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A COMPARATIVE STUDY OF UK COMPANIES ACT, 2006 AND INDIAN COMPANIES ACT, 2013

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ABSTRACT

With the ever-changing business environment the way in which business firms are supposed to work also changes. With this changing environment it is in the best interest of the country to keep on incorporating various corporate laws arising in terms of challenges due to changes taking place in corporate arena.In this paper, an attempt is made to bring out the comparative picture of India and United Kingdom with regard to Indian Companies Act, 2013 and UK Companies Act, 2006 respectively.This paper covers the core contents generally associated with the corporate and their compliances. Our research throw some light on the framework of UK Companies Act, 2006 and Indian Companies Act, 2013 and the rapid challenges faced by both the countries in their corporate governance world. Our study also shows that UK law has been slow to move to revise its company law legislation but has learn from the experiences of other countries while Indian Companies Act, 2013 has taken a step ahead towards the rapid changes in the corporate scenario.

Keywords: Corporate Laws, Corporate Social Responsibility, Charges, Directors, Dividend, Meetings, One Person Company.

1.INTRODUCTION

Indian Company Law is conceived and developed in UK. Cherished child of English parents born and brought up England. Whenever we are contemplating any course of action it is always extremely important to check the provisions of governance as these vary from company to company as well as country to country. In the past 57 years during which the Companies Act, 1956 has been in existence, the corporate and business environment has evolved significantly and hence there was a need to revamp the legislation governing Companies. The Companies Act, 2013 was enacted on 29th August, 2013 after receiving President's assent. The Act 2013 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.

The Act of 2013 intends to promote self-regulation and has also introduced some progressive concepts like One-Person Company, Small Company, Dormant Company, E-governance etc. The concept of Corporate Social Responsibility has also been introduced to encourage a socially, environmentally and ethically responsible behavior by companies. The Act of 2013 further aims to fortify investor protection and transparency by introducing terms like Insider Trading, Price Sensitive Information, Class Action Suits and other additional disclosures. A National Company Law Tribunal will also be a reality now and therefore the matters which used to linger in courts for years will be swiftly handled by this dedicated tribunal.

UK Company Law has undergone a major reform in 2006. A new Company Law was enacted in UK as UK Companies Act, 2006. The UK was one of the first nations to establish rules for the operation of the companies.The Companies Act 2006is an Act of the Parliament of the United Kingdom which forms the primary source of UK Company Law. It had the distinction of being the longest in British Parliamentary history: with 1,300 sections and covering nearly 700 pages, and containing 16 schedules (the list of contents is 59 pages long). The Act provides a comprehensive code of company law for the United Kingdom, and made changes to almost every facet of the law in relation to companies.Implementation of the Act is the responsibility of the Department for Business, Innovation and Skills.

The key provisions includes that the Act codifies certain existing common law principles, such as those relating to director's duties, implements the European Union's Takeover and Transparency Obligations Directives, introduces various new provisions for private and public companies,applies a single company law regime across the United Kingdom, replacing the two separate (if identical) systems for Great Britain and Northern Ireland and it otherwise amends or restates almost all of the Companies Act 1985 to varying degrees. Therefore, in this paper an attempt has been made to bring out a comparative analysis between Indian Companies Act 2013 and UK Companies Act 2006.

2. OBJECTIVES OF THE STUDY

a) To compare the Indian Companies Act, 2013 and UK Companies Act, 2006.

b) To understand the points where Indian Companies Act, 2013 has got an edge over UK Companies Act, 2006.

c) To know the various developments in both the countries related to Companies Acts.

d) To understand the need of having a very comprehensive and revamped Companies Act.

e) To understand their role in ensuring better corporate governance.

3. RESEARCH METHODOLOGY

The present study is an attempt of exploratory research, based on the information collected from various secondary sources such as books, research journals available online, newspaper articles, various websites, bare acts and magazines in order to achieve its objectives.

Our study covers the comparative analysis of Companies Act of India and UK. The scope of the study covers the following:

- Incorporation and Types of Companies
- One Person Company
- Meetings
- Charges
- Dividend
- Directors
- Corporate Social Responsibility
- Winding up

4. COMPARATIVE ANALYSIS

- ***Incorporation and Types of Companies:***

• *Incorporation:*

Registration is the process by which a company is incorporated and becomes a legal entity separate from its owner(s). This process is commonly referred to as registration, incorporation or formation of a company.

In UK Companies Act 2006, this principle is stated in section 7 (1).Registration is effected by delivering the relevant documentation to the Registrar of Companies. There are three ways to file information with Companies House such as electronic software filing with standard fee of£ 13, paper filing the IN01 form- the standard fee is £ 40 or web incorporation service through Companies House's online portal- the standard fee is £ 15. In order to incorporate a company both memorandum of association and articles of association are required to be submitted to Companies House.The memorandum, which includes a statement of compliance, must be delivered to Companies House together with an application for registration of the company and the new company's articles of association.The articles of association sets out how the company is run, governed and owned. There are certain types of articles which are present in Act such as Model articles, Bespoke articles and Shareholder agreements.

In Indian Companies Act 2013, to get incorporated, apply for the name of the company to be registered by filing Form INC-1 for the same. Prepare the Memorandum of Association which has six clauses and contains tables A, B, C, D and E and Articles of Association that contains tables F, G, H, I and J. After that depending upon the proposed company type file required incorporation forms: Form INC-7 or Form INC-2, Form INC-22 and Form DIR-12 with the Registrar of Companies. The Government of India has notified on 1st May, 2015, a new system of incorporation of Private and Public Limited Company. It has introduced easy method of incorporating by filing e-form INC-29 (single form) with the Registrar of Companies, within whose jurisdiction the registered office of the company is proposed to be situated.

- *Entrenchment of Articles:*

The concept of entrenchment under Indian Companies Act is a new concept as there was no such concept under the old act. It makes certain amendments in the articlesmore difficult. The provision of entrenchment has been provided under section 5 (3) of Indian Companies Act, 2013 and under section 22 of UK Companies Act, 2006.

- *Types of Companies:*

In UK Companies Act, 2006 the companies that can be formed are Community Interest Company, Right to Manage Company, Companies Limited by Guarantee, Unlimited Companies and Limited Liability Partnerships whereas in India following companies can be formed as per Indian Companies Act,2013: Public Company, Private Company, Government Company, Foreign Company, One Person Company, Small Company and Dormant Company.

➢ ***One Person Company***

Section 2(62) of the Companies Act, 2013 defines OPC as a company which has only one person as a member which is a new concept in India. OPC can be registered only as a private company and cannot be converted or incorporated into section 8 company (i.e. company with charitable objects, etc.) or carry out non-banking financial activities, including investment in securities of any body corporate. It must have a minimum paid-up capital of Rs.1lakh and cannot make invitation to public to subscribe for its securities. The concept opens up a spectacular possibilities for sole proprietors and entrepreneur who can take advantages of Limited liability and corporatization.

In UK, the concept of One Person Company has been in existence for several years now. In UK, the famous case of Salomon vs. A Salomon & Co. Ltd paved the way to the idea of one man company by setting up a precedent. As per section 7 ofUKCompanies Act, 2006, both the private and public companies can be incorporated with a single member. The UK Act does not provide for maximum number of directors which a company can have. Under UK laws, the meeting of Board of Directors is largely guided by the Articles of Association of the Company.
From a general comparison of both, it is evident that except for a few differences, the position is mostly similar in both the countries. However, the concept of OPC is new in India, it needs to be seen whether it will emerge as a success in corporate arena as it is in UK.

➢ ***Meetings***

Board Meetings, General Meetings and Annual General Meetings:

- Every company shall hold the first meeting of the Board of Directors within 30 days of date of its incorporation and thereafter hold minimum number of four meetings every year with a maximum gap of 120 days between two consecutive meetings whereas in UK Companies Act, 2006 does not provide for any such provision, board meetings do not have to be held fixed intervals and may be convened from time to time, as the directors see fit.

- Notice of Board Meeting as per Indian Companies Act requires giving not less than seven days' notice to every director at his address registered with the company while there is nothing in the statue about the notice to be given for board meetings under UK Act. Any director or the secretary can call a board meeting and, unless the articles or a previous board meeting have stipulated the length of notice to be given, the only requirement is that it be reasonable.

- The quorum for board meetings as per Indian Companies Act, 2013 shall be one-third of its total strength or two directors, whichever is higher. However, in UK Companies Act, 2006 the quorum for board meetings is fixed as two directors, unless the directors decide otherwise.

- Minutes of board meetings as per Indian Companies Act, 2013 shall be kept by every company and Minutes books shall be preserved permanently, whether in Physical or Electronic form. Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later whereas in UK Companies Act, as per section 248 every company must cause minutes of all proceedings at meetings of its directors to be recorded. The record must be kept for at least ten years from the date of the meeting.

- A General Meeting is a meeting of company's shareholders. As per UK Companies Act, 2006 Part 13 (comprising 80 sections) provides the statutory framework for the calling and conduct of general meetings whereas in Indian Companies Act, 2013 the provisions are covered under section 96 of Chapter XII.

- Every company is required to hold an AGM as per Indian Companies Act, 2013. There is no point of difference between Private and Public company in holding of AGM while in UK Companies Act, 2006 private companies are no longer required to hold an AGM. However, members of private companies can hold AGM by amending its Articles of Association.

- Every company is required to hold its first AGM within 9 months of closure of its financial year and the gap between two AGMs should not be more than 15months as per Indian Companies Act, 2013 whereas in UK Companies Act, 2006 every public company and private company that is a traded company must hold an AGM within 6 months and nine months for a private traded company commencing on its accounting reference date.

➢ ***Charges***

A charge is a right created by any person including a company referred to as “the borrower” on the assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

- As per section 77 of Companies Act, 2013 companies are required to register all types of the charges with ROC within 30 days of its creation within or outside India or on its property or assets or any of its undertakings or whether tangible or otherwise or situated in or outside India whereas under section 859A of UK Companies Act, 2006 all charges created by a company registered in UK or LLP are registrable at Companies House unless the charge is (a) a charge in favour of a landlord on a cash deposit given as a security in connection with the lease of land; (b) a charge created by a member of Lloyd's (within the meaning of the Lloyd's Act 1982(a)) to secure its obligations in connection with its underwriting business at Lloyd's; (c) a charge excluded from the application of this section by or under any other Act.

- The period allowed for companies to register their charges with ROC is 30 days in Indian Companies Act, 2013 while in UK Act the time limit is 21 days beginning with the day after the date of creation of the charge.

- In Indian Companies Act, 2006 ROC allows companies an additional period of 300 days (30 + 270 additional days) to register their charge while in UK Companies Act, 2006 the relevant charge will be void against a liquidator, administrator or creditor if it is not charged within the time limit.

- The companies has to pay fees as prescribed under the Act and has to file form CHG-1 for registration under Companies Act, 2013 and in UK companies Act, 2006 the companies has to pay a filing fee of £13 while registering, though where using web filing or electronic means, the fee is £10. New Companies House registration forms apply for registration of the creation of charges including, amongst others, separate forms for charges created by written instrument (Form MR01 for companies and LLMR01 for LLPs) and charges created by operation of law where there is no written instrument (Form MR08 and LLMR08 respectively).

- Under Indian Companies Act, 2013 every company shall maintain a register at registered office in form CHG-7 and will be open for inspection to any member or creditor without any fee and to any other person on payment of prescribed fee. While in UK Companies Act, 2006 a company or LLP must continue to keep a register of charges created on or before 5 April 2013 but there is no requirement to do so in respect of charges created on or after 6 April 2013.

➢ ***Dividend***

A dividend is a payment made by a corporation to its shareholders usually as a distribution of profits.A dividend is allocated as a fixed amount per share, with shareholders receiving a dividend in proportion to their shareholding.

- The provisions related to dividend in UK Companies Act, 2006 are set out from section 830 where a company may only make a distribution out of profits consisting of: accumulated profits, realised profits, so far as not previously utilised by distribution or capitalisation and less its accumulated , realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made whereas in Indian Companies Act, 2013 section 123 relates to declaration of dividend, it shall be declared only on the recommendation of the Board, made at the meeting of the Board and it shall be declared only at Annual General Meeting of the company not exceeding the rate recommended by the Board.

- In Indian Companies Act, 2013 interim dividend once it is declared by the Board, it becomes a debt and payable but in UK Companies Act, 2006 an interim dividend may be varied at any time before payment and may therefore only be regarded as due and payable when it is actually paid.

- The amount of dividend which remains unpaid or unclaimed after 30 days from the date of declaration should be transferred to a special dividend account opened by the company in any scheduled bank in Indian Companies Act, 2013 whereas in UK Act, all dividends and sums payable and unclaimed may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

- Any amount in the Unpaid Dividend Account which remains unpaid and unclaimed for a period of seven years from the date of transfer in such account should be transferred to the "Investor Education and Protection Fund" while in UK Companies Act, 2006 if twelve years have passed from the date on which a dividend or other sum become due for payment, and the distribution recipient has not claimed it, the distribution recipient is no longer entitled to that dividend.

➢ **Directors**

Directors are officers of the company who are responsible for managing the company and making the decisions as to its operation on a day to day basis, for the benefit of the shareholders.

- As per section 149 (3) of Companies Act, 2013 board of directors of a company, must have at least one resident director i.e. a person who has lived at least 182 days in India in the previous calendar year whereas no such provision are need to be followed in the UK Companies Act, 2006

- UK Companies Act, 2006 provides for a special type of director to be called as Shadow Director who is not being formally appointed as a director but who nevertheless either controls the management of the company or on whose instructions the directors act. Till date Indian Companies Act does not provide for any such act.

- The Companies Act, 2013 has not prescribed any age limit on a person to become a director of the company. It must have attended the age of majority as the competency to enter into a contract to be a director. However, Schedule V of the Act has put a mandatory condition that to be a director the age of 21 years must have been complete. As per Clause 49 of Listing Agreement, in a Listed Company the age of Independent Director to be appointed should not be less than 21 years of age. While in UK Act, a person aged 16 or under cannot be a director as per section 157.

- The minimum number of directors in a private company must be two and three in case of a public company as per section 149 (1)(a) of Indian companies Act, 2013 whereas a private company must have at least one director and a public company must have at least two director under section 152 of UK Companies Act, 2006

- Maximum number of directors can be 15 under Indian Companies Act, 2013 and can increase if special resolution has been passed in General Meeting whereas in UK Act there is no statutory maximum number of directors.

- As per Section 161(2) A company may appoint an alternate director, if the articles confer such power on company or a resolution is passed (if a Director is absent from India for at least three months) whereas there is no such provision in the Act authorising a director to appoint an alternate to act on their behalf in their absence, so alternates may be appointed only if the articles specifically provide for this.

- Section 149 (1) (a) second proviso of Indian Companies Act, 2013 requires certain categories of companies incorporated to have at least one Woman Director on the board while there is no such clause in UK Act.

➢ ***Corporate Social Responsibility***

Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013. The CSR provisions within the Act, is applicable to companies with annual turnover of 1000 crore INR and more, or a net worth of 500 crore INR and more, or a net profit of 5 crore INR and more. The new rules also require companies to set up a CSR committee consisting of their board members, including at least one independent director and encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities. The new Act requires that the board of the company shall, after taking into account the recommendations made by the CSR committee, approve the CSR policy for the company and disclose its contents in their report and also publish the details on the company's official website, if any, in such manner as may be prescribed. If the company fails to spend the prescribed amount, the board, in its report, shall specify the reasons.

While UK Companies Act, 2006 introduced a mandatory requirement for a business review in the director's report and applies to all companies other than those subject to the small companies' regime.The statute included the duty to promote the company's success for the benefit of the company's shareholders as a whole, which replaces the duty to act in the best interests of the company. Linked to this is the requirement that companies (other than small companies), must include a business review in their annual directors' report, which will inform shareholders so that they are able to assess how the directors have performed their duty under section 172 of the Companies Act.The Companies Act 2006 has now added pressures by requiring directors to have regard to community and environmental issues when considering their duty to promote the success of their company and by the disclosures to be included in the Business Review.The government sponsors a CSP website, on which it says it has "an ambitious vision for UK businesses to consider the economic, social and environmental impacts of their activities, wherever they operate in the world".

- ***Winding Up of Companies***

The winding up process is the last stage in the life of a company, wherein its existence is dissolved and all its assets are used to satisfy the creditors and shareholders.

- As per Section 270 of Indian Companies Act, 2013, the procedure for winding up can be initiated either a) by the Tribunal or b) Voluntary. In UK, for winding up the statue law is principally contained in the Insolvency Act, 1986 and can be done by three ways: members' voluntary winding up, creditors' voluntary winding up and winding up by the court.

- There are no formal arrangements mentioned in Indian laws which would be implemented as alternative of winding up. But company can make informal arrangements by mutual concessions whereas in UK Act, there are three types of arrangements which is mostly used as alternative of winding up: Informal arrangement, Company voluntary arrangements and administration orders.

- Company can be wound up by members, tribunals, creditors, court or any other persons as prescribed in the laws under Companies Act, 2013 while in UK Act, company may be wound by members, creditors, corporate houses or any other government authorities.

5. FINDINGS, CONCLUSIONS AND SUGGESTIONS

There is so much to be learnt from the comparative study of Indian company law and UK's company law, although laws and codes in these have been heavily influenced by the local customs and traditions. Our study has sought to sketch some of the issues underlying reforms that have been introduced in the area of corporate governance in both the countries. The UK law has been slow to move to revise its company law legislation and to some extent it has been able to learn from the experience of other countries. This is a good position to be in if one is open-minded about drawing from foreign experiences. To the contrary, Indian Companies Act 2013 has taken a step ahead towards the rapid changes in the corporate scenario.

Many elements of British company law are deeply embedded in nineteenth-century assumptions. Change has come very slowly when efforts have been made to modernise company law in the United Kingdom. The passage of the Companies Act 2006 was a significant advance after a lengthy period of debate and consultation, but the outcome is far from perfection. This legislation has, however, introduced some important new concepts into this body of British law. The Act sought to simplify company law and to start with a small firm focus as these comprise the vast majority of companies. For the first time, the Act also codified the duties of directors and introduced the concept of 'enlightened shareholder value', to give greater attention to stakeholders other than shareholders and to encourage companies to adopt more long-term perspectives. It is however, still relatively too early to provide a definitive review of recent UKcompany law reforms, although UK corporate governance practices are deserving of moreattention as they have been in place for some time, despite the introduction of new reformssuch as the recent Stewardship Code.

On a concluding note we can say that the introduction of a very comprehensive Companies Act 2013 is a landmark legislation but the concern is about its implementation. No act is helpful if it is not implemented in its spirit, similarly there is also a need to have unified laws for corporate sector to remove ambiguities due to the existence of multiple acts and statues. Companies Act 2013 overcomes some of the major loopholes of company act 1956. It introduces significant changes in the provisions relating to governance, e-management, compliances and enforcement, disclosure and norms, auditors and mergers and acquisitions also, new concept such as one person company, small companies, dormant company, class action suits, registered valuers and Corporate Social Responsibility has been included. But there might be some loopholes with Companies Act 2013 as well specially when in the areas when it does not provide for punitive or penal actions like in the case of section 135. So there is a need to have a re look at some of the parts of the newly introduced act.

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