



Grant Thornton

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Results: Grant Thornton Survey

The Companies Act, 2013

December 2014



Preface

It has almost been a year since the Companies Act, 2013 (2013 Act) came into effect, replacing the nearly six-decade old Companies Act, 1956 (1956 Act). The 2013 Act is a landmark legislation that seeks to strengthen corporate governance framework in corporate India.

The new law is being implemented in phases and a few sections are yet to become effective. The government is still making amendments to the 2013 Act to align it with other regulations like those of SEBI and vice versa. With the changes and implementation happening simultaneously, it is an uphill task for dynamic Indian businesses to keep pace with this fast-changing regulatory landscape.

In this backdrop, Grant Thornton in India conducted a survey to identify the issues and challenges being faced by companies, as they run the extra mile to comply with the 2013 Act. The survey received an overwhelming response.

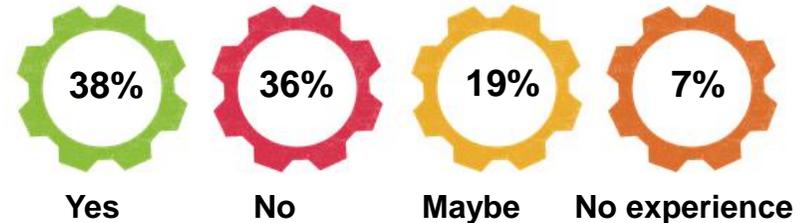
Following are the results of the survey. We have analysed the findings and presented our view as well. We welcome your feedback and suggestions.



Survey results - Companies Act, 2013

Q 1: Do you find the 2013 Act user-friendly as compared to the Act 1956?

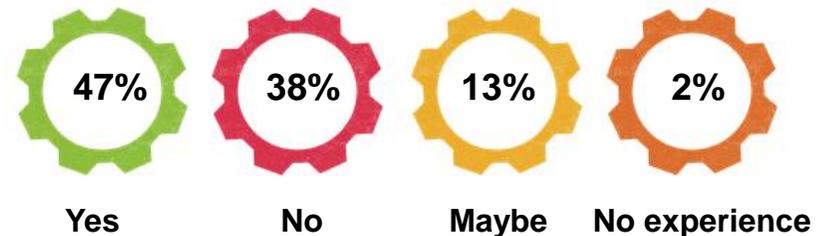
Among respondents with a definitive opinion, more than 50% of the respondents believe that the 2013 Act is more user-friendly than the erstwhile legislation.



Our view : The 2013 Act is a shorter document than the 1956 Act, and has better grouping of Sections. Also, arrangements of key portions of the law in the form of Rules facilitates ease of update and amendments. However, a few of these positives also have their flip side e.g. lesser provisions also means more areas requiring interpretation, which create obvious challenges for companies.

Q 2: Do you think the phased implementation of the 2013 Act is an effective approach?

While 51% respondents do not agree or are unsure, a large number (47%) believes that the phased implementation of the 2013 Act is an effective approach.

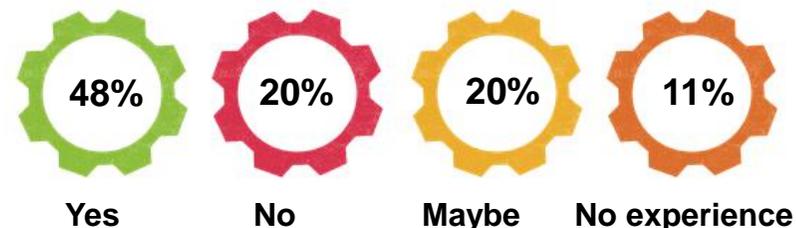


Our view: A phased implementation shall provide the much needed transition time to companies, e.g. to develop processes, train resources, alter transactions and adjust organisation structures. However, at some places , especially where part of a section is alive under the new Act, this approach has left the companies in a swing to refer both the versions of the Act. The lack of detailed transitional provisions in many places adds to the complexity.

Survey results - Companies Act, 2013

Q 3: Do you find that 2013 Act has become largely compatible with other regulations like SEBI?

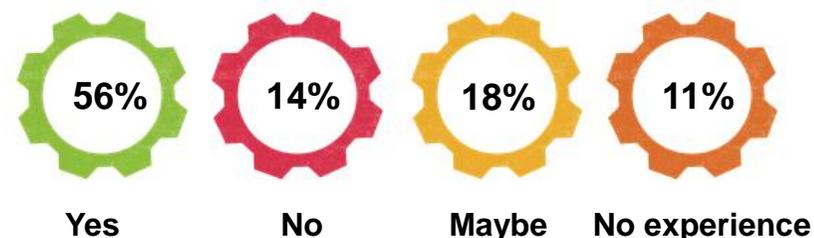
Among the respondents with experience in this regard, a majority (54%) believe that the 2013 Act is largely compatible with other regulations like SEBI.



Our view: After some of the recent amendments, the 2013 Act and the SEBI requirements have certainly been aligned to a large extent, although a handful of areas have yet to be harmonised. For e.g. the definition of related parties, approval process for such transactions, requirement of risk management committee of the Board, provisions related to sale of a material subsidiary, etc. Regardless, the 2013 Act has made good progress in the right direction.

Q 4: Do you think it will be challenging for listed companies to comply with the provisions of both the 2013 Act and SEBI together?

Among the respondents with experience in this regard, a staggering 63% feel that it will be challenging for listed companies to comply with the provisions of both the 2013 Act and SEBI together.

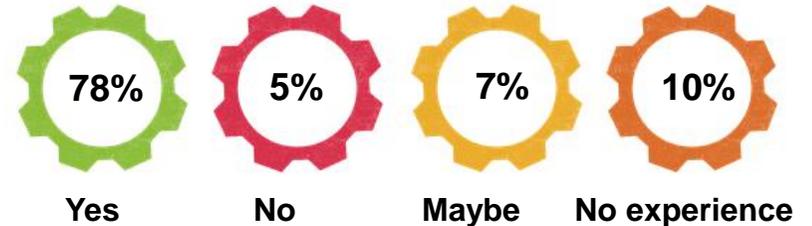


Our view: While the gap between the 2013 Act and the SEBI requirements has been narrowed in several areas, both have become much stricter than their previous avatars. And, since a listed company will have to anyway comply with the stricter provisions out of the two, they will face an increased challenge in achieving compliance. Also, companies shall look forward to an adaptation of reliefs provided by the securities market regulator in the 2013 Act too, e.g. omnibus approval of the audit committees for related party transactions.

Survey results - Companies Act, 2013

Q 5: The transitional provisions for complying with the new requirements have not been specified in certain cases. Do you think it is creating more implementation challenges?

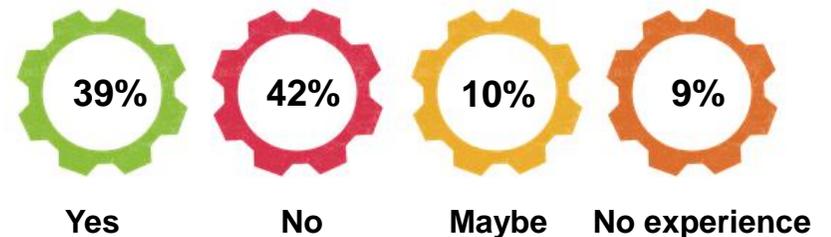
A massive 78% (87% after adjusting for inexperience bias) confirmed that in the absence of the transitional provisions for complying with the new requirements in certain cases, implementation of the 2013 Act is challenging.



Our view: We also second the opinion that the absence of transitional provisions is creating difficulties both for the corporates as well as for the regulators. However, a few instances have been advantageous too for the corporates where no intermediate provision is available, such as grandfathering provisions on providing loans to directors.

Q 6: Do you think that the time window of 60 days for reporting fraud by auditors adequate?

Among the respondents with a definitive opinion, the survey results show the number of respondents are almost equally divided on whether the time window of 60 days for reporting fraud by auditors adequate.

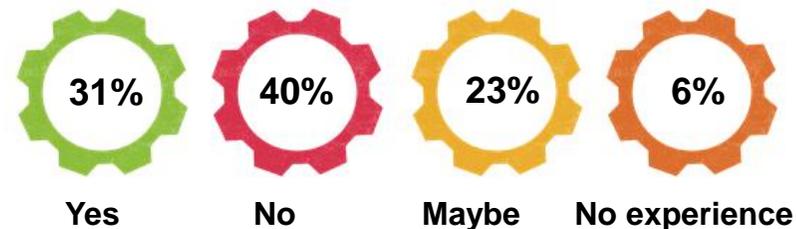


Our view: This is a completely new requirement introduced by the 2013 Act and it is expected it will take some time for the auditing profession to fully understand the scope of their duty and for the best practices to be developed and standardised. This being the initial stage of implementation, it is too soon to say whether or not the prescribed timeline is too short, too long or justified.

Survey results - Companies Act, 2013

Q 7: Under the 2013 Act, internal financial control reporting also applies to a private company. Do you think private companies and their auditors will be able to comply with it?

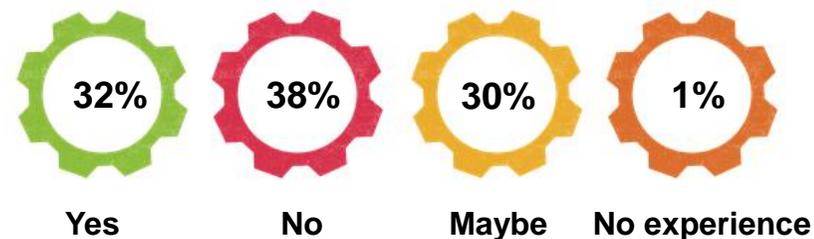
63% of the respondents seem concerned as to whether private companies and their auditors will be able to comply with internal financial control reporting or not.



Our view: This is a good example where the 2013 Act has even surpassed the severity and rigor of the international standards. While the debate on cost vs benefit of this requirement for private companies will go on for a long time, it is expected that implementing this requirement will be equally challenging for large companies and their auditors. In the US, for example, the implementation costs of similar provisions resulted in almost doubling of outlay in auditing and compliance fees.

Q 8: Do you think that the mandate of a "woman director" on the board will be effective in true sense?

68% of the respondents do not believe or are unsure that the mandate of a 'woman director' on the board will be effective in true sense.

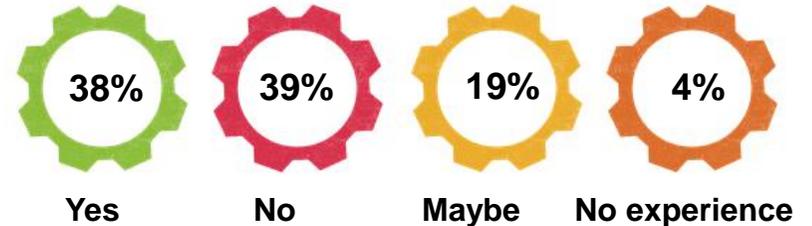


Our view: While this is certainly a welcome legislation to empower women and ensure their representation in the financial and economic growth of the country, to truly meet the objective of the legislation, the companies must achieve compliance strictly based on professional and competitive merits.

Survey results - Companies Act, 2013

Q 9: Do you think mandatory preparation of consolidated financial statement for non-listed companies and low or no public interest entities be beneficial, considering the efforts involved?

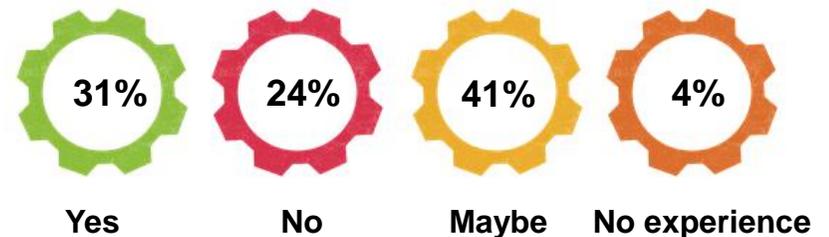
Most respondents disagree that the mandatory preparation of consolidated financial statement for non-listed companies and low or no public interest entities would be beneficial, considering the efforts involved.



Our view: Given the cost and efforts involved in preparing the consolidated financial statements, while the benefits of this requirement may appear questionable, those familiar with the international practices would agree that this is rudimentary for Indian companies to compare themselves with their international peers.

Q 10: Do you think that the companies and the employees of the companies will make effective use of the whistle blower policy?

A large majority of the respondents are unsure as to whether the companies and employees can make most of the whistle blower policy.

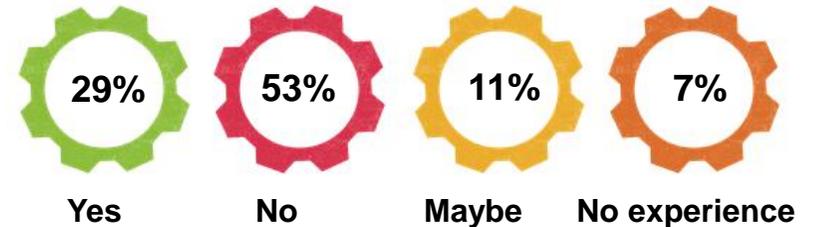


Our view: We believe that this requirement is a must, regardless of the perceived or actual benefits. This is also one of the best practices followed by almost all large foreign multinationals and provides an indispensable mechanism to raise the alarm for all concerned when they may need one.

Survey results - Companies Act, 2013

Q 11: Do you think it is possible to effectively comply with the restrictions placed on loans and investments in case of private companies?

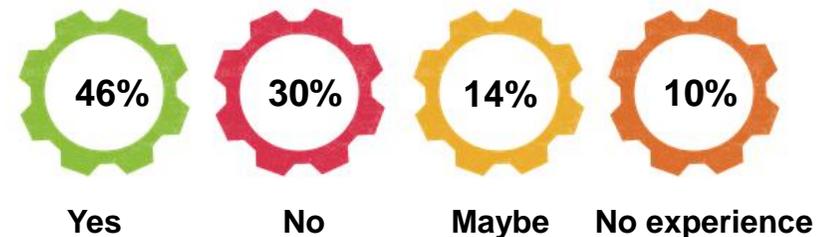
A majority of the respondents (53%) believe it is not possible to effectively comply with the restrictions placed on loans and investments in case of private companies.



Our view: We are able to see the merit in survey results that the restrictions placed on private companies for loans and investments seem a bit too harsh, considering the structure and operations of the private companies in India, and that several large privately-held companies traditionally started only as family businesses.

Q 12: There is no update on any changes in CARO after making the 2013 Act applicable. Do you want CARO to be used in the current form in the 2013 Act too?

46% of the respondents say they want CARO to be used in the current form in the 2013 Act too.

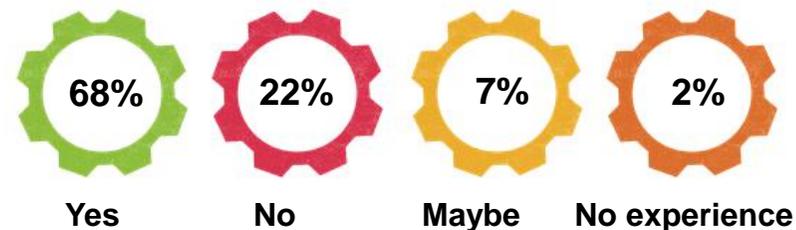


Our view: While we do not recommend eliminating the requirement of CARO reports, we believe that the CARO can be revised to make it more effective by covering fewer, more critical aspects of reporting.

Survey results - Companies Act, 2013

Q 13: Do you believe that new requirements for related party transactions are onerous to comply with?

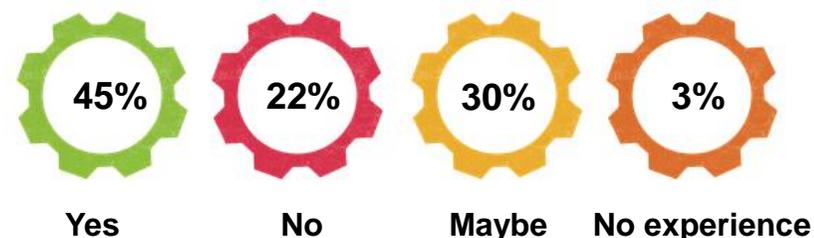
In this completely one-sided result in the survey, a whopping 68% respondents feel that the new approval requirements for related party transactions are onerous to comply with.



Our view: We are not surprised to see the results of the survey on this topic. The 2013 Act has significantly broadened the approval requirements for related party transactions, e.g. certain transactions requiring special resolution to be passed at the general meeting. These requirements are onerous to comply with, especially for more closely held groups.

Q 14: The role of audit committee has been widened under the provisions of the 2013 Act. Do you think the audit committees will be able to transition effectively to the new role?

A majority of the respondents believe that the audit committees will be able to transition effectively to the widened role under the provisions of the 2013 Act.

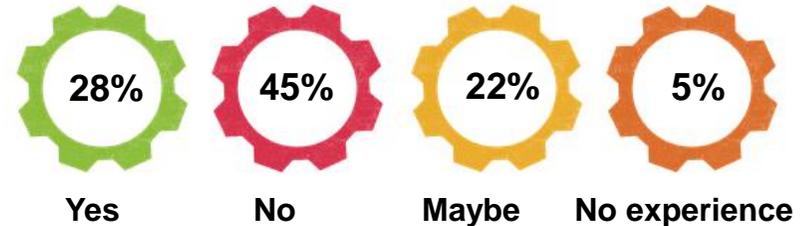


Our view: The 2013 Act has charged the audit committee with far greater responsibilities than ever before. The continued involvement of an audit committee with respect to reviewing and monitoring auditor's independence and performance, scrutiny of inter-corporate loans, approving related party transactions etc. may seem difficult to comply with, however, these are imperative to protect public interest given the increasing aspirations and complexities of businesses today.

Survey results - Companies Act, 2013

Q 15: The 2013 Act gives an exhaustive list on duties of directors. Do you think it is practicable for directors to comply with?

45% of the respondents feel that it is not practicable for directors to comply with the exhaustive list on duties given in the 2013 Act.



Our view: The 2013 Act contains a long and fairly broad list of duties of directors, e.g. protecting the rights of minority shareholders, acquiring a comfort on integrity of financial information etc., which have increased the responsibilities of the directors, a way too much. However, these form part of the larger corporate governance reforms that the 2013 Act aims to accomplish and can go a long way in improving the credibility of Indian companies to the rest of the world.

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