

# HIGHLIGHTS OF COMPANIES BILL

## **WHY A NEW LAW WAS NEEDED?**

- ⌘ The changing national and international economic environment
- ⌘ Exponential growth of the Indian economy
- ⌘ Changes in the stakeholders' expectations
- ⌘ Manifold Increase in Number of Companies

Year	No. of Companies
1956	30,000 approx
2013	11,00,000 approx

- ⌘ The need of a legal framework was felt to enable the Indian corporate sector to adopt the best international practices in a globally competitive manner, fostering a positive environment for investment and growth
- ⌘ Companies Bill 2012 was passed by Lok Sabha on 18<sup>th</sup> December, 2012 and subsequently, was passed by the Rajya Sabha on 8<sup>th</sup> August, 2013.
- ⌘ The bill comprises of 29 chapters, 470 Clauses with 7 Schedules as against 658 sections and 14 Schedules in the Companies Act, 1956
- ⌘ Substantively a law based on Rules (as may be prescribed).

In 470 Clauses the word "as may be prescribed" has been used at around 336 places.

## **NEW CONCEPTS**

New definitions (Accounting Standards, Auditing Standards, Associate Company, Authorized Capital, Books of Accounts, Called up Capital, Charge, Chartered Accountant, Chief Executive Officer, Chief Financial Officer, Company Limited By Guarantee, Company Limited by Shares, Company Liquidator, Contributory, Control, Cost Accountant, Deposit, Expert, Financial Institution, Financial Statement, Foreign Company, Free Reserves, Global Depository Receipt, Independent Director, Indian Depository Receipt, Interested Director, Issued Capital, Key Managerial Personnel, Notification, Official Liquidator, One Person Company, Ordinary or Special Resolution, Postal Ballot, Promoter, Public Financial Institution, Register of Companies, Related Party, Remuneration, Serious Fraud Investigation Office, Small Company, Subscribed Capital, Sweat Equity Shares, Turnover, Unlimited Company, Voting Right, Whole Time Director).

- ⌘ Private company to have a maximum of 200 members (earlier limit was upto 50). (Clause 2 (68))
- ⌘ E-Governance – maintenance and allowing inspection of documents by companies in electronic form. (Clause 120)
- ⌘ Vigil mechanism (whistle blowing) introduced. (Clause 177 (10))
- ⌘ In prescribed class or classes of companies, there should be atleast 1 woman director. (Clause 149 (1))
- ⌘ Restrictions on layers of subsidiaries. (Clause 2 (87))
- ⌘ The Financial Year of any Company can be only from April-March. Existing companies has to align within 2 years of the commencement of the Act. (Clause 2 (41))
- ⌘ Memorandum not to have 'other objects'. (Clause 4 (1))
- ⌘ A person cannot become director in more than 20 companies instead of 15 as provided in the Companies Act 1956 and out of this 20, he cannot be director of more than 10 public companies. (Clause 165)
- ⌘ Shareholders to have exit option if money raised has not been utilized. (Clause 27)
- ⌘ A company can make buyback even if it had at any time defaulted in repayment of deposit or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank, provided that default must have been remedied and a period of 3 years must have lapsed after such default ceased to subsist. (Clause 66 (6))
- ⌘ Concept of CSR introduced. (Clause 135)
- ⌘ Definition of independent Directors introduced. (Clause 149 (5))
- ⌘ Condition and manner for issue of Bonus shares has been introduced. (Clause 63)
- ⌘ New provisions suggested for allowing re-opening of accounts in certain cases with due safeguards. (Clause 130)
- ⌘ Consolidation of Accounts (Clause 129)
- ⌘ Secretarial Audit Report given by a company secretary in practice is required to be attached with Boards' report in case of bigger companies. (Clause 204)

CHAPTERWISE HIGHLIGHTS OF COMPANIES BILL

Chapter	Section	Highlights
I	1-2	<p><b>PRELIMINARY</b></p> <p>This Act may be called the Companies Act, 2013 (Clause 1 (1))</p> <p><b>Some important Definitions</b></p> <p>☞ Clause 2 (6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.</p> <p>Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement.</p> <p>☞ Clause 2 (27) "control", shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;</p> <p>☞ Clause 2 (34) "director", means a director appointed to the Board of a company.</p> <p>Clause 2 (40) "Financial Statement" in relation to a company includes,</p> <ol style="list-style-type: none"> <li>i. a balance sheet as at the end of the financial year,</li> <li>ii. a profit and loss account, or in the case of accompany carrying on any activity not for profit, an income and expenditure account for the financial year;</li> <li>iii. cash flow statement for the financial year,</li> <li>iv. a statement of changes in equity; and</li> <li>v. any explanatory note attached to or forming part of any document referred to in sub-clause (i) to sub-clause (iv);</li> </ol> <p>provided that the financial statement with respect to One Person Company, small company and dormant company may not include the cash flow statement.</p> <p>Issue: Cash Flow Statement becomes mandatory.</p>

		<ul style="list-style-type: none"> <li>≡ Clause 2 (41) definition of "Financial Year" modified <ul style="list-style-type: none"> <li>✓ The Financial can mandatorily end on 31st March</li> <li>✓ Exception- entities which are holding cos or subsidiary companies of foreign companies requiring consolidation outside India with the approval of Tribunal.</li> <li>✓ Existing companies to align within 2 years</li> </ul> </li>   <li>≡ Clause 2 (43) definition of "Free Reserves" modified, <ul style="list-style-type: none"> <li>✓ Share premium account does not form part.</li> <li>✓ Credit balance in Statement of Profit &amp; Loss is not free reserve.</li> </ul> </li>   <li>≡ Clause 2 (51) "key managerial personnel", in relation to a company, means— <ul style="list-style-type: none"> <li>(i) the Chief Executive Officer or the managing director or the manager;</li> <li>(i) the company secretary;</li> <li>(ii) the Chief Financial Officer if the Board of Directors appoints him; and</li> <li>(iv) such other officer as may be prescribed;</li> </ul> </li>   <li>≡ Clause 2 (57) definition of "net worth" modified, it says that only paid up capital, share premium and reserves created out of profit will be treated as net worth. <ul style="list-style-type: none"> <li>✓ Credit balance in Statement of Profit &amp; Loss has been left out.</li> </ul> </li>   <li>≡ Clause 2 (59) definition of "Officer" modified to include CEO/ CFO or any other officer as may be prescribed.</li>   <li>≡ Clause 2 (60) "officer in default": <ul style="list-style-type: none"> <li>Scope broadened</li> <li>✓ Directors aware of the default</li> <li>✓ CFO</li> <li>✓ KMP's if knowingly commits default</li> </ul> </li>   <li>≡ Clause 2 (77) "relative", with reference to any person, means anyone who is a related to another, if— <ul style="list-style-type: none"> <li>(i) they are members of a Hindu Undivided Family;</li> <li>(i) they are husband and wife; or</li> <li>(ii) one person is related to the other in such manner as may be prescribed</li> </ul> </li>   <li>Small Company (Clause no. 2(85)) : means a company, other than a public company,- <ul style="list-style-type: none"> <li>i. paid up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or</li> <li>ii. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.</li> </ul> </li> </ul>
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		<p>Provided that nothing in this clause shall apply to :</p> <ul style="list-style-type: none"> <li>(a) a holding company or a subsidiary company;</li> <li>(b) a company registered under section 8;</li> <li>(c) a company or body corporate governed by any special act.</li> </ul> <p><b>subjected to a lesser stringent regulatory framework</b></p>
II	3-22	<p><b>INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO</b></p> <ul style="list-style-type: none"> <li> <p>☞ Concept of One Person Company has been introduced and the OPC can be formed as private limited company (Clause 3). Certain Privileges Provided to OPCs</p> <ul style="list-style-type: none"> <li>✓ The financial statement may not include the cash flow statement [Proviso to Clause 2(40)]</li> <li>✓ The annual return to be signed by the company secretary, or where there is no company secretary, by the director of the company.</li> <li>✓ No requirement of holding an AGM [Clause 96(1)]</li> <li>✓ Inapplicability of the provisions of Section 98 and Sections 100 to 111 (both inclusive) [Clause 122(1)]</li> <li>✓ Minimum number of directors: 1 [Clause 149(1)]</li> <li>✓ Board Meetings- Minimum 1 in each half of a calendar year and the Gap between the two meetings shall not be less than 90 days. Not applicable where there is only one Director. Clause 173 (5)</li> <li>✓ Quorum for Board Meetings not applicable where there is only 1 director in OPC. (Clause 174)</li> </ul> </li> <li> <p>☞ The Memorandum of Association shall only state the mandatory objects. The Company cannot provide for other object clause (Clause 4).</p> </li> <li> <p>☞ After reservation of name for proposed company, if it is found that the name was applied for furnishing wrong or incorrect information then</p> <ul style="list-style-type: none"> <li>a) Company not incorporated- Reserved name cancelled and a penalty not exceeding Rs. 100000 shall be levied.</li> <li>b) Company incorporated- name to be changed or to make a petition for winding up. (Clause 4(4) and 4(5)).</li> </ul> </li> <li> <p>☞ Articles of Association may contain provisions with respect to entrenchment whereby the specified provisions of the article can be altered only if the more restrictive conditions or procedures as compared to those applicable in case of special resolution have been met with. (Clause 5)</p> </li> </ul> <p>A declaration, in the prescribed form, required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with, will be required to be signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the</p>

		<p>company. (Clause 7)</p> <ul style="list-style-type: none"> <li>⌘ If a company has any raised Money from public through prospectus and if there is any unutilised amount out of the money so raised, it shall not change its objects unless a special resolution is passed and other requirements of advertisement and exit opportunity to dissenting shareholders is complied with. (Clause 13)</li> </ul>
III	23- 42	<p><b>PROSPECTUS AND ALLOTMENT OF SECURITIES</b></p> <ul style="list-style-type: none"> <li>⌘ The Bill governs the issue of all types of securities (Clause 23)</li> <li>⌘ Public company can only issue securities by following the provisions related to public offer or Private Placement or by way of bonus or right issue. (Clause 23)</li> <li>⌘ A Private company may issue securities only through private placement by complying with the provisions of Part II of Chapter III. (Clause 23)</li> <li>⌘ Where a company has varied the terms of contract and has not utilized any amount raised by it, the dissenting Shareholders to have exit option. (Clause 27)</li> <li>⌘ The Bill provides provisions for offer of sale by existing shareholders to public. (Clause 28)</li> <li>⌘ Any class of companies or companies as the SEBI may provide by regulations may file shelf prospectus. (Clause 31)</li> <li>⌘ Deals with Civil liability and where it is proved that a prospectus has been issued with intent to defraud then every person (like directors, promoters, experts etc.) shall be personally liable without any limitation of liability. (Clause 35)</li> <li>⌘ Any person (including group or association) who is affected by any misleading statement or inclusion or omission of any matter in the prospectus can file any suit or take any action under clause 35 or 36 providing for civil liability for misstatement in prospectus and Punishment for fraudulently inducing persons to invest money. (Clause 37)</li> <li>⌘ A person shall also be liable for impersonation, in case he makes multiple applications in different name or in different combination of surnames for acquiring or subscribing the securities of the company. (Clause 38)</li> <li>⌘ Return of allotment shall be filed with the Registrar. Clause 39(4)</li> </ul> <p>Companies may now issue Global Depository Receipt by passing the special resolution and subject to such conditions as may be prescribed. (Clause 41)</p>

		<ul style="list-style-type: none"> <li>⌘ Qualified Institutional Buyers shall not be covered under the provisions related to Private Placement</li> </ul> <p>If a company, listed or unlisted, makes an offer to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions provided in this regard by SEBI.</p> <p>Any company making any offer or invitation of securities under private placement has to allot the securities within 60 days of receipt of application money. (Clause 42)</p>
IV	43- 72	<p><b>SHARE CAPITAL AND DEBENTURES</b></p> <ul style="list-style-type: none"> <li>⌘ If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447. (Clause 46)</li> <li>⌘ The conditions under which the preference shareholders can vote on every resolution placed before meeting of shareholders has been changed. Now preference shareholders can only exercise such voting rights when dividends payable in respect of a class of preference shares are in arrears for a period of 2 years or more. There is no distinction between cumulative and non cumulative preference shares. (Clause 47)</li> <li>⌘ If the variation of one class of shareholders affects the rights of any other class of shareholders the consent of <math>\frac{3}{4}</math> of that class should also be obtained. (Clause 48)</li> <li>⌘ Such class of companies as may be prescribed and whose financial statements comply with the accounting standards cannot utilize securities premium for in writing off the preliminary expenses, for providing the premium payable on the redemption of preference shares or of any debentures of the company. (Clause 52)</li> <li>⌘ A company cannot issue share at a discount. In case of default penalty shall be levied. [Clause(53)]</li> <li>⌘ Company cannot issue shares at discount other than as sweat equity, no provision has been provided for any approval. (Clause 54)</li> </ul> <p>a company may issue preference shares redeemable after 20 years for such infrastructure projects as may be specified subject to redemption of specified % of preference shares on annual basis at the option of the</p>

		<p>Preference shareholder. The term Infrastructure projects has been defined for the purpose of this section as the infrastructure projects specified in Schedule VI. (Clause 55)</p> <ul style="list-style-type: none"> <li>⇒ Alteration of Share Capital shall be made only after making application to the Tribunal and getting approval. (Clause 61)</li> <li>⇒ Bonus shares can be issued out of – <ul style="list-style-type: none"> <li>✓ Free reserves, Securities premium, CRR, not in lieu of dividend, authorized by AOA,</li> <li>✓ recommended by the Board and authorized by general meeting and if no defaults in respect of statutory dues (PF, gratuity and bonus) (Clause 63)</li> </ul> </li> <li>⇒ Apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the issue of further shares, such shares may also be offered to employees by way of ESOP subject to approval of shareholders by way of special resolution. (Clause 62)</li> <li>⇒ No reduction of capital shall be allowed if the company is in arrears for payment of deposits, accepted either before or after the commencement of this Act. Reduction of share capital to be made subject to confirmation by the Tribunal. The Tribunal on receiving an application for reduction of share capital, shall give notice to the Central Government, Registrar and to the SEBI and consider the representations received in this behalf (Clause 66)</li> <li>⇒ A company can make buyback even if it had at any time defaulted in repayment of deposit or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayments of any term loan or interest payable thereon to any financial institution or bank, provided that default must have been remedied and a period of 3 years must have lapsed after such default ceased to subsist. (Clause 66 (6))</li> <li>⇒ When the company issues prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, it is required to appoint a debenture trustee. (Clause 71)</li> </ul>
V	73- 76	<p><b>ACCEPTANCE OF DEPOSITS BY COMPANIES</b></p> <ul style="list-style-type: none"> <li>⇒ NBFCs are not covered by the provisions relating to acceptance of deposits and they will be governed under rules issued by Reserve Bank of India. (Clause 73)</li> </ul> <p>Company may accept deposit from persons other than its members having net worth and turnover of certain amount as prescribed subject to complying with necessary conditions and after consultation with RBI. (Clause 76)</p>



VI	77- 87	<p><b>REGISTRATION OF CHARGES</b></p> <ul style="list-style-type: none"> <li>⇒ All types of charge created would be required to be registered with ROC. (Clause 77)</li> </ul>
VII	88- 122	<p><b>MANAGEMENT AND ADMINISTRATION</b></p> <ul style="list-style-type: none"> <li>⇒ New particulars to be included in the Annual return under sub-clause (e) to (k). (Clause 92)</li> <li>⇒ Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within 15 days of such change. (Clause 93)</li> <li>⇒ First Annual General Meeting of the Company shall be held within the period of 9 months from closure of its first financial year instead of 18 months from the date of the Incorporation. AGM can be called on a public holiday. (Clause 96)</li> <li>⇒ The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. (Clause 108)</li> <li>⇒ The resolution requiring special notice has to be moved by such number of members holding not less than 1 % of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid-up. (Clause 115)</li> <li>⇒ Penalty is now prescribed for tampering with the minutes. (Clause 118)</li> <li>⇒ Every Listed Public Company is required to prepare a report in the manner as may be prescribed on each AGM including the confirmation that meeting was convened, held and conducted as per the Act and the rules made thereunder. (Clause 121)</li> </ul>
VIII	123- 127	<p><b>DECLARATION AND PAYMENT OF DIVIDEND</b></p> <ul style="list-style-type: none"> <li>⇒ A company may before the declaration of dividend transfer such &amp; of its profits for that financial year to reserves as it may consider appropriate. This means that % of profits that can be transferred to reserves has been left to the wisdom of the company. (Clause 123) No dividend shall be paid by a company from its reserves other than free reserves. (Clause 123)</li> </ul> <p>The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Statement of Profit and Loss and out of profits of the financial year in which such interim dividend is sought to be declared.</p> <p>A company cannot declare interim dividend at a rate higher than the average dividends declared by the company during the immediately</p>

		<p>preceding three financial years, where it has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend. (Clause 123 (3))</p> <ul style="list-style-type: none"> <li>⌘ All shares for which unpaid or unclaimed dividend has been transferred to Investor Education Protection Fund shall also be transferred by the company in the name of Fund along with a statement containing such details as may be prescribed. (Clause 124 (6))</li> </ul>
IX	128- 138	<p><b>ACCOUNTS OF COMPANIES</b></p> <ul style="list-style-type: none"> <li>⌘ The term Balance Sheet &amp; Profit &amp; Loss Account, has been defined collectively as financial statement under the Act and cash flow statement also forms part of the same. (Clause 2(40))</li> <li>⌘ Books of Accounts etc. to be kept by the company- The Books of accounts may be kept in electronic form also. In case of default, the Managing Director, the whole time director in charge of finance, the CFO and any other person charged by the Board with the duty of complying with the provisions of this Clause, they shall be punishable, Even if the default was not done wilfully. (Clause 128)</li> <li>⌘ The requirement of attaching the balance sheet, profit &amp; loss account, report of board of directors, auditor report, statement of the holding company's interest in the subsidiary and others reports as was required by section 212 of the Companies Act 1956 has been dispensed with.</li> <li>⌘ The benefit given to Private Companies to file their balance sheet &amp; profit and loss account separately has been withdrawn.</li> <li>⌘ Along with financial statement, consolidated financial statement of all subsidiaries shall be prepared and shall also be laid before the AGM. Subsidiary shall for the purpose of this requirement include associate company and joint venture. (Clause 129)</li> <li>⌘ No re-opening or re-casting of book of accounts of the Company is allowed except under Court's or Tribunal's orders. (Clause 130)</li> <li>⌘ Voluntary revision of financial statements or Board's Report can also be made with Tribunal's consent. (Clause 131)</li> </ul> <p><b>National Financial Reporting Authority (Clause 132)</b></p> <ul style="list-style-type: none"> <li>⌘ The name of NACAAS has been changed to National Financial Reporting Authority (NFRA) and authority is to advise on matters related to auditing standard in addition to accounting standards.</li> </ul> <p>The CG may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after</p>

examination of the recommendations made by the NFRA.

- ⇒ Powers of NFRA includes:
  - ✓ monitor and enforce the compliance with accounting and auditing standards
  - ✓ oversee the quality of service of the professions associated with ensuring compliance with such standards
  - ✓ have the power to investigate into the matters of professional or other misconduct committed by any member or firm of chartered accountants and impose penalties of not less than Rs. 1 lakhs in case of individuals and Rs. 10 Lakhs in case of firms and debar members/firms for a period of 6 months to 10 years.
- ⇒ Provided that the Appellate Authority constituted under respective Acts shall be deemed to the appellate authority against any order made by the NFRA and any person aggrieved by any order of the NFRA shall have the right to appeal before the appellate authority.

**Issues** related to Clause 132

- ⇒ NFRA had jurisdictions over CAs, cost accountants, company secretaries and any other profession as may be prescribed.
- ⇒ Now, this Clause has been amended, NFRA to have jurisdiction over only CAs. i.e., Professional misconduct of chartered accountants also comes under NFRA.
- ⇒ Where NFRA initiates an investigation, no other institute or body shall initiate or continue any proceedings in such matters of misconduct
- ⇒ Penalty increased
- ⇒ Chairperson and members in Full Time Employment with NFRA shall not be associated with any audit firm including related consultancy firms during the course of their appointment and 2 years after ceasing to hold such appointment.
- ⇒ The Director's report for every company except for One Person Company, shall provide various types of additional information like number of meetings of the Board, Company's policy on directors' appointment and remuneration; explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Company Secretary in his secretarial audit report, particulars of loans, guarantees or investments etc. (Clause 134)

The Directors responsibility statement in case of listed company shall also include additional statement related to internal finance control and compliance of all applicable laws

		<p><b>Corporate Social Responsibility (Clause 135)</b></p> <ul style="list-style-type: none"> <li>⇒ Concept of CSR introduced &amp; Board to have a CSR Committee consisting of three or more directors, out of which at least one director shall be an independent director for companies <ul style="list-style-type: none"> <li>≧ having networth of Rs. 500 crore or more or</li> <li>≧ turnover of Rs. 1000 crore or more or</li> <li>≧ net profit of Rs. 5 crore or more during any financial year</li> </ul> </li> <li>⇒ The committee shall recommend the policy for CSR to the Board</li> <li>⇒ Board to ensure atleast 2% of average net profits may during 3 immediately preceding years spent every year on CSR</li> <li>⇒ Certain Class of companies are required to appoint an internal auditor to conduct internal audit of the books of company. Internal Auditor shall be a Chartered Accountant or Cost Accountant or such other professional as may be decided by Board. (Clause 138)</li> </ul>
X	139- 148	<p><b>AUDIT AND AUDITORS</b></p> <ul style="list-style-type: none"> <li>⇒ Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.</li> <li>⇒ Provisions for compulsory rotation of individual auditors in every five years and of audit firm every 10 years in the listed company &amp; certain other class of companies, as may be prescribed.</li> <li>⇒ A transition period of 3 years from the commencement of this Act has been prescribed for the Company existing on or before the commencement of this Act to comply with the provision of the rotation of auditor.</li> <li>⇒ The members of a company can resolve for rotation of auditing partner and also for audit to be conducted by more than auditor. (Clause 139)</li> <li>⇒ Where a company constitutes an Audit Committee, all appointments including the filling of a casual vacancy of an auditor shall be made after taking into account the recommendations of Audit Committee.</li> </ul> <p>appointment is done once for 5 years</p> <ul style="list-style-type: none"> <li>✓ Ratification done every year</li> <li>✓ confusion between "ratification" and "reappointment" taken as these two expressions to mean the same</li> <li>✓ Mandatory retirement after 5 years in case of individual and 10 years in case of firms</li> <li>- no auditor/audit firm/ audit firms having common partners, shall take</li> </ul>

		<p>audit for a consecutive term of 5 years after 5 years have been completed</p> <ul style="list-style-type: none"> <li>✓ Provision applicable to all listed companies, and companies of such class as may be prescribed</li> </ul> <ul style="list-style-type: none"> <li>⇒ A person at the time of appointment or reappointment holding appointment as auditor of more than twenty companies shall not be eligible for appointment. (Clause 141 (3) (g))</li> <li>⇒ In case, LLP is appointed as auditor only chartered Accountants is allowed to act and sign on behalf of the firm. Clause 141(2)</li> <li>⇒ Multidisciplinary partnership is allowed. Proviso to Clause 141(1)</li> <li>⇒ Fraud reporting- A duty has been casted on the auditor, to immediately report to the central government, any offence involving fraud which is being or has been committed against the company by officers or employees of the company, which he believes to be committed during the course of performance of his duties as an auditor.</li> </ul> <p>The Auditor shall also comply with auditing standards. The Central Government will prescribe the standards of auditing or any addendum thereto, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the NFRA. (Clause 143)</p> <ul style="list-style-type: none"> <li>⇒ Auditor of the company shall not provide directly or indirectly the specified services to the company, its holding and subsidiary company. (Clause 144)</li> <li>⇒ The Auditor unless otherwise exempted by the company shall attend any general meeting by himself or through his representative. (Clause 146)</li> </ul> <p>Auditors not to provide non-audit services (Clause 144)</p> <p>Following services not to be provided</p> <ul style="list-style-type: none"> <li>✓ accounting and book keeping services;</li> <li>✓ internal audit;</li> <li>✓ design and implementation of any financial information system;</li> <li>✓ actuarial services;</li> <li>✓ investment advisory services;</li> <li>✓ investment banking services;</li> <li>✓ rendering of outsourced financial services;</li> <li>✓ management services; and</li> <li>✓ any other kind of services as may be prescribed</li> <li>✓ not to the company, holding company, or subsidiary directly or indirectly</li> <li>✓ indirectly includes through relative, connected or associated person, or other entity over which individual has significant influence or control, or whose name or trade mark or brand is used by the individual</li> </ul>
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		<p><b>Clause 147</b></p> <ul style="list-style-type: none"> <li>⌘ In case the auditor contravenes the provisions related to his powers &amp; duties, provide services given under Clause 144 then in addition to punishment provided in the section, he shall be required to refund the remuneration received by him from the company and shall be liable to pay the damages to the company or to any person for the loss arising out of misleading or incorrect information.</li> <li>⌘ It is specifically provided that partner or partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force.</li> <li>⌘ If it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, and they shall also be punishable in the manner provided in Clause 447.</li> </ul> <p><b>Cost Audit (Clause 148)</b></p> <ul style="list-style-type: none"> <li>⌘ Instead of company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, the central government can only direct cost audit to be conducted in such class of companies engaged in the production of such goods or providing such services , which have the prescribed networth or turnover and who has been directed to include the particulars relating to the utilization of material or labour or to other items of cost as may be prescribed in their books of account .</li> <li>⌘ No approval is required of central government for the appointment of cost auditor to conduct the cost audit</li> </ul>
XI	149- 172	<p><b>APPOINTMENT AND QUALIFICATIONS OF DIRECTORS</b></p> <ul style="list-style-type: none"> <li>⌘ In prescribed class or classes of companies, there should be atleast 1 woman director. (Clause 149)</li> <li>⌘ There is a provision for compulsory rotation of individual auditors in every five years and of audit firm every 10 years in the listed company &amp; certain other class of companies, as may be prescribed.</li> <li>⌘ Out of all the Directors, atleast one director shall be a person who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.</li> </ul> <p>The maximum limit of directors in the Company has been increased to 15 with a power to add more directors upon passing of Special Resolution. (Clause 149 (1))</p>

		<ul style="list-style-type: none"> <li>⌘ A person cannot become directors in more than 20 companies and out of this 20, he cannot be director of more than 10 public companies. (Clause 165)</li> <li>⌘ A transitional period of 1 year is provided to persons acting as director to comply with the requirement of maximum number of directorship and they have to intimate their choice to each of company where they wish to continue as director and also to the Registrar.</li> <li>⌘ Independent Directors- Defined in Clause 149 (5) <ul style="list-style-type: none"> <li>≡ Qualifications as may be prescribed</li> <li>≡ Term upto 5 consecutive years prospectively but not for more than two consecutive terms</li> <li>≡ Reappointment by Special Resolution</li> <li>≡ Cooling off period for three years</li> </ul> </li> <li>⌘ The Bill provides provision for limiting the liability of Independent Director and non executive director not being promoter or key managerial personnel. (Clause 149)</li> <li>⌘ Panel of ID's to be maintained by a body/institute notified by the CG facilitating appointment of Independent Directors. (Clause 150)</li> <li>⌘ Listed company may have one director by small shareholders. (Clause 151)</li> <li>⌘ The company and the independent directors shall abide by the provisions of (Code of Conduct) specified in Schedule IV of the bill.</li> <li>⌘ Every listed public company shall have at least one-third of the total number of directors as independent directors. Companies existing as on date of commencement of this Act have been provided a transition period of 1 year for the compliance of this provision. (Clause 163)</li> </ul> <p><b>Resignation of Director (Clause 168)</b></p> <ul style="list-style-type: none"> <li>⌘ The Bill prescribes the duties of the directors towards the company</li> <li>⌘ Directors are required to mandatorily forward their resignation along with detailed reason for resignation also to the Registrar within 30 days of resignation in prescribed manner.</li> <li>⌘ The notice for removal of director can only be given by prescribed number of members or members holding prescribed number of shares or voting power.</li> </ul>
XII	173- 195	<p><b>MEETINGS OF BOARD AND ITS POWERS</b></p> <p>Atleast 4 meeting should be held each year. There is no requirement of holding the meeting every quarter; the only requirement is that not more</p>

		<p>than 120 days shall elapse between two consecutive meetings. (Clause 173 (1))</p> <ul style="list-style-type: none"> <li>⌘ The Bill provides that Director can participate in the Board meeting through video conferencing or other audio visual mode as may be prescribed. (Clause 173 (2))</li> <li>⌘ Notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means. (Clause 173 (3))</li> <li>⌘ The participation of director at Board meeting through video conferencing or by other electronic means shall be counted for the purpose of Quorum. (Clause 174)</li> <li>⌘ Every Listed Company and such other company as may be prescribed shall form Audit Committee comprised of minimum 3 directors with majority of the Independent Directors and majority of members of committee shall be person with ability to read and understand financial statement. <ul style="list-style-type: none"> <li>✓ Vigil mechanism to be established in the prescribed manner by every listed company or such class or classes of companies, as may be prescribed. (Clause 177)</li> </ul> </li> <li>⌘ Every listed company and prescribed class or classes of companies, shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors.</li> </ul> <p>Every company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. (Clause 178)</p> <ul style="list-style-type: none"> <li>⌘ The limits for political contribution by company have been changed. The contribution shall not exceed 7.5% of the average net profits of the Company during the three immediately preceding financial years. (Clause 182)</li> <li>⌘ Disclosure of interest by every director has been made mandatory. The disclosure shall be made 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.</li> </ul> <p>In case of private company also, an interested director cannot vote or take part in the discussion relating to any matter in which he is interested.</p>
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		<p>(Clause 184)</p> <ul style="list-style-type: none"> <li>⌘ The requirement of permission of CG for giving loan to Director has been dispensed with. (Clause 185)</li> <li>⌘ Inter corporate investments not to be made through more than 2 layers of investment companies. (Clause 186)</li> <li>⌘ No approval of CG is required for entering into any related party transactions and for appointment of any director or any other person to any office or place of profit in the company or its subsidiary. (Clause 188)</li> <li>⌘ A company shall not enter into any arrangement by which a director of the company or of its holding company or any person connected with him can acquire assets for the consideration other than cash from the company &amp; vice versa without the approval of company in general meeting. (Clause 192)</li> <li>⌘ Forward dealing in securities of company by director and key managerial personnel is prohibited. Penalty in case of contravention will be imprisonment for 2 years and fine from Rs. 2 lakhs to Rs. 5 lakhs. (Clause 194)</li> <li>⌘ Insider trading of the securities in the company is prohibited. (Clause 195)</li> </ul>
XIII	196- 205	<p><b>APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL</b></p> <ul style="list-style-type: none"> <li>⌘ Independent director not entitled to stock option and may receive remuneration only by way of fees or commission.</li> </ul> <p>Where a company is required to re-state its financial statement due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager who, during the period for which the financial statements are required to be re-stated, the remuneration received (including stock option) arisen due to such statement or non-compliance in excess of what would have been paid to the managing director, whole-time director or manager under such re-stated financial statements. (Clause 197)</p> <ul style="list-style-type: none"> <li>⌘ Every company belonging to such class or description of companies as may be prescribed shall have Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director and Company Secretary. Same person shall not be the Chairperson and MD or CEO at the same time. (unless articles provide). (Clause 203)</li> </ul> <p>Secretarial Audit compliance report in case of certain class of companies to be annexed with the Board's report. (Clause 204)</p>

XIV	206- 229	<p><b>INSPECTION, INQUIRY AND INVESTIGATION</b></p> <ul style="list-style-type: none"> <li>⌘ The Central Government will establish Serious Fraud Investigation Office (SFIO) for investigation of frauds relating to a company. Till the time SFIO is not established, SFIO set up by Central Government to be used for the purpose of this section (Clause 211)</li> <li>⌘ Investigation report filed by SFIO with the court for framing of charges shall be treated as a Report filed by a Police Officer. SFIO shall have the power to arrest. (Clause 212)</li> <li>⌘ In the process of the Investigation, Inquiry or inspection if any person <ul style="list-style-type: none"> <li>a) destroy, mutilates or falsifies or conceals or tamper or unauthorized removes or is a party to that or any document relating to the property, assets or affairs of the Company or body corporate or</li> <li>b) makes or is a party to the making of any false entry in the document concerning the company or body corporate or</li> <li>c) provides any false information which he knows to be false then he shall be liable to punishment for imprisonment for a term from 6 months to 10 years and shall also be liable to fine which shall not be less than the amount involved in fraud but which may extent upto 3 times of the amount of fraud. (Clause 229)</li> </ul> </li> </ul>
XV	230- 240	<p><b>COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS</b></p> <ul style="list-style-type: none"> <li>⌘ No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Clause 133. (Clause 230)</li> <li>⌘ Separate provisions have been provided for the merger or amalgamation between two small companies or between a holding company and a wholly owned subsidiary company. (Clause 233)</li> <li>⌘ Provision for cross border amalgamations between Indian Companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. (Clause 234)</li> <li>⌘ Specific provision for purchase of minority shares in case an acquirer or person acting in concert with the acquirer become holder of 90% or more of the issued capital of the company, either directly or by virtue of any amalgamation, share exchange, conversion of securities or any other reason. (Clause 236)</li> </ul>
XVI	241- 246	<p><b>PREVENTION OF OPPRESSION AND MISMANAGEMENT</b></p> <p><b>(Clause 245 Class Action Suits)</b></p> <p>The Bill provides for class action by specified number of Members or</p>

		<p>Depositors against the company except the banking company, which is prevalent in developed countries.</p> <p>Penalty for failing to comply with an order passed by Tribunal</p> <p>Company – Rs. 5 lakhs to Rs. 25 lakhs, Officer – Rs. 25000 to Rs. 10 lakhs, Imprisonment 3 years</p>
XVII	247	<p><b>REGISTERED VALUERS</b></p> <p>Where any valuation is required to be made of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.</p>
XVIII	248- 252	<p><b>REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES</b></p> <p>Registrar has the power to remove the name of a company from its record under certain circumstances. (Clause 248 (5))</p> <p>In case of a company regulated under a Special Act, approval of the regulatory body constituted or established under that Act shall also be obtained (Clause 248 (2))</p>
XIX	253- 269	<p><b>REVAL AND REHABILITATION OF SICK COMPANIES</b></p> <p>Any company can be declared as sick. (Clause 253 (1))</p>
XX	270- 365	<p><b>WINDING UP</b></p> <p>There are only two modes of winding up. (270 (1)) (i) By the Tribunal; or (i) Voluntary</p> <p>New grounds of winding up by Tribunal are incorporated. (271 (1))</p> <p>The minimum amount of indebtedness raised from Rs. 500 to Rs. 1.00 lakh. (271 (2a))</p>
XXI	366- 378	<p>PART I.—Companies authorized to register under this Act PART II.—Winding up of unregistered companies</p>
XXII	379- 393	<p><b>COMPANIES INCORPORATED OUTSIDE INDIA</b></p> <p>Service of documents on foreign company now can be served through any electronic mode. (Clause 383) The foreign offices are also required to comply with the provisions of winding up. (Clause 391)</p>
XXIII	394- 395	GOVERNMENT COMPANIES
XXIV	396- 404	REGISTRATION OFFICES AND FEES

XXV	405	<b>COMPANIES TO FURNISH INFORMATION OR STATISTICS</b>  ⌘ In case a company furnishes incorrect information on order by the Central Government, then penalty shall be levied. (Clause 405)
XXVI	406	<b>NIDHI</b>  ⌘ Definition of Nidhi has been prescribed.
XXVII	407- 434	<b>NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL</b>
XXVIII	435- 446	<b>SPECIAL COURTS</b>  For providing speedy trial offences, Central Government may by notification establish as may Special Courts as may be necessary.
XXIX	447- 470	<b>MISCELLANEOUS</b>  Specific provisions related to any act of fraud. (Clause 447)
	SCHEDULE I	SECTIONS 4 AND 5
	SCHEDULE II	USEFUL LIVES TO COMPUTE DEPRECIATION
	SCHEDULE III	GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY
	SCHEDULE IV	CODE FOR INDEPENDENT DIRECTORS
	SCHEDULE V	CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANGING OR WHOLE TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT
	SCHEDULE VI	SECTION 55 AND 186 RELATED TO INFRASTRUCTURE PROJECTS
	SCHEDULE VII	CORPORATE SOCIAL RESPONSIBILITY

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