another provision of 2013 Act which ensure 5 year term for an auditor to ensure his independent work. This change will ensure better corporate governance.

### Authentication of Documents

As per 2013 Act the authority to authenticate or execute documents on behalf of the company stay only with directors and key managerial personnel of the company.

*The new Act authorizes the board to authorize any person to authenticate or execute documents on behalf of the company.*

### Analysis

This is a good step in ensuring the smoothing and quickening the business process; which will furthers brings down cost of business operations and will ease business activity. But there is a definite need to have enough control mechanism for the board of the company to ensure that right person has been authorized to authenticate any document and that person is doing as per his authority, to ensure good governance in the company.

### Loans and Investment by Companies

The 2013 Act restricted the ability of a company to grant loans to and make investments beyond a specified limit, in other companies.

### New change brings the following:

1. *The prohibition on companies from granting loans beyond specified limit will not be applicable for granting loans to the employees of the company.*
2. *The limit prescribed will also not be applicable for the following i) Loan or Guarantee given or security provided by a company to its wholly owned subsidiary company or a joint venture company; and ii) Holding Company made the acquisition, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company.*

### Analysis

The new change first of all will ease the process of granting loans to the company employees, if necessary precautions can be taken in granting loans to employees this change can ensure employee commitment and loyalty for the organization and can thereby enhance company welfare. Secondly, the new change will also ensure better financial prospect for wholly owned subsidiary and joint venture companies.

It will ease their business operations, but it would be better if new change also specify the purpose for which loans can be granted. Finally the new amendment also eases the acquisition of wholly owned subsidiary company by its holding company, which may give synergic impact to both the companies.

#### Changes in ranking under some indexes:

Rank	(total Countries)	Name
2017(2016)	2018(2017)	

**Ease of Doing Business index by the World Bank**  
100(190)                      77(190)

(Study period)

Global Competitiveness Index	Developed
40(137)	58(140)

#### By World Economic Forum

(Study period)

(WEF clarified that 2018 index employed a majority of new factors such as workforce diversity, labour rights, e-governance etc.. "If we back-cast our new methodology to 2017, this indicates a rise of five places in (India's) ranking," the WEF said.)

#### Analysis

Both the international indexes show a better trend in terms of better business prospects for India in 2017 than 2016. The improvement of 2018 index position over 2017 index position for Ease of Doing Index by India represent that business environment in India in 2017 is more friendly for development of business than business environment of 2016. Most of the factors that has been taken into consideration by the World Bank in developing this index has been better off and those factors are directly linked with new changes brought in by the Amended Company Law in 2017. So it can be said that betterment of business environment in 2017; highly supported the merits of new changes brought in by the Amended Company Law in 2017.

In case of Global Competitiveness Index, which also represent health of business environment in country also improves; as stated above, in 2017 in comparison to 2016. Here also; most of the factors which are taken into consideration for its determination has improved over the years. Many of these factors are directly related to new changes brought in by the Amended Act , So here also it can be termed that new changes brought in by the Companies Act(Amended) 2017 has improved the business doing conditions in India.

#### Conclusion

The new changes brought in by the Companies (Amended) Act 2017 are mostly beneficial for ensuring transparency in business operations, reduction of complexity in business operations and thus ensures favourable business conditions for business to grow smoothly. But the most important area to be taken into care now is to tackle the problems associated with the implementation issues, it is always a big problem for our country that implementation of laws accurately in real life are mostly remain undone or overlooked, which destroy the merits of the provisions. Hence in this case also it will be of great importance to take all desired measures; so as to ensure proper implementation of

new changes brought in by Company Law in real life scenarios.

It can be also concluded from the changes in international rankings from 2017 to 2018, that new changes in the Company Law are on one hand improve the business doing conditions in India and on other hand these changes are also considered by international experts; who are preparing these indexes as good changes for welfare of business environment of India.

#### Recommendations

1. Some changes in the law to smoothen regulatory compliances and easing business operations, should be properly handled so that easing of process do not hamper corporate governance.
2. Ambiguity arises from the writings of the provisions should be taken care off.
3. It will be very important for both companies, regulatory authorities and for government to ensure proper implementation of this new changes; so that easing of processes are not misused for self-interest by any stakeholder and actual business welfare oriented objectives that are desired by these changes can be achieved.
4. Government has to always check the relevancy of existing Company Law provisions, as business environment is first changing it is of immense important that constant revision of provisions is the need of the time and government has to ensure it to make business environment much more friendlier for its development.
5. More and more research is required in this field, based on quantitative data and statistical tools, so as to measure the effectiveness of new changes in Company Law much more accurately.

#### Limitations

1. The paper is totally descriptive and analysis based, it does not use any statistical tools and quantitative data.
2. The paper has taken into consideration some important changes brought in by the Companies (Amendment) Act 2017, not all the changes.
3. The study is totally based on secondary data.

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