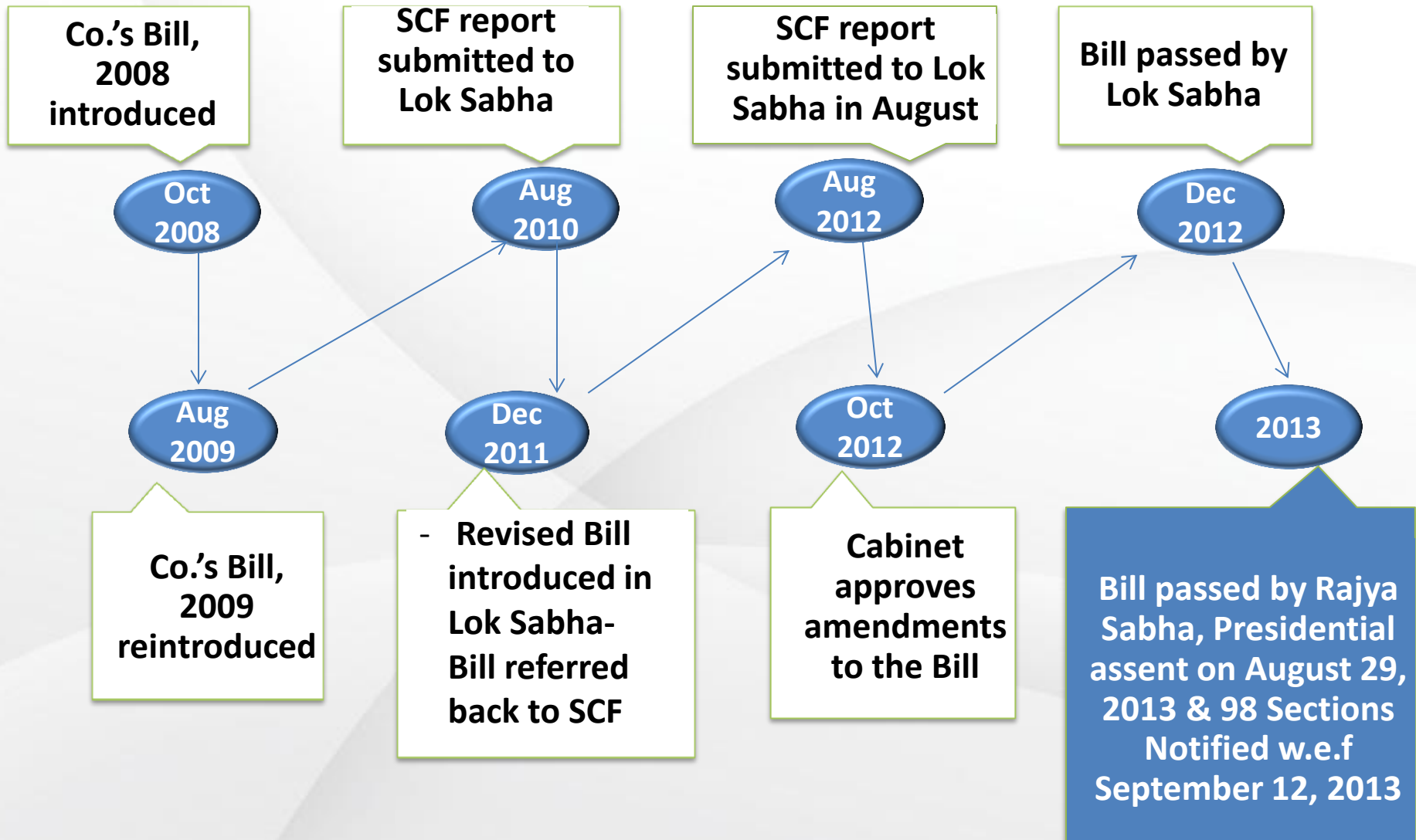




IMPACT ON PRIVATE & UNLISTED PUBLIC COMPANIES OF NEW COMPANIES ACT, 2013

Organized by J.B. Nagar CPE Study Circle of WIRC

Passage of Companies Bill



Structure

**The Companies
Act, 1956**

**13 Parts
658 Sections
15 Schedules**

**The Companies
Act, 2013**

**29 Chapters
470 Sections
7 Schedules**

In approx. 75% of the Sections the words “to be specified” or “as may be prescribed” has been used – depicting extensive “delegated legislation”. The Draft rules have been made available for public debate

Major Highlights

Mandatory CSR

Enhanced Accountability on Corporates

Independent Director – Detailed provisions & code for ID

NFRA (NACAS) given more powers

Additional disclosures in BoD Report

Restriction on Inter Corporate Loans/Investments and Guarantee

Major Highlights

M & A procedures streamlined

1 Woman Director mandatory

Class action suits

NCLT given very wide powers

Transfer of shares to IEP Fund along with unpaid/
unclaimed dividend

Changes in Depreciation Provisions

Major Highlights

Private placement clearly defined

Several exemptions /relaxations / privileges to Pvt Co now withdrawn & permissible max no of members-200

Concept of One Person Company (OPC) introduced

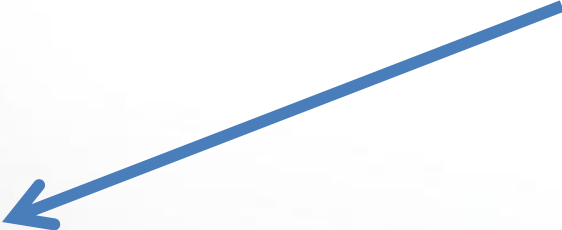
Small Companies defined and granted some relaxations

Many new definitions and changes to existing definitions inserted



IMPACT ON PRIVATE & UNLISTED PUBLIC LIMITED COMPANIES OF NEW COMPANIES ACT, 2013

Agenda for discussion today



Effect on Private Companies

Mainly:

- Section 185 (Old Sec – 295)
- Section 186 (Old Sec – 372A)
- Section 73 & 74 (Old Sec – 58A)
- Section 188 (old Sec – 297)
- Cash Flow & CFS



Effect on unlisted Public companies

Plus:

- Audit Committee & ID
- Governance
- Rotation of Auditors
- CSR
- Etc

Exemptions etc... Withdrawn....

Loan **etc** to Directors Etc... (Notified on 12th September 2013)

Sec. 295

- Applicable only to Public Co.'s

Sec. 185

- Now Applicable to Private Co.'s also

- Section 295 exempted Pvt Limited Companies; new Act does not
- Loans etc from Holding to its Subsidiaries also not exempted
- Under the existing act, prohibited loans/guarantees can be made with the approval of CG, Under the new act providing such loans not permitted
- Only exceptions in Sec 185:
 - ✓ loan given to MD or WTD if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by SR
 - ✓ Loans **etc** given in ordinary course of its business **(conditions apply)**

Exemptions etc... Withdrawn.... Cont'd

First proviso of clause 185 state that nothing contain in this sub-section shall apply to –

- (a) The giving of any loan to a managing or WTD –
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) Pursuant to any scheme approved by the members by a special resolution
- (b) A company which in the ordinary course of its business provides loan or gives guarantees or securities for the due repayment of any loan in respect of such loan an interest is charged at a rate not less than the bank rate declared by the RBI

Consequences of non-compliance:

- ✓ Fine to Company - Rs 5 Lakh to Rs 25 Lakh
- ✓ Fine to Director or other person - Rs 5 Lakh to Rs 25 Lakh or Imprisonment upto Six months or Both

Unlike in Sec. 295, the exemption from imprisonment, if loan is repaid fully, is not there in Sec. 185

Exemptions etc... Withdrawn.... Cont'd

Under sec. 185 “person in whom Director is interested” means:

(the list is same as in Section 295 of 1956 Act)

- Any Director of lending Co or of Holding Co
- Any partner or relative of any such Director
- Any firm in which any such Director or relative is partner
- Any PVT Co of which any such Director is Director or Member
- Any Body Corporate of which 25% or more of total voting power is exercised/controlled by any such Director(s)
- Any Body Corporate the BoD or MD whereof is accustomed to act in accordance with directions/instructions of BoD or of any Director(s) of lending Company

Exemptions etc... Withdrawn.... Cont'd

➤ Intercompany Investments and Loans (**Not yet notified**)

Sec. 372A

- Applicable only to Public Co.'s

Sec. 186

- Now Applicable to Private Co.'s also

Additional Changes:

- Benchmark for minimum rate of interest for such loans changed from **the prevailing bank rate to prevailing yield of 1, 3, 5 or 10 year G-sec** closest to the tenor of the loan
- **Exemption in case of Loan by Holding Co to WOS also withdrawn**
- **Additional disclosure in financial statements-** full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security


Exemptions etc... Withdrawn.... Cont'd

- **S. 186:** Restriction on only 2 layers of subsidiaries **except for subsidiaries outside India or if required by law/rule or regulation**
- 186 (2)- No company shall directly or indirectly —
 - (a) give any loan to any person or other body corporate;
 - (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
 - (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, **exceeding 60% of its paid-up S/C, free reserves and S.P account or 100% of its free reserves and S.P account, whichever is more**


If exceeds the limits then prior approval by S.R in G.M shall be necessary

Interpretation of S. 185 vis-a-vis S. 186

- Sec. 185 begins with words 'save as otherwise provided in this Act', hence, whether the intent of the law is such that once Section 186 is made operative, loans to director and other person in whom the Director is interested may also be made after complying with the provisions of Section 186? (S. 186 begins with words 'without prejudice to the provisions contained in this Act'...)



If the answer is positive, the whole purpose of legislation to have Section 185 of the New Law seems redundant



If the answer is negative, there seems some drafting error in the legislation or where else do we see the effect of this section in the law if not Section 186 ?

MCA clarification dated 19/11/2013 (stating that Sec 372A continues to be operative till Sec 186 of new Act is notified) adds to confusion rather than clarifying

S. 185 – Discussion in Select Committee Pg 67;

Suggestion	Comments of Ministry
<p>This clause corresponds to section 295 of existing Act. However, section 295(2) seems to have been inadvertently overlooked. Such exemption is necessary. A holding and subsidiary company are in substance one entity and consolidated financials ensure that all their transactions with third parties are accounted and disclosed. Consequently, it is necessary to give freedom to companies to deal with their subsidiaries as if they are mere divisions of the company.</p>	<p>The Irani Committee on new Company Law (2005) had made following recommendations in connection with restrictions for loans to be made to directors :- —5.1 <i>Generally the directors should not be encouraged to avail of loans or guarantees from companies. They should be allowed remuneration or sitting fees only. <u>In case company decides so, loans to directors should be allowed only when company by special resolution approves such loans. Disclosures to be made to shareholders, through the explanatory statement, should be specified in the rules.</u> It should be open to a company to formulate schemes (such as Housing Loan Schemes) for the benefit of Executive Directors. Once such schemes are approved by the shareholders by special resolution, loans under such schemes may be allowed to eligible directors, without again going to shareholders for approval.</i> (b) The provisions proposed in the Companies Bill, 2011 are in accordance with above recommendation and were similarly included in the Companies Bill, 2009.</p>

Related Party Transactions

What does the Companies Act, 1956 say ? [Section 297 (1)]

- Central government approval required for entering into specific contracts, where paid-up capital of the company is not less than Rs. 1 crore; for other Companies – the Board approval where interested Directors are not to participate
- Following transactions are covered:
 - Sale, purchase or supply of any goods, material or services
 - Underwriting the subscription of any shares or debentures
- Sale/purchase of goods/services for cash at prevailing market prices not exceeding Rs 5K – are exempted
- No specific disclosure required in the Board Report

Related Party Transactionscont'd

Provisions of Sec 188 of New Act

- Prior approval by SR at GM required if paid-up capital of Co is Rs 1 Cr or more **OR** the transaction with RP does ~~not~~ exceed such sum, as may be prescribed (The word “not” is mis-placed in Section). The limits for clauses (a) to (e) as per draft rules are prescribed as 5% of annual Turnover or 20% of Net worth of Co as per last audited FS
- Interested member not to vote on SR – **(issue for some Co's)**
- Disclosure in board report required along with appropriate justification for RPT
- Section exempts: Any transaction entered by company in its ordinary course of business other than transactions which are not an arm's length basis

Related Party Transaction

1956 Act

- Limited scope of transactions and persons covered under Co Act (S. 297)
- Prior approval of CG required in case paid-up capital exceeds INR 10 million (INR 1 crore)

2013 Act

- Enhanced scope of transactions
- Enhanced scope of related parties to include KMP and relatives, directors with certain shareholding, persons in advisory capacity (other than professional advice) to board
- Prior approval of shareholders by SR if: (Rule 12.14)
 - paid-up capital exceeds Rs 1 Cr
 - Trx exceeding higher of 5% of T/O or 25% of N/W as per last audited FS
 - Appointment exceeding Remuneration of Rs 1 Lac pm
 - Underwriting etc exceeding Rs 10 lac
 - **No member shall vote if he is related party**

Related Party Transactions ...cont'd

Following transactions are covered u/s 188

- a) sale, purchase or supply of any goods or materials;
- b) selling or otherwise disposing of, or buying, property of any kind;
- c) leasing of property of any kind;
- d) availing or rendering of any services;
- e) appointment of any agent for purchase or sale of goods, materials, services or property;
- f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and **(Draft Rules: Rs 1 Lakh per month or more)**
- g) underwriting the subscription of any securities or derivatives thereof, of the company **(Draft Rules: more than Rs 10 Lakh)**

Restriction on Non-cash transaction involving directors (S. 192)

The new Act introduce the new requirement, that without prior approval of the company in general meeting, a company will not enter into an arrangement by which:

- A Director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- The company acquires or is to acquire assets for consideration other than cash, from such director or person so connected

If the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company

Acceptance of Deposits

➤ What does the Companies Act, 1956 say? (Section 58A)

- Sec. 58A not applicable to deposits taken by private companies from its members

➤ What does the Companies Act, 2013 say? (Section 73 – Deposit from members and Section 74 – Deposit from others) (Both are not yet notified)

- Co.'s can (including private Co.'s excluding banks & NBFC) subject to the passing of resolution in GM & such rules as may be prescribed in consultation with the RBI accept deposits from its members if the following conditions are fulfilled:
 - ✓ Issuance of circular to members containing necessary details
 - ✓ Files a copy of such circular with the ROC within 30 days
 - ✓ maintenance of 15% liquid deposits
 - ✓ deposit insurance
 - ✓ Details/description of security, if any
 - ✓ Appointing one or more deposit trustees

Acceptance of Deposits... Cont'd

- Transitional provision for repayment of existing deposit contained in Sec. 74 (within 1 year or maturity whichever is earlier & statements of O/s deposits to be filed with RoC within 3 months)

- Deposit will include, inter alia, as per draft rules:
 - a) Share application money outstanding beyond 60 days and such application money/ advance is not refunded within 15 days
 - b) loans from relatives of directors or loans from directors in case of public company
 - c) advances received for supply of goods or provision of services outstanding beyond 180 days
 - d) advances from buyers of immovable property if agreement is not registered

Acceptance of Deposits... Cont'd

Premature repayment of deposits:

- Rate of interest payable shall be reduced by 1%
- Renewal before maturity is allowed provided:
 1. Interest will be paid as per the new rates
 2. Renewal for a period longer than the unexpired period of deposit

Return of deposit to be filed with ROC

- On or before 30th June in Form no 3
- Furnish information as on 31st March duly audited by the auditor of the company who shall give his report as per Form
- A copy of return to be submitted to RBI as well, wherever applicable

Penal Rate of Interest for non-payment – 18% per annum

Exemptions etc... Withdrawn

- Further issue of Share Capital by Right issue (**Not yet notified**)

Sec. 81	{	• Applicable only to Public Co.'s
Sec. 62	{	• Now Applicable to Private Co.'s also

Additional changes:

- In case the existing shareholders do not accept the offer, directors should dispose such shares in a manner “**non disadvantageous**” to the **shareholders and company**. Earlier it was to be disposed of in manner “**most beneficial to the company**”

Exemptions etc... Withdrawn

- if not right issue then:
 - to any person if authorised by Special Resolution;
 - at a **price to be determined by registered valuer &**
 - subject to other conditions as may be prescribed

- Under the existing provisions Sec. 81 (1A) (b)-if the approval was given by simple majority, CG could have allowed the issue if it was shown to be most beneficial to the Company. Such option is removed in the new act

Exemptions etc... Withdrawn

➤ Commencement of business (**Not yet notified**)

Sec. 149

- Applicable only to Public Co.'s

Sec. 11

- Now Applicable to Private Co.'s also

Sec 11(1)- Co. having a S/C not to commence any business or exercise any borrowing powers unless-

- Declaration filed with the ROC that every subscriber to the MOA has paid the value of the shares agreed to be taken by him
- Co. has filed with ROC verification of its Registered office

Sec 11(3)- If declaration is not filed within 180 days of incorporation and ROC has reasonable cause to believe that the co. is not carrying on any business or operations, he may, initiate action for the removal of the name of the company from the Register of Co.'s.

Exemptions etc... Withdrawn

➤ Passing of Resolution by Postal Ballot (**Not yet notified**)

Sec. 192A

- Applicable only to Public Co.'s

Sec. 110

- Now Applicable to Private Co.'s also having > 50 members

Following items of business shall be transacted only by means of voting through a postal ballot-

- Object Clause Alteration
- Articles of Association Alteration
- Change in Registered Office
- Change in utilisation of funds raised by company
- Issue of shares with differential voting rights
- Variation in the rights attached to shares or debentures
- Buy back of shares
- Election of small shareholder's director
- Sale of undertaking

Exemptions etc... Withdrawn.... Cont'd

- Interested director not to participate or vote in Board's proceedings (**Not yet notified**)

Sec. 300(2) { • Applicable only to Public Co.'s
Sec. 184 { • Now Applicable to Private Co.'s also

- Appointment & tenure of Managing Director (**Not yet notified**)

Sec. 269 (2) & 317 { • Applicable only to Public Co.'s
Sec. 196 & 203 { • Now Applicable to Private Co.'s also

Exemptions etc... Withdrawn.... Cont'd

- Other conditions:
 - Age limit of 21 to 70
 - If age > 70 approval by S.R in G.M no further approval of the C.G shall be necessary for such appointment
 - MD and Manager both cannot be appointed in same company
 - Term of MD for 5 years
 - Appointment of Director **(Not yet notified)**

Sec. 264

- Applicable only to Public Co.'s

Sec. 152

- Now Applicable to Private Co.'s also

Exemptions etc... Withdrawn.... Cont'd

- Restrictions on Kinds of Capital that can be issued (**Not yet notified**)

Sec. 86

- Applicable only to Public Co.'s

Sec. 43

- Now Applicable to Private Co.'s also

- Length of Notice of GM, explanatory statement etc.. (**Not yet notified**)

Sec. 171-186

- Applicable only to Public Co.'s

Sec. 101

- Now Applicable to Private Co.'s also

Board of Directors – Major Changes

1956 Act	2013 Act
Maximum no. of directors in a Co can be 12 [Section 259]	Now increased to 15 , with SR at GM-no. can be > 15 [Section 149] (Not yet notified)
Max number of directorship a person can have is 15 (excluding private co etc.) [S. 276]	Restricted to 20 (with max 10 public co.'s) [Section 165]. Time of 1 year given to comply (Not yet notified)
Director of the company to be resident in India - No specific provision	1 of directors - stayed in India for 182 days or more in previous calendar year (S.149) (Not yet notified)
Formation of AC must for Co having paid up capital > Rs 5cr (S.292A)- no specific provisions for Nomination & Remuneration Committee OR Stakeholders Relationship Committee	All listed Co & other Public Co having, at least Rs 100cr paid up capital or Borrowings (including Debentures & Deposits) Rs 200cr are required to have AC, Nomination & Remuneration Committee and Stakeholders Relationship Committee & whistle Blower mechanism [Sec 177 & 178 rwr 12.4] (Not yet notified)

Board of Directors – Major Changes

1956 Act	2013 Act
No such Provision	Resignation of director S.168- Concerned Director to file form with RoC along with detailed reason (Not yet notified) – applicable to pvt ltd co.'s also
Section 316 & 317 rws Sec 269- Appointment of MD or WTD- in case of Public Co.'s	Sec 203- All listed co.'s & other co.'s having paid up S/C > 5crore to have 1 MD or WTD and CS and CFO (Not yet notified)
Restriction on powers of the Board applied only to Public Companies	Applicable to all Companies. Exemption to Private Co.'s taken away
Section 293- Required ordinary resolution to exercise certain powers	Section 180- Required special resolution to exercise certain powers—Sell, lease, Disposal of Undertaking. Investments & borrowings

Powers of BoD

1956 act (Sec 293)	2013 act (Sec 180) (Notified on 12th September, 2013)
expression “undertaking” and substantially the whole of the “undertaking” used- not defined	180(1) undertaking means an undertaking in which the investment of the Co. > 20%. of its net worth as per the audited balance sheet of the preceding F/Y or an undertaking which generates 20% of the total income of the company during the previous F/Y Substantially the whole of the undertaking in any financial year shall mean 20% or more of the value of the undertaking as per the audited balance sheet of the preceding F/Y
Contributions to charitable and other funds not directly relating to the business of the co. or the welfare of its employees exceeding the limit specified also required approval	Now approval not required

Report of Board of Directors

Additional Items required to be given in report of board of Directors:

- The extract of the annual return
- Particulars of loans, guarantees or investments in subsidiaries as provided in sec. 186
- Particulars of contracts or arrangements with related parties with rationale for arms length pricing as stated in sec. 188
- A statement indicating development and implementation of risk management policy for the company which in the opinion of the Board may threaten the existence of the company

Additional Items required to be given in director responsibility statement:

- Details about policy developed and implementation of CSR policy
- Such other matters as provided in the Rules notified by the Government
- Directors had devised proper system to ensure compliance with the provision of all applicable laws and that such systems were adequate and operating effectively

Accounts & Audit – Major Changes

- Cash Flow (Definition of ‘Financial Statements’ u/s 2(40))
- Consolidated Financial Statements (Section 129)
- Subsidiary Company (Section 2(87))
- Depreciation
- Bonus Shares

- Appointment of auditor for block period
- Rotation of Auditor

Share Application Money

- The offer or invitation in a financial year is to be made to such number of persons not exceeding 50 or such higher number as may be prescribed;
- If a company makes an offer to allot or invites subscription or allots or enters into agreement to allot securities to more than prescribed number of persons, the same shall be deemed to be an offer to the public;
- All monies payable on subscription of securities under this section shall be paid through cheque or DD or other banking channels but not by cash [section 42(5) of the 2013 Act];
- Securities to be allotted within 60 days from the receipt of application money [section 42(6) of the 2013 Act];
- Moneys received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any other purpose

Depreciation

1956 Act

- S. 350 & Sch XIV read with AS 6
- 95% of original cost to be depreciated over specified period
- Low value items - fully depreciated
- Separate rates for Intangibles/electricity companies/EST etc

2013 Act

- Schedule II provides useful Lives of assets and no rates (SLM or WDV)
- The balance of WDV to be depreciated as per provisions of this schedule
- No provision for low value items or rates for intangibles
- Schedule Rates for some items like Building, Furniture etc are different

▪ **Carrying values of FA to be depreciated as per the new Act** ▫

Depreciation... Cont'd

- All companies will be divided into the following three classes to decide application of depreciation rates:
 - Class of companies as may be prescribed and whose FS comply with prescribed accounting standards- *useful life & residual value as prescribed in schedule II. Permitted to adopt diff useful life or residual value by giving appropriate justification*
 - Class of companies where useful life or residual value are prescribed by a regulatory authority constituted under an act of parliament or by CG- *depreciation rate, useful lives and residual value prescribed by relevant authority*
 - Other companies- useful life and residual value as proposed in schedule

Depreciation

Some significant Changes

Asset	Rate of depreciation-1956 act	Rate converted to years-1956 act	Useful Life-2013 Act	Longer life/ (Shorter life)
Continuous Process Plant	5.28	18.94	8	-10.94
Plant & Machinery	4.75	21.05	15	-6.05
General Rate for furniture & fittings	6.33	15.80	10	-5.80
Electrically Operated Vehicles	7	14.4	8	-6.14
Purely temporary erections	100	1	3	-2
Furniture & fittings used in hotels etc...	9.5	10.53	8	-2.53

Bonus Shares (Section 63)

Pre-condition for issue of Bonus share - No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

it is authorized by its articles;

it has, on the recommendation of the Board, been authorized in the general meeting of the company;

it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

it complies with such conditions as may be prescribed (not yet prescribed)

bonus shares shall not be issued in lieu of dividend

Prohibition on Other Services-not yet notified

- **What does the Companies Act, 1956 say ?**

- No specific provision

- **What does the Companies Act, 2013 say ? (Section 144)**

- Auditor **not to render, directly or indirectly, following services** to the Co. or its Holding Co. or Subsidiary Company or Associate Company:

- a) Accounting and book keeping services;
- b) Internal audit;
- c) Design and implementation of any financial information system;
- d) Actuarial services;
- e) Investment advisory services;
- f) Investment Banking;
- g) Any other financial services;
- h) Management services; and
- i) any other kind of services as may be prescribed

comply before the closure of the first F.Y. after the Act commences

Prohibition on Other Services...Cont'd

- Directly or Indirectly shall include rendering of services:
 - ✓ Either by auditor himself or through relative or other associated person or entity over which he has significant influence or control or whose name, trademark or brand is used by him
 - ✓ In case of Firm, either by itself or through its parent, subsidiary, associate or any entity over which firm has significant influence or control or whose name, trademark or brand is used by it or any of its partners
- The CoE of ICAI also presently prohibit such services by auditor which would create conflict with independence
- Terms such as investment advisory services, outsourced financial service and **management services** are not defined; Management consultancy services are described in CoE of ICAI.
- CoE of IFAC defines Management services as “...assistance for carrying out such services for Company which are responsibilities of management:

One Person Company

Definition:

One Person Company (Section 2 (62)) (Not yet notified)- means a company which has only one person as a Member

What is a One Person Company?

As the name suggests, it means a company which has only one person as a member and where legal and financial liability is limited to the company only and not to that person (i.e. liability is limited)

Important provisions

1. Financial Statements need not include cash flow statement
2. Inclusion of nominee clause in MOA so as to maintain perpetual succession
3. “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved
4. Annual Returns shall be signed by the CS, or where there is no CS, by the director of the company

Important provisions for OPC

5. Need not require to hold an annual general meeting
6. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its BOD's within a period of 15 days of the date of approval by the BOD's
7. For the purposes of **Section 114**, any business which is required to be transacted at an AGM or other GM of a co. by means of an OR or SR, it shall be sufficient if the resolution is communicated by the member to the co. and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act
8. In case of one Director on the board any business which is required to be transacted at the meeting of the BOD's of a company, it shall be sufficient if, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the BOD's for all the purposes under this Act

Small Company

- **Small Company (Section 2 (85)) (Not yet notified)**- means a company, other than a public company,—
 - i. paid-up share capital of which does not exceed Rs.50 lacs or such higher amount as may be prescribed which shall not be more than Rs.5 crore or
 - ii. turnover of which as per its last profit and loss account does not exceed Rs.20 lacs or such higher amount as may be prescribed which shall not be more than Rs.20 crore

Provided that nothing in this clause shall apply to—

- a) A holding company or a subsidiary company;
- b) A company registered with Charitable Objects; or
- c) A company or body corporate governed by any special Act;

Small Company.... Cont'd

Privileges/exemptions to small Company:

1. Financial Statements need not include cash flow statement
2. Annual Returns of Small company can be signed by the CS or where there is no CS, by any director of the company (CS in practice not required in such cases)
3. Section 173 requires Small Company to hold at least 1 meeting of the BOD's in each half of a calendar year with a min gap of 90 days b/w both meetings
4. The Company Act introduced a simplified procedure for merger & amalgamation between two small companies without approval of tribunal, subject to compliance with certain other procedures

Small Company.... Cont'd

Sr. No	Basis	Companies Act, 2013	Companies (Accounting Standards) Rules, 2006	CARO (Amend) 2004
1	Nomenclature	Small Company	SMC's	Private Ltd Co.
2	Applicability	Private Company	Both public or private	Private Ltd Co.
3	Paid up share Capital	<=50 lakhs or such higher amount as prescribed (Max 5 cr)	N.A.	<=50 lakhs (including reserve)
4	Turnover	<= 2 Crore or such higher amount as may be prescribed (Max 20 crore)	<=50 crore	<=5 crore
5	Borrowings	N.A.	<= 10 cr in last year	<= 25 lacs from any bank or FIS

Small Company.... Cont'd

Sr. No	Basis	Companies Act, 2013	Companies (Accounting Standards) Rules, 2006	CARO (Amend) 2004
6	Exceptions	(a) A Holding or a Subsidiary Co. (b) A Co. registered u/s 8 (c) A Co. or a Body Corporate governed by any Special Act.	(a) Bank (b) Financial Institution (c) Insurance Company (d) a holding or subsidiary co. of a co. which is not a small and medium-sized co.	N.A.

Corporate Social Responsibility

What does the Companies Act, 1956 say ?

- Presently, there is no mandatory requirement on companies to spend any part of their profit on CSR activities. The MCA has issued “Guideline on Social, Environment and Economic Responsibility of Business” for Voluntary adoption by companies. In addition, the SEBI has mandated top-100 listed entities, based on market capitalization at BSE and NSE, to include business responsibility report in their Annual Report

What does the Companies Bill, 2013 say? (Section 135)

- Every Company having :
 - Net worth of Rs. 500 crore or more; or
 - Turnover of Rs. 1000 crore or more; or
 - Net profit of Rs. 5 crore or more;

During ANY financial year, to constitute a CSR Committee of the Board & spend 2% of average net profits on identified CSR initiatives



MERGERS & AMALGAMATIONS

Compromise, Arrangements & Amalgamation

Topic	Companies Act, 1956	Companies Act, 2013
Filing of order with ROC	<ul style="list-style-type: none">• Order made by the tribunal shall not be effective unless a certified copy of it is filed with the RoC.(no time limit prescribed)• Copy of the order has to be annexed to every copy of the MOA issued after filing order copy with RoC	<ul style="list-style-type: none">• No compromise or arrangement shall be sanctioned by the tribunal, unless a certificate by the co.'s auditor has been filed with the tribunal to the effect that the accounting treatment, if any, proposed in the scheme is in conformity with the AS prescribed• Order also to be filed with RoC, within period of 30 days from the date of receipt of order

Compromise, Arrangements & Amalgamation

Topic	Companies Act, 1956	Companies Act, 2013
Objections	Objections can be made by any shareholder or creditor as the case may be, irrespective of their shareholding /outstanding debt	<p>Objection to an arrangement or compromise can be made by :</p> <ul style="list-style-type: none">a) persons holding not less than 10% of the shareholding; ora) having not less than 5% outstanding debt out of the total outstanding debt as per latest audited financial statement <p>Limits frivolous litigations by few small shareholders or creditors but should also result in efficiency in implementation of the scheme</p>

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Provision for dispensation of creditors meeting	No explicit provision	Tribunal has been conferred power to dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors , having at least 90% in value, agree and confirm, by way of affidavit, to the scheme
Circulation of documents for meeting	silent about documents to be sent along with the notice of meeting	The new Act requires circulation of documents mentioned in Section 232
Fast Track Mergers	No specific provision	Section 233 provides an option of simplified and fast track process of merger /demerger in cases of specified small companies and between holding and its wholly-owned subsidiary



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