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Corporate Governance under the Companies Act, 2013: An Overview

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Structured Abstract:

Purpose: This paper deals with some theoretical aspects of corporate governance in comprehensive manner thrusting upon provisions lay down in companies Act 2013.

Desigin / Methodology / Approach: It's purely a theoretical paper. Information is collected from different reputed books, journals, newspapers and websites. In the first phase, conceptual framework of corporate governance is highlighted in nutshell and in second phase, provisions relating to corporate governance in companies act 2013 has been discussed in comprehensive manner. The paper ended with concluding observations.

Findings: Keeping in view the good corporate governance, changes made in companies act 2013 are a step forward in the right direction to smoothly run the management and affairs of the companies in the interest of stakeholders.

Originality / Value: An overview of conceptual aspects of corporate governance and legal provisions in companies act 2013 has been presented in this write-up in a comprehensive manner to acquainted stakeholders about the benefits of corporate governance.

Keywords: Corporate Governance, Stakeholders, Companies Act 2013, Independent Director, Audit Committee, CSR.

Introduction

Corporate Governance is the new golden term coined in the corporate sector in the late 1990's by the Industry Association On Confederation of Indian Institute which was the first initiative in India as a voluntary measure to be adopted by Indian companies. The second major initiative was taken by Securities and Exchange Board of India (SEBI) as Clause 49 of the Listing Agreement. The third key initiative to effectively introduce Corporate Governance was taken by Naresh Chandra Committee and Narayana Murthy Committee who previewed Corporate Governance model working in companies from the viewpoint of shareholders, investors and other stakeholders of the company. Corporate governance guidelines both mandated and voluntary have evolved since 1998, due to the sincere efforts of several committees appointed by the Ministry of Corporate Affairs (MCA) and the SEBI. The real change in the corporate sector could be felt with the introduction of 2009 Mandatory Corporate Governance Voluntary Guidelines which has to be complying by companies listed on stock exchange by Clause 49 of Listing Agreement. The final assent to Corporate Governance practices in the effective management of the company can be seen as introduction to new significant provisions introduced in the Companies Act, 2013 in form of independent directors, women directors on the board, corporate social responsibility and mandatory compliance of Secretarial Standards issued by Institute of Company Secretaries of India as per Section 118 of Companies Act, 2013.

Objectives of the Study

The objectives of the present study are:

1. To discuss about some theoretical aspects of Corporate Governance.
2. To highlight the provisions of companies act 2013 relating to corporate governance.

Methodology

It's purely a theoretical paper based on information collected from different sources like reputed books, journals, news papers, websites etc. The author proposes that some theoretical aspects of corporate governance to be discussed in the primary stages of 'discussion and analysis' part of this paper and then present the key features of company act 2013 relating to corporate governance. Finally a conclusion will be drawn on the basis of discussion and analysis.

Discussions and Analysis

Meaning: Corporate Governance is a multi-faceted subject and difficult to comprehend in a concise definition. The main theme of corporate governance is to integrate sound management policies in the corporate framework in such a manner to bring economic efficiency in the organization in order to achieve twin goals of profit maximization and shareholder welfare.

Need of Corporate Governance: The collapse of international giants like Enron, WorldCom, Tyco, AOL and financial scams like Satyam have been big eye-openers in the corporate arena to make realize the company's management, ownership and stakeholders the emergent need to comply with Corporate Governance principles in order to prevent themselves from paying huge corporate criminal liabilities in the future. These huge corporate giants paid the cost for lack of good corporate governance practices and corrupt policies adopted by management of these companies and their financial consulting firms.

The significance of good corporate governance solutions has widened because of the increasing conflict between ownership and management disciplines, the non-compliance of financial reporting by auditors which inflicts heavy losses on investors and lack of fair and transparent culture in the company which shook's investor trust in the financial viability of the company and its ethical standards.

Scope of Corporate Governance: Corporate governance instills ethical standards in the company. It creates space for open dialogue by incorporating transparency and fair play in strategic operations of the corporate management.

Key Market Players Involved in Corporate Governance: The Corporate management decisions have an impact on various people and entities associated with the company who are collectively known as stakeholders which include shareholders, directors, creditors, employees, suppliers, government agencies and society at large. But there are only key stakeholders like shareholders, directors, officers who are active participants in corporate governance process and other stakeholders who themselves are not involved in corporate governance practices but rather are recipients of benefits derived from companies having good corporate governance practices.

Key Features of Corporate Governance in Companies Act, 2013

The new Companies Act, 2013 has introduced various key provisions which have changed the corporate regime in such a way to run the corporate machinery in alignment with the globalised corporate world by mandatory disclosure requirements for:

1. Independent Director under the Companies Act, 2013

The strength of number of Independent Directors for the prescribed companies under Section 149(4) read with Rule 4 of Companies (Appointment and Qualifications of Directors) Rules, 2014 for listed Public Company is at least one third of total number of directors and public companies having turnover of 100 crores rupees or more at least 2 directors and public companies having paid up capital of 10 crores rupees or more at least 2 directors.

2. Audit Committee

1. The Audit Committees of the Companies Act, 2013 has undertaken both private and public companies within its ambit to constitute audit committees. The constitution of audit committee has also seen change as compared to clause 49 with minimum with three independent directors on the board along with the chairperson who should be able to read and understand the financial statement.
2. Section 177 of the Companies Act, 2013 and Rule 6 and 7 of Companies (Meetings of Board and its Powers) Rules, 2014 deals with the Audit Committee.
3. The Board of directors of every listed company and the following classes of companies, as prescribed under Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014 shall constitute an Audit Committee.

   I. All public companies with a paid-up capital of Rs. 10 Crores or more;

   II. All public companies having turnover of Rs. 100 Crores or more;

3. Internal Audit

Companies Act, 2013 has mandated the internal audit for certain classes of companies as specified under Section 138 of the Companies Act, 2013.

4. Serious Fraud Investigation Office (SFIO)

Section 211 (1) of the Companies Act, 2013 shall establish an office called the Serious Fraud Investigation office to investigate fraud relating to Company. The powers are given to SFIO under the act as mentioned that he can investigate into the affairs of the company or on receipt of report of Registrar or inspector or in the public interest or request from any Department of Central Government or State Government.

5. Corporate Social Responsibility

The concept of CSR rests on the good corporate citizenship where corporate contributions to the societal growth as a part of their corporate responsibility for utilizing the resources of the society for their productive use.

Ministry of Corporate Affairs has recently notified Section 135 and Schedule VII of the Companies Act as well as the provisions of (CRS Rules) which has come into effect from 1 April 2014.

Applicability

Section 135 of the Companies Act provides the threshold limit for applicability of the CSR to a Company:

1. Net worth of the company to be Rs. 500 crore or more;
2. Turnover of the company to be Rs. 1000 crore or more;
3. Net profit of the company to be Rs. 5 crore or more.

Further, as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies but also applicable to **branch offices** of a foreign company in India.

CSR Committee and Policy

Every company as prescribed in Section 135 of the Act and Company (Corporate Responsibility) Rules, 2014 within the threshold limit requires spending of at least 2% of its average net profit for the immediately preceding 3 financial years on CSR activities.

Further, the company will be required to constitute a committee (CSR Committee) of the Board of Directors (Board) consisting of 3 or more directors.

Conclusion

The study reveals that the Companies Act, 2013 empowers independent directors with proper checks and balances so that such extensive powers are not exercised in an unauthorized manner but in a rational and accountable way. The changes are a step forward in the right direction to smoothly run the management and affairs of the companies in the interest of stakeholders. These are all welcome changes in the globalised corporate world of today and they will strengthen the core corporate machinery by instilling strong corporate governance norms in a company leading to economic efficiency and higher ethical standards which will always inspire the company's management to work in the direction to uphold its goals of maximization of wealth of stakeholders backed with good corporate repute.

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