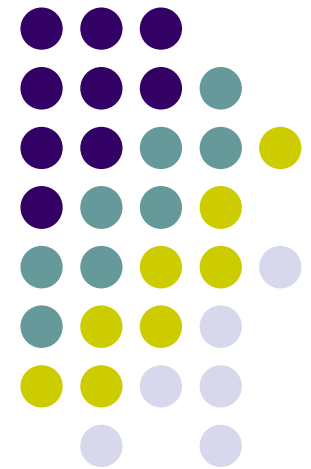




Companies Act, 2013 & Professional Opportunities for CA's

The Game Changer!



- Anand Bathiya

B.Com., A.C.A., LL.B., D.I.S.A.

Coverage



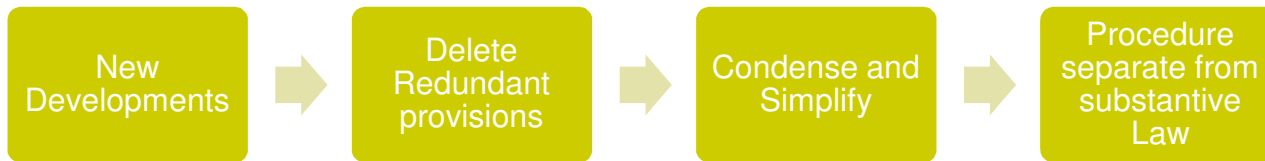
- The story so far
ET: 10 mins
- Key Points for discussion
ET: 15 mins
- Overview and key changes vis-à-vis Companies Act, 1956
ET: 40 mins
- Professional Opportunities for CA's
ET: 20 mins
- The way forward & QA
ET: 5 mins



The story so far

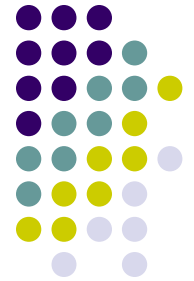


- Bhabha Committee > Companies Act, 1956
- **30,000 entities grown to 1,350,000!**
- Around 25 amendments thereafter



- 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
- 2013 - **Companies Act, 2013**

Key Points for discussion



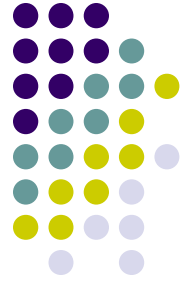
Construct of the Companies Act, 2013

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

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



Key Principles of Companies Act



- Proactive vs. Reactive
- Shareholder vs. Stakeholder
- Majority vs. Minority
- Third Party Regulation
- Transparency and Good Corporate Governance
- Hub and Spoke Model

High-Impact Areas



- **NCLT (HC + CLB + BIFR + additional)**
- Inter-corporate Loans
- **Not many exemptions for private limited companies(MD, Postal Ballot, etc.)**
- **Auditors obligations, liabilities and NFRA**
- Independent Directors
- **Mandatory Consolidation**
- New definition of subsidiary company
- Many rules and no 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

Loans & Investments



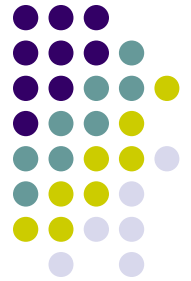
- **Loans to include all entities.** Earlier covered only corporates
- All investments covered, including MFs
- **Wholly-owned subsidiary not exempted – Impactful!**
- **Private Limited Companies also covered**
- Post-facto permission not possible earlier for urgency
- Disclose in report all such loans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

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
- 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?**

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?**

Registered Valuer

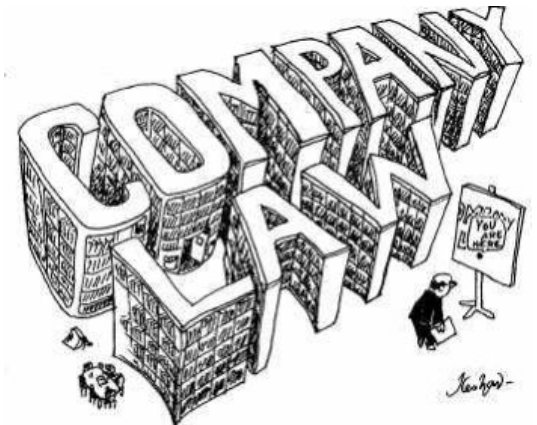


- **New professional category (CVP)**
- Audit committee to appoint registered valuer
- Criminal liability for wrongdoing. Liable for damages
- Registered Valuers required for:
 - Further issue of shares
 - Transactions with directors on a non-cash basis
 - Scheme of Arrangements
 - **Purchase of minority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

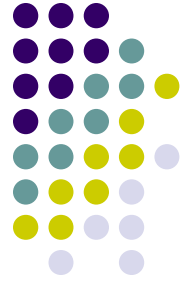


Other related provisions



- Fraud is defined. Imprisonment and cognizable offence. Broad definition
- Serious Fraud Investigation Office
- No mandatory requirement for transfer to reserve before declaration of dividend
- **Rate of interim dividend shall not be higher than last 3 years average**
- 217 Matrimonial statement details gone away
- 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
- Sick Companies to include all kinds of companies

Other related provisions



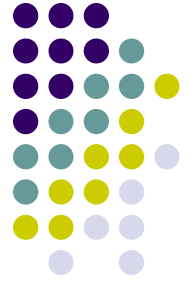
- Only main objects in memorandum
- CIN number to be printed on all letterheads, billboard, etc.
- **Lending to ESOP trust now possible**
- **All charges to be registered with ROC**
- Listed companies to file change in top 10 shareholding pattern to ROC
- First AGM within 9 months
- Many other resolutions 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**
- **Component Accounting – Revalued depreciation**
- Mandatory following of Financial Year 31st March
- CFO to be mandatorily appointed by certain companies
- **CFO to attest financial statements**
- 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:

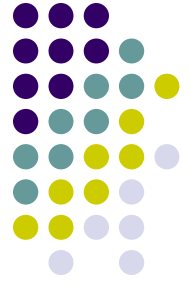
*Provided that if an auditor has contravened such provisions **knowingly** or willfully with the intention to deceive the company or its shareholders **or creditors or tax authorities**, he shall be punishable with imprisonment for a term which may extend to one year **and** with fine which shall not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

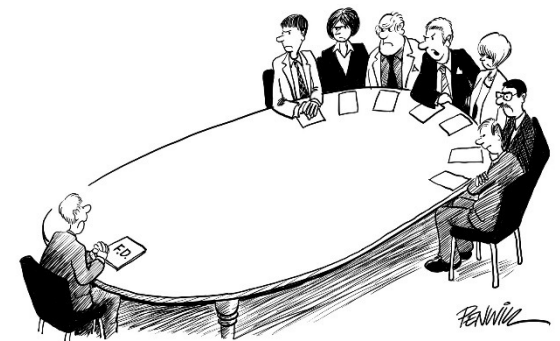
*(i) **refund** the remuneration received by him to the company; and*

*(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.”*

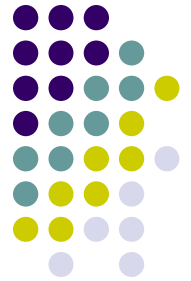
Accounts, Audit & Auditors



- 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 25lakhs 143(12))**
- Relatives matter!



Notified Sections



- Section 1
- Other 98 Sections

| | | | | | | |
|-----|-----|------|------|------|-----|-----|
| 2* | 37 | 70* | 127 | 379 | 443 | 460 |
| 19 | 38 | 86 | 133 | 382 | 444 | 461 |
| 21 | 39* | 91 | 161* | 383 | 445 | 462 |
| 22 | 40* | 100* | 162 | 386* | 446 | 463 |
| 23* | 44 | 102 | 163 | 394 | 447 | 467 |
| 24 | 45 | 103 | 176 | 405 | 448 | 468 |
| 25* | 49 | 104 | 180 | 407 | 449 | 469 |
| 29 | 50 | 105* | 181 | 408 | 450 | 470 |
| 30 | 51 | 106 | 182 | 409 | 451 | |
| 31 | 57 | 107 | 183 | 410 | 452 | |
| 32 | 58 | 111 | 185 | 411 | 453 | |
| 33* | 59 | 112 | 192 | 412 | 456 | |
| 34 | 60 | 113* | 194 | 413 | 457 | |
| 35* | 65 | 114 | 195 | 414 | 458 | |
| 36 | 69 | 116 | 202 | 439 | 459 | |

- Section 135 & its Rules
- 183 sections applicable from 1st April, 2014

Key not Notified Sections



National Financial Reporting Authority,

Investor and Education Protection Fund,

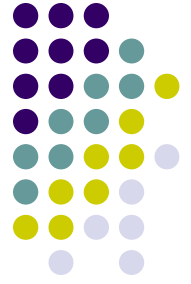
Compromise and arrangement,

Oppression and mismanagement, winding up, sick companies

National Company Law Tribunal

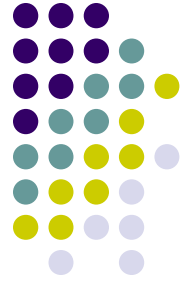
Operational and few penalty provisions

Professional Opportunities



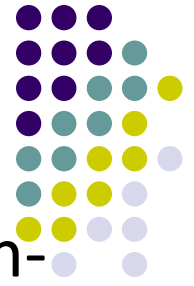
- NCLT \ NCLAT
- Consolidation
- Internal Audit
- CFO
- Impact Analysis
- CSR Advisory
- Readiness for IFRS
- Opinions\Interpretations
- Increased Risk – Increased Fees
- Enhanced compliance costs

Professional Opportunities



- Protection against removal of auditors
- Rotation of Auditors
- Independent Directors
- Revision of Accounts
- Mandatory Women director \ resident director
- Cross-border mergers and mandatory certification
- Liquidator
- Registered Valuer
- Postal ballot

Professional Opportunities



- No limit on number of partners in a CA firm and non-CA partners
- Taxation implications
- Conversion to LLPs
- Class Actions Suits
- Joint auditor \ Early rotation of auditors
- Assurance delinked from Consulting\Services

Thank You!

Anand Bathiya

anand@shbathiya.com

Mumbai



The views expressed herein are individual and personal in nature and neither the organizing body nor the representative firm has endorsed or supports nor rejects the view of the individual. Reliance on matter herein should be after due care and professional advice.