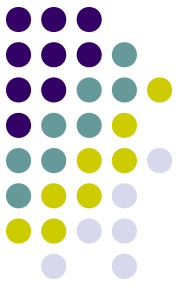


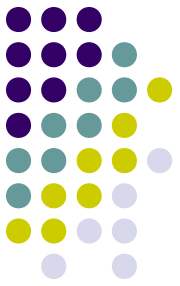
Coverage



- The story so far
ET: 10 mins
- Key Points for discussion
ET: 30 mins
- New Concepts introduced in the Bill
ET: 45 mins
- Key Changes vis-à-vis Companies Act, 1956
ET: 45 mins
- Accounts, Audit and Auditors
ET: 30 mins
- The way forward & QA
ET: 10 mins



The story so far



- Bhabha Committee > Companies Act, 1956
- **30,000 entities grown to 1,250,000!**
- Around 25 amendments thereafter
- 1993, 1997, 2000 attempts to revamp lapsed

2004 - Concept Paper

2004 - Expert Committee of JJ Irani

2008 - Companies Bill 2008

UPA-I tenure over

2009 - Companies Bill 2009

Sent to Parliamentary Standing Committee

2011 - Companies Bill 2011

Sent to Parliamentary Standing Committee

2012 - Companies Bill 2012

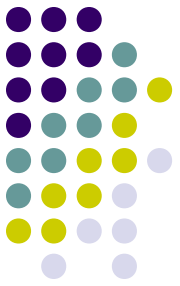
Key Points for discussion



Construct of the Companies Bill, 2012

- 29 Chapters
- **470 sections (658 in the current act)**
- 7 schedules (15 schedules)
- Extends to the whole of India
- **Flexibility to notify sections separately with time**
- Power, Insurance and Electricity companies to have specific regulations

Key Points for discussion



- Rules and Delegated Legislation
- **'As may be prescribed' in 346 clauses**
- Rules expected by end - Apr – Rules drafting committee
- Transitional Issues – Power to remove difficulties
- Quantum leap in penalty amounts
- Lesser Central Government Approvals
- Scope extends to whole of India
- **Extra-territorial powers to subsidiaries\associates**
- Overshadowed by scams



"I plan to institutionalize the process so that it's not substituted by suo moto actions" says the 35-year-old Sachin Pilot



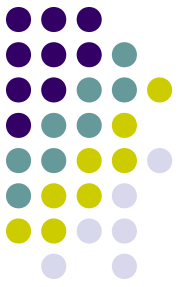
High-Impact Areas



- **NCLT (HC + CLB + BIFR + additional)**
- Inter-corporate Loans
- **Rotation of audit firms and NFRA**
- Independent Directors
- **Mandatory Consolidation**
- New definition of subsidiary company
- **Not many exemptions for private limited companies (MD, Remuneration, etc.)**
- Many rules and mechanism for pre-consultation

- **No restriction on Share transfer rights**
- **Reinstated shareholders democracy (80 – OR & 44 – SR)**
- Better corporate democracy – Enabling architecture
- Minority protection
- **Better disclosure norms**
- Faster adaption to changes\reforms

Some new Definitions & Concepts



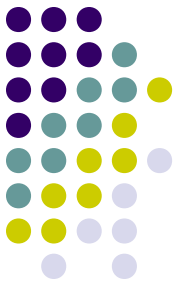
- Control – in sync with SAST
- **Listed Company – listed debentures?**
- Private Company – 200 members (slight dichotomy)
- Promoter & Associate
- **Related Party**
- Foreign Company – electronic mode covered
- **Small Company – Capital < 50lakhs or Turnover < 2crores**
- CFO\KMP
- **Insider Trading – Criminal offence**
- Dormant Company – mandatory application to ROC
- Share Capital definition

One Person Company



- Fillip to SME activities
- **Limited liability of a sole-proprietor**
- At par with global standards
- Need to nominate one person as nominee – One director
- On the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares
- No requirement of preparing cash flow statement
- **Will be a Private Limited company for all purposes**
- The words “One Person Company” shall be mentioned in brackets, wherever its name is printed, affixed or engraved
- **No requirement of general meets. No cash-flow. Lesser Board meetings**
- If one director than no requirement for a board meeting also
- **Subsidiary? Transfer of shares? Conversion? Taxation?**

Independent Directors



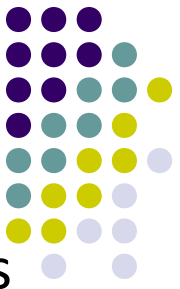
- Every listed company to have 1/3rd independent directors
- **Certain unlisted companies to also have ID**
- Stringent requirements for qualifying – Schedule IV gives onerous responsibilities
- **5 years + further 5 years**
- **Cooling period for 3 years. Transitional phase**
- Liable only in case of knowledge, consent, connivance or acted indiligently – **Other laws?**
- Separate meetings – Call any employee – Do performance evaluation
- **No ESOP**
- Nominee Director not regarded as Independent Director
- SEBIs draft corporate governance regs
- **Special appointment letters for each independent director.**

Corporate Social Responsibility



- **1st country in World to legislate on CSR!**
- Networth > 500crs. or Turnover > 1000crs. or Net Profit > 5crs.
- To constitute a CSR committee
- Minimum 3 directors with one independent
- **Activities qualifying as CSR listed in the schedule VII**
- CSR policy to be formed and disclosed in Board Report
- **Spend at least 2% of the average net profits made by the company in the preceding three financial years**
- **Whether constitutional? Counter argument**
- Voluntary guidelines of MCA already in place
- ‘Comply-or-explain’ approach. Bark not followed by bite!
- SEBI BR Reports
- **Tax allowability?**

Loans & Investments



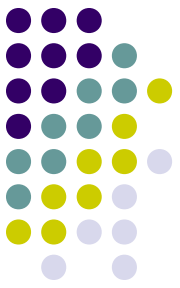
- **Loans to include all entities.** Earlier covered only corporates
- All investments covered, including MFs
- **Wholly-owned subsidiary not exempted – Impactful!**
- **Private Limited Companies also covered**
- Post-facto permission not possible earlier for urgency
- Disclose in report all such loans and guarantees
- Existing loans also covered. **No grand-fathering clause**
- Bank rate substituted by government securities
- Fine **and** imprisonment
- **No transition period**

Registered Valuer



- **New professional category (CVP)**
- Audit committee to appoint registered valuer
- Criminal liability for wrongdoing. Liable for damages
- Registered Valuers required for:
 - Further issue of shares
 - Transactions with directors on a non-cash basis
 - Scheme of Arrangements
 - **Purchase of minority shareholding**
 - Submission of report on liquidation
 - Submission for voluntary winding-up

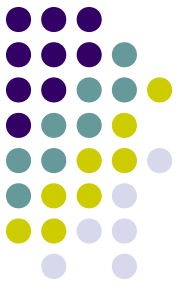
Class Actions Suits



- Can be filed with the NCLT against company, directors, **auditors, experts, consultants or advisors** by members or depositors.
- **Damages**, compensation, restriction on passing resolutions, declaration of a void resolution, etc.
- 100 shareholders or 100 depositors can file suits
- Penalties and imprisonment
- Filings to be made to NCLT
- **Internationally comparable model**

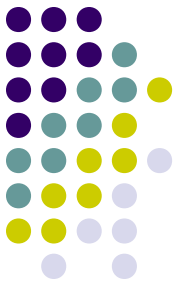


Merger \ Arrangement



- Myth of 'squeeze out'
- Tag Along rights with minority shareholders
- Stricter conditions for Reduction of Capital
- Reduction of capital if within the scheme, to be disclosed
- Merger\Arrangements between small companies and holding\subsidiary companies to be easier and outside NCLT (still requires central government approval)
- Exit to shareholders incase of merger\reverse merger
- Statutory auditors certificate mandatory
- No longer a 'complete code' now

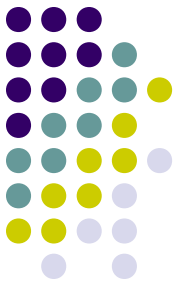
Directors & Board Meets



- **Compulsory resident director**
- **Woman Directors**
- Maximum 15 directors – more by resolution
- **Resignation effective from ‘date of receipt of letter’ by company.**
- Mandatory remuneration and nomination committee
- **ESOP part of remuneration for directors**
- Elaborate disclosures in Directors report



Directors and Board Meets



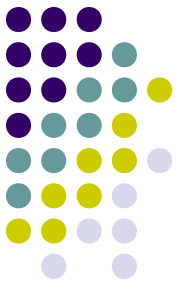
- **Maximum 20 directorships including 10 public companies**
- First Board Meeting within 30 days for all companies
- Minimum 7 days notice period – Hand, post or electronic –
Shorter notice with 1 Independent Director consent
- **Video Conferencing permitted for quorum**
- Many special resolution & many ordinary resolutions
- Performance report to be disclosed

Subsidiary related provisions



- **Definition of subsidiary**
- Controls or owns more than 50% of total share capital
- **Subsidiary of a Public Limited Company**
- Layers of subsidiary – Not more than layers as may be prescribed.
- **Investment company subsidiaries to be not more than two layers**
- **Exemption for acquisitions. Greenfield? Transition Provisions?**
- No exemption for loan\guarantee to wholly-owned subsidiary
- Annexure of domestic subsidiary accounts not required
- Mandatory consolidation

Public Issue related changes



- **Entrenchment provisions in articles possible – All member approval**
- Differential voting rights allowed
- **No issue of shares at a discount. Except sweat equity**
- **No change in objects. Only through special resolution and by providing an exit to dissenting shareholders by promoters**
- Any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract. 111A
- Debenture trustee to be appointed if debentures issued to more than 500 persons
- **More stricter disclosure requirements in prospectus**
- Experts in prospectus also liable to make good the losses to investors

Stricter regulations for Private Placement

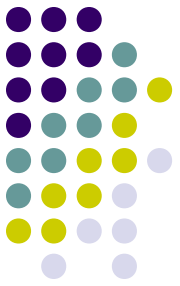


Other related provisions



- GDR, IDR and other instruments as ‘securities’
- Fraud is defined. Imprisonment and cognizable offence. Broad definition
- Serious Fraud Investigation Office
- **One-year cool-off period before buy-back**
- No mandatory requirement for transfer to reserved before declaration of dividend
- **Rate of interim dividend shall not be higher than last 3 years average**
- Deposits only from Members
- Only certain companies to raise deposits from public. Appropriate charge to be registered and credit rating performed
- 217 Matrimonial statement details gone away

Other related provisions



- Secretarial Standards granted statutory recognition.
- **Secretarial Audit mandatory for all listed companies.**
- Related Party Transactions to be at 'Arms Length'. No CG approval. Members approval.
- 'Majority of Minority rule' in Related Party transactions
- Rights issue to ESOP possible
- **Company can be wound up by NCLT suo-moto or by voluntary application**
- Sick Companies to include all kinds of companies
- No need to refer to BIFR in 50% net-worth eroded.
- Company or 50% of creditors, if unpaid can file reference with NCLT

Other related provisions



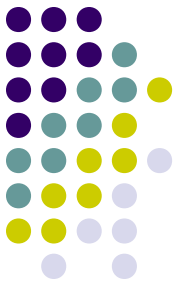
- Only main objects in memorandum
- CIN number to be printed on all letterheads, billboard, etc.
- **Lending to ESOP trust now possible**
- **All charges to be registered with ROC**
- Listed companies to file change in top 10 shareholding pattern to ROC
- First AGM within 9 months
- Electronic communications with shareholders and maintenance of records allowed
- **Postal Ballot requirements applicable to all companies**
- Many other resolutions will now require filing with the ROC
- **'Report on AGM' to be filed with ROC**
- Political contributions at 7.5%

Accounting Requirements



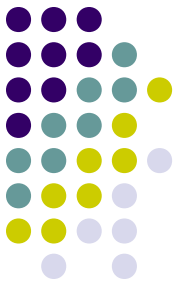
- **NFRA vs. ICAI**
- Consolidated Financial Statements – Each level
- Associates\JVs also to be consolidated
- **Restatement of Financial Statements – Fraud, Mismanagement or voluntarily – 3 years**
- Auditor certificate in mergers\court schemes
- **Useful life for depreciation**
- Transitional Adjustment to charge deprecation to retained earnings
- **Component Accounting – Revalued depreciation**
- Mandatory following of Financial Year 31st March
- CFO to be mandatorily appointed by certain companies
- **CFO to attest financial statements**
- Internal Audit to be mandatory for certain companies. CAs and CWAs
- No requirement for transfer to reserves before dividend

Appointment & Rotation of Auditors



- Resolution for appointment can be passed for 5 years, subject to ratification each year
- Mandatory rotation of auditors every five years
- **Mandatory rotation of auditor firms every five + five years**
- Common partner firms not permitted reappointment
- **Transition period of 3 years**
- **Liability of the entire Firm and not the signing partner – Joint & Several**
- CA firm can have other professionals as partners
- Appointment restricted to **20 companies (can be lesser too)**
- Shareholders are at liberty to decide by passing resolution that audit partner and the audit team, be rotated every year
- Members can pass resolution for early rotation
- Member can pass resolution for joint auditors

Accounts, Audit & Auditors



- Removal by company requires special resolution and central government approval
- **Resignation requires filing a statement of reasons with ROC**
- Tribunal\Central Govt. can remove auditors
- **Auditor to report on adequate internal financial control system and also their operating effectiveness**

“147(2) ... the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:

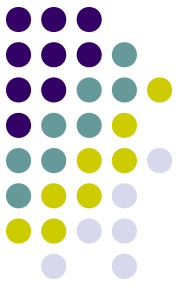
*Provided that if an auditor has contravened such provisions **knowingly** or willfully with the intention to deceive the company or its shareholders **or creditors or tax authorities**, he shall be punishable with imprisonment for a term which may extend to one year **and** with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.*

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

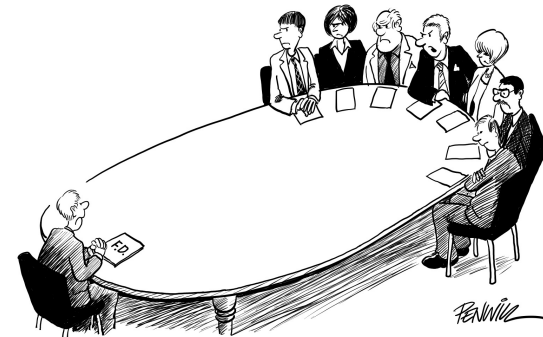
*(i) **refund** the remuneration received by him to the company; and*

*(ii) pay for **damages** to the company, **statutory bodies or authorities or to any other persons** for loss arising out of incorrect or misleading statements of particulars made in his audit report.”*

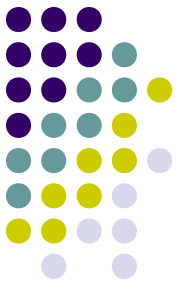
Accounts, Audit & Auditors



- Mandatorily attend to all General Body Meetings
- **Board resolution for other services.** Auditors are prohibited from rendering specified services to the company/its holding company / subsidiary company, *inter-alia*, including: (a) *internal audit*; (b) *investment banking*; (c) *outsourced financial services*; (d) *actuarial services*; (e) *investment advisory services*; (f) *management services*; (g) *any other kind of services as may be prescribed*.
- **Imprisonment upto One Year AND fine upto 25 lacs + fees + damages**
- NFRA has powers to conduct disciplinary proceedings against CA's
- **No limit on number of partners in a professional firm \ LLP**
- **Mandatory Auditing standards**
- Debarment and class action suits will make auditors wary!
- Stricter reporting requirements
- **Whistle Blower! (penalty upto 25laks 143(12))**



The way forward!



- Rajya Sabha
- President Assent
- Rules and Amendments
- Ancillary regulatory changes
- SEBI listing agreement changes
- Phased-wise adoption
- Early elections!



Thank You!

Anand Bathiya

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