CASC BULLETIN

The Chartered Accountants Study Circle

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MEETINGS

Date	Time	Speaker	Topic
12.09.13	06.30 P.M.	**Mr. S. DHANAPAL**	Overview - Company Bill 2013

High Tea 6.00 pm (for the meetings)

CASC Annual Members are requested to renew their subscription for 2013 - 2014

Provisions Relating to Accounts and Auditors

A Comparative Analysis between the Companies Bill, 2013 and Companies Act, 1956

CS. S. DHANAPAL

On 8th August 2013 Companies Bill 2013 has reached another milestone, approval of the Rajya Sabha! In its arduous expedition spanning over many years, Companies Bill has seen numerous stumble blocks. But finally the Bill has emerged victorious, giving surge to the sinking hopes of the entire Corporate India. All the speculations on the Bill seeing the light of day have been laid to rest. After being referred to the Standing Committee twice, the Bill has emerged as a robust legislation, a legislation in sync with the changing economic scenario which seeks to bring the Companies Act on par with global trends.

We, the present generation are the witness to this historical moment when the Companies Act is being rewritten and replaced for the first time after its enactment in Independent India, after a hiatus of 57 long years. We have appreciated the provisions of the present Act and are ready to face the challenges of the new one.

Companies Bill 2013 has brought with it numerous changes in almost every aspect of company administration and management. Among these, the changes brought in the field of accounts, audit and auditors seem to be most radical and noteworthy. In the present write up, we have made an effort to bring out these changes, namely changes in provisions relating to financial year, accounts and auditors, by means of comparison of the provisions under companies bill with that under the existing Act. Only those provisions which are different from the existing Act have been compared below.

COMPARISON OF PROVISIONS RELATING TO FINANCIAL YEAR

Basis of Comparison	Companies Act 1956	Companies Bill 2013
Definition/ Meaning	Section 2(17) defines financial year as : "Financial Year" means, in relation to anybody corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not: Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938.	Clause 2(41) defines financial year as : "Financial Year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up: Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year: Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.
Period of Financial year and Extension	Section 210 contains that the period to which the accounts relate is referred to as "financial year" and it may be more than a calendar year, but it shall not exceed 15 months. The Section further contains that financial year may be extended to 18 months where special permission has been granted by Registrar. Financial year can end on any date within the above parameters.	There is no separate provision under the Bill regarding period of financial year. As per the definition, financial year for all companies must end on 31st March every year. Only in the first year of incorporation, the period of financial year can be more than 12 months. For purpose of consolidation outside India, different financial year may be permitted by the Tribunal which period may or may not be a period of year.

COMPARISON OF PROVISIONS RELATING TO FINANCIAL STATEMENTS/ACCOUNTS

Basis OF Comparison	Companies Act 1956 (Act)	Companies Bill 2013 (Bill)
Definition/ Meaning	No specific definition is provided in the Act. Section 210 contains that at every AGM, the Board of directors shall lay before the company - (a) a balance sheet as the end of the financial year, and (b) a profit and loss account for the period. In case of companies not carrying on business for profit, "an income and expenditure" account shall be laid instead of the profit & loss account.	Clause 2(40) defines financial statement as : "financial statement" in relation to a company, includes— (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.
Mode of Maintenance of Accounts	Act does not clearly stipulate whether the accounts have to be maintained in physical mode only or can be in electronic mode also.	Bill specifically contains that the company may keep books of account or other relevant papers in electronic mode in such manner as may be prescribed.

Consolidation of Accounts in case of subsidiaries	Section 212 of the Act contains that: There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company' s balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:- (a) a copy of the balance sheet of the subsidiary; (b) a copy of its profit and loss account; (c) a copy of the report of its Board of directors (d) a copy of the report of its auditors; (e) a statement of the holding company' s interest in the subsidiary as specified in sub- section (3); (f) the statement referred to in sub- section (5), if any; and (g) the report referred to in sub- section (6), if any. Consolidation is not mandated under the Act.	Clause 129(3) of the Bill contains that: Where a company has one or more subsidiaries, it shall, in addition to financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement: Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed. *Explanation.* – For the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture.

Re-opening of Books of Accounts and Recasting of Financial Statement	No provisions specified in the Act.	As per Clause 130, accounts of a company can be re-opened on an order passed by the Tribunal pursuant to an application made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned, if the accounts were prepared in fraudulent manner or if the affairs of the company were mismanaged.
Revision of Financial Statements	No provisions specified in the Act.	Clause 131 contains that the financial statements or the report of the Board may be revised voluntarily for any of the three preceding financial years if the same were not prepared in accordance with the provisions of the Bill, after obtaining approval of Tribunal. Only one revision in a financial year is permitted.

COMPARISON OF PROVISIONS RELATING TO AUDITORS

Basis of Comparison	**Companies Act 1956 (Act)**	**Companies Bill 2013 (Bill)**
Appointment of Auditor	Section 224 contains that - Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting	Clause 139 contains that 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. The company shall place the matter relating to such appointment for ratification by members at every annual general meeting. In case of listed companies, no company shall appoint (*a*) an individual as auditor for more than one term of five consecutive years; and (*b*) an audit firm as auditor for more than two terms of five consecutive years: Re-appointment after five years of completion of term is permitted.

Consent of Auditor	Consent is not required to be obtained before appointment.	Written consent of auditor has to be obtained before appointment.
Intimation of Appointment	Company is required to give intimation to auditor within 7 days of appointment.	Company is required to give intimation to auditor within 15 days of the meeting in which appointment is made.
Intimation to ROC	Within 30 days of the receipt of appointment letter, auditor has to file his consent or refusal to ROC. No confirmation to company is mandated.	Company has to intimate appointment of auditor to ROC within 15 days of the meeting in which appointment is made.
Intimation of resignation of auditor	No intimation mandated.	The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of Government companies, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.
Number of companies which an auditor can audit	No company or its Board of directors shall appoint or re-appoint any person who is in full-time employment elsewhere or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies. Specified Number means - (a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakh, twenty such companies;	One of the disqualifications specified for appointment of auditor contains that a person or a partner of a firm holding appointment as its auditor shall be disqualified for appointment, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies.

	(b) in any other case twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakh or more. The above mentioned provision is not applicable to a private company.	
Attendance at AGM	As per Section 231, an auditor is entitled to attend all general meetings and be heard on matters concerning him as auditor.	As per Clause 146 the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting of the company.
Disqualification for appointment as auditor	As per Section 226 – None of the following persons shall be qualified for appointment as auditor of a company – (a) a body corporate; (b) an officer or employee of the company; (c) a person who is a partner, or who is in the employment, of an officer or employee of the company; (d) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;	As per Clause 131 – The following persons shall not be eligible for appointment as an auditor of a company, namely: – (*a*) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; (*b*) an officer or employee of the company; (*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company; (*d*) a person who, or his relative or partner – (*i*) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

	(e) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.	Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed; (*ii*) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or (*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed; (*e*) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed; (*f*) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel; (*g*) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

		(*h*) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction; (*i*) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.
Rendering of other services	No specific restriction provided in the Act for rendering other services.	As per Section 144, an auditor of the company shall provide to the company only such other services as are approved by the Board of Directors or the audit committee but which specifically excludes following services: (*a*) accounting and book keeping services; (*b*) internal audit; (*c*) design and implementation of any financial information system; (*d*) actuarial services; (*e*) investment advisory services; (*f*) investment banking services; (*g*) rendering of outsourced financial services; (*h*) management services; and (*i*) any other kind of services as may be prescribed

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