



Chapter - 9: Corporate Affairs

Introduction

- The Ministry of Corporate Affairs (MCA) oversees the implementation of several key acts including **the Companies Act of 2013, the Companies Act of 1956, and the Limited Liability Partnership Act of 2008.**
 - Its main objective is to regulate the corporate sector, ensuring compliance with laws and regulations.
- MCA is also tasked with administering the **Competition Act of 2002**, aimed at preventing anti-competitive practices, promoting fair competition, and safeguarding consumer interests through a dedicated commission.
 - Additionally, MCA is responsible for the implementation of the Insolvency and **Bankruptcy Code of 2016**, which deals with insolvency resolution and bankruptcy proceedings.
- The ministry supervises professional bodies such as the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI), and the Institute of Cost Accountants of India (ICoAI), ensuring their proper functioning and growth.
- It carries out **governmental functions** related to various acts including the Indian Partnership Act of 1932, the Companies (Donations to National Funds) Act of 1951, and the Societies Registration Act of 1860.

Administrative Structure

- The Ministry has a **three tier** organizational structure with the **headquarters at New Delhi, seven offices of Regional Directors (RDs)** at Ahmedabad, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi and Shillong, fifteen Registrars of Companies (RoCs), fourteen Official Liquidators (OLs) and nine RoC-cum-OLs in states and union territories.
- The jurisdictional Registrars of companies, continue to have jurisdiction over the companies incorporated by the Registrar, **CRC under the Companies Act, 2013** for all other provisions of the Act and the rules made thereunder, which may be relevant after incorporation.
- The Official Liquidators function under the overall administrative control of the Ministry, and are attached to corresponding High Courts. They are mainly responsible for implementing court orders regarding liquidation and final dissolution of the companies.

Maior Initiatives

Some of the recent major initiatives of the Ministry are :

The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

- The Companies Act 2013, **Section 233** introduces a Fast Track Process for mergers and amalgamations.
 - This provision applies to specific categories of companies, including **two or more start-up companies**, combinations of start-up and small companies, two or more small companies, and a holding company with its wholly-owned subsidiary.
 - The Act was amended to simplify and expedite the approval process for mergers.
- If the registrar and official liquidator do not raise objections or provide suggestions **within 30 days**, and if the central government believes the scheme benefits the public or creditors, it can

issue a confirmation order within **15 days after the 30-day period**.

The Companies (Removal of Names of Companies) Amendment Rules, 2023

- The Registrar, Centre for Processing Accelerated Corporate Exit, established under **Section 396(1)**, has been assigned new responsibilities.
 - This Registrar has been designated as the Registrar of Companies for handling applications related to voluntary closure by companies.
- The functional jurisdiction for processing and disposing of such applications falls under the Registrar's purview.
- These amendments empower the Registrar to handle voluntary closure applications from companies across India.

Central Registration Centre

- The project aimed to streamline the processing of company incorporation e-forms with the goal of completing applications for name reservation and incorporation within D+1 days (D being the Date of Payment Confirmation), aligning with global best practices.
- The **Ministry of Corporate Affairs (MCA)** initiated the **first phase** of the Central Registration Centre (**CRC**) in **January 2016**, focusing on processing name reservation applications, followed by the **second phase in March 2016**, which focused on processing company incorporation applications.
- The Government Process Re-engineering (GPR) exercise was conducted to enhance the "**Ease of Doing Business**" by ensuring faster processing of incorporation-related applications, uniform application of rules, and eliminating discretionary practices.
- These efforts were aimed at benefiting all stakeholders involved in the incorporation process and promoting efficiency and transparency in business operations.

Ease of Doing Business

- The Ministry of Corporate Affairs (MCA) in India introduced '**SPICE+**' (pronounced 'SPICEplus') as part of the Ease of Doing Business (EODB) initiatives.
 - 'SPICE+' is a **new web form** replacing and upgrading the existing SPICE form.
 - It offers **11 services** provided by three central ministries and departments: Ministry of Corporate Affairs, Ministry of Labour & Employment, and Department of Revenue in the Ministry of Finance.
- Additionally, services are extended by three state governments: Maharashtra, Karnataka, and West Bengal, along with the Government of NCT of Delhi.
- The implementation of 'SPICE+' aims to streamline procedures, save time, and reduce costs for starting a business in India.
 - It is applicable for all new company incorporations from the year 2020 onwards.

Companies Act, 2013

- The Companies Act, 2013 was enacted in 2013, **replacing the Companies Act, 1956**, with the aim of consolidating and amending laws related to companies.
 - Significant changes were introduced in the Act concerning disclosures to stakeholders, director accountability, auditor responsibilities, investor protection, and corporate governance.
 - The Act established various **statutory bodies** such as the Investor Education and Protection Fund Authority, National Financial Reporting Authority, and Serious Fraud Investigation Office.
- Quasi-judicial bodies, namely the National Company Law Tribunal and National Company Law Appellate Tribunal, were constituted under the Act to fulfill its functions.
- The Act has undergone several amendments by the **Ministry in 2015, 2017, 2019, and 2020**, considering feedback from stakeholders and changing economic and legal requirements.
- Currently, all sections of the Companies Act, 2013 have been notified except for **Sub-section (67)(ix) of Section 2** and part of **Section 465** related to the **Registration of Companies (Sikkim) Act, 1961**, which are pending due to consultations with the Government of Sikkim.

Companies (Amendment) Act, 2015

- The Companies (Amendment) Act of 2015 introduced **crucial changes**.
- These changes aimed to address urgent difficulties encountered in implementing specific provisions of the Act.
- The modifications were made to streamline the application of the law and facilitate smoother operations for businesses.
- The Act was amended to ensure better compliance and effectiveness in the corporate sector.

Companies (Amendment) Act, 2017

- Changes were made to the Companies Act, **2013** based on recommendations from the **Companies Law Committee Report of February 2016**.
- The changes were enacted through the **Companies (Amendment) Act, 2017**.
 - The main objectives of these changes were to address difficulties in implementation due to stringent compliance requirements, facilitate ease of doing business to promote growth and employment, achieve harmonization with accounting standards, **SEBI Act, 1992, RBI Act, 1934**, and related regulations.
- The amendments aimed to rectify omissions and inconsistencies within the Act.
- Additionally, amendments were made to provisions concerning qualifications and selection of members of the National Company Law Tribunal and the National Company Law Appellate Tribunal in accordance with directives from the Supreme Court.

Companies (Amendment) Act, 2020.

- The Companies (Amendment) Bill, 2020 was based on the recommendations from the Company Law Committee (**CLC 2019**).
- The feature of CAA - 2020 are as under:
 - **Decriminalization is provided as follows:**
 - Recategorizing **23 out of 66** compoundable offences under the Act for in-house adjudication.
 - Omitting 7 compoundable offences entirely.
 - Limiting punishment for 11 compoundable offences to fines only, removing provisions for imprisonment.
 - Dealing with 5 offences under alternative frameworks.
 - Reducing penalties for 6 defaults that were previously decriminalized.
 - **Greater Ease of Living provided as under:**
 - Amendment in Section 23 of CA-13:
 - Allows Indian public companies to directly list securities in permissible foreign jurisdictions.
 - Amendments in Section 135 of the Act:
 - Exempts companies with CSR spending obligations of 50 lakh or less from constituting a CSR committee; their Board will handle CSR functions.
 - Permits eligible companies to carry forward excess CSR spending beyond the mandated 2% for subsequent financial years.
 - Reducing the minimum required timeline of **15 days** for keeping Rights offers open to accelerate Rights issues under **Section 62**.
 - Extending exemptions from filing certain resolutions to specific classes of NBFCs & HFCs under **Section 117**, in consultation with RHI/NHB, to lessen the compliance burden for routine lending activities in the ordinary course of business.
 - Introduction of a new **Section 129A** to ensure that prescribed classes of unlisted companies submit their financial results periodically, in addition to the annual filing of financial statements under **Section 137**, which is typically filed within 6 months of the financial year's closure.
 - Proposal to establish benches of **NCLAT** and remove restrictions on the maximum number of members in NCLAT.
 - Clarifying trial court jurisdiction under **Section 452** for wrongful withholding of company property by its officers/employees.
 - Stating in **Section 452** that imprisonment won't be ordered by a court on a

company officer/employee for wrongful possession of a dwelling unit if the company hasn't paid certain dues to that officer/employee.

Insolvency and Bankruptcy Code, 2016

- The **Insolvency and Bankruptcy Code (IBC)** was enacted in **2016** to consolidate and amend laws related to reorganization and insolvency resolution for various entities including corporate persons, partnership firms, and individuals.
 - The code established the **Insolvency and Bankruptcy Board of India (IBBI)** as the regulator.
 - It has been amended multiple times, with the latest being the **Insolvency and Bankruptcy Code (Amendment) Act 2021**.
- The **2021 amendment** introduces the pre-packaged insolvency resolution process (PPIRP) for Micro, Small, and Medium-Sized Enterprises (MSMEs) to address pandemic-related distress.
- The PPIRP aims to provide a quicker resolution process, with a timeline of **120 days**.
 - Under PPIRP, MSMEs can work on a resolution plan while maintaining control over their company and management (debtor-in-possession model).
- Earlier amendments included defining ineligible persons for submitting resolution plans, clarifying the status of homebuyers, protecting last mile funding, and absolving resolution applicants of liabilities for offences committed before CIRP initiation.

Insolvency and Bankruptcy Board of India

- The Insolvency and Bankruptcy Board of India (IBBI) was **established in 2016**.
- Its mandate includes regulating insolvency professionals, insolvency professional agencies, and information utilities.
- The IBBI also exercises other powers and functions as outlined under the Code.

National Company Law Tribunal

- National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) **established on June 1, 2016**.
- **Purpose:** Speedy resolution of corporate disputes, reduction of multiple agencies, and promotion of 'ease of doing business'.
- NCLT replaces **Company Law Board (CLB)**, Board of Industrial and Financial Reconstruction (BIFR), and Appellate Authority for Industrial and Financial Reconstruction (AAIFR).
- NCLT's jurisdiction includes arbitration, compromise, winding up, arrangements, and reconstruction of companies under the **Companies Act**.
- NCLT acquires jurisdiction formerly vested in High Courts for these matters.
- **Sixteen Benches of NCLT set up:** Principal Bench in New Delhi, with additional benches in New Delhi, Ahmedabad, Allahabad, Amravati, Bengaluru, Chandigarh, Chennai, Cuttack, Guwahati, Hyderabad, Indore, Jaipur, Kochi, Kolkata, and Mumbai.

National Company Law Appellate Tribunal

- The National Company Law Appellate Tribunal (NCLAT) is established to hear appeals against NCLT orders under the Companies Act.
- It serves as the Appellate Tribunal for appeals against NCLT orders under **Section 61** of the Insolvency and Bankruptcy Code (IBC), 2016, and orders by IBBI under **Sections 202 and 211 of the IBC**.
- The Competition Appellate Tribunal (**COMPAT**) merged with NCLAT on **May 26, 2017, through the Finance Act, 2017**. Appeals against CCI directions, decisions, or orders are referred to NCLAT.
- NCLAT is also designated as the Appellate Authority for the National Financial Reporting Authority (NERA) by the Companies (Amendments) Act, 2017.
- NCLAT operates with two Benches, namely the Principal Bench in New Delhi and another Bench in Chennai.

Corporate Social Responsibility

- The Companies Act, 2013, introduced Corporate Social Responsibility (CSR) provisions effective from **2014**.
- CSR framework is outlined in **Section 135 of the Act, Schedule VII, and the Companies (CSR Policy) Rules, 2014**.
 - Section 135 sets eligibility criteria, Schedule VII lists CSR activities, and CSR Rules detail implementation modalities.
 - **Amendments** to Section 135 were made, including provisions for transferring unspent CSR funds and making non-compliance a civil wrong from 2021.
- The Ministry launched an "**E-Compendium on CSR**" for comprehensive CSR information and a National CSR Exchange Portal to facilitate interaction between stakeholders.
- Amendments to CSR Policy Rules in 2014 aimed to strengthen the CSR ecosystem, enhancing objectivity, transparency, board responsibility, and company disclosures.
- Companies were allowed to undertake research and development activities, including those related to Covid-19, in collaboration with specified institutes.
- Major changes in CSR ecosystem, including mandatory registration of implementing agencies with MCA through e-form **CSR-1 from 2021**, were brought about by amendments to **CSR Policy Rules in 2014**.

Limited Liability Partnerships

- In India, approximately 95% of industrial units are Micro, Small, and Medium Enterprises (MSMEs).
- **MSME survey findings:** Over 90% of these enterprises are registered as proprietorships, about 2-3% as partnerships, and less than 2% as companies.
- **Low prevalence of corporate form among MSMEs:** Data analysis by the Ministry of MSME indicates that high compliance costs under the **Companies Act, 1956**, discouraged MSMEs from adopting the corporate form.
- **Challenges with traditional forms:** Proprietorship and partnership firms' opaque functioning makes credit assessment difficult for bankers, placing MSMEs at a disadvantage in accessing loan/credit facilities.
- **Need for a new corporate form:** Limited Liability Partnership (LLP) Act was enacted in 2008 and implemented from 2009 to provide an alternative to traditional partnership and corporate structures.
- **LLP characteristics:** LLP shields individual partners from joint and several liabilities, unlike traditional partnerships. Partners' liabilities are limited to business assets, not personal assets. LLP can enter contracts and hold property in its own name.
- **Advantages of LLP:** Simplified compliance norms, limited liability, and corporate structure improve access to credit in the market for MSMEs.

Limited Liability Partnership (Amendment) Act, 2021

- The Limited Liability Partnership (Amendment) Act, 2021 came into effect in **August**.
 - Its purpose is to amend the **Limited Liability Partnership Act, 2008**.
 - It converts specific offenses into civil defaults.
- The Act modifies the punishment for these offenses.
- It defines the concept of a small LLP.
- The Act includes provisions for appointing adjudicating officers.
- Special courts are established under this Act.

e-Governance Project

- The Ministry initiated an e-governance project named **MCA21 in March 2006** to streamline services related to Companies and Limited Liability Partnerships (LLPs).
- MCA21 aimed to provide end-to-end service delivery including registration, incorporation, registry, and compliance services.
 - Implemented on the Build, Own, Operate, and Transfer (BOOT) Model, the project's vision was to introduce a service-oriented approach in government service delivery.
- Mission Mode was adopted to bring a service-centric approach to public service delivery and administration of the **Companies Act and LLP Act**.

- Key focuses of MCA21 included speedy incorporation of Companies and LLPs and enhancing Ease of Doing Business.
- Services were available online, and all filed documents were accessible to the public.
- **Version 1** of MCA21 was **launched in 2006**, followed by Version 2.0 in 2016-17, and subsequently, Version 3.0 was introduced.
- **Version 3.0** offers web-based forms with real-time validation, prefill options, and new features like e-books and e-consultations.
- C-PACE, established in 2023, is operational to centralize and expedite the voluntary winding up process of Companies.

National Financial Reporting Authority

- National Financial Reporting Authority (NFRA) was **formed in 2018** under **Section 132** of the **Companies Act, 2013, as a statutory body**.
- NFRA's purpose is to safeguard the public interest, investors, creditors, and others involved with companies by:
 - Setting high-quality standards for accounting and auditing.
 - Exercising effective oversight over accounting functions of companies and auditing functions of auditors.
- NFRA's establishment was prompted by a **global need** for independent regulators following accounting scandals.
- Its role includes enforcing auditing standards and ensuring the quality of audits to bolster investor and public confidence in companies' financial disclosures.

Serious Fraud Investigation Office

- The Serious Fraud Investigation Office (SFIO) was **established in 2015** under the **Companies Act, 2013**.
 - SFIO operates under the **Ministry of Corporate Affairs**.
 - It is a multi-disciplinary organization comprising experts in various fields such as accountancy, forensic auditing, law, information technology, investigation, company law, capital market, banking, and taxation.
- SFIO's primary purpose is to detect, prosecute, or recommend prosecution for white-collar crimes and frauds.
- Its mandate includes investigating complex financial frauds and corporate malpractices.
- SFIO plays a crucial role in maintaining corporate integrity and ensuring transparency in business practices.

Competition Commission of India

- The Competition Commission of India (CCI) was **established in 2003** under the **Competition Act, 2002**, with the aim of promoting fair competition, protecting consumer interests, and ensuring freedom of trade.
- CCI's functions include eliminating practices harmful to competition, safeguarding consumer welfare, conducting advocacy, raising public awareness, and training on competition issues.
 - It ensures foreign companies comply with Indian competition laws and prevents enterprises from abusing dominant positions by controlling supply, manipulating prices, or denying market access to competitors.
- The Act underwent several **amendments in 2007, 2009, and 2023**, with certain provisions modified through the **Finance Act of 2017**.
- Provisions regarding anti-competitive agreements and abuse of dominant positions were enacted in **2009**, while those relating to combinations were implemented in **2011**.
- The Competition (Amendment) Act, 2023 introduced new thresholds for notifying combinations, reduced the review time for **M&As from 210 to 150 days**, broadened the scope of anti-competitive agreements, and established a framework for settlement and commitment for faster market corrections.
- By August 2023, CCI had registered **1,238 matters** related to allegations of anti-competitive agreements and abuse of dominant position across various sectors.

