

India-Japan Newsletter

India towards stronger governance

Introduction

The Companies Act, 2013 (`2013 Act`), enacted on 29 August, 2013 on accord of Hon`ble President`s assent, has the potential to be a historic milestone, as it aims at improving transparency and accountability in the India`s corporate sector.

The Ministry of Corporate Affairs (`MCA`) in India has issued few sets of draft rules in six phases that are to be read together with the 2013 Act.

The 2013 Act

To address the growth needs of dynamic Indian businesses which are part of the third largest economy in the emerging markets, this change was imperative in the corporate regime. The historical Companies Act of 1956 has finally taken a infinite halt and the 2013 Act has switched the corporate world towards more stronger governance which shall safeguard the interest of minority investors and legislate the role of whistle-blowers. These changes in the legislation shall provide greater transparency and assurance to the existing and potential investors in India as they will now see much stricter environment on the corporate management side.

These rules were open for public comments and thus the Act is being implemented in a phased manner by the MCA, before it is finally approved by the Central Government.

Besides the standpoint of corporate members, stakeholders and the investors, the 2013 Act is expected to have strong and longer impact that will contribute a lot to the growth strategy of India economy and shall develop prospects for corporate and social community in India.

The 2013 Act inter alia includes provisions for social welfare activities, encourages appointment of women directors, casts significant obligations on independent directors and auditors and empowers investors against any frauds committed by promoters. It is clear that the new Act will change the way business is undertaken in India, be it for stakeholders or regulators.

Some salient features of the Act and rules include requirement for independent board of director for public companies (other than those listed) in India and directors will now be responsible for design and operating effectiveness of internal financial controls.

Others include enhanced penalties for committing offences by the directors and specific provisions relating to fraud.

Given the need to put more governance controls, the 2013 Act has also induced mandatory rotation of audit firm in listed companies whereby the term cannot be more than ten years and internal audit required for certain prescribed class of companies. Furthermore, the auditors shall now be whistle blowers to Central Government if they become aware of fraud.

For companies who are looking to India entry and keen to do doing business in India, the new Act provides for key amendments allowing merger of Indian companies into foreign companies. Some of the changed prohibit foreign company to make investment through more than two layers of investment companies, with certain exemptions to foreign acquisitions.

Given the economic scenario and seeing the western countries growth ambitions, this step provides an additional avenue and should certainly help Indian investor too as foreign companies would be able to do deal through issue of its shares.

Amongst other provisions, companies are required to set up the Corporate Social Responsibility Committee and class actions suits are introduced as remedy for small investors against wrongful acts, subject to certain number of members participating in that suit.

While these provisions introduces more stricter and complex regulatory environment in the country, these shall foster much needed investor confidence and bringing India upto the global platform

Contact us

Gaurav Malhotra

Head of India desk

For Grant Thornton Taiyo ASG LLC

E IndiaJapan.Desk@gtjapan.or.jp

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