

Companies Bill, 2012

-Directors, Accounts & Audit

- Anand Banka

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What is Company?

- o Latin word
- o Com = with or together
- o Pains = bread

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Accounts

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DEFINITION

Financial Statement

- o Balance sheet
- o Profit and loss account/ income and expenditure account
- o Cash flow statement (except one person company, small company and dormant company)
- o Notes

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DEFINITION

Small Company

- o Not a public company
- o Paid up capital \leq 50 Lakhs (may be prescribed upto Rs. 5 crore)
- o Turnover as per last P/L \leq 2 Crores (may be prescribed upto Rs. 20 crore)

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DEFINITION

Dormant Company

- o company formed for a future project or
- o to hold an asset or intellectual property and
- o has no significant accounting transaction
- o or an inactive company
- o Application to be made to the Registrar for obtaining the status of a dormant company

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DEFINITION

Financial Year

- o March 31
- o If company formed on or after 1st Jan, the March 31 of next year
- o Existing companies to re-align within 2 years
- o Application to be made if different financial year to be followed

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What's new!

- o Maintenance of books, minutes, etc. in electronic mode
- o Compulsory consolidation of accounts of Holding Company and its Subsidiaries including Joint Venture and Associates
- o Re-opening or re-casting of book of accounts of the Company
 - o By order of the court
 - o Voluntary - by consent of the court

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Differences

Companies Bill, 2012

- o Books of accounts can be kept in electronic mode
- o Directors to have authority to inspect BOA of Subsidiary
- o Reopening of BOA under an order of NCLT or Court
- o Voluntary revision of financial statements permitted on approval of NCLT

Companies Act, 1956

- o No such provision
- o Directors cannot inspect BOA of Subsidiary
- o Reopening was not permitted
- o No Such Provision

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Differences

Companies Bill, 2012

- o Can be revised for previous 3 years
- o Once revised shall be final
- o No such Provisions
- o To consolidate Subsidiary JV and Associates.
- o Internal Audit made mandatory for prescribed class of companies.

Companies Act, 1956

- o No such Provisions
- o No such Provisions
- o Financial year may extend up to 15 months
- o No such Provisions
- o No such Provisions

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Audit

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Appointment of Auditor

- o Appointment of auditors for 5 years
 - o No requirement for annual appointment/ re-appointment
 - o Automatic re-appointment if no other auditor appointed at AGM
- o Compulsory rotation - for Listed Companies and other prescribed class of companies
 - o 5 years (individual)
 - o 10 years (firm)
- o Cooling period = 5 years
- o Limited Liability Partnerships may be appointed as auditors

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Disqualification

- o Not Holding any security of company/subsidiary/ holding/ associate/ fellow subsidiary.
 - o Relative may hold securities of FV upto Rs.1,000/-
- o Not indebted to same category of Companies for prescribed amount
- o Not provided guarantee/ security to same category of companies – prescribed amount
- o No direct/ indirect business relationship with same category of companies
- o Not relative of employee/ KMP
- o No Court Conviction in last 10 years

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Disqualification

- o Majority partners should be qualified for appointment as against all in previous Act
- o Restriction on Common Partner Firms
 - o Part of same group / network
 - o Same address
 - o Common relative
- o Disqualified for providing other services to Subsidiary/ Holding/ Associate, etc.
 - o Also during holiday/ cool – off period

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Disqualification

- o Maximum number of companies in which a person may be appointed as auditor - 20 companies
- o Rotation of auditing partner and his team (in case of an audit firm) can be imposed by the company
- o Resignation of auditors
 - o statement in prescribed form to be filed with company as well as ROC
 - o indicating reasons and other facts as may be relevant
 - o failure to attract fine

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Disqualification

- o Restrictions on Auditor to provide either directly or indirectly non-audit services
 - o accounting and book keeping,
 - o design and implementation of any financial information system,
 - o management services,
 - o investment advisory services,
 - o investment banking services,
 - o rendering of outsourced financial services, etc. to the company, its holding company and subsidiary company.

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Disqualification

- o Tribunal may direct company to change auditors
 - o if satisfied that auditor acted in fraudulent manner or
 - o abetted or colluded in any fraud by or in relation to company or its directors or officers

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Miscellaneous

- o Auditing and cost auditing standards made mandatory
- o In case of fraud
 - o Auditor/secretarial auditor/cost auditor to report to Central Government
- o Internal Audit mandatory for class of companies as may be prescribed – CA or Cost Accountant or such other professional as may be decided by Board to conduct audit

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Miscellaneous

- o Cost audit to be mandatory
 - o for class of companies engaged in production of such goods or
 - o providing such services as prescribed and
 - o which have a net worth of such amount as may be prescribed
 - o or a turnover of such amount as may be prescribed
- o Mandatory Secretarial audit
 - o for listed companies and
 - o such class of companies as may be prescribed
 - o by Company Secretary in Practice

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Liability of Auditors

- o Contravention of certain provisions – fine
- o Knowingly or willful contravention with the intent to deceive company, shareholders, creditors, tax authorities – imprisonment and fine
- o Convicted for offence – liable to refund remuneration and pay damages for loss arising out of incorrect or misleading statements in audit report
- o In case of audit firm – if proved that audit partner/s have acted in fraudulent manner or abetted or colluded in any fraud, the liability, civil or criminal, would be of audit partner/s concerned as well as of the firm jointly and severally

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Directors

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Appointment & Qualification

- Mandatory to have at least one woman director for prescribed class of companies
- At least 1 director shall have stayed in India for a total period of not less than 182 days in the previous calendar year
- Maximum limit of directors has been increased to 15 from 12
 - Can be increased by passing special resolution
 - No requirement for CG approval

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Appointment & Qualification

- Max directorships is 20 Companies instead of 15
- Out of this 20, maximum 10 public companies (including pvt. ltd. Holding/ Subsidiaries)

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Resignation

- Resignation by notice to company
- Resignation with detailed reasons to be forwarded to Registrar

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Removal

- o Only prescribed number of members can pass a resolution for removal of a Director:
 - o Members holding 1/10th of voting power
 - o Members holding shares valued at an aggregate of Rs. 5 Lakhs or more
- o Great relief from frivolous application for removal of directors by small shareholders holding 1 share only

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Independent Director

- o Listed public company shall have at least 1/3 of the total number of directors as independent directors
- o Independent directors not entitled to stock options
- o Term of 5 years + 5 years and then cooling period of 3 years
- o The company and independent directors to abide by Code for independent directors -Code of professional conduct- guidelines, role and functions, duties, etc. defined

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Independent Director

- o 'Independent Directors' excluded for computing 'one third of retiring Directors'
- o Independent director to be held liable only for acts of omission or commission by company
 - o which had occurred with his knowledge and
 - o with his consent or connivance or
 - o where he had not acted diligently

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Miscellaneous

- o The Director's Report for every Company except for One Person Company, shall have to provide
 - o number of meetings of the Board,
 - o Company's policy on directors' appointment and remuneration,
 - o explanations or comments by the Board on every qualification,
 - o reservation or adverse remark or disclaimer made by the Company Secretary in his secretarial audit report,
 - o particulars of loans, guarantees or investments etc.

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Miscellaneous

- o The Directors responsibility statement in case of listed company shall include
 - o additional statement related to internal finance control and
 - o compliance of all applicable laws
- o Penalty for tampering with minutes
 - o 2 years of imprisonment and
 - o fine which shall not be less than Rs. 25,000 but which may extend to Rs. 100,000.

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ThanQ?

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