COMPANIES ACT, 2013 – Analysis of important provisions

24 October 2013
Himanshu Kishnadwala
Companies Bill, 2008 introduced on 23.10.2008

Report on SCF on Companies Bill, 2009 was introduced in Lok Sabha on 31.08.2010

Companies Bill, 2008 lapsed due to dissolution of Lok Sabha; reintroduced on 03.08.2009 as Companies Bill, 2009. Bill referred to Standing Committee on Finance [SCF]

Companies Bill 2011 introduced in Lok Sabha on 14th Dec 2011

Companies Bill 2012 as amended approved by Lok Sabha on 18th Dec, 2012

Approved by Rajya Sabha on 8th Aug 2013 – renamed Companies Bill 2013
President’s assent on 29th August 2013

Law to be operational in phases

- 98 sections notified on 12th September 2013 – corresponding sections of Companies Act, 1956 ceased to have effect from that date
- No transitional provisions

Draft Rules (and corresponding forms) issued:

- 1st phase on 9th Sept 2013 – 16 chapters (comments by 10 Oct)
- 2nd phase on 20th September – 13 chapters (comments by 23 Oct)
- 3rd phase on 22nd October 2013 – 3 chapters (comments by 01 Nov)
BACKGROUND…
Companies Act 2013 …
- Huge amount of law has been moved into Rules
- Several sections consolidated into single section

- ‘prescribed’ 416 times
- ‘Imprisonment’ 76 times
- ‘Special Resolution’ 74 times
- ‘Prosecution’ 25 times
- ‘Approval from CG’ 15 times
SEVERAL NEW CONCEPTS

- One person company, Dormant company, Small Company
- Mandatory Corporate Social Responsibility (CSR)
- Mandatory Cash Flow and Consolidated Financial Statements
- Mandatory retirement of auditors
- Higher reporting responsibilities for auditors
- More onerous penalties for auditors
- Mandatory retirement of independent directors and pecuniary relationships ruled out
- National Financial Reporting Authority
- Related Party Transactions (incl. loans) – stricter norms
- Non-judicial approval of mergers
- Class action, etc.
TYPES OF COMPANIES

- By Liability
  - Limited
  - Unlimited
    - By Shares
    - By guarantee

- By Type
  - One Person company
  - Private Company
    - Small Company
    - Not Small Company
  - Public Company
    - Listed Company
    - Unlisted Company

Any of the above can be a Dormant Company
DEFINITIONS
DEFINITIONS…

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Private Company [2(68)]
- Having minimum paid up capital of 1 lakh
- Restricts transferability of shares
- Limits number of members to 200 (except OPC)
- Prohibits invitation to public for subscription to any securities

Condition of 1956 Act to have a restriction in AoA prohibiting invitation or acceptance of deposits has been removed.

Public Company [2(71)]
- Includes any private company if such company is a subsidiary of another company (though the Articles contain clauses relevant for a private company i.e. restriction on transfer of shares and limits members to 100)
- May necessitate such private company to comply with other sections of the Act like no. of directors, capital, section 185, etc.
DEFINITIONS...

- **Debentures [2(30)]**
  - Definition includes any instrument evidencing a debt;
  - This can cover even ICDs, Bills and requirement of creation of Debenture Redemption Reserve and rules for maintenance of liquid assets would apply.

- **Turnover [2(91)]**
  - Defined to mean the aggregate value of the "realisation of amount due" from the sale, supply or distribution of goods or on account of services rendered or both by a company.
  - Since the words used are ‘realisation of amount due’, whether adjustment needed for opening / closing receivables to determine the turnover?
  - Seems that the above definition would not affect preparation of financial statements
Free Reserves [2(43)]

- Such reserves which as per latest audited BS are available for distribution of dividend. **Proviso states that following to be excluded:**
  - any amount representing unrealised gains, notional gains or revaluation of assets (whether shown as reserve or otherwise) or
  - Any change in carrying amount of an asset or liability recognised in equity, including surplus in PL on measurement of asset or liability at fair value

Implication of ‘unrealised gains’? – adjustment for receivables, AS 11 restatement, etc.?
PRIVATE COMPANIES – ADDITIONAL PROVISIONS APPLICABLE

- **Sec 43**: restriction on kinds of capital to be issued
- **Sec 101-116**: Notice for GM, explanatory statement, passing of resolution by Postal Ballot (for > 50 members)
- **Sec 73/74**: Deposits from members subject to conditions
- **Sec 184**: interested director not to vote / participate in BM
- **Sec 185**: loans to directors, etc.
- **Sec 186**: Limits for intercompany investments and loans
- **Sec 192/195**: restrictions on non-cash transactions with directors and prohibition on insider trading
- **Sec 152**: Consent to act as director to be filed with RoC
- **Sec 196**: Appointment of managerial personnel
- **Sec 203**: Appointment and tenure of managerial personnel
ACCOUNTS & FINANCIAL STATEMENTS
ACCOUNTS & FINANCIAL STATEMENTS (128 to 138)

- Books of Account can be in electronic form
- To be preserved for 8 years (or longer in case of any investigation)
- Draft Rules mention that they shall be retained completely in the format as originally generated
- To be kept on accrual basis
- Books open for inspection
- Uniform financial end (April – March) (exception only for subsidiaries of foreign companies with prior approval)
- MD, CFO, responsible for the above

Section 133: CG to prescribe Accounting Standards

Section notified on 12 Sept 2013 and clarification issued that AS issued under existing Companies (AS) Rules, 2006 to be followed till NFRA formed and new set of AS issued.
As per section 2(40), Financial Statement includes:

• Balance Sheet
• Statement of Profit and Loss
• Cash Flow Statement
• Consolidated Financial Statements (CFS) in case a company has Subsidiaries *(subsidiary includes associate company or Joint Ventures)*
• Statement of changes in Equity, if applicable
• Any explanatory note/s forming part of above.

- Cash Flow necessary for all companies (except OPCs)
- CFS required for all companies having subsidiaries
Associate Company [sec 2(6)]
- Company in which there is Significant Influence i.e. control of at least 20% of total share capital or business decisions under an agreement.

Subsidiary Company [sec 2(87)]
- Controls composition of BoD
- Exercises or controls more than ½ of total share capital

Definitions different from those given by notified AS
Preparation of Cash Flow → As per AS 3
  - Which method to follow: Direct or Indirect?
  - Several inconsistencies between AS 3 and Schedule VI
    (Schedule III under Companies Act, 2013)

Preparation of CFS → As per AS 21 / AS 23 / AS 27
  - AS 21 applicability as per extended definition of ‘subsidiary’

Company having only Associates or JVs
  - CFS as per AS 21 or AS 23?
  - Equity method or proportionate consolidation?
  - Getting information as per Schedule VI can be a challenge
## HOW TO CONSOLIDATE?

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Case I</th>
<th>Case II</th>
<th>Case III</th>
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<tbody>
<tr>
<td>Equity capital (Total 100)</td>
<td>100</td>
<td>30</td>
<td>0</td>
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<tr>
<td>Preference capital (Total 200)</td>
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<td>200</td>
<td>200</td>
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<td></td>
<td>200</td>
<td>230</td>
<td>200</td>
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<td>% holding in total paid up capital</td>
<td>67%</td>
<td>77%</td>
<td>67%</td>
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<tr>
<td>% holding in equity shares</td>
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<td>30%</td>
<td>0%</td>
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<tr>
<td>Subsidiary as per Companies Act?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Subsidiary as per AS 21?</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Associate as per AS 23?</td>
<td>NA</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Under Companies Act 2013</td>
<td>Subsidiary</td>
<td>Subsidiary</td>
<td>Subsidiary</td>
</tr>
<tr>
<td>Under AS</td>
<td>Subsidiary</td>
<td>Associate</td>
<td>No consolidation</td>
</tr>
</tbody>
</table>
Schedule III to the Bill lays down format for FS
  - Similar to Schedule VI (as revised)
  - Contains additional format and guidance for CFS

**Reopening of FS**
  - By court order
  - Voluntary revision upto 3 preceding years (on application made to Tribunal)
  - Detailed reasons to be given in Directors’ Report

FS to be signed by CFO, plus Chairman or 2 directors (incl. MD or CEO) and secretary
Constitution of CSR Committee:
By every company having following criteria:
- net worth of Rs. 500 crores or more or
- turnover of Rs. 1,000 crores or more or
- net profit of Rs. 5 crores or more

CSRC will consist of 3 or more directors with at least 1 ID.

Responsibility of CSRC:
- To formulate & recommend to the Board CSR policy.
- To ensure 2% of avg. profits of 3 past yrs is spent.
- To explain the reasons for non-spending by Board.
- To monitor CSR policy.

Preference to local area for spending CSR amount
Board report and the company’s website to disclose CSR policy

Is provision necessary for unspent amounts on CSR?
DEPRECIATION

**Current Provisions**

- As per life of asset (AS 6) or rates prescribed by Sch. XIV
- Schedule XIV prescribes rates (SLM and WDV) so as to write off 95% of the cost of an asset
- Separate rates for Double/Triple shift
- Assets costing < 5,000 → 100% depreciation

**As per Companies Act, 2013**

- Schedule II lays down useful life to compute depreciation
- Useful life is the period over which an asset is available for use by an entity
- Residual life not to be more than 5%
Companies divided into 3 classes:

- **Class I**: Prescribed class of companies which comply with prescribed AS → can adopt different useful lives/residual values if an appropriate justification is given for the same.

- **Class II**: Companies regulated by other law, e.g., electricity companies → Rates/residual values prescribed by regulatory body.

- **Class III**: Other companies
  - Assets cannot have useful life longer than and residual value higher than that prescribed in schedule II.
DEPRECIATION

- For Intangible assets, provisions of AS to be followed

- **Component-wise determination of useful life** – where cost of any part of the asset is significant to the 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 to be determined separately

- Extra shift depreciation to be increased by 50% or 100%
- No specific provision for 100% rate on assets below Rs. 5,000
**Transitional Provisions**
- Carrying amount of the asset on that date to be depreciated over the remaining useful life
- If remaining useful life is NIL, after retaining the residual value, the remaining carrying amount to be recognized in retained earnings

**Issues**
- Different useful life for components – Ind-AS 16 compliant
- Significant components to be identified
- In case of revaluation, whether GN can still be followed to withdraw excess depreciation from Revaluation Reserves? – seems no
- Transitional provision requiring remaining carrying value to be depreciated over remaining useful life can provide very harsh outcomes
DIVIDEND
Dividend allowed out of profits for the year or accumulated profits or both
- Depreciation to be provided in both cases as per Schedule II
- No provision to declare dividend without providing for full depreciation
- Transfer to reserves at option of company
- Interim dividend can be declared out of CY profits or PL surplus
- If loss in the current FY upto the end of earlier quarter when interim dividend is declared – rate cannot exceed average of last 3 yrs
- Draft rules issued for dividend out of reserves
  - Rate not to exceed average rate for last 3 years, etc.
DIVIDEND

- No dividend to be declared if company fails to comply with provisions related to acceptance and repayment of deposits
- **Transfer to IEPF for Unpaid Dividend:**
  - Along with unpaid / unclaimed dividend, **company reqd to transfer all the shares** on which dividend has remained unpaid / unclaimed to the Investor Education and Protection Fund (IEPF)
    - As per draft rules transfer of shares not required for shares held in demat form and dividend encashed for any 1 out of 7 years
  - Claimant of shares transferred as above entitled to claim from IEPF as per laid down procedures
SECURITIES PREMIUM / BONUS SHARES
Securities premium to be applied for permitted purposes

Utilization of securities premium for any other purpose would entail compliance with provisions relating to reduction of capital

For classes of companies to be prescribed in the Rules, utilization of securities premium for the following purposes will require such a company to ensure that the AS prescribed have been complied:

- Issue of bonus equity shares
- Writing off the expenses of or the commission paid on any issue of equity shares
- Buy-back of shares or other securities
BONUS SHARES (Sec 63)

- Fully paid Bonus shares can be issued out of:
  - Free reserves
  - Securities premium account or
  - Capital Redemption Reserve

- No bonus shares out of reserves created by revaluation of assets

- Bonus shares can be issued only if:
  - Authorised by AoA and approved in general meeting;
  - No default in payment of interest and principal in respect of fixed deposits or debt securities issued;
  - No default in payment of statutory dues of employees;
  - Once announced, decision cannot be reversed (draft rules)
ACCEPTANCE OF DEPOSITS
• No company permitted to accept deposits except Banking Company, NBFC and such other company as specified in Rules
• As per draft rules exemption available for:
  • deposit accepted from any other company
  • Share application (upto 60 days)
  • Deposit by private company from directors or shareholders
• Public company having net worth > 100 crores or turnover > 500 crores only would be allowed to raise funds through public deposits
• Deposits can be accepted subject to compliance of Rules and subject to conditions which includes:
  • obtaining credit rating, providing deposit insurance
  • Depositing at least 15% of deposits maturing during current and next financial year in a scheduled bank
LOANS TO DIRECTORS, ETC. (185)
Corresponds to sec 295 of the 1956 Act
Section already operational from 12th Sept 2013
Section applies to any loan given directly or indirectly to any director or to any person in whom director is interested or give guarantee in connection with any loan;
‘any person in whom director is interested’ includes any body corporate:
  o in which not less than 25 % of the total voting power maybe exercised or controlled by any such directors or,
  o The Board or MD is accustomed to act in accordance with the directions or instructions of the Board or of any directors of the lending company.
Changes from sec 295:
- Exemption to private limited companies removed i.e. section applies to all companies
- Exemption for loan given to subsidiary company removed
- Section does not contain any remedial proviso (like approval of central govt, etc.)

Exemption now available only for loans:
- Given to Managing Director (as part of service conditions or approved by special resolution)
- Company giving loans in ordinary course of business (i.e. NBFCs)

Penalty of Rs. 5 lakhs to 25 lakhs and imprisonment of 6 months
Section 186 (not operative till date) prohibits investments through more than 2 layers of investment companies;
  o Exemption if the company acquires another company outside India and such other company has investment subsidiaries beyond 2 layers;

Subject to compliance of sec 185, limit for loan or investments is higher of:
  o 60 % of paid up share capital, free reserves and securities premium or
  o 100 % of free reserves and securities premium

If limit exceeded, prior approval of members by special resolution

Section corresponds to section 372A of current Act
Very detailed definition for RPT

Definition more wider than AS 18 ‘Related Parties’

Relative[2(77)]: means any one who is related to another if:
- they are members of a HUF;
- They are husband and wife or
- One person is related to another as prescribed (list given as per draft rules)
Related Party [2(76)]: means:
- A director or KMP or his relative;
- Firm in which a director, manager or his relative is a partner;
- A private co in which a director/manager is a director or holds alongwith his relatives, more than 2% of paid up share capital;
- Any body corporate whose BoD, MD is accustomed to act in accordance with the advice, directions or instructions of a director or manager; (other than in professional capacity)
- Any person on whose advice, directions or instructions of a director or manager is accustomed to act; (other than in professional capacity)
- Any company which is a holding, subsidiary or an associate company of such company or
- Other persons as prescribed (see next slide)
Draft rules prescribe the following additional persons:

- director or key managerial personnel of the holding, subsidiary or associate company of such company or his relative;
- any person appointed in senior management in the company or its holding, subsidiary or associate company i.e. personnel of the company or its holding, subsidiary or associate company who are members of core management team excluding Board of directors comprising all members of management one level below the executive directors, including the functional heads.

*Reporting of RPT as per AS 18, for DTP, u/s 40A(2)(b) of Income Tax different from Companies Act, 2013*
PROVISIONS RELATED TO AUDITORS (139 to 148)
Currently, appointment is done every year
Now, appointment to be done once for 5 years
Ratification to be done every year
Mandatory retirement after 5 years in case of individual and 10 years in case of firms
Provision applicable to all listed companies and other prescribed companies
No auditor/audit firm/audit firms having common partners, shall accept an audit for a consecutive term of 5 years after 5 years have been completed
Transition provision → to comply within 3 years
Company (members) can also decide that audit partner or team be rotated at regular intervals or joint auditor be appointed
Central government approval and special resolution required to remove auditor before his term. Also company will need to pass special resolution at the AGM

Rotation applicability – draft rules require:
- Retrospective application
- Applicable to ALL companies except OPC and Small Companies (i.e. share capital <= 50 lakhs or turnover <= 2 crores).
Applicability of Rotation in following cases for M/s ABC

1. Auditors since last 20 years → Transition of 3 years
2. Auditors since last 9 years → 1 year
3. Auditors since 3 years as M/s ABC – prior to that it was M/s AB (for 10 years) which got merged with C → 5 years

Companies (audit committees) may consider long-term perspective for appointing auditors
Some Issues

- Can auditors be appointed for less than 5 years?
- No clarity on appointment if the auditor resigns before completing the term of 5 years
- RBI/IRDA/CAG provisions for rotation every 3/4/5 years?
- Whether Indian / foreign subsidiaries of listed companies also need rotation?
- Whether applicable to branch auditors also?
- Whether audits of SFS and CFS to be separate?
Maximum number of companies in which a person can be appointed auditor is 20 companies (includes public and private).

Whether audit of SFS and CFS to be counted separately?

- **Some statistics (As per MCA/ICAI)**

<table>
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<tr>
<th>Description</th>
<th>Value</th>
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<tr>
<td>Number of Companies In India</td>
<td>10,66,102</td>
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<tr>
<td>Active Companies</td>
<td>7,05,699</td>
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<td>Number of CAs required</td>
<td>35,285</td>
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<td>CAs in full-time practice</td>
<td>98,863</td>
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<tr>
<td>Ratio of requirement to availability</td>
<td>2.80 times</td>
</tr>
<tr>
<td>Ratio of requirement to availability (if all companies considered)</td>
<td>1.85 times</td>
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</table>
Eligibility for appointment as auditor:

- Individuals who should be a Chartered Accountant
- A firm with majority of partners practicing in India.
- Limited Liability Partnership (LLPs) if it meets the criteria similar to the firm. Presently, not eligible for appointment.
Disqualification:

The following persons are disqualified for appointment as auditor:

- A body corporate
- An officer or employee of the company
- A person who is a partner, or who is in the employment of an officer or employee of the company
Disqualification:

- **Holding of Security** → A person who or his relative or partner holds any security or interest in the company, its subsidiary, holding or associate company or subsidiary of such holding company (relative allowed to hold security of FV upto an amount as prescribed – as per draft rules Rs. 1 lakh)

- **Indebtedness** → A person or his relative is indebted to the company its subsidiary, holding or associate company or subsidiary of such holding company in excess of such amount to be prescribed (as per draft rules Rs. 1 lakh)

- Also applicable to guarantee given or security provided in connection of indebtedness of third person
Business Relationship → A person or firm not eligible if it directly or indirectly, has business relationship (as may be prescribed – as per draft rules Rs. 1 lakh) with the company, its subsidiary, holding or associate company or subsidiary of such holding company or associate company.

- Business relationship defined as any transaction for commercial purpose except those in the nature of professional services permitted to be rendered by an auditor
- Relatives not covered here

Relative’s employment → A person whose relative is a director or is in employment of the company as a director or KMP.

Fraud → A person convicted by a court of an offence involving fraud and 10 years have not been lapsed from the date of such conviction (for politicians this period is 5 years !!)
Besides audit, only such services can be provided as approved by Board of Directors or Audit Committee.

The following services are however specifically not permitted:

- Accounting and book keeping services;
- Internal audit;
- Design and implementation of any financial information system;
- Actuarial services, Investment advisory / banking services;
- Outsourced financial services and
- **Management services**,
- Other kind of services to be prescribed
Restrictions apply to Audit firm, its partners, its parent, subsidiary or associate company or any other entity in which the firm or any of its partner has significant influence / control or whose name / trade name / brand is used by the firm or any of its partners.

IFAC Code of Ethics defines ‘management services’ as ‘assistance for carrying out such services for the company which are the responsibilities of the management’.
Transition provision: If the prohibited services are being rendered auditor needs to comply before the end of the first financial year after enactment of the Act

Some Issues
- Whether tax representation services covered by above restriction?
- Whether restriction applies to subsidiaries outside India?
- Whether ICAI networking guidelines need to be modified?
REMOVAL/ RESIGNATION OF AUDITORS

- Auditor appointed may be removed from his office before expiry of his term:
  - By passing a special resolution at the general meeting, and
  - After obtaining previous approval of the Central Government

- An auditor who has resigned from the company has to file a statement indicating reasons and other facts with regard to his resignation within 30 days with Company and registrar.

- NCLT may direct change of auditors, if it believes that:
  - Auditor has acted in a fraudulent manner, or
  - Abetted or colluded in any fraud in relation to the company or its directors or officers

- NCLT may pass the order suo-moto, or on application of Central Government or any person concerned.
AUDIT REPORTING
### Additional Requirements

- Observations or comments on financial transactions or matters having adverse effect on the company’s functioning *(No need to report this in thick bold & italics)*
- Whether the company has adequate internal financial controls in place and operative effectiveness of such controls;
- If any frauds against the company by any of its officers, or employees, are noticed by the auditor, the auditor shall report the same to the CG, within such time / manner as may be laid by rules (see next slide)
- Other matters as may be prescribed:

Auditing Standards to be followed as formulated by ICAI and notified by NFRA
AUDIT REPORTING

Additional Requirements …

Other matters prescribed as per draft rules:

- Whether the company has disclosed the effect, if any, of pending litigations on its financial position;
- Whether the company has made provision for foreseeable losses, if any, on long term contracts including derivative contracts;
- Whether there has been a delay in depositing money into the Investor Education and Protection Fund by the company.

- Reporting similar to CARO will also be notified later u/s 143(11)

Audit Reporting under Companies Act, 2013 and requirements of SA 700 series will ensure that audit reports are at least 5-7 pages long –

**India will become a strong contender for the world record on length of audit reports!!**
Reporting for Fraud

In case auditor has sufficient reason and information to believe that an offence involving fraud which is likely to materially affect the company, is being or has been committed against the company by officers or employees of the company, report to be given to CG immediately (but not later than 30 days) with a copy to Audit Committee or Board.

*Materially defined to mean:*

- Fraud(s) that is/are happening frequently;
- Fraud(s) where the amount involved or likely to be involved is not less that 5 % of net profit or 2 % of turnover of the company for preceding financial year.
Reporting for Fraud: …

- In cases where the fraud(s) is not material, report to be given to the audit committee or Board.
- The Audit Committee or Board has to give reply to auditors in writing about the steps taken to address the fraud(s) including systemic issues.
- If auditor not satisfied with the above action, he can report to CG also.
- Form prescribed for the above.

**Auditor now also becomes a whistle blower !! …**
AUDITOR’S RIGHTS

- Access to books of accounts kept at registered office and at any other place in India.

- Compulsory attendance of Auditor at every AGM

- Auditor of holding company shall also have the right of access to the subsidiaries’ books of accounts so far as it relates to the consolidation. No such provision currently.
  - This right will be very useful in cases where the subsidiaries’ operations are substantial in the Consolidated results of the company.
PENAL PROVISIONS
For any contravention regarding appointment / rotation, powers / duties, prohibited services → fine of 25,000 to 5 lakhs

For willful contraventions,
- Fees received to be refunded
- Imprisonment and fine of 1 lakh to 25 lakhs
- Liable for damages to company, statutory authorities and other persons for loss arising out of incorrect or misleading statements

For audits carried out by a firm, if it is proved that any partner/s has acted in fraudulent manner, the above liability shall be joint and several.
Action by NFRA
- Suo-moto action can be taken against firm / member
- Penalty – for individuals 1 lakh to 10 times fees received. For firms – 10 lakhs to 10 times fees received
- Debarring member or firm from practice for 6 months to 10 years

Class Actions: members or depositors or any class of them can claim damages or compensation for improper and misleading statements

Currently, company is liable u/s 232 for a fine upto Rs.5,000, and the auditor is liable u/s 233 for a fine upto Rs 10,000.
Currently, CARO requires an auditor to comment on internal audit system being commensurate with the size and nature of business for specified cos.

As per Act, prescribed companies shall be required to appoint an Internal Auditor.

Companies prescribed are:
- Listed
- Public with paid up capital > 10 crs
- Public with o/s borrowings from banks/FIs/deposits > 25 crs

Internal auditor shall be a chartered accountant or a cost accountant or such other professional as may be decided by the Board – draft rules also refer to ‘firm of internal auditors’

Board to decide manner, scope, periodicity, methodology
### SUMMARY FOR TYPES OF AUDITS

<table>
<thead>
<tr>
<th></th>
<th>Statutory</th>
<th>Internal</th>
<th>Secretarial</th>
<th>Cost</th>
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<tr>
<td>Relevant sections</td>
<td>139-147</td>
<td>138</td>
<td>204</td>
<td>147</td>
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<tr>
<td>Applicability</td>
<td>All companies</td>
<td>Listed and public Cos having capital &gt; 10 crores or loans &gt; 25 crores</td>
<td>Listed Cos and Public Cos with capital &gt; 100 crores</td>
<td>To be notified</td>
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<tr>
<td>Who can conduct</td>
<td>CA / CA firm</td>
<td>CA / Cost Acctt</td>
<td>CS in Practice</td>
<td>Cost Acctt in practice</td>
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<td>Scope of Audit</td>
<td>Financial Statements</td>
<td>Functions and activities</td>
<td>Secretarial and related records</td>
<td>Cost records</td>
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<td>Standards applicable</td>
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<td>ICSI Standards</td>
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NATIONAL FINANCIALS REPORTING AUTHORITY
NFRA will be a quasi-judicial body
To oversee compliance of accounting and auditing standards
To oversee quality of service of professionals associated with preparation of financial statements
As a quasi judicial body – complete with Appellate Authority, has powers of a civil court
Professional misconduct of CAs also comes under NFRA

Is the role of ICAI now restricted to?
- To conduct Exams and
- To hold CPE programs
- To formulate AS / Ind AS and SA (to be finally approved by NFRA)
As per Draft Rules:

- **Stringent terms for appointment of members of NFRA**

- **NFRA will have 3 committees – Committee on AS, Committee on SA and Committee for Enforcement**

- **Power to conduct investigations or quality reviews against audit firms which conducts:**
  - audit of 200 companies or more in a year;
  - audit of 20 or more listed companies;
  - company or companies (including listed company or companies), having net worth > 500 crores or paid up capital > 500 crores or annual turnover > 1,000 crores as on 31st March of immediately preceding financial year ; or
  - company or companies having securities listed outside India
INCREASED FOCUS ON AUDITORS

- Increased focus on role of auditor in recent times
- Companies Act 2013 lays down several additional restrictions, responsibilities and penalties for an auditor etc. (including class action suits)
- Audits are becoming very challenging
- Adequate and advance planning necessary
- All firms esp. Small and Medium sized firms will have to fast gear up for Rotation and other additional responsibilities
- Globally also, auditor role and reporting is undergoing a change
- If proper audits not done, auditor will have to face FRRB, QRB, NFRA, ICAI, MCA, Class Action Suits, etc.
Where valuation is required to be made under the Act, in respect of any property, stocks, shares, debentures, securities or goodwill or other assets or of networth of a company or its liabilities, such valuation shall be done by a registered valuer

**Scope**
- Any valuation under the Companies Act 2013 to be done by registered valuer. Illustratively;
  - Valuation of further issue of shares
  - Valuation of properties / assets of the company for non cash consideration
  - Valuation report in respect of shares, properties etc. for compromise and arrangement
  - Valuation for purposes of minority squeeze out
  - Voluntary winding up – valuation of assets
As per Draft Rules following persons are the registered valuer:

a) CA / CS / Cost Accountant in whole time practice or any other person holding qualification as MCA may recognize
b) Merchant Banker registered with SEBI
c) Member of Institute of engineers in whole time practice
d) Member of Institute of architects in whole time practice etc.

Person referred to in (a) and (b) → Financial Valuation
Person referred to in (c) and (d) → Technical Valuation
DIRECTORS’ REPORT
Additional disclosures:
• Extract of the Annual Return, Number of meetings of BoD,
• Listed and prescribed class of companies - Policy on directors appointment, remuneration and annual evaluation of the performance of the BOD, committee and individual directors, Statement on declaration given by ID,
• Related party contracts, certain loan / guarantees / investments;
• Development and implementation of a Risk Management Policy and CSR
• For listed Company statement for laid down internal financial controls and that such internal financial controls are adequate and were operating effectively
• For all companies – System for ensuring compliance with all applicable laws
As per Draft Rules, to also include:

- Ratio of remuneration of each director to the median remuneration of the employees
- Percentage increase in the median remuneration of employees
- Key parameters for any variable component of remuneration availed by the directors
- Particulars of employees drawing remuneration of Rs 5 lakhs p.m. or Rs. 60 lakhs p.a.

As per SA 720 ‘Auditors’ Responsibility in relation to other information in documents containing audited financial statements’, Information contained to Directors Report needs to be cross verified with Financial Statements.
M & A, RECONSTRUCTION
Several changes in M&A provisions

In most cases, permissions of High Court dispensed with and NCLT given those powers

Application for compromise or arrangement involving corporate debt restructuring to include report by auditor that its fund requirements after debt restructuring will conform to the liquidity test based on estimates provided by the Board.

No scheme will be allowed by NCLT, unless it is certified by the auditor that the same is in compliance with notified Accounting Standards.(also applicable in case of Unlisted Companies also)
The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn.

*If you don't have a strategy, you're part of someone else's strategy.*

*Alvin Toffler*
Thank you!

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