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# Accounts

- **Financial year** – 31 March mandatory- 2 year transition provided – certain exemptions
- **Financial statements**
  - Financial statements 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,

# Accounts

- **Consolidated Financial Statements**
- Preparation of consolidated financial statements mandated if a company has one or more subsidiaries
- Subsidiaries include associate company and joint venture (for this purpose only)
- Definitions to be as per the AS
- Manner of preparation as per Schedule III and Ass
- Company required to place separate audited accounts in respect of each of its subsidiaries on its website
- Audited financial statements of foreign subsidiaries are required to be filed with RoC
- *Preparation of Financial Statements of Foreign subsidiaries?*

# Accounts

- **Framework for Internal Financial Controls**
- **NFRA**
- **Reopening of books of account (regulator driven)**
- **Voluntary Revision of Financial Statements**

# Audit and Auditors

- **Appointment** – 5 year term – mandatory rotation – role of the audit committee – eligibility certificate (including particulars of pending proceedings)
- **Disqualifications** – LLP with majority of practicing CAs – Holding of securities – Indebtedness/ guarantee/ security –business relationship -(excluding normal commercial transactions)- relative's employment – limits – fraud –consulting services

# Reporting

- **Changes under the Companies Act, 2013**
- **Internal Control Framework**
- **Fraud Reporting**

# Changes under the Companies Act, 2013

- Whether the auditor has ***sought and obtained all the information and explanations*** which to the best of his knowledge and belief were necessary for the purposes of his audit. ***If not, the details thereof and the effect of such information on the financial statements shall be stated*** [Section 143(3)(a)]
- The onus on auditors has increased significantly, since there needs to be a demonstration that the information and



# Changes under the Companies Act, 2013

- Views and comments on the following specific matters
  - Disclosure of impact, if any, on pending litigations on financial position
  - Whether provision required under any law or accounting standards for material foreseeable losses, if any on long term contracts including derivative contracts
  - Whether there are delays in transferring amounts to the Investor Education and

# Internal Control Framework

- Whether the Company has adequate *internal financial control system* in place and the operating effectiveness of such controls  
**[Section 143(3)(i)]**

## **Reporting Responsibilities:**

- Adequacy of Internal Financial Control systems
- Operating effectiveness of such controls
- CARO Requirements (no change)

# Internal Control Framework

## Internal Financial Controls (IFC) v/s Internal Financial Control Systems

- **IFC** “ *Policies and procedures adopted by the Company for ensuring **orderly and efficient conduct of its business** including adherence to company’s policies, the safeguarding of assets, the prevention and detection of frauds and errors, accuracy and completeness of the accounting records and timely preparation of reliable financial information*” [**Explanation to**

## Fraud Reporting

- To report only on frauds in the **course of performance of duties as an auditor.**
- Only frauds committed against the Company by its **officers or employees.**
- **Requirements of SA-240 need to be kept in mind.**
- Any of the above if detected during the course of other attest / non attest functions and if likely to have a material effect on the financial statements need to be reported.

## Proscribed Services

### **Section 144 : Auditors not to Render Certain Services**

- An auditor shall provide to the company only such other services as approved by the Board of Directors or Audit Committee, as the case may be, but shall not render any of the following services rendered either

# Internal Audit

## Internal Audit – Section 138

Internal audit made mandatory for below mentioned class of companies:

- Every listed company
- Every unlisted public company having:
  - paid up share capital of ` 50 crores or more during the preceding FY or
  - turnover of ` 200 crores or more during the preceding FY
  - outstanding loans or borrowings from banks or public financial institutions exceeding ` 100 crores or more at any point of time during the preceding FY or
  - outstanding deposits of ` 25 crores or more at any point of time

# Secretarial Audit

## Secretarial Audit – Section 204

- Following companies shall have secretarial audit done by a Company Secretary in practice and such report shall be annexed with the Board Report (Rule 8)
  - Listed company
  - Public company having
    - Paid up share capital of ` 50 crores or more or
    - Turnover of ` 250 crores or more
- The format of the Secretarial Audit Report shall be in Form No.MR.3.

## **Rule 8A - Appointment of Company Secretaries in companies not covered under rule 8.**

A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

# Acceptance of Deposits

- **Preconditions for accepting deposits by public companies**
- **Exclusion from definition of the term 'Deposits'-**
  - **Application and Call Money**
  - **Bonds and Debentures**
  - **Advances for Goods and Services**
- **Maintenance of Liquid Assets**
- **Credit Rating**
- **Insurance**
- **Trustees**



## Acceptance of Deposits

### **Preconditions for accepting deposits by public companies**

·Only a public company (Eligible Company) having

- 1) net worth of not less than Rs. 100 crore or
- 2) turnover of not less than Rs. 500 crore and
- 3) which has obtained the prior consent of the company by means of a special resolution and

## Acceptance of Deposits

### Application and Call Money

·The securities application money received by a company shall not be considered as a deposit, only if the securities are **allotted within 60 days** of receipt of such amount or if the amount is refunded within the period of 15 days after the completion of this 60 days period.

**[Rule 2(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014]**

## Acceptance of Deposits

### Bonds and Debentures

·The bonds or debentures issued by a company should be secured by a **first charge** or a charge ranking *pari passu* with the first charge on the assets of the company (excluding the intangible assets) **or** such bonds or debentures should be **compulsorily convertible into shares of the company within 5 years** for availing the exemption from the definition of deposits.

**[Rule 2(c)(ix) of the Companies (Acceptance of Deposits) Rules, 2014]**

## Acceptance of Deposits

### Advance for Goods and Services

·Any amount received by the company for supply of goods or provisions of services is required **to be appropriated** against supply of good or provision of services for **within a period of 365 days**, failing which it should be refunded within 15 days otherwise the advance amount will be treated as a deposit for the company.

## Acceptance of Deposits

### Maintenance of Liquid Assets

- An amount equivalent to a minimum 15% of deposits maturing during the financial year as well as the following financial year will need to be kept in a separate bank account with a scheduled bank referred to as **Deposit Repayment Reserve Account.**  
**[Section 73(2)]**

## Acceptance of Deposits

### Credit Rating

·Every eligible company soliciting public deposit is required to obtain the **credit rating at the time of invitation of deposits and in every year** during the tenure of deposits.

**[Section 76(1)]**

## Acceptance of Deposits

### Insurance

·Every company, accepting deposit after 31st March, 2015, should enter into a deposit insurance contract which should specifically provide that in case the company defaults in repayment of principal/interest amount, the depositor shall be entitled to the repayment of principal amount and the interest thereon by the insurer up to the aggregate monetary

# Acceptance of Deposits

## Trustees

·No company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

**[Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]**



## Corporate Social Responsibility

- CSR provisions applicable from the Financial Year 2014-15 to every company having during any financial year :
  - Net worth => ` 500 crores , or
  - Turnover => ` 1,000 crore , or
  - Net profit => ` 5 crore

# Depreciation

- **Transition**
- **Extra Shift Depreciation**

## Transition

- Useful lives
- Componentisation
- Revaluation
- Low value assets
- Intangible assets

## Useful Life

- The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.
- Useful life can be higher than that specified in schedule II
- Justification to be supported by Technical Advice
- While external technical advice is the

## Useful Life

- When a company opts to move to Schedule II useful lives and residual values, they can simultaneously also change the method of depreciation and still avail benefits of transition provisions
- Two stage process –
- In the first stage, consequent to the change in the method of depreciation, as on the date of transition to Schedule II, the carrying value of the assets should be recalculated based on the

## Useful Life

- It is permissible for companies to consider useful life and residual value per Schedule II for some categories of assets and different life / residual value for the other categories of assets. However, the rationale is to be technically evaluated and disclosed in the financial statements where useful life as per Schedule II is not being applied.
- **Useful life is based on its usage and not its nature (e.g. earthmoving equipment used in**

## Componentisation

- Schedule II does not exempt componentisation of existing assets. Hence, in whichever year a company adopts componentisation, all assets would have to be componentised retrospectively but with respect to only those assets that have a carrying value greater than the residual value as on the transition date.
- Two transition dates possible
- Normally, only when the useful lives are

## Revaluation

- As per Schedule II depreciation should be based on cost of an asset or **other amount substituted for cost**, less its residual value.
- **Accordingly, the depreciation charge to the Statement of Profit and Loss should be based on the revalued amounts and the excess amount of depreciation arising out of the revaluation cannot be recovered /credited back from the revaluation reserve.**



## Low Value Assets

- Schedule II does not specifically deal with assets costing less than Rs. 5,000/-.
- As per AS 1 – Disclosure of Accounting Policies, a company has to give due consideration to the concept of materiality when framing its accounting policies and preparation of financial statements.
- Considering the above, a company would be free to determine a policy for depreciating assets costing less than Rs. 5,000/-

## Intangible Assets

- Only intangible assets under road projects (Toll Roads) can be depreciated as per the revenue model
- Intangible assets that arise out of other BOOT projects such as port projects, railways, etc. may have to be amortised as per AS 26. Amortisation based on revenue model may no longer be available for such assets. Hence, a change from the revenue model to amortisation as per AS 26 in such cases would

## Extra Shift Depreciation

- Depreciation charge to increase by 50% / 100% for double / triple shift respectively
- In case of assets working on multiple shift basis the useful lives of assets under Schedule XIV needs to be separately derived for single, double and triple shift usage based on the respective depreciation rates.
- On and from the date Schedule II becomes effective, the carrying amount as on that shall be depreciated over the remaining useful life

## Extra Shift Depreciation

- As per the revised Guidance Note, the company should at the beginning of the next year determine whether such assets were used on an extra shift basis on a sporadic basis in the past year and whether the sporadic use is expected to continue in the future also. In such a case, the useful life should be determined on a single shift basis and depreciated accordingly and increased only if in the future the use on extra shift basis is more frequent (i.e. other than sporadic). Thus

## Extra Shift Depreciation

- *What constitutes sporadic use has not been determined and would be a subject matter of judgement. Normally when the asset are operated on extra shift basis for more than half of the year the same could be construed as not sporadic.*
- *The companies would have to maintain detailed records of the usage pattern of various assets and the same would need to be periodically reviewed.*

# Dividend

## Section 123

### Declaration of Dividend and Transfer to Reserves

- Dividend can be declared for any FY out of the profits of the company for that FY or previous FY(s) after providing for depreciation in accordance with Schedule II.
- A company *may* voluntarily transfer a portion of its profits to reserves as considered appropriate. **Mandatory transfer to reserves is not required.**

### Interim Dividend

- Interim dividend may be declared out of the surplus in the Profit & Loss Account as well as profits of the FY in which dividend is sought to be declared.
- In case company has incurred loss in the current FY up to the end of the

# Dividend

## Declaration of Dividend out of Reserves – Rule 3

In case of inadequacy or absence of profits in any FY, the company can declare dividend out of the accumulated profits transferred to reserves subject to the following:

- Rate of dividend should not exceed average rate of dividend declared in last 3 preceding years.
- Amount to be drawn from free reserves shall not be more than 1/10th of paid-up share capital + free reserves.

# Dividend

## Declaration of Dividend out of Reserves – Rule 3 (Contd..)

- Balance reserves after withdrawal shall not fall below 15% of the paid-up share capital.
- No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year. [**As amended by Companies (Declaration and Payment of Dividend) Amendment Rules, 2014]**]



## Dividend

### Restrictions

- No dividend shall be declared or paid by a company from its reserves other than free reserves [Section 123(1)]
- Failure to comply with provisions relating to acceptance of deposits (Section 73) and repayment of deposits accepted before commencement of the Act (Section 74) will bar the company to declare any dividend

# Related Party Transactions

- **Identification of Related Parties**
- **Identification of relevant Related Party Transactions**
- **Approval Process**

## Identification of Related Parties

As per **Section 2(76)** the following are the various related parties:

- A director or his relative;
- A key managerial personnel ('KMP') or his relative;
- A firm, in which a director, manager or his relative is a partner;
- A private company in which a director or manager [or his relative] is a member or

## Identification of Related Parties

As per **Section 2(77)**, the term “relative” with reference to a person means:

- Members of a Hindu Undivided Family;
- Husband and wife;
- Father (including step father);
- Mother (including step mother);
- Son (including step son);
- Son’s wife;

## Identification of Related Parties

As per **Section 2(51)**, the term “Key Managerial Personnel” with reference to a Company means:

- The Chief Executive Officer or the Managing Director or the Manager
- The Company Secretary
- The Chief Financial Officer
- Such others as may be prescribed

# Identification of Related Parties

## Promoter – Whether Related Party?

**As per Section 2(69).** *A promoter is a person:*

- *Who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92; or*
- ***Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director, or otherwise; or***
- ***In accordance with whose advice, directions or instructions the Board of Directors of the***

# Identification of Related Parties

- Section 2(76) which defines related party does not specifically refer to the term 'promoter'.
- However, persons covered under sub clauses (b) and (c) of Section 2(69) will be scoped in as a related party under Section 2(76)(vii) by virtue of being persons in accordance with whose directions or instructions the Board of Directors of the Company is accustomed to act.
- Therefore, unless scoped into Section 2(76)

# Identification of Related Parties

## Manager (Section 2(52)):

- “manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not



## Identification of Related Parties

### Managing Director (Section 2(53))

- “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called

## Identification of Related Parties

### **Holding company**

- controls composition of the Board; or
- exercises or controls more than 50% of the total share capital either at its own or together with one or more of its subsidiary companies
- Investment in total share capital (equity + preference) of the company to be considered for determining holding company – subsidiary company relationship

## Identification of Related Parties

### Disclosure of Interest by Director – Section 184

- Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, ***disclose his concern or interest in any company or companies or bodies corporate, firms, or other association***

# Identification of Related Parties

## Disclosure of Interest by Director – Section 184

- Every director of a company who is in any way, ***whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—***
  - with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
  - with a firm or other entity in which, such director is

## Identification of Relevant Related Party Transactions

**Section 188** deals only with the following **contracts or arrangements** between related parties:

- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, **property of any kind**
- Leasing of property of any kind
- Availing or rendering of any services

# Identification of Relevant Related Party Transactions

## **Restriction on Non-cash Transactions Involving Directors – Section 192**

- No company shall 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,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and 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.

# Identification of Relevant Related Party Transactions

## Prohibition on Forward Dealings in Securities of Company by Director or Key Managerial Personnel – Section 194

- No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—
  - a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
  - a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

## Approval Process

- **Audit Committee**
- **Board of Directors**
- **Shareholders**



## Audit Committee

- As per Section 177 **every audit committee (wherever the same is required to be constituted as per the Act)** is required to approve all transactions of a company including any modifications with related parties.
- ***Thus a very onerous responsibility has been cast on audit committees to approve and be conversant with all related party transactions, especially those that do not***

## Audit Committee

- Whilst for listed companies as per Clause 49 of the Listing Agreement as recently amended, an omnibus approval is permissible for a period of one year, subject to certain condition regarding repetitiveness, materiality etc. the same is not clearly spelt out in the Act.
- At the same time the Act nowhere specifies that a prior approval is required.
- Further, Clause 49 also requires listed

## Board of Directors

- In terms of **Section 188** all **contracts / arrangements** with related parties which are discussed earlier which are **not in the ordinary course of business or on an arms' length basis** would require the *prior approval* of the Board of Directors by a resolution passed at the meeting. In terms of the Rules, the agenda at the Board Meeting at which such a resolution is passed shall disclose the following:

## Board of Directors

- *The MCA has recently clarified that transactions which are in the nature of **compromises, arrangements and amalgamations (which includes mergers and demergers)** with related parties would not attract the requirements of Section 188. However, it appears that **only those arrangements etc. pursuant to Chapter V (Sections 390 to 396A) of the 1956 Act and Chapter XV (Sections 230 to 240) of the 2013 Act are covered** and any other transactions*

## Shareholder Approval

- All the above transactions which exceed the thresholds as indicated hereunder would need the ***prior approval*** of the shareholders by means of a ***special resolution*** in the general meeting:
  - Where the **paid up share capital** of the Company is **Rs. 10 crores or more** – all the contracts / arrangements as discussed above, which are covered under Section 188. (i.e. other than those in the ordinary course of business

# Shareholder Approval

Nature of Transaction	Threshold Limits
Sale , purchase or supply of goods or materials, directly or through agents	More than 25% of the annual turnover
Selling or otherwise disposing off or buying property of any kind.	More than 10% of net worth
Leasing of property of any kind	More than 10% of turnover or net worth
Availing or rendering of services, directly or through agents	More than 10% of net worth
Appointment to any office or place of profit in the Company, its subsidiary or associate	Monthly remuneration exceeding Rs. 2.50 lakhs
Underwriting the subscription of any securities or derivatives	More than 1% of the net worth

## Shareholder Approval

- **Company has only husband and wife as directors and shareholders** - *Such types of Companies would have to bring in two outsiders as shareholders giving one share each and pass special resolutions for all related party contracts in a General Meeting and file the necessary form and register such special resolutions. This is the only way these contracts could be regularized at least for the time being till the Ministry comes out with some relaxations/clarifications*

## Shareholder Approval

- **Applicability to foreign subsidiaries** - *The term 'company', as defined under the Act, is a company incorporated under this Act or any previous company law. A Company incorporated under the relevant legislation of a foreign country is not a 'company' under the Act. However, transactions by an Indian company with a foreign company, which is a subsidiary, associate, fellow subsidiary, joint venture of the same venture or company under control of same promoter would be*



## Shareholder Approval

- **Principle of “Majority of Minority”** - *In cases where shareholders are ‘related’ in some way or the other with the company (but are neither the intended transacting party nor interested in the transaction directly or indirectly that has been put up for approval) it will be inappropriate to interpret the law to say that all such shareholders are prohibited from voting. The principles of “majority of minority” voting must not result in any unfair advantage to the minority. However plain reading of the*

## Loans and Investments

- **Loans to Directors**
- **Inter corporate Loans, Guarantee, Security and Investments**

## Loans to Directors (Section 185)

- **Applicability** – Public and Private Limited companies (unless exempted)
- **Scope** - No company shall directly or indirectly make any loan including book debt or give any guarantee or provide any security to its director or to '***any other persons in whom the director is interested***' [as per explanation to Section 185(1)]
- **Exemptions** - Restriction will not apply to:

Loan to MD / WTD as a part of contract of

## Loans to Directors (Section 185)

- The **MCA has vide a Notification dated 5th June, 2015** specified that the provisions of s 185 shall **not apply to private limited companies** which **satisfy the following conditions:**
  1. *No other **body corporate** has invested any money in such private limited company;*
  2. *The borrowings from banks, financial institutions and other body corporates is **less than twice the paid up share capital or***

## Inter corporate Loans, Guarantee, Security and Investments (Section 186)

- **Coverage** - Investment, Loan, Guarantee or Security to body corporate or **any other person**
- **Rate Of Interest** - Rate of interest on the loan granted shall not be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenure of the loan.
- **Investment through Layers** - Company can not make investment through more than two

## Inter corporate Loans, Guarantee, Security and Investments (Section 186)

- **Exemptions -**

- Any loan, guarantee or security provided by:

- banking company; or insurance company; or housing finance company; in-ordinary course of their business ;

- company engaged in the business of financing of companies or of providing infrastructural facilities;



Questions

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