# CORPORATE GOVERNANCE AND COMPANY'S ACT, 2013- A CRITICAL ANALYSIS

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## Abstract

With the ever-changing industry atmosphere, the way in which in which industry businesses are presupposed to work also changes. No nation can prevent the trade within the company culture that comes as an outside drive due to the fast linkage of more than a few economies & their company entities & that not simplest provide considerable of opportunities but poses a number of challenges chiefly on the governance front. With this changing atmosphere, it is within the pleasant interest of the nation to keep on incorporating various governance points arising in phrases of challenges as a result of alterations taking situation in company environment. The financial development of any nation depends upon strong investor protection and just right governance. It is with spirit the government presented the landmark laws- Company's Act, 2013. The Company's Act, 2013 is landmark legislation with a way attaining penalties on all firms integrated in India. The Act, 2013 is more outward looking and makes an attempt to align with worldwide requisites. It is anticipated to set the tone for an extra state-of-the-art law which allows progress and bigger law of the corporate sector in India. This paper is thus an attempt to fully grasp such the altering company legal guidelines in India with the aid of comparing the two predominant Company's Act i.e., Company's Act 1956 & Company's Act 2013. Certainly, the Company's Act, 2013 has opened new and simple avenues for mergers, acquisitions and restructuring operations in India. The authorized points governing corporates worried in a company Restructuring scheme, notably Mergers and Acquisitions (M&A) have been mentioned in detail from the light of the brand-new Company's Act of 2013. The paper attempts to give an explanation for the development of company legal guidelines over time in India & then to deliver concerning the primary differences between the almost fifty-seven years historical Company's Act, 1956 & The Company's Act, 2013. In order to make the understanding of the paper clearer the paper has been divided into certain sections

wherein the first section that is the present section talks about the concept, meaning & importance of corporate laws or rather strong and effective corporate laws followed by section II that provides the objectives & methodology of the paper next is section III that talks of the historical developments in the Indian corporate laws. section IV is the core section wherein I produce a table showing major points of differences between Companies Act 1956 & Companies Act 2013. Section V deals in detail with the concepts, key provisions, and Impact Analysis relating to mergers, compromises and arrangements in the 2013 Act. Problems, Suggestions, and Conclusions are contained in section VI followed by the references in the last section.

## INTRODUCTION

Company governance implies managing the business responsibly, dedication to ethics and enough and well-timed disclosure on all material issues as a way to broaden overall stakeholder confidence that will in flip lead to effective allocation of capital and sustained monetary progress. Governance is ready jogging the company, but excellent governance is ready ensuring that is run particularly and overtly.

The long-awaited Company's bill, 2012 was handed by the Lok Sabha on 18th December, 2012 and by way of the Rajya Sabha on 8th August, 2013. On receiving the assent of the Hon'ble President of India on August 29, 2013, it used to be notified on August 30, 2013 as the Company's Act, 2013. The Company's Act, 2013 has replaced the present 56-year historic legislation, i.e., Company's Act, 1956. The Act has turn out to be thoroughly operational on account that 1 April, 2014. It moves from the regime of manipulate to that of liberalization or self-regulation. The Act, 2013 supplies for business-friendly corporate regulation, e-governance initiatives, good corporate governance, Corporate Social Responsibility, enhanced disclosure norms, enhanced accountability of management, audit accountability, protection for minority shareholders, investor protection and activism and better framework for insolvency regulation and institutional structure.

The new Act seeks to usher in extra transparency and governance within the corporate bodies apart from creating the imperative atmosphere for growth in the present world structure. It has

the potential to be a historic milestone, as it aims to fortify corporate governance, simplify regulations, enhances the pursuits of minority traders and for the first time states the function of whistle-blowers. The Act encourages excellent governance practices by way of putting the onus on unbiased administrators to convey oversight within the functioning of the Board and guard the interest of minority shareholders.

## OBJECTIVES

The objectives of the paper are as follows:

1. To critically analyze the Company's Act, 1956 and Company's Act, 2013.
2. To critically analyze the key provisions of the Companies Act 2013 with respect to Mergers and Acquisitions.
3. To provide an impact analysis of the key provisions.
4. To study the issues and challenges associated with the actual implementation of the Companies Act 2013.

## RESEARCH METHODOLOGY

The research paper is an attempt of exploratory research, based on the secondary data sourced from journals, magazines, articles and media reports. Looking into requirements of the objectives of the study the research design employed for the study is of descriptive type. Keeping in view of the set objectives, this research design was adopted to have greater accuracy and in-depth analysis of the research study. Available secondary data was extensively used for the study. The investigator procures the required data through secondary survey method. Different news articles, Books and Web were used which were enumerated and recorded.

## SCOPE OF THE STUDY

This study explains the difference between provisions of Company's Act, 1956 and Company's Act, 2013 and further extends to the impact of the Companies Act 2013 on Mergers and Acquisitions only. Other forms of Reconstruction have not been considered for the study. All provisions of the New Companies Act 2013 have been analyzed irrespective of whether they have been notified or not.

## DEVELOPMENT OF COMPANY'S ACT, 2013

2008: Companies Bill, 2008 was introduced on 23rd October 2008 in the Lok Sabha to replace existing Companies Act 1956.

2009: Companies Bill, 2009 was re-introduced on 3rd August 2009 in the Lok Sabha. Bill was referred to the Standing Committee on Finance of the Parliament for examination and report.

2010: Report of the Standing Committee on Finance on Companies Bill, 2009 was introduced in the Lok Sabha on 31st August 2010.

2011: Companies Bill 2011 introduced in the Lok Sabha on 14th December 2011.

2012: The Companies Bill, 2012 was introduced and got its assent in the Lok Sabha on 18 December 2012.

2013: Companies Bill, 2012 was passed by the Rajya Sabha on 8th August, 2013. After having received the assent of the President of India on 29 August 2013, it has now become the much-awaited Companies Act, 2013.

## COMPARATIVE ANALYSIS

| Basis | Companies Act 1956 | Companies Act 2013 | Comments/Remarks |
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| **1. Composition** | It contains 13 parts having 658 sections and 15 schedules. | It contains 29 chapters having 470 sections and 7 schedules. | Both the act gives various laws, rules, and regulations to regulate the working of companies. |
| **2. Definition of Charge** | "Charge" includes mortgage.[1] | "Charge" means an interest or lien created on the property or | Earlier it included only mortgage. |

[1] Section 124 of Companies Act, 1956.

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| | | assets or a company and includes a mortgage.[2] | |
| **3. Definition of "officer who is in default"** | officer who is in default in relation to any provision referred to in section 5, has the meaning specified in that section.<br>Section 5: For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely: (a) the managing director or managing directors; (b) the whole-time director or whole-time directors; (c) the manager; (d) the secretary (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision : Provided that the person so charged has given his consent in this behalf to the Board ; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors : Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.[3] | Officer who is in default, for the purpose of any provision in this act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: — (i) whole-time director; (ii) key managerial personnel; (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.[4] | The scope of officer in default has been broadened. |

[2] Section 2 (16) of Companies Act, 2013.
[3] Section 2(35) of the Companies Act, 1956.
[4] Section 2(60) of the Companies Act, 2013.

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| **4. One person company** | Earlier this concept was not there in the act. | OPC means a company which has only one person as a member.[5] | This will increase the number of companies. |
| **5. Prohibition on issue of shares at discount** | Earlier companies have a power to issue shares at discount.[6] | Now the companies cannot issue shares at discount except sweat equity shares subject to fulfillment of certain conditions.[7] | If company contravenes the provision shall be punishable with a fine not less than one lakh rupees which may extend to five lakh rupees. |
| **6. Power of company to purchase its own securities** | Power of company to purchase its own securities.[8] In case of buy back by board no further buy back is permissible within a period of 365 days from the date of preceding buy back. | Company can purchase its own shares or other securities out of free reserves, security premium account, or the proceeds of any shares or other specified securities[9]. Now no buy back is permissible within a period of 365 days whether approved by board or shareholders. | For the purpose of new act "free reserves" include security premium account. |
| **7. Prohibition on acceptance of deposits from public** | Deposits not to be invited without issuing an advertisement.[10] | Prohibition on acceptance of deposits from public.[11] | With regard to "unsecured deposits" company should quote this in every advertisement relate to invitation or acceptance of deposits. |
| **8. Notice of meeting** | This deals with length of notice and on the other hand other section deals with contents and manner of service of notice.[12] | It explains the procedure of notice of meeting.[13] | Earlier this was divided in different sections, but now everything regarding notice is merged in one section. |
| **9. Minutes of meeting** | It covers all the aspects minutes of proceedings of general meetings.[14] | It explains the minutes of proceedings of general meetings, board meetings, and any other general meeting and all the resolutions passed by postal ballot.[15] | Corresponds to various sections now only one single section deals with the minutes of meeting. |
| **10. Appointment of Auditors** | It covers the appointment and remuneration of auditors in government and other companies.[16] | It deals with appointment of auditors.[17] | The Act 2013 also provides for rotation of auditing partner and his team within an audit firm. |
| **11. Corporate Social Responsibility** | Earlier this section was not there. | Every company having net worth of rupees 5 hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate social responsibility committee of board consisting of three or more directors, out of which at | Now, this section is mandatory for all the companies who come under the ambit of the provision of said section. |

[5] Section 2(62) of the Companies Act, 2013
[6] Section 79 of the Companies Act, 1956.
[7] Section 53 of the Companies Act, 2013.
[8] Section 77A of the Companies Act. 1956.
[9]Section 68 of the Companies Act, 2013.
[10] Section 58A of the Companies Act, 1956.
[11] Section 73 of the Companies Act, 2013.
[12] Section 171 and 172 of the Companies Act, 1956.
[13] Section 101 of the Companies Act, 2013.
[14] Section193, 194,195,197 of the Companies Act, 1956
[15] Section: 118 of the Companies Act, 2013.
[16] Section: 224 and Section 619 of the Companies Act, 1956.
[17] Section: 139 of the Companies Act, 2013.

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| | | least one director shall be an independent director.[18] | |
| **12. Debentures** | Earlier there were different sections which deals with debentures, which includes debenture trust deed, appointment of debenture trustees etc.[19] | As per new act company can issue debentures with an option to convert them into shares wholly or partly approved by special resolution. Now there is only one section which deals in debentures.[20] | Now there is only one section which deals in debentures. |
| **13. Cost Audit** | Cost Audit was allowed in certain cases.[21] | Central government after consultation with regulatory authority may direct certain class of companies for cost audit.[22] | Earlier Cost Auditing Standards were not mandatory, but according to new act these standards are mandatory. |
| **14. Class Action Suits** | This concept was not there in companies' act 1956. | Now the provision of class action suit is introduced, it provided that if class of members, depositors, or any class of them conduct the business in any manner which are prejudicial to the interest of the company or its members file an application before the tribunal on behalf of the company or its members.[23] | This will bring greater and efficient judicial proceedings. But this section shall not apply to banking companies. |
| **15. Serious Fraud Investigation Office** | This concept was not there in companies' act 1956. | As per new act central government by notification establish an office to investigate the frauds relating to a company.[24] | It provides transparent and efficient proceedings against frauds. |
| **16. Types of companies** | Private companies, public companies. | Private companies, public companies, one-person company. | Introduction of one new concept will bring more companies. |
| **17. Maximum number of members for private companies** | Earlier maximum number of members was 50. | Now the members strength exceeds to 200. | This will increase the requirement of number of members to form a private company. |
| **18. Commencement of Business** | This provision of companies' act 1956 is applicable to only public limited companies. | Now as per new act this provision is applicable to all the companies. | Now every company is required to obtain certificate of commencement of business. |
| **19. Memorandum of Association "Object Clause"** | The object clause is divided into different parts main objects, incidental and other objects. | Now the MOA contains the object for which the company is incorporated. | The earlier bifurcation is omitted now. |
| **20. First Board Meeting** | In companies act 1956 no specific time is mentioned for holding first meeting | Now every company shall hold its first board meeting within period of thirty days from incorporation. | This new amended provision will help the directors to understand the agenda of the company at an early stage. |

[18] Section: 135 of the Companies Act, 2013.
[19] Section: 117,117A, 117B, 117C, 118,119,122 of the Companies Act, 1956.
[20] Section: 71 of the Companies Act, 2013.
[21] Section: 233B of the Companies Act, 1956.
[22] Section: 148 of the Companies Act, 2013.
[23] Section: 245 of the Companies Act, 2013.
[24] Section: 211 of the Companies Act, 2013.

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| **21. Notice of Board meeting** | In this act no specific time period of notice is mentioned. | In this act seven days' notice is required to call board meeting. | The notice will reach within stipulated time to every member eligible for notice. |
| **22. Penalty with regard to notice of board meeting** | If an officer fails to give notice shall be punishable with fine which may extend to 1000 rupees. | Now as per new act if an officer fails to give notice then he shall be liable to a fine of 25000 rupees. | This will help in better management. |
| **23. Maximum number of directors** | As per this act the limit is 12. More can be appointed by the approval of central government. | Now the limit is 15, more can be appointed by passing special resolution in meeting. | Now the approval of central government is not required. |
| **24. Directorship** | As per old act the maximum number of directorship is 15. | As per new act the maximum number of directorship is 20 out of which 10 can be public companies. | The new act also includes alternate directorship but earlier alternate directorship was not included. |
| **25. Women Director** | No women director was mandatory earlier. | Now at least one women director is compulsory in every board. | Increase the role of women in corporate. |
| **26. Registration of director** | No specific provision. | as per new act, director shall send a copy of registration within 30 days to ROC. | It will give more transparency about the board. |
| **27. Registration of pledge** | Earlier pledge of movable property does not require registration with ROC. | as per new act, now the registration regarding the same is compulsory. | This will help the public to track the records of the company regarding all the charges, registration and their pledge. |
| **28. Holding first AGM** | As per old act, maximum time limit for holding of first AGM is 18 months from incorporation or 9 months from closure of accounts whichever is earlier. | As per new act, the maximum time limit is 9 months from closure of accounts. | The earlier provision of 18 months has been omitted now. |
| **29. Consent for shorter notice with regard to AGM** | As per earlier act consent for shorter notice was given by all the members entitled to vote at the meeting. | Now the consent is to be given by not less than 95% of the members entitled to vote at the meeting. | Now the consent requires only 95% voting of all the members. |
| **30. Financial Year** | Earlier companies were allowed to choose freely its financial year; however, it cannot exceed 15 months. | Now the financial year shall be from April 1st to March 31st for all companies. | It will bring uniformity. |
| **31. Key Managerial Personnel** | Earlier KMP does not include Company Secretary. | Now the KMP includes the Company Secretary also. | The role of Company Secretary has broadened. |
| **32. Takeover offer** | Earlier scheme of compromise and arrangement does not include takeover offer. | Now the scheme of compromise and arrangement includes takeover offer. | This provision will work as per the SEBI guidelines. |
| **33. Merger** | Earlier the provision of fast track merger was not there. | Now the provision of fast track merger is there between two companies. | It will help the two companies to put forward their steps towards their goal at earliest. |
| **34. Secretarial Audit for Bigger Companies** | Earlier this section was not there. | Now every listed company and company of other classes is required to comply with secretarial audit report to be furnished by Company Secretary in practice.[25] | This will give better governance. |

[25] Section: 204 of the Companies Act, 2013.

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| **35. Functions of Company Secretary** | No provision was there in old act. | New act gives the clear picture of functions of Company secretary.[26] | Clear the role of Company Secretary. |
| **36. Committees of Creditors** | No provision was there. | Now the committee of creditors is appointed by interim administrator.[27] | This will help to save the interest of various creditors. |
| **37. Associate Company** | No provision was there. | Now the concept of associate company is introduced.[28] | It is not a subsidiary company. |
| **37. Declaration of dividend in case of in adequate profits** | As per the provision of this act the company can declare dividend in case of adequate profits out of the reserves subject to the fulfillment of certain rules. | As per new act in this case company can declare dividends out of its accumulated profits transferred to reserves. | Earlier the maximum rate of dividend was 10%. |
| **38. Special courts** | No provision was there. | For speedy results for offences the concept of special courts has been introduced in new act.[29] | Timely and efficient judicial proceedings. |

## MERGERS & ACQUISITIONS AND THE COMPANIES ACT 2013 - KEY PROVISIONS AND IMPACT ANALYSIS

The key provisions relating to mergers, compromises and arrangements in the 2013 Act and an impact analysis of these provisions have been outlined below:

### A. Fast – track Merger ("short form" Mergers):

As in some overseas jurisdictions, the 2013 Act has offered the brand-new proposal of speedy-monitor mergers and demergers. These provide the alternative of a simplified and rapid-track merger/ demerger method, which can be used for the next:

1. Merger of two or more specified small businesses

2. Merger between maintaining enterprise and its thoroughly owned subsidiary

3. Such other courses of businesses as could also be prescribed.

[26] Section: 205 of the Companies Act, 2013.
[27] Section: 257 of the Companies Act, 2013.
[28] Section: 2(6) of the Companies Act, 2013.
[29] Section: 435 of the Companies Act, 2013.

In the above acknowledged instances, the merger will need to be authorized only by Central Government.

**Approval Process:**

Under this procedure, the schemes accredited by means of the boards of administrators of companies will must be dispatched to the Registrar of Companies (RoC) and the Official Liquidator (OL) for their suggestions or objections within 30 days. The scheme will then be considered in the conferences of shareholders or creditors, together with their recommendations or objections, and will must be approved by way of the following classes of persons:

- Shareholders protecting ninety% of the complete quantity of shares at a general assembly.
- Majority collectors (representing nine-tenth in price) in a meeting convened with 21 days' notice.

Presently, beneath the 1956 Act, the criterion of "present and voting" is primary for the habits of shareholders and creditors conferences. Nevertheless, the equivalent thought of "Present and voting" has not been included in the 2013 Act. After the approval mentioned above, the scheme will need to be filed with the OL, RoC and the imperative executive. Within the event of there being 'no objection', this can be deemed as permitted. However, in the event of objections from the RoC or OL, the scheme is also referred through the relevant executive to NCLT for it to don't forget the scheme under the typical procedure of a merger. If it is mandated that the scheme is to be considered a natural merger, the enterprise is at chance of the process being considered a traditional merger system rather of a fast-track merger.

**Impact Analysis:**

This provision is contemporary alternate to the lengthy tactics involved more commonly. This will likely help in lowering the executive burden of the present procedure, shorten the time frame in finishing a merger and could lessen the bills of smaller firms that fall inside threshold limits.

**B. Cross-border Mergers:**

The waft of transactions in a cross- border Merger, might be inbound (non-residents investing in India) or outbound (Indian trade making investments abroad). Nevertheless, current laws only permit inbound mergers (overseas companies merging with Indian ones) and no longer the other way around. The 2013 Act proposes to allow both inbound and outbound cross-border mergers between Indian corporations and overseas ones. It provides for the merger of an Indian organization into a foreign one, whether or not its position of industry is in India or in licensed jurisdictions (to be notified via the relevant executive from time to time), area to the approval of the proposed National Company Law Tribunal (NCLT) and RBI's approval. The consideration of a merger, so as to even be discipline to the approval of the RBI, might both be in money or depository receipts, or partly in cash and partly in depository receipts.

**Impact Analysis:**

Enabling of cross-border mergers is predicted to help Indian organizations in additional methods than one, together with in the following:

1. Restructuring their shareholdings, in which they may be able to migrate possession to an international holding structure.
2. Facilitating list of entities, which could have Indian belongings in abroad jurisdictions.
3. Offering exit routes to current buyers in abroad jurisdictions.

Cross-border mergers could have floor-breaking value in plotting India on the worldwide M & A panorama, on account that corporate offers have fallen via or failed to satisfy their desired pursuits in the past because of the dearth of such provisions within the 1956 Act.

**C. Mergers of listed Companies with unlisted ones:**

The 1956 Act does now not include any precise provision governing the merger of a listed company with an unlisted one. It's almost always assumed that shares issued pursuant to the merger of a listed company with an unlisted one (or vice versa) ought to be listed on the stock exchanges the place the transferor enterprise was listed. There have been occasions, nevertheless, where the resulting corporation has endured to be unlisted after the demerger.

The 2013 Act sets out formal recommendations and supplies an alternative to a transferee company to remain unlisted until it's listed or applies for checklist, supplied the shareholders

of the merged listed enterprise are given an exit opportunity. It additionally presents that provision will have to be made by way of the NCLT for an exit route for the shareholders of a transferor corporation who make a decision to opt out of the transferee corporation by making payment amounting to the worth of the shares and other benefits, in accordance with a pre-determined fee system or after a valuation report is produced.

**Impact Analysis:**

An analysis of the new provisions brings to light makes an attempt made to codify the prevailing practice whilst delivering extra readability on valuation requisites. A precise provision within the 2013 Act, involving the identical, will encourage businesses to discover this option rather or furthermore to the Delisting recommendations. It is vital to have a seamless interaction between SEBI's delisting laws and these provisions listed above, chiefly in light of the requisites of delisting regulations, where minority shareholders effortlessly verify their own exit fee. It's foremost that the provisions between SEBI and Ministry of corporate Affairs be aligned to go well with the standards.

**D. Minority Buyout:**

The 2013 Act has presented an exit mechanism for minority shareholders. The Act provides access to the acquirer or person preserving 90% or more of the issued equity share capital of the target company (listed or unlisted) by means of advantage of amalgamation, share exchange, conversion, securities or for some other reason to gather shares from minority shareholders subject to a few compliances. Such an acquirer, person or a group of persons will notify minority shareholders about their intention of purchasing the remainder equity shares. Furthermore, minority shareholders might also off load their shares Suo-moto to majority shareholders.

**Impact Analysis:**

The rate mechanism for the minority purchase-again in the case of a listed company will be the price in keeping with SEBI's regulations, but this desires to be carried out by using a registered valuer. Furthermore, a registered valuer will provide a valuation report to the board of directors of a company, justifying the methodology of arriving at this type of cost. For that reason, compulsory valuation via a registered valuer becomes imperative. However, the shares of

minority shareholders have got to be obtained with the aid of majority shareholders and now not by means of the company and in order to entail outflow of money within the palms of the majority shareholders.

## MERGERS, ACQUISITIONS AND COMPANIES ACT 2013- ISSUES AND CHALLENGES:

1. The 2013 Act seeks to simplify the overall approach of acquisitions, mergers and restructuring, domestic and cross-border mergers and acquisitions, and thereby, make Indian organizations fairly more attractive to buyers. Even as some of the changes to look for on the conceptual level include merger/demerger strategies, cross-border and fast track mergers between small corporations and holdings, subsidiaries and provisions relating to minority shareholders' safeguard and exits, among others, a lot nonetheless wishes to be performed in terms of provision of improved readability on some critical areas and the overall interaction of the 2013 Act with different laws.

2. Pending notifications of one of the most sections and rules in relation to restructuring and the absence of transitional provisions can be a quandary inside the enterprise and for specialists engaged in restructuring in the corporate world.

3. The 2013 Act provides for the constitution of the National Company Law Tribunal (NCLT) as the single authority for all schemes in the case of restructuring. However, NCLT is yet to be constituted and end up operational. Practical difficulties are expected in implementation of provisions in the case of restructuring till the MCA provides clarity on these issues.

4. There's no clarity on whether or not fast-track mergers will probably be allowed previous to NCLT becoming operational. Beneath current tax legal guidelines, there is not any need for an enterprise to seek the approval of a court to prove the tax neutrality of a merger or demerger. However, readability in this regard will likely be required in the case of fast-track mergers involving non-court accepted schemes.

5. In case of cross border mergers, corresponding amendments are required in existing legal guidelines including the Income Tax Act, Exchange Control Regulations, Security-related laws and so on.

6. In case of cross border mergers, notification of the "specified jurisdictions" for cross-border mergers and the amendment of Exchange Control Regulations is yet to be made. This notification is primary as it'll preclude the scope of outbound mergers as well as inbound ones, that are presently allowed from any jurisdiction that allow cross-border mergers beneath their domestic laws.

7. In case of merger of listed company with unlisted company, in a merger, useful disorders may come up on the relevant date of valuation of shares (e.g., the appointed date, the potent date and so on.) and systems for compensating shareholders if the NCLT method consumes tremendous time and in case of any disputes on the exit cost price on the basis of the valuation, the redressal mechanism for such disputes wishes further clarity.

8. The availability very nearly appreciate minority squeeze out as an authorized alternative. Nevertheless, there's no longer a lot of readability on whether or not this can be a necessary exit mechanism and a state of affairs the place one minority shareholder desires to exist would the acquirer be forced to purchase out all.

## CHALLENGES TO EFFECTIVE CORPORATE GOVERNANCE

There are some practices widely wide-spread in the market and in our society which can be posing challenges to company governance in our country.

- Unsophisticated fairness market susceptible to manipulation and with rudimentary, average analyst activity.
- Dominations and monopoly of family corporations.
- Excessive level of corruption, emerge as visible best after a revelation of giant monetary scam.
- Vulnerable and non-obvious monitoring method.
- Lack of admire for shareholders and low economic disclosure.

## MEASURES TO BE TAKEN FOR IMPROVEMENT

- New procedure for the appointment of independent Director is required.
- Independent Directors- selection standards ought to be transparent, additionally procedure of appointment of BOD have to be reconsidered.
- It is predominant to focal point on not just number or profits but on the sustainability of industry items.
- Need for having laws of SEBI for the credit rating companies have got to increase standards that focus on substance instead than the form of governance.
- Compensation of government directors must flow from an goal efficiency evaluation approach carried out by means of the board.
- Want for having supervising the capabilities of administration and make them in charge and obvious to shareholders.
- To revise clause 49 of SEBI list Agreement of Codes of Conducts and whistle blower insurance policies have got to be framed in such a manner as to be possible to position in to practice.
- Need for having supervising the functions of management and make them in charge and transparent to shareholders.
- Strong implementation of code of corporate governance.
- Regulators must increase penalties as well as to fix legal responsibility in imposing titanic penalties for non-compliance.
- Efficient monitoring process can give a boost to transparency in industry management.
- Proper tests and steadiness system over managerial rights.
- Accurate information related to trends, threats and dangers regarding economic and fiscal concerns in annual studies and on the company web sites.
- Right and transparent auditing system to verify monetary irregularities and frauds.
- Codes of conduct are ensured to be understood and adhered to by way of all individuals of organization.
- Ethical behaviour of company or of any member at board or management degree will have to be rewarded.

## CONCLUSION

Author's view- The new Indian Company's Act, 2013 is a constructive and welcoming step in the direction of modernizing India's company legislation and make India on par with corporate laws in other places within the globe. The Act is a revolutionary and forward looking which guarantees improved company governance norms, greater disclosures and transparency, facilitation of responsible entrepreneurship, multiplied accountability of organization managements and auditors and stricter enforcement strategies. It goes a long way in defending the interests of shareholders and removes administrative burden in a few areas. The introduction of CSR as an imperative operate of corporate operations is the most welcoming step and also the levy of heavier penalties for transgressions from success of its duties. Overall, the Act guarantees to tremendously carry the bar on corporate Governance and will radically alter the framework in an optimistic experience.

The Company's Act, 2013 has opened new and simple avenues for mergers, acquisitions and restructuring operations in India. The authorized facets governing corporates concerned in a company restructuring scheme, particularly Mergers and Acquisitions (M&A) had been discussed from the light of the new Company's Act of 2013. The 2013 Act supplies for the structure of the National Company Law Tribunal (NCLT) as the single authority for all schemes in terms of restructuring. Alterations made in the new act are likely to have a positive impact on the style in which company structuring is undertaken in India as a result of countless procedural changes.

On a concluding note we will say that as time passes & company sector turns into more & extra built-in with the society there's have to incorporate imperative alterations in corporate laws governing this sector & the business.