



The Institute of Chartered Accountants of India
Western India Regional Council

Intensive Workshop on Companies Act, 2013

[from SME Perspective]

Date: 9th July, 2014

Venue: Seminar Room [Mayor Hall], C D Barfiwala Marg,
Andheri (West), Mumbai - 400 058.

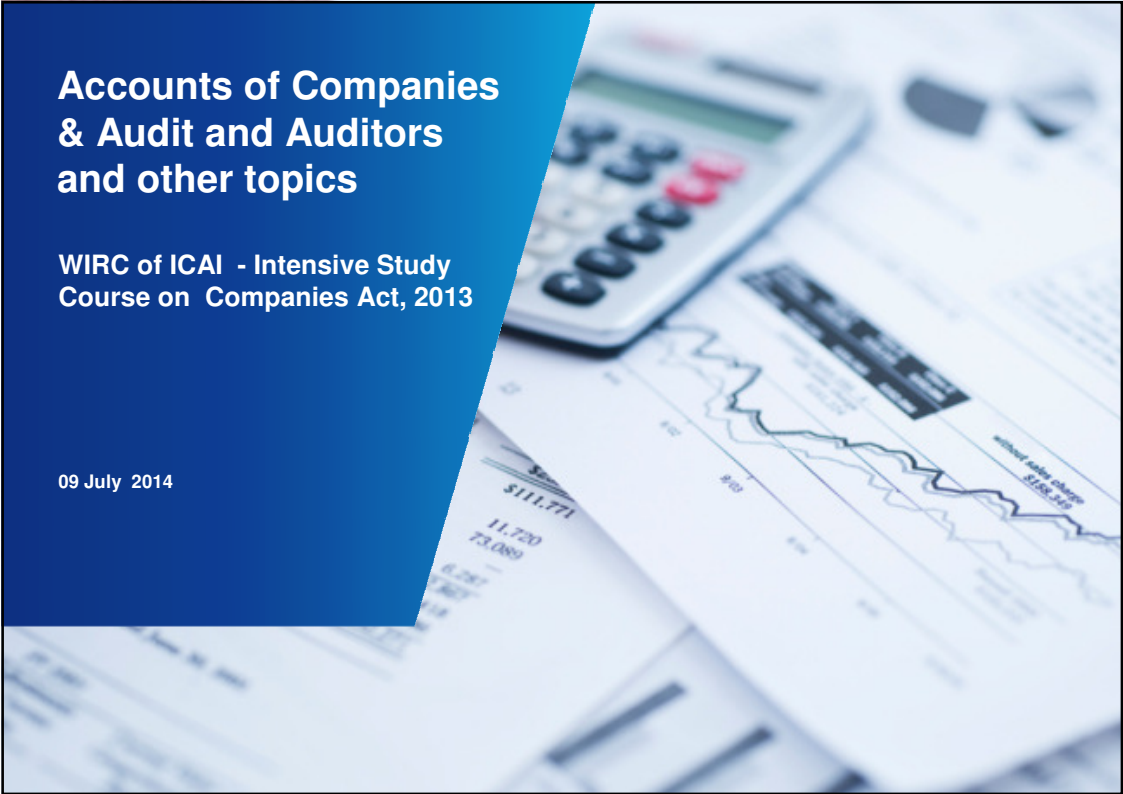
Topics

Faculty

- Issues relating to Accounts and Financial Statements
- Components of Financial Statements
- Voluntary Revision of Financial Statements
- Re-opening of Accounts
- Depreciation
- Dividend and Managerial Remuneration
- Consolidation of Accounts etc.

CA Shabbir Readymadewala

Jointly with Andheri West CPE study circle



Accounts of Companies & Audit and Auditors and other topics

WIRC of ICAI - Intensive Study
Course on Companies Act, 2013

09 July 2014



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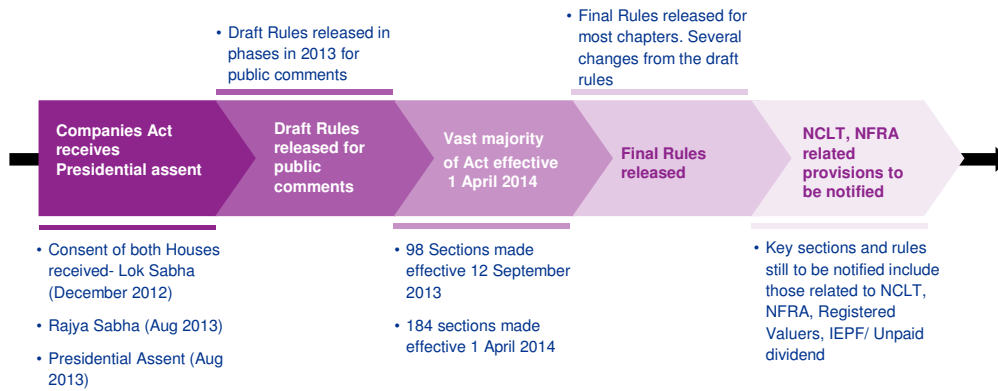
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Corporate Social Responsibility (CSR)

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Roll out roadmap

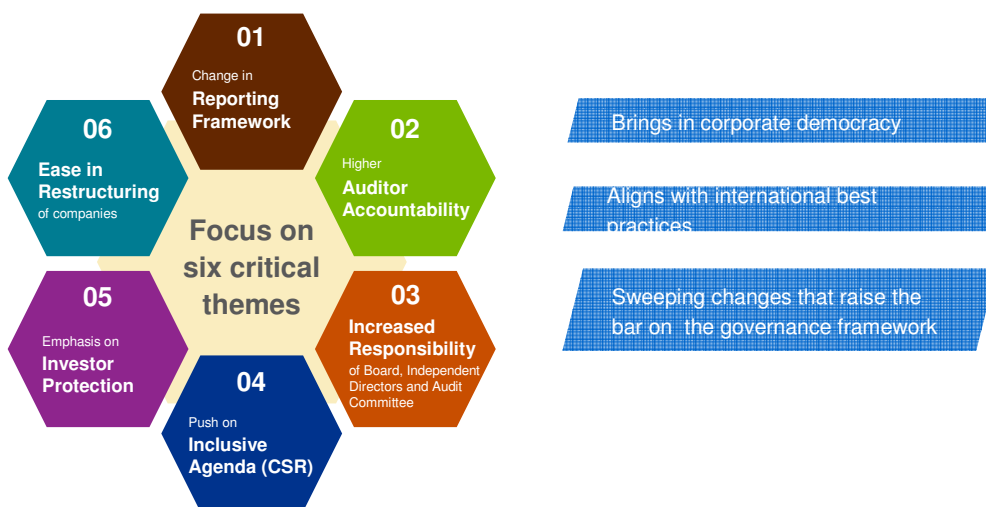
Companies Act 2013



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Companies Act 2013: Critical Themes

Companies Act 2013



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Chapter IX and X – Significant coverage by the media

Companies Act
2013

BusinessLine

Depreciating confidence

Changing times: The useful life for computing depreciation has decreased for laptops from six to three years, general furniture from 15 to 10 years, and general plant and machinery from 20 to 15 years.

BusinessLine

Knots in consolidation

Under Companies Act 2013, it is not just the listed companies that have to prepare consolidated financial statements. It may be useful to recall some of the implementation issues related to consolidation accounting under generally accepted accounting principles in India (Indian GAAP).

THE ECONOMIC TIMES

The Companies Act, 2013: Impact on auditors and audit firms

When the draft rules relating to the Companies Act, 2013, were first rolled out, Zenobia Aunty's auditor friends were shell-shocked. Typically, it is just the annual audit season that gets them down; else they are a more cheerful lot than their counterparts – those poor tax practitioners who battle it out in tax offices and tribunals.

What was the reason for their dismay? Well, rotation of auditors had been proposed not just for listed companies but for all companies, including private companies irrespective of its size. "If rotation of auditors is to ensure shareholder protection by ensuring a 'comfort-level' doesn't develop between the auditor and the Company over the years, what is the logic of extending rotation to private companies?" queried a young tax practitioner.

business today

Expert view: New Companies Act puts an end to crony auditing

In three years, India's biggest corporate houses - Reliance Industries, Tata Sons, Aditya Birla Group and Infosys - will have to bring in a new set of chartered accountants firms to audit their books.

business today

The new CSR rules: Confusion or clarity

One of the most applauded aspects of the new Company Law regime is the mandatory social spending requirement. Faced with innumerable economic and social challenges as our country is, our lawmakers could not have ushered in a more revolutionary change through the new law.

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Overview of Chapter IX and X

Companies Act
2013

| | Sections | Rules |
|--------------------------------|----------|-------|
| Chapter IX - Accounts | 11 | 13 |
| Chapter X – Audit and Auditors | 10 | 14 |

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A photograph of a modern glass skyscraper at night, illuminated from within. The building is the background for a presentation slide. A large blue geometric shape is overlaid on the left side of the image, containing the chapter title.

Chapter IX: Accounts of Companies

A photograph of a modern glass skyscraper at night, illuminated from within. The building is the background for a presentation slide. A large blue geometric shape is overlaid on the left side of the image, containing the chapter title and a list of topics.

Chapter IX: Accounts of Companies

So – What's New?

- Uniform financial year
- Definition of Financial statements
- Consolidated financial statements
- Depreciation
- Board's Report
- Revision in financial statements
- NFRA
- Internal audit

Financial year to be uniform – section 2(41)

Companies Act 2013

Applicability

- All companies
- To follow a uniform FYE 31 Mar
- To align with new requirement within two years from the commencement of New Act
- Incorporated on/after 1 Jan 2012 to close books on 31 Mar in following year

Exceptions

- Company/body corporate that is holding/subsidiary of a foreign company incorporated outside India. However, application to National Company Law Tribunal necessary (no exception for a company which is an Associate/JV of a company incorporated outside India)
- If required to follow different FY for consolidation of accounts outside India

Implication

- Companies in India following different FYE, especially those in seasonal businesses will have to change the FY
- Above companies will not require separate Tax financial statements



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Financial Statements - section 2 (40)

Companies Act 2013

Applicability

“Financial statement” in relation to a company, includes—

- a **balance sheet** as at the end of the financial year;
- a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- a **cash flow statement** for the financial year;
- a **statement of changes in equity**, if applicable; and
- any **explanatory note** annexed to, or forming

Requirement

- Cash flow statement will be required for all companies with the exception of One Person Company, small company and dormant company
- Schedule III which lays down the format for preparation and presentation of financial statements of most classes of companies does not prescribe formats of cash flow statement - which should therefore be prepared as per AS 3

Implication

- Earlier, cash flow statement was mandatory only for Listed companies and non SMC companies



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Consolidated Financial Statements (CFS) required for all companies - section 129 (3) Companies Act 2013

Applicability

Mandate for all companies to prepare CFS in respect of the following entities:

- Subsidiary; or
- Associate; or
- Joint Venture company



Requirement

- a. CFS will have to be prepared in addition to standalone financial statements
- b. Some additional mandatory disclosures also required per Schedule III (eg minority interests, net assets/P&L)
- c. Mandatory even if immediate parent overseas
- d. Company is required to attach to its separate financial statements a statement containing the prescribed salient features of the financial statements of its subsidiaries /JVs

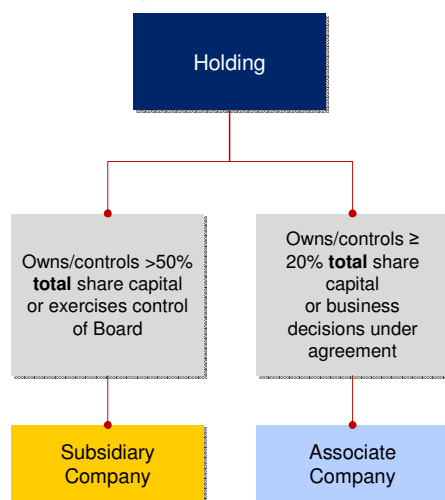
Implication

- Earlier, Clause 41 mandated only listed company to prepare CFS
- Significant responsibility on unlisted companies and private limited companies
- Groups with complex tiered structures and private equity firms will have to prepare CFS at each intermediate holding company level
- CFS will have to be audited and laid/adopted in the AGM (similar requirement for preparation, adoption and audit as for standalone financial statements)

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Subsidiary, Associate and Joint Venture companies now redefined Companies Act 2013

Subsidiary / Associate : section 2(6) and 2(87)



Requirement

- a. AS 21/23 conditions now in contradiction with the Act. Holding > 50% /20% of 'nominal equity share capital' now replaced with 'total share capital'
- b. Associate: No rebuttable presumptions. Includes joint venture



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Subsidiary, Associate and Joint Venture companies now redefined (continued) Companies Act 2013

- **Subsidiary** has been defined in the Act as follows:

“a “subsidiary company” or “subsidiary” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i)
- (ii) exercises or **controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies. [Section 2(87)]**

The criterion relating to share capital as per the Act is broader than the corresponding criterion under AS 21 which refers only to ownership of more than one-half of the voting power (rather than total share capital). Thus, entities qualifying as subsidiaries under the Act may differ from those so qualifying under AS 21

- The definition of the term ‘**Associate company**’ as per the Act (reproduced below) differs from the definition under AS 23, Accounting for Investments in Associates in Consolidated Financial Statements:

“Associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company [Section 2(6)]

Explanation – For the purposes of this clause, “significant influence” means control of at least twenty per cent, of total share capital, or of business decisions under an agreement;

This definition refers to ‘control’ of business decisions; the term ‘control’ is different from the term ¹² ‘significant influence’

Holding and subsidiary relationship: Voting power Vs. total share capital

Companies Act 2013

X Ltd. has investment in equity and preference shares of A Ltd. but does not control its board composition

| Particulars | Equity Shares | Preference Shares | Total |
|---|---------------|-------------------|-------------------------|
| | (Voting) | (Non-Voting) | |
| Total share capital | 100 | 60 | 160 |
| Shares owned by X Ltd | 40 | 60 | 100 |
| % ownership of X Ltd | 40% | 100% | 62% |
| Per 1956 Act (based on equity share capital) | | | Not a subsidiary |
| Per 2013 Act (based on total share capital) | | | Subsidiary |
| Per AS 21 | | | Not a subsidiary |

Implementation issues - CFS

Companies Act
2013

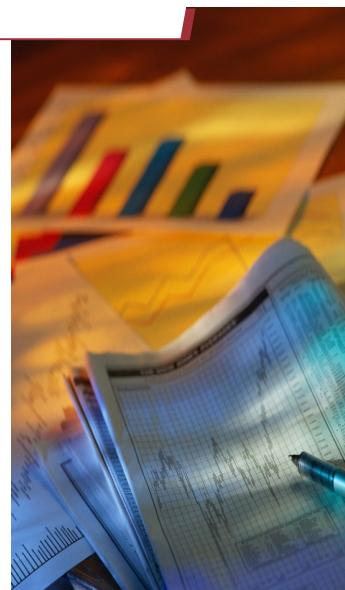
- Apparent conflict between the Accounting Standards and the Act regarding the definition of subsidiary/ associate. How would such conflicts be resolved for preparing CFS?
- Should optionally convertible preference shares be excluded for determining a subsidiary?
- Challenges due to retrospective application of consolidation principles in the absence of transitional provisions (eg. Determination of goodwill on consolidation)
- Section 129(3) requires a company with one or more subsidiaries to prepare CFS. The explanation to the section clarifies that the word 'subsidiary' shall include associate company and joint venture. AS 21 notified under section 133 requires CFS to be prepared only in case of subsidiaries. What happens in case a company has only an associate or a JV?
- The consolidated financial statements should be prepared in the same form and manner as the company's stand-alone financial statements (*seems to create an inconsistency vis-à-vis AS 21 according to which certain disclosures required in stand-alone financial statements may not be made in CFS – eg CIF value/income/expenses in foreign currency etc. However, since the Act would prevail over the standard, the exemptions under AS 21 would not be available once the section comes into force*)
- Currently, under the listing agreement, listed companies can prepare consolidated financial statements under IFRS and need not prepare Indian GAAP CFS. Under the 2013 Act, such companies would need to prepare CFS under Indian GAAP including the intermediate holding¹⁴ company

Financial Reporting- Depreciation – Schedule II

Companies Act
2013

Depreciation

- Increased significance on useful life and residual values (benchmark – max. 5% of original cost)- companies can choose life and residual value that is different from Schedule II
 - Justification required in case, 'useful life' or residual value is different from 'Schedule II'
 - Depreciation rates rationalized- useful life of Continuous Process Plant raised to 25 years
 - No specific provision for items up to INR 5000
 - Depreciate carrying value less residual value over remaining useful life. Adjust networth if useful life is exhausted
 - Revenue-based amortisation of intangible assets (toll roads) permissible- MCA notification reinstated as part of Schedule II
- Component accounting to be mandatory**



Comparative snapshot of depreciation rates

Companies Act
2013

| Nature | Companies Act 2013 | | Companies Act 1956 Single Shift (SLM) | |
|--|--------------------|-------|--|-------|
| | Life (Years) | % | Life (Years) | % |
| Building: factory building | 30 | 3.34 | 30 | 3.34 |
| Plant and machinery | | | | |
| General | 15 | 6.67 | 21 | 4.75 |
| Continuous process plant | 25 | 4 | 19 | 5.28 |
| Furniture and fitting: general rate | 10 | 10 | 16 | 6.33 |
| Motor vehicle | 8 | 12.5 | 9 | 11.31 |
| Office equipment | 5 | 20 | 14 | 7.07 |
| Computers and data processing | | | | |
| units: | | | | |
| Servers and networks | 6 | 16.21 | 6 | 16.21 |
| End user devices such as desktop/laptop etc | 3 | 33.33 | 6 | 16.21 |
| Laboratory Equipment: General | 10 | 10 | 14 | 7.07 |

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Implementation issues – Depreciation

Companies Act
2013

Component accounting - Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

An example could be a commercial aircraft which, for depreciation purposes, may be viewed as comprising (i) airframe, (ii) aero engine(s), and (iii) interiors.

- Component approach requires more detailed record-keeping - fixed assets register will need to separately record (i) component X and (ii) the rest of the machine. For this purpose, the total cost of the machine will need to be split in

- In many cases, an entity acquires an asset for a fixed sum without knowing the cost of the individual components. In such case, the cost of individual components would need to be estimated either with reference to current market prices (if possible), in consultation with the seller or contractor, or using some other reasonable method of approximation (e.g. relative values)

- Identification of components and split of total cost may also require involvement and assistance of technical experts

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Implementation issues – Depreciation

Companies Act
2013

- No particular method for providing depreciation
 - In case a method other than WDV/ SLM is used, in our view minimum depreciation charge should be as per SLM basis
- Residual value generally not more than 5% of the original cost (except for Ind-AS companies)
 - If asset replacement occurs significantly earlier than the end of economic life - an appropriate higher estimate
- Categories of depreciable assets rationalised
 - Many items of plant and machinery with general rate under Schedule XIV governed by special rate
- Wide divergence between Schedule II and Income-tax depreciation rates
 - IT rates and company law rates should be similar (except for accelerated depreciation under tax laws to stimulate capital investment in certain assets)

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Content of Board's Report – section 134

Companies Act
2013

Various items prescribed in the Act and the Rules for inclusion in the Board report, which include:

- Manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors (for listed companies and public companies with share capital > Rs 25 crores)
- Company's policy on directors' appointment and remuneration including criteria for determining qualifications, independence etc (for listed and certain other covered companies)
- particulars of loans, guarantees or investments under section 186
- particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form AOC 2
- Significant and material orders passed by the regulators/courts/tribunals impacting the going concern status and company's future
- Details of risk management policies and CSR initiatives
- Statement on declaration given by independent directors
- Separate section on the performance and financial position of each subsidiary/JV/associate included in the consolidated financial statements
- material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date report;
- the conservation of energy, technology absorption, foreign exchange earnings and outgo



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Directors Responsibility Statement in the Board Report to include:

In listed companies

Assurance on adequacy and effectiveness of internal financial controls

In all companies

- assurance on system adequacy/effectiveness for compliance with applicable laws and regulation
- Statement that accounts have been prepared on a going concern basis
- Applicable accounting standards have been followed with explanation relating to material departures

- statement that proper and sufficient care has been taken for maintenance of adequate accounting records to safeguard assets of company and for preventing and detecting fraud and other irregularities
- Statement that accounting policies are applied consistently and along with estimates and judgments (which are reasonable and prudent) made give a true and fair view of the financial statements

Auditor's responsibility relating to the internal financial controls discussed later



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- Section 134(5)(e) requires listed companies to state in the Directors' Responsibility Statement that the **internal financial controls** are **adequate** and were **operating effectively during the year**.
 - The term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information
- However, the Companies (Accounts) Rules, 2014 under Rules 8(5)(viii) requires the Board to give details in respect of adequacy of **internal financial controls with reference to the financial statements** in the Board's Report. What is additionally mandated in the Rules?
- As per section 136 proviso, every company having subsidiary(ies), shall place audited accounts for such subsidiaries on its website. In case of foreign subsidiaries, would accounts prepared under local GAAP be adequate for this purpose?

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Revision in Financial Statements – section 130 and 131

Companies Act 2013

Applicability (limited circumstances)

- Fraudulent financial reporting
 - Mismanaged affairs casting doubt on reliability of financial statements
 - Non-compliance of financial statements or Board report with sections 129 or 134
- Window open only for three financial years for voluntary restatement

Requirement

Court/Tribunal may approve following applications:

•Regulatory intervention:

- Central Government; or
- Tax Authorities; or
- SEBI; or
- any other Regulatory Authority

•Voluntary application:

- Directors

Implications

- Detailed process for revision, including involvement of current and previous auditors (may lead to frivolous litigations)
- May require current auditor to re-audit entire financial statements for one or more periods
- MAT implications to be evaluated if reported profits change on account of restatement

This section has not yet been notified!

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National Financial Reporting Authority (NFRA) – section 132

Companies Act 2013

Role

- Recommend Accounting and Auditing Standards
- Oversee quality of service of Chartered Accountants and suggest measures required for improvement in quality of service
- Monitor and enforcement of compliance with accounting and auditing standards
- Investigate suo moto or on reference made by Central government into matters of professional or other misconduct

Powers

- No institute/ body to continue proceedings in such matters where NFRA has initiated investigations
- If misconduct proved, impose penalty or Debar member/Firm
- Persons aggrieved, may approach Appellate Authority



This section has not yet been notified!

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In the United States

- PCAOB – Public Company Accounting Oversight Board
- PCAOB oversee the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports

In the United Kingdom

- FRC – Financial Reporting Council
- The FRC sets the framework of codes and standards for the accounting, auditing, actuarial and investor communities and oversee the conduct of the professionals involved

Applicability

- Listed company
- Public company - paid up share capital more than Rs 50 crore, turnover more than Rs 200 crore; or
- Public company - outstanding loans or borrowings (from banks or public financial institutions) of more than Rs 100 crore or deposits of more than Rs 25 crore; or
- Private company – turnover more than Rs 200 crore ; outstanding loans or borrowings more than Rs 100 crore

Eligibility

- Chartered Accountant (whether engaged in practice or not) or Cost Accountant or other professional, as decided by Board
- Internal auditor may or may not be the company's employee

Scope

- Audit Committee or Board, in consultation with the internal auditor



- In case of some multi-national companies, internal audit is conducted across the group companies by the central internal audit team based at the overseas parent location. Can this arrangement continue for the Indian subsidiary post the mandate under the 2013 Act?



Chapter X: Audit and Auditors

Chapter X: Audit and Auditors

So – What's New?

- Appointment
- Rotation
- Disqualifications of auditors
- Non-audit services
- Powers and Duties of auditors
- Enhanced auditor reporting
- Fraud reporting

Appointment of auditors – section 139

Companies Act
2013

- Instead of reappointment at each AGM, auditor to be appointed for a block of five years
- Reappointment needs to be ratified at each AGM
- Appointment shall be made taking into account the recommendations of the Audit committee/Board
- At each AGM, members will have option to:
 - rotate Audit partner/team
 - appoint joint auditor
- Maximum of 20 companies (including private limited companies) can be audited by an individual Auditor
- Auditors need to provide a written consent and also indicate whether they satisfy the criteria provided in Section 141



- Firm includes a LLP incorporated under the

- Mandatory auditor rotation
 - Companies covered by rotation (Listed companies, unlisted public companies with paid up share capital > Rs 10 crores, private limited companies with paid up share capital > Rs 20 crores, all companies having public borrowings from banks/financial institutions or public deposits > Rs 50 crores)
- While a partnership firm would be eligible for two consecutive five year terms, an individual auditor would be eligible for only one such term
 - Term prior to commencement of New Act will be retrospectively reckoned for computing 5-10 year validity
 - After completion of audit engagement term, the Auditor will be subject to a continuous five-year cool off period
 - Incoming auditor cannot be an associate or from same network as the outgoing auditor
 - If a partner who is incharge of an audit firm and also certifies the financial statements of a company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years

- Transition period of three years set to implement the change
- Where a company has appointed two or more persons as joint auditors, the rotation shall be done in such a manner that all of the joint auditors do not complete their term in the same year

International scenario

- Views are sharply divided on whether rotation improves the effectiveness of audit
- Internationally rotation of auditors is restricted to public interest entities
- European Union has recently proposed rotation rules for member countries
- Currently, only Italy and Netherlands has mandatory rotation of auditors. However, subsidiaries of foreign companies having their primary listing overseas are exempted from rotation in Italy
- It has been abandoned in Spain, Brazil and Korea after having been adopted for most public companies
- ~~Regulators in the United States evaluated the auditor rotation post the Enron debacle and concluded that mandatory audit rotation need not increase auditor independence~~

- The Rules specify that the appointment of an auditor should be ratified at every annual general meeting. In case the appointment is not so ratified, the Board shall appoint another auditor. It is not clear whether the non-ratification would amount to removal of the auditor or automatic termination – since the process for giving effect to both is different under the Act
- Term of appointment within transitional period - whether for a block of years or one year at a time
- Can Joint auditor be appointed within the transitional period ?

Disqualification and independence criteria – section 141

Disqualifications

Provisions relating to auditor independence made more stringent

- Business relationship
- Officer/employee of company (or partner of /in employment of such person)
- Auditor in more than 20 Companies
- Convicted by Court
- Body Corporate, other than LLP
- Consulting and Specialised Services
- Holding security of /interest in or indebted to company/its subsidiary/associate / holding company /subsidiary of its holding company exceeding Rs one lakh/Rs five lakhs
- Person whose relative is Director/KMP of company
- Full time employment elsewhere



Eligibility

- Chartered Accountant
- Firm, with majority partners as CA's



Generally similar to Sarbanes Oxley Act in the US

Prohibition extends to holding and subsidiary companies

Covers auditor and related entities

Transition period – one year

All non-audit services to be approved by the Audit Committee or Board

- Clarification on the meaning of investment advisory services, investment banking services and management services, which services an auditor cannot provide to its audit clients
- Section 141 disqualifies an auditor if he or his relative holds any security or interest in a company or is indebted or has given guarantee or provided security in excess of prescribed limits. The term 'relatives' is very wide (parents, son/son's wife, daughter/daughter's husband, brother, sister) and covers even financially independent relatives over whose actions the auditor may have no control
- Even private companies have been included to calculate the maximum limit of 20 companies which an auditor can audit. Will significantly restrict the number of companies that can be audited

Duties and Liabilities of auditors – section 143 and 147

Companies Act
2013

Duties

- Auditor to report on specified matters, in the audit report
- Responsibility to report offence involving fraud to the Central government
- NFRA can specify additional matters for reporting

Liabilities

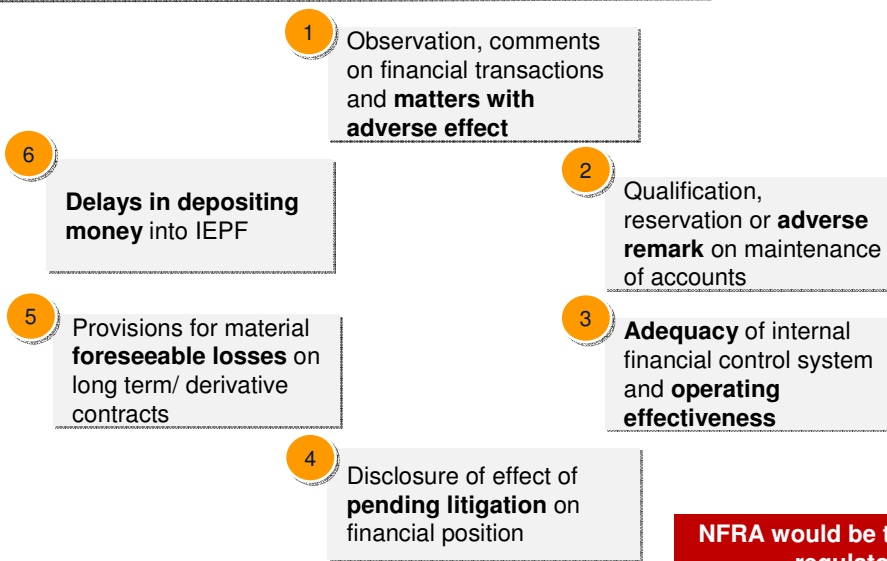
- Contravention of provisions punishable with fine not less than Rs 25,000 upto Rs 500,000
- In case of wilful or contravention done knowingly or with wilful intent to deceive, imprisonment upto one year and fine not less than Rs 100,000 but which may extend upto Rs 2,500,000
- If convicted, also liable to refund remuneration and liable to pay damages (to company, statutory bodies or authorities) arising out of the incorrect reporting



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Enhanced auditor responsibilities – section 143

Companies Act
2013



NFRA would be the new regulator

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- How does the auditor determine financial transactions/ matters which have adverse effect on the company's functioning?
- The requirement of 'internal financial controls' is not explained in the context of the auditors' responsibility in relation to his audit report. What is the auditor required to do to enable him issue the report?
- Would the above apply to CFS considering that section 129 mandates the preparation of CFS?

- All frauds to be reported within 60 days to Central government (Secretary, Ministry of Corporate Affairs), after following prescribed procedures
- Procedure for reporting fraud
 - Refer the matter to the audit committee/ board and seek responses within 45 days
 - After incorporating their response (or even if no response is received), report to the Central government
- Fraud reporting to apply to secretarial and cost auditors
- In case of non compliance with the reporting obligation on frauds, punishable with fine not less than Rs 1 lakh but which may extend upto Rs 25 lakhs



- As per the Section, the related Rules and the MCA circular dated 4 April 2014, are the fraud related matters to be reported to Central Government only those that occur after the commencement of the Companies Act, 2013, i.e. frauds relating to financial year commencing on or after 1 April 2014? If while performing the audit for financial year ending 2014 (or a later year), the auditor becomes aware of a suspected fraud which relates to period prior to 31 March 2014, is it required to be reported to the Central Government?
- Is it required to report all frauds i.e., frauds which are not material?
- Does the matter have to be reported to the Central Government if based on the management explanations and steps taken by it, it is subsequently concluded that there was no fraud/suspected fraud?
- When does the time period of 60 days provided in Rule 13 of the Audit Rules commence?
- Board/Audit committee may or may not conclude that there is a suspected fraud/fraud. What will be the auditor's responsibility if the Board/Audit Committee is of the view that there is no fraud/suspected fraud and the auditor may or may not be satisfied with the Board/Audit Committee response?

- Central Government to notify Companies which need to (a) maintain cost records and (b) conduct cost audit
- Audit to be conducted by Cost Accountant in practice who shall be appointed by the Board (based on recommendations of the Audit committee, where applicable)
- Auditor cannot act as a cost auditor
- Comply with cost accounting and auditing standards
- Cost audit report to be addressed to Board of Directors
- Company shall submit the report to Central government
- Remuneration to be subsequently ratified by shareholders



| Corporate Social Responsibility (CSR) – section 135 Companies Act 2013 | | |
|---|---|---|
| Applicability | Administration and reporting | Implication |
| <ul style="list-style-type: none"> ▪ Covers all companies in India meeting any one or more of the following conditions: <ul style="list-style-type: none"> – Sales ≥ INR1000CR – Networth ≥ NR 500CR – Net Profit ≥ INR 5CR ▪ CSR contribution <ul style="list-style-type: none"> – 2% of average net profit before tax for last three financial years ▪ Contributions to be made towards causes listed under Schedule VII* | <ul style="list-style-type: none"> ▪ Board to appoint a three-member CSR committee including one Independent Director ▪ Committee responsibility: <ul style="list-style-type: none"> – Formulate CSR policy; – Recommend CSR activities; – Monitor CSR expenditure ▪ Mandatory reporting on CSR under section 135 ▪ In case of failure to spend, reasons to be disclosed. Penalties for non | <ul style="list-style-type: none"> ▪ Schedule VII and the Rules seem to hint at possibility of aligning business goals with social objectives ▪ No clarity on income-tax stand on allowability of CSR contributions ▪ Onerous responsibility on the Board to report and comply with a wide set of requirements and reports |
| <p>* Hunger, Poverty, Education, Gender Equality, Child mortality, HIV/AIDS program, Environment, PM's National Relief and 'such other matters that may be prescribed'</p> | | |

Wide set of compliances to be taken care of:

- CSR Committee to make a responsibility statement: '**Complied with in letter and spirit**'
- Tax treatment to be decided by CBDT only
- Activities cannot be exclusively for benefits of employees/their families
- Only CSR in India is eligible
- Trusts, societies, foundations may carry out CSR activities on behalf of the company
- Activities on a collaboration/pool basis may also be acceptable
- Surplus arising out of CSR activity will not be part of business profits of a company and will have to be recouped in the CSR corpus
- Net Profit shall mean, net profit before tax as per books of accounts and shall not include profits arising from branches outside India
- Mere donation and charity may not be allowed. CSR activity must be properly monitored and end use reported
- Expenditure incurred on CSR to be disclosed as a separate item in the notes to the financial statements (per Schedule VII)



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- MCA has notified 1 April 2014 as the date on which the provisions of section 135 and Schedule VII of the Act shall come into force. The issue relates to applicability of provision of CSR to a company which has a financial year ending on other than 31 March, e.g. a company which has a financial year ending on 31 December 2014. Whether CSR provisions would be applicable from 1 April 2014 or from the beginning of their next financial year i.e. 1 January 2015
- Is creation of a CSR reserve required?
- How is excess spend on CSR to be treated (can this be carried forward)?
- Can CSR activities be performed at a Group level ?
- Who determines whether the expenditure incurred is permissible to be included/considered as CSR activity – is any audit/certification required?

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Managerial remuneration – Public companies

Companies Act
2013

- Private companies would continue to be exempt from limits on managerial remuneration (a subsidiary of a public company is not a private company)
- In the absence of deeming provision corresponding to section 4(7) of the 1956 Act, a private subsidiary of a foreign body corporate would seem to remain a private company and therefore exempt from the limits

Overall caps

- No change in maximum limit - retained at 11% (of net profits)
- Cap of 5% on one MD/WTD retained; but can be increased within the overall limit of 11% with shareholders' approval
- Caps on other directors' remuneration retained; but can be increased within overall limit with shareholder approval

Remuneration for the purpose of caps

- Payment for professional services to directors not included - Whether director possesses requisite qualifications to be assessed by Board (instead of Central Govt.)
- Sitting fee not included
- Perquisites included – valued as per Income-tax Act
- Premium for indemnity insurance excluded unless the person is proved to be guilty
- Reimbursement of direct taxes included

Managerial remuneration – Public companies (absence/ inadequacy of profits)

Companies Act
2013

- For public companies with no/inadequate profits
 - remuneration payable in accordance with Schedule V
 - limits generally enhanced
 - Annual ceiling doubles with shareholders passing a special resolution
 - For managerial person who was not
 - holding securities of the company of nominal value of Rs. 5 lakhs or more or
 - an employee or director of the company or
 - not related to any director/promoterat any time during two years prior to appointment
- the overall limit may be higher than that for other persons
- (Schedule XIII of 1956 Act allows remuneration without any cap to certain managerial persons who satisfy somewhat similar (but not identical) criteria)
- Provision of Schedule XIII permitting managerial remuneration without any ceiling if company is neither listed nor subsidiary of a listed company not carried forward

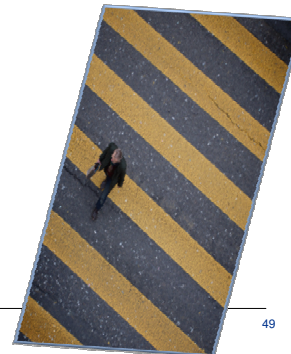


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Managerial remuneration – Public companies (absence/ inadequacy of profits)

Companies Act
2013

- Remuneration in excess of limits of Schedule V can be paid by another company if
 - other company is either a foreign company or
 - other company has
 - its shareholders' approval for this payment and
 - total managerial remuneration of the other company (inclusive of such remuneration) is within permissible limits under section 197
- Prescribed limits do not apply where remuneration fixed by BIFR or NCLT, if certain conditions are satisfied
- Higher limits available to
 - newly incorporated companies
 - sick companies
 - SEZ companies



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- Sitting fee within prescribed limit: final rule proposes Rs. 1 lakh per meeting
- Remuneration by way of fee also for purposes other than attending meetings as may be decided by the board
- Board may fix different sitting fees for independent and non-independent directors (other than WTDs)
- Central government can fix different fees for different classes of companies and for independent directors
- No stock option to independent directors permitted
- Profit related commission can be paid to independent directors if approved by members; however monthly remuneration can not be paid



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- Recovery of excess remuneration in case of revision of financials due to fraud or non-compliance with Act/Rules
- MD or WTD in receipt of commission can receive remuneration from holding or subsidiary company
 - Disclosure in the Board's report
- Computation of profits
 - Same as existing requirements except that impact of change in fair value of asset/liability in reserves or profit and loss account to be disregarded
- Rules require detailed disclosures in the Board Report of listed companies

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Dividend

Companies Act 2013

- Section 123 does not carry forward requirement of 1956 Act to set off lower of loss and depreciation of previous years
 - However, where paid out of past reserves, the loss incurred during the current financial year needs to be set off.
- Transfer of profits to reserves before declaring dividend at the discretion of the company
- Declaration of dividends out of reserves still subject to Rules; only 'free reserves' available for this purpose
 - Free reserves are reserves which are available for distribution as dividend; following are not part of free reserves:
 - Amounts representing unrealised gains, notional gains or revaluation of assets
 - Change in carrying amount of an asset /liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value
 - Until MCA/ ICAI clarifies the issue, net forex gain on monetary items may be considered as unrealised gain and adjusted whereas net forex loss may not be so adjusted
- Interim dividend
 - Permissible only out of opening balance of profit and loss and current profits (cannot be paid out of reserves)
 - Not to exceed average rate of dividend in preceding three years if company has incurred loss up to the



**Comparative snapshot – Chapter IX
Accounts of Companies**

**Companies Act
2013**

| Companies Act, 2013 | Companies Act, 1956 |
|---|----------------------------|
| Section 128 Books of account, etc to be kept by the company - No significant difference; certain clarifications in respect of books of account in electronic mode | Section 209 |
| Section 129 Financial statements -Preparation of consolidated financial statements - Preparation of cash flow statement | Section 210 and 211 |
| Section 130 and 131 on Re-opening/ Revision of accounts - not notified | No corresponding section |
| Section 132 Constitution of National Financial Reporting Authority – not notified | No corresponding section |
| Section 133 Central Government to prescribe accounting standards - No significant difference | Section 210A |
| Section 134 Financial statement, Board’s report etc - Additional requirements in Board’s report and Directors’ Responsibility Statement | Section 211(3C) |

Comparative snapshot – Chapter IX Accounts of Companies (Continued)

**Companies Act
2013**

| Companies Act, 2013 | Companies Act, 1956 |
|--|--------------------------|
| Section 135 Corporate Social Responsibility | No corresponding section |
| Section 136 Right of member to copies of audited financial statement - No significant difference , except that unlisted companies having subsidiaries are required to place separate audited accounts in respect of each of its subsidiary on its website and provide copies | Section 219 |
| Section 137 Copy of financial statements to be filed with Registrar - No significant difference | Section 220 |
| Section 138 Internal audit | No corresponding section |

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Comparative snapshot – Chapter X Audit and Auditors

**Companies Act
2013**

| Companies Act, 2013 | Companies Act, 1956 |
|---|---------------------|
| Section 139 Appointment of auditors -Block period appointment -Rotation requirement | Section 224 |
| Section 140 Removal, resignation of auditor and giving of special notice – second proviso to sub-section 4 and 5 not notified - Debarring a firm for professional misconduct (acting in fraudulent manner or abetted/colluded in any fraud) | Section 225 |
| Section 141 Eligibility, qualifications and disqualification of auditors - Various additional disqualifications prescribed | Section 224 and 226 |
| Section 142 Remuneration of auditors - No significant difference | Section 224(8) |
| Section 143 Powers and duties of auditors and auditing standards - New audit report requirements | Section 227 and 228 |

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Comparative snapshot – Chapter X Audit and Auditors (Continued)

**Companies Act
2013**

| Companies Act, 2013 | Companies Act, 1956 |
|--|--------------------------|
| Section 144 Auditor not to render certain services | No corresponding section |
| Section 145 Auditor to sign audit reports, etc - No significant difference | Section 229 and 230 |
| Section 146 Auditors to attend general meeting - No significant difference | Section 231 |
| Section 147 Punishment for contravention - Significant penalties/ imprisonment | Section 232 and 233 |
| Section 148 Central Government to specify audit of items of cost in respect of certain companies - No significant difference | Section 233 B |

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Thank you

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