

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Comparison of U.K. Companies Act 2006 and Indian Companies Act 2013

GAYATHRI V¹

ABSTRACT

In order to maintain the business entities for a long period, they framed rules and assign some duties and responsibility for its further existence through companies act. The companies act has a long history and after several amendments' companies act 2013 is in prevalent. Nothing in this world is perfect and it involves both positive and negatives. In the same manner companies act has both pros and cons.

This article deals with the need for companies act and some important drawbacks under the companies act 2013 and discusses the amended sections in that particular topic. Along with that it mainly aims at the comparison of U.K. Companies Act 2006 and Indian companies act 2013 in some of the major areas.

I. INTRODUCTION

Companies Act 2013 has been framed for the efficient functioning of companies and to provide the base for doing business. This act enables to create interest and a sense of security in the minds of people. It has evolved with reference to many countries' companies act. Though there are many advantages, it discusses about some drawbacks and major areas of comparison of U.K. Companies Act 2006 and Indian Companies Act 2013.

II. DRAWBACKS:

²Some of the drawbacks under company's act includes the following

- Separation of control and ownership
- Formalities and expenses
- Information disclosure
- Social responsibilities
- Winding up procedure

¹Author is a student at Sastra university, Thanjavur, India.

²<https://www.toppr.com/guides/business-law/elements-of-company-law/disadvantages-of-incorporation>

(A) SEPARATION OF CONTROL AND POWER:

The company involves large number of people. It may have many partners. The partners may be the persons who hold the major number of stocks or they may be the regular dealers. The ownership and control differ based on the number of members. If the members are too large owners do not have a control but are considered to be owners. The persons who have the control will be acting on behalf of owners. In this way it is considered to be a drawback.

(B) FORMALITIES AND EXPENSES:

The setting up of business entity is a complex process. It involves a huge procedure. The time and money spent for its incorporation is huge. The persons who are not passionate about their business face difficulties. It has to follow the rules under companies act even after its incorporation. It involves filing of proper borrowing, lending, auditing accounts. It should conduct proper audit, account and board meetings which has the rules under companies act. Along with it should abide the legal rules. It is hard to comply all these rules. It is one among the drawbacks under companies act.

(C) INFORMATION DISCLOSURE:

The information regarding the working of a company is disclosed only to higher officials. If the working process along with the earnings are disclosed to employees will motivate them to earn more for the company which results them to work hard. This is one of the drawbacks in companies act.

(D) SOCIAL RESPONSIBILITIES:

As an individual every person is having a responsibility to contribute something towards the society. In the same way companies, which are earning more profits contributes in the development of society. It is considered to be a part of duty under companies act in the name called "corporate social responsibility". It fixes certain limits based on their net worth and profits. It is considered to be mandatory and sometimes if company suffers any reduction in their income it is hard for them to contribute. So, it is considered to be a disadvantage.

(E) WINDING UP PROCEDURE:

The procedure for setting up business and in the same manner the winding up of business is a huge and complex process. It involves a lengthy procedure and the time consumption is quite longer. It is considered to be the reason to be called as disadvantage.

The above said are considered to be some of the drawbacks that can be easily understood by a lay man while setting up any business entity under the companies act.

The legal framework of India has been framed by referring to various country's framework. The idea of setting up a company in a large size is also evolved in the same way. In order to regulate the frameworks law has been enacted. The companies act has amended many times. Each country is having a separate rule to maintain their companies. Here the comparison for U.K. Companies act and companies act in India are discussed.

III. DIFFERENCES:

³There are some grounds under which we can find a difference between both countries' companies act:

- During incorporation
- Classification of companies
- Meetings
- Dividends
- Directors
- Corporate social responsibility
- Winding up

(A) INCORPORATION:

Registration is a process through which company is incorporated. It involves registration, formation and documentation process to be incorporated. It makes the company as a legal entity. There is only a single process for incorporation under Indian companies act. It should satisfy all the six conditions under "MOA". It also contains other details along with the information of place, name and its "AOA". It should file the following forms known as Form INC-2, Form INC-22, Form INC-7, Form DIR-12 to the registrar of companies.

In U.K. Companies Act it has three ways under section 7 of their companies act to file information to the company's house. By filing in electronic software, IN01 Form or web incorporation through companies' online portal. All these processes involve fees for its process. It should file both "AOA and MOA". Along with there are some other articles under this act which involves model articles, bespoke articles and shareholders agreement.

(B) TYPES OF COMPANIES:

Under Indian companies act 2013 the companies can be classified as public company, private

³ E-ISSN NO: 2454 – 9916 |Volume:1|Issue :4|November 2015|
(A comparative study of u.k. companies act 2006 and Indian companies act 2013)

company, foreign company, government company, one-person company, small company and finally dormant companies. It can be further sub divided and has many sub divisions.

Under U.K. Companies Act 2006 the companies can be classified as community interest company, right to manage company, companies limited by guarantee, unlimited companies and limited liability partnership companies.

(C) MEETINGS:

It involves board meeting of directors, annual general meetings. Under Indian Companies act of 2013, the first board meeting of directors has to take place within 30 days of its incorporation. It also mentions the time period for the meetings to be conducted and there must be a maximum gap of 120 days. The meeting should occur for four times within a year. There is no specification of time and period for conducting meetings for board of directors under U.K. Companies act 2006.

Notice should be given to each director separately regarding the event of happening of meeting prior to seven days under Indian Companies act 2013. There is no particular statute under the U.K. Companies Act regarding notice to all the directors. The secretary of the board can call for meeting under reasonable cases.

The quorum for meeting should contain 1/3rd of its total strength under Companies Act 2013 with two directors or more than that. Under U.K. Companies Act the quorum for meeting should contain only two directors.

The information regarding holding of “AGM” under U.K. Companies Act 2006 is mentioned under part 13 which comprises of 80 sections. Under Indian companies act 2013 under section 96 of chapter XII. It is mandatory for the companies whether private or public to hold an “AGM”. In U.K. Act it is not necessary to hold an “AGM” for private companies. If the private members need for any amendment under “AOA” they can hold a meeting.

(D) DIVIDENDS:

It is the payment made by the company to its shareholders from the profit based on its fixed proportion to the shares holding by them under the company.

Under Indian companies act if the interim dividend once declared becomes debt by the company and is considered to be payable. In U.K. Companies Act the interim dividends can be varied before the payment and is considered to be payment as due to them.

The unpaid or unclaimed dividend amount by the shareholders from the company is transferred to an account opened by the bank specially for that amount under Indian

companies act. Under U.K. Companies Act the unclaimed money by the shareholders will be used by the directors for company purpose until it is claimed by the shareholders.

(E) DIRECTORS:

They are considered to be the managing people of a company for its effective working on a daily basis. They will take decisions for the benefit of company and to sustain its shareholders to earn profit.

Under Indian companies act sec 149(3) of 2013 the board of directors, at least one of them should be a resident of India for 182 days. It is not mandatory under U.K. Companies act. The minimum number of directors for a private company is one and public company is two under the same act under section 152. Under section 149 (1)(a) of Indian companies act the minimum number of directors for a private company is two and for public company it is three. The maximum limit is mentioned as 15 under Indian companies act. Under U.K. Companies Act there is no statutory limitation for maximum number of members. The U.K. statutory provision does not make it mandatory that there should be a women director. But in Indian companies act it is mentioned that there must be at least one women director under section 149(1)(a) for companies which are incorporated under this act.

(F) CORPORATE SOCIAL RESPONSIBILITY:

The process in which company will interact with the stake holders and doing some useful things to environmental and social concerns.

The Indian companies act made “CSR” as mandatory for certain companies governed by this act. It is governed by clause 135 of Indian companies act. The company which has the annual turnover over of 1000 crore or more, net worth of 500 crore or more, net profit of 5 crore or more has to spend something for environment. The new rules after the amendment is it should contain a board committee and it includes board members and at least one independent member. It also makes another rule to contribute at least 2% of the net profit earned by the company from the previous three years in “CSR”. Through suggestions from the committee they can implement policies. If they fail to do so they may prescribe the proper reason for not spending the amount. It may publish its policies in official website and gazette and show the members of the company how the funds have been utilised properly in “CSR”.

In U.K. Companies Act 2006 has made it mandatory for all companies to contribute for “CSR” for a business review in the director report. Only exception is given to small companies. The government has introduced a ‘CSP website’. “An ambitious vision for U.K. business to consider the economic, social and environmental impacts of their activities,

wherever they operate in the world.”

(G) WINDING UP:

It is the last stage of company survival. It is dissolved to solve the debts to creditors and its remaining assets are distributed to the shareholders.

Under Indian companies act the winding up of a company can be done voluntarily or with the help of tribunals under section 270. In U.K. companies act there are three ways which includes voluntarily winding up by courts, voluntarily winding up by members and winding up by court. It involves three agreements but in case of Indian companies act it can be through informal agreement by the mutual consent of all members.

These are considered to be some of the differences that can be found under Indian Companies Act 2013 and U.K. Companies Act 2006.

IV. CONCLUSION:

This article gives some basic ideas about the frame work of Indian companies act in comparison of U.K. Companies Act. It helps to gain confidence over the public about the operation of aw in the area of business. The strong relationship between the people or the stakeholders, share holders with the company heads and executives. Trust will be maintained because of the act of law in the minds of people.
