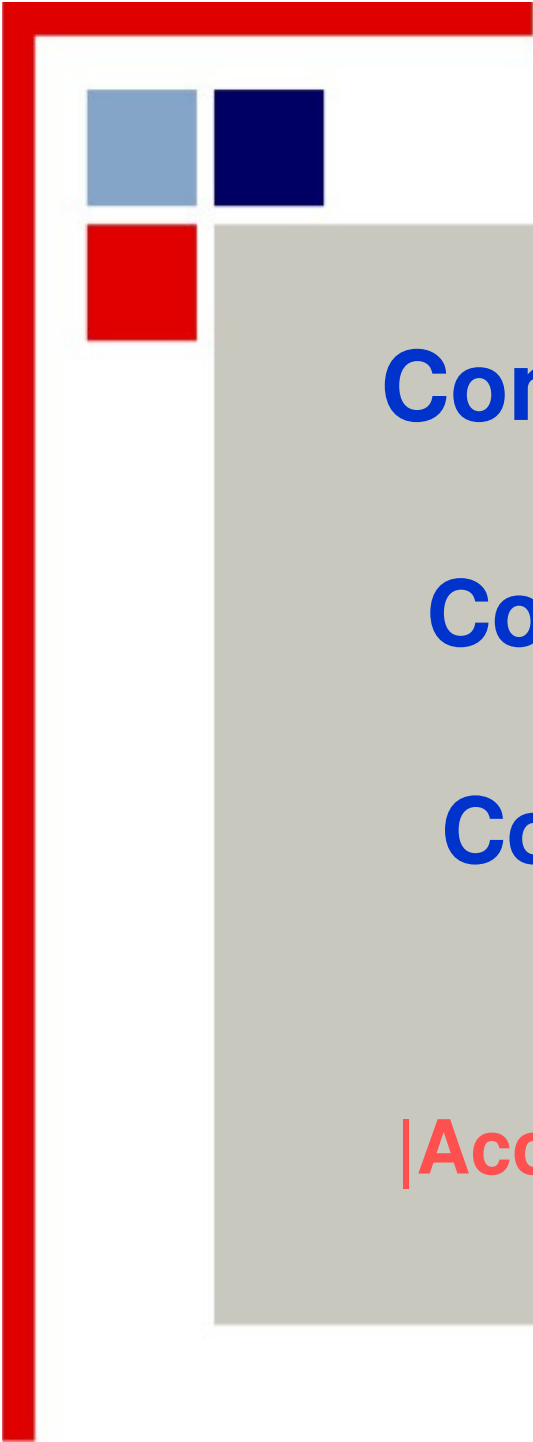




Comparative Analysis of Companies Act, 1956 and Companies Bill, 2009

|Accounts| Audit |Dividend|

Contents

- **Background of Companies Bill, 2009**
- **Brief Highlights of the Bill**
- **Overview of Chapters**
 - **Audit**
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- **Penal Provisions**
- **Role of Central Government**
- **Other Major Changes Proposed in the Bill**

Background of Companies Bill, 2009

The Companies Act 1956, having served the needs of corporates and governed their conduct over 5 decades, has outlived its utility.

Considering

- Exponential growth of Indian economy
- Dynamic business environment
- Manifold Increase in number of Companies

<u>Year</u>	<u>No. of Companies</u>
1956	30 K approx
2009	8 lacs approx

- Existing Act not in harmony with the present era.
- Consistency towards global standards

Government has considered it desirable & appropriate to have new statutory framework for corporate regulation.

In the endeavour, the Companies bill 2009 has been introduced.

Brief Highlights of the Bill

Current Status of Bill

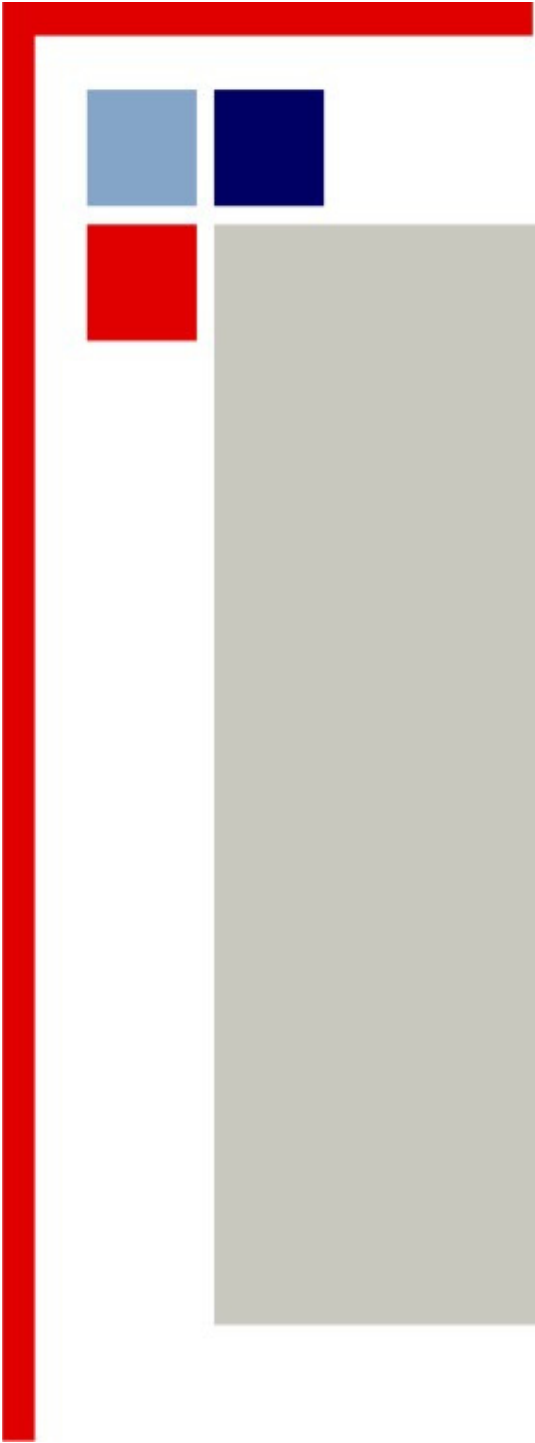
The Bill has been introduced by the Government in the Lok Sabha on 23rd October, 2008 as **"Companies Bill 2008"** and again represented as **"Companies Bill, 2009"** on the 3rd August 2009.

Structure of Bill

The entire bill has been divided into **28 Chapter & 426 Clauses** as against **13 Parts & 658 Sections** in the existing Companies Act, 1956.

Overview of Chapters

Area	Companies Act 1956	Companies Bill 2009
Audit & Auditors	Chapter I of Part VI [Section 224-233B]	Chapter X [Clause 123-131]
Accounts	Chapter I of Part VI [Section 209-223]	Chapter IX [Clause 116-122]
Dividend	Chapter I of Part VI [Section 205-208]	Chapter VII [Clause 110-115]



AUDIT & AUDITORS

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Auditor's Services

| AUDIT |

Auditors not to render certain services

- accounting and book keeping services
- internal audit
- design and implementation of any financial information system
- actuarial services
- investment advisory services
- investment banking services
- rendering of outsourced financial services and
- management services.

Presently above services are not restricted by Act. However few of such services have been restricted by ICAI code of ethics.

Auditors can extend their range of services beyond audit to taxation and other compliances matter **but with the prior approval of BOD or Audit Committee.**

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Auditor's Appointment

|AUDIT|

Number of Auditors

Act under section 224, allows company to appoint auditor or auditors & shall hold office till the adoption of next financials.

Usage of plural words allow the joint auditor's appointment.

While in the Bill under clause 123 plural reference has been deliberately replaced by the word "individual or a firm".

Recommendation of Audit Committee

Company having or required to have an Audit Committee under clause 158, shall appoint auditors with the prior recommendations of such committee.

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Auditor's Appointment

|AUDIT|

Failure in AGM to appoint auditors

Act - On a failure on members appointing the auditor in GM, Central Government will appoint the auditor.

Bill - On failure of auditor's (*other than 1st auditor*) appointment in AGM, such authority is not transferred to Government and the previous auditors shall continue as auditors till the adoption of next financials.

Company shall attract the penalty for it.

[Automatic Appointment]

Special Resolution by certain companies

Act requires nationalized banks, FI , & other companies having stake by government etc. to pass special resolution for the appointment of auditor is now done away with by virtue of proposed Bill.

[Sec 224A]

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Written Consent

|AUDIT|

Written consent of Auditors

Act specifically requires auditor to give his eligibility under 224(1B) by way of certificate while Bill requires certificate saying that appointment is in accordance with conditions prescribed.

Submission of Auditor's Consent to ROC

Act- requires company to intimate auditors with in 7 days from appointment & requires auditor to inform his acceptance or refusal with in 30 days from such intimation to Registrar.

[In all 37 days from appointment]

Now such onus has been transferred from auditors to the company.

Bill – Company shall intimate auditor of his appointment & file notice of such appointment to Registrar with in 15 days from the date of meeting.

Removals on the expiry of term

Bill requires a **special resolution** to be passed for auditor's removal on expiry of his term as against the ordinary resolution with special notice requirement in the Act.

Removal of auditor before the expiry of term

Act - by the company in GM with the previous approval of CG (*except 1st auditor*).

Bill – only by **special resolution** in GM. **[no CG approval required]**

Tribunal [NCLT] power to remove

Having proved the auditor's fraudulent acts, Tribunal may direct the company to change its auditors.

Auditor's Disqualification

|AUDIT|

Bill now covers **business relationships , associates and relatives** under its purview of disqualifications of auditors as against the Act.

Any person or his relative, indebted to company shall be disqualified as against the Act's criteria defining materiality level of disqualification above Rs. 1000.

Limits of Audit Assignments

Act clearly defines the number of audit assignments to be handled as an auditor u/s 224 (1B) while in Bill these number of audit assignments are not quantified.

Casual Vacancy

|AUDIT|

Casual Vacancy on Disqualification

Bill specifically defines that any disqualification of auditor shall be treated as casual vacancy while in the Act there is no such specification.

Filing of Casual Vacancy

Act- Board may fill any casual vacancy of an auditor except where such vacancy is caused by the resignation of an auditor which shall only be filled by the company in General Meeting.

Bill- Board may fill any casual vacancy and in case of resignation by auditors within 3 months along with the approval in general meeting.

Rights & Powers of Auditors

|AUDIT|

Right to access books of accounts

Auditor shall have access to the books of accounts kept at registered office and else where.

In the Bill the word "elsewhere" is replaced by any other place in India.

So now it is a restriction to auditor's access to the extent of Indian Borders.

Access to Subsidiary's books of accounts

Auditor of holding company shall also have the right of access to the subsidiaries' books of accounts so far as it relates to the consolidation with that of its subsidiaries as against no such benefit in the Act .

Right / Obligation to attend GM

Bill compulsorily requires auditor to attend every general meeting against the right to attend meeting in Act.

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Contents of Auditors Report

|AUDIT|

Audit report requirements outlined:

- Has obtained all the information to the best of his knowledge & explanations
- Director's Disqualification
- Maintenance of books of accounts
- Compliance with auditing standards along with accounting standards
- Observations having adverse effect on the company's functioning **to be reported in thick bold & italics**
- Qualifications, reservations or any adverse remarks on the maintenance of accounts
- For listed companies-whether the company has complied with the internal financial controls and directions issued by the Board
- Such other matters as may be prescribed

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Signing of Auditors Report

|AUDIT|

Signing of certificates

Act -requires auditor to sign the audit report and documents which are required under law to be authenticated by the auditor. [section 229]

Bill- Prescribes that only the person who is appointed as auditor shall sign the audit report and certificates. [Clause 128]

Partner Practicing in India

Act requires that only partner practicing in India shall sign the report while there is no such restriction in the Bill.

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Cost Records & Audit Report

|AUDIT|

Cost Records maintenance required:

for production, processing, manufacturing, mining & infrastructure activities.

Cost Audit Report

Auditor's report on cost records shall be submitted by the Cost Accountant in practice to the Board of Directors of the company as against the Act's requirement of submitting it to Central government.

And then the company in turn shall submit the report to central government within 30 days from its receipt.

Act empowers the Central government to circulate cost audit report to shareholders while have no such proposed provision in the Bill.

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Audit Remuneration

|AUDIT|

Decided by Whom

Audit Remuneration according to Bill shall always be decided in general meeting or in such a manner as may be determined therein while the Act empowers the appointing authority with such honours.

Components of Audit fees

Act defines any payment made to the auditor shall be auditor's remuneration. [Sec 224 (8)]

Bill is very clear in terms of defining exclusions and inclusions for audit remuneration.

Remuneration will include the payments in cash and in kind to auditor to the extent they are in connection with the audit and do not include any payment for any other services rendered by him at the request of company. [Sec 125(2)]

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Government Companies

| AUDIT |

Act -Sections governing and Controlling government companies are dealt separately in section 619 of the Act.

Bill -Clauses governing and controlling government companies are dealt in at relevant chapters & sections separately.

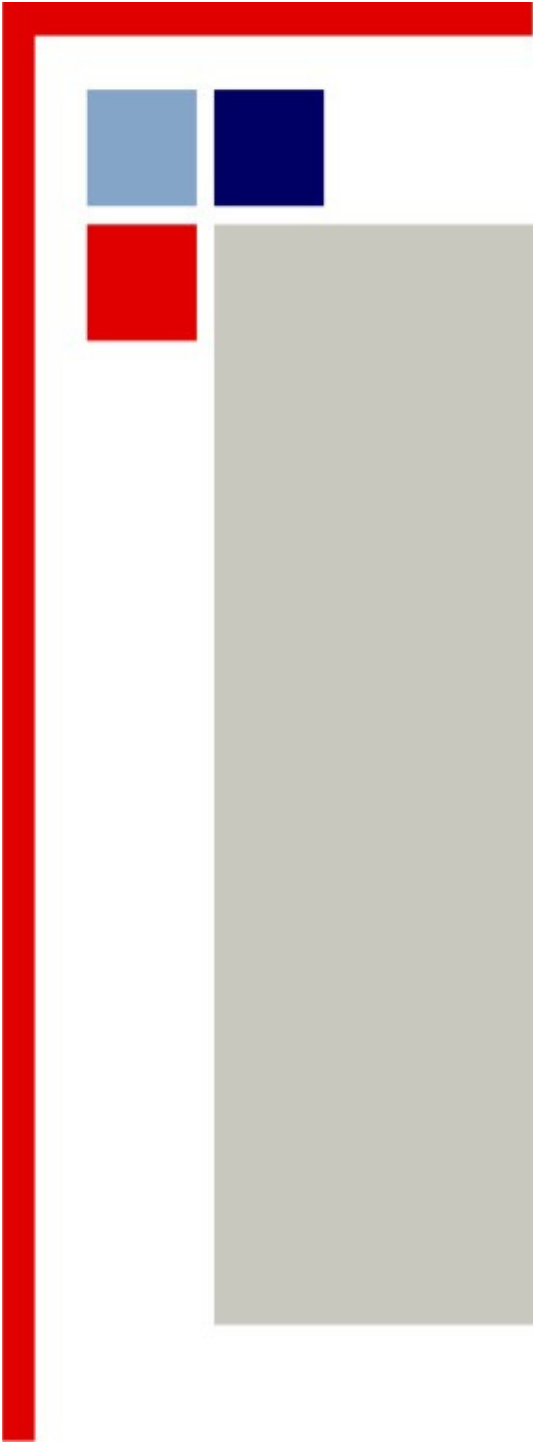
Auditor's Appointment

Act – Central Government shall appoint the auditor (including 1st) on advice & directions of C&AGI.

Bill –1st auditor shall be appointed by C &AGI within 30 days of its registration. Failing that the power is exercisable by the BOD and failing that power is exercisable by the central or state government.

For subsequent year's C & AG shall appoint the auditor with 180 days from the start of financial year.

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ACCOUNTS

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Maintenance Of books at:

- a. Registered office**
 - b. In case if books maintained at any other place in India as decided by BOD, company shall intimate it to ROC within 7 days.**
 - c. Any other place outside India, only if duly maintained in the compliance with the conditions as prescribed.**
-
- **On accrual & double entry basis**
 - **Preserve books for 8 years (with additional provision giving rights to C. Government to extend such period)**
 - **Keeping Books of Accounts in electronic mode is sought to be statutorily authorized.**

Books of Accounts

|Accounts|

Returns by Branches

Act- Requires submission of branch return made up to date at interval of not more than 3 months.

Bill – has same provisions for branch returns without the requirement of 3 month's interval.

Inspection of Books – No major differences in Bill and Act.

In India – shall be open for inspection during business hours

Outside India – shall be made available for inspection

Of subsidiaries' books - shall be allowed by person duly authorised by resolution

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Financial Year

|Accounts|

Financial Year

Act – Financial year shall be the period in respect of which any profit and loss account laid before it in the AGM. [No specific FY defined]

Bill – Financial year means the period ending on the 31st day of March every year.

For the companies 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.

Consistent Reporting in line with Income Tax Act.

Exceptions carved out for insurance industry in the Act now sought to be done away with in the Bill.

Extension of Financial Year

Act – any such extension shall be granted by Registrar.

Bill – shall be granted by NCLT (Tribunal).

Consistency of Financial Year for Subsidiary's Accounts

- Where it coincides with the Holding Co's FY - as at the end of the financial year of the subsidiary.
- Where it doesn't coincide with Holding Co's FY & such FY doesn't end by more than 6 months - as at the end of the financial year of the subsidiary last before that of the holding company.

While no such provisions in the Bill.

Act empowers Central Government to reduce and extend FY with the prior approval of BOD while no such provision in the Bill.

Financial Statements

|Accounts|

Consolidation of Accounts – shall now be compulsory for all companies by the virtue of Bill however for listed companies it is required by listing agreement.

And requirement of annexing the Subsidiaries' financial statements has been dropped with the introduction of consolidation requirement.

Contents of Financial Statements e.g. Balance Sheet, Profit & loss a/c etc. are included in the section 210 of the Act and have no separate definition.

Bill covers such contents of FS in definitions section including Cash flow statement compulsory for all the entities.

Central Government is empowered to exempt the format of financial statements.

[Sec 211 (3) / Clause 117 (5)]

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Compliance

|Accounts|

Company shall comply with:

- Accounting standards
- Compliance with Schedule VI replaced by the forms as prescribed.
- Secretarial Standards

[Scope of National Advisory Committee on Accounting standards (NACAS), Auditors and BOD is sought to be enlarged with inclusion of auditing standards in its purview along with the accounting standards.]

Financial Statements

|Accounts|

Board shall approve the Financial Statements.

Signing of Financial Statements (FS)

Act requires FS to be signed by the manager or MD or secretary while Bill requires them to be signed by Chairman or two directors one of whom should be CEO or MD.

Submitting Financials to Registrar

Act requires 3 copies to be submitted with in 30 days from the date on which FS are laid at AGM.

[Same provisions in Bill]

With the additional provisions in the Bill requiring company to send adopted FS in case when provisional unadopted FS had been sent to registrar.

Table F in Schedule I –Act requires certain companies e.g. banking, insurance etc. to submit Form in table F and now has been dropped in the bill.

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Rights of members

|Accounts|

Right of members- to receive financials and audit report 21 days before the AGM.

Act have provision of circulating financials for shorter period, if agreed by the members shall deemed to be duly sent while there is no such provision in the Bill.

Access To Financials- Act and Bill both requires all the members & debenture holders are entitled to access Financial Statements through out the year.

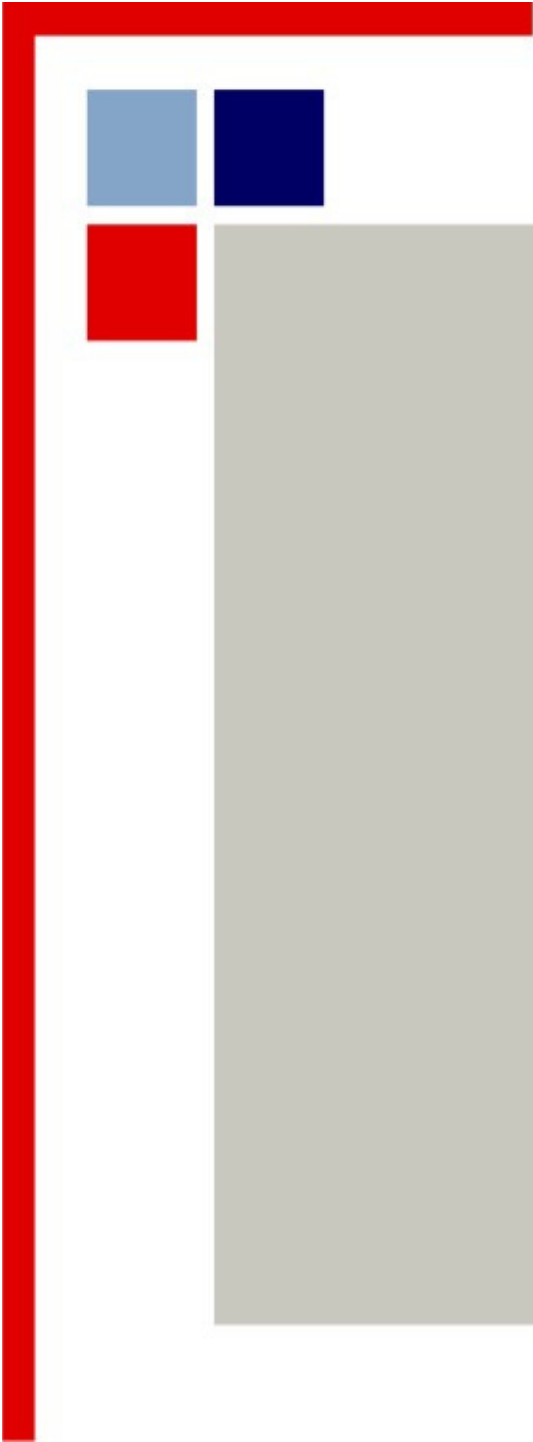
While Act permits deposit holders to have such access also.

Board Report Contents defined in the Bill-

- **Explanation on Auditor's Qualification**
- **Annual return**
- **No of board meetings held**
- **Director's responsibility**
- **Independence Declaration of Director**
- **Director's Remuneration Committee Report**
- **Inter Corporates Loans**
- **Related Party transactions**

Some of the requirements are missing in the Board's Report Contents (*which are already there in Act*):

- **State of Company's affairs**
- **Dividend**
- **Material changes in financial status**
- **Reasons of failure of buy back**



DIVIDEND

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Dividend Declaration

| Dividend |

Company Shall declare dividend with more stringent conditions:

- Out of profits in current and past years (after providing depreciation and losses)
- Unanimous consent of Board
- Approval from the Financial Institutions
- Special resolution passed at AGM
- Transfer such percentage of its profits as it may consider appropriate to the reserves of the company as against Act's requirement of transferring equivalent amount to reserve not exceeding 10% of profits.

[No rules and rates for depreciation defined in the Bill]

Interim Dividend

| Dividend |

Interim Dividend

[Sec 205(1A) / Clause 110 (3)]

Board of Director may declare interim dividend and requires it to be deposited in a separate bank account with in 5 days from such declaration and the amount shall be used only for the payment of interim dividend.

Mode of Payment

[sec 205 (5)(b) / Clause 110(5)]

Any dividend payable in cash may be paid by cheque or warrant or sent through the post directed to the **registered address of shareholder or in electronic mode.**

There is no specification for electronic mode of payment in the Act but the same is empowered by the RBI & SEBI Circulars.

Dividend to be paid to whom

Act- to registered shareholder and bearer of share warrant

Bill – to registered shareholder or to his banker on his order

In case of joint shareholders – to the first holder not considered in the Bill.

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Dividend Declaration

| Dividend |

Disqualifications for declaring dividend

Act – Failure of redemption of irredeemable preference shares u/s 80A.

Bill – Failure on repayment of any deposits u/c 67.

Dividend in inadequacy of profits

Act – under Rule 382 with complexities of calculation and restrictions.

Bill – with the consent of FI given loan and BOD and having special resolution passed in GM.

Unpaid Dividend

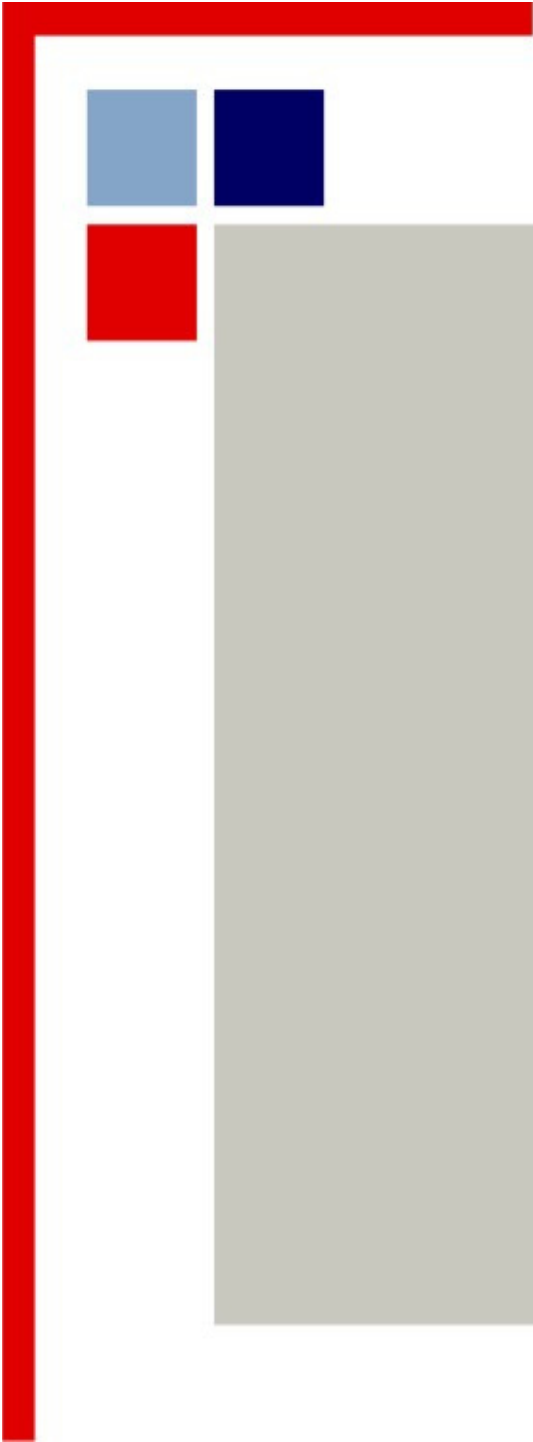
| Dividend |

Provisions of Dividend in Act and Bill:

- Dividend Unpaid after 30 days from its declaration shall be treated as unclaimed and shall be duly transferred to Unpaid account within further 7 days or (30+7=37 days from date of declaration)
- Shareholders can claim such dividend within the period of 7 years only (while in Bill same is available after 7 years also) from date of transfer and later on any remaining unclaimed amount shall be transferred to Investor's Education & protection Fund established.

Utilisation of fund

For investor's interest and awareness along with the **refund of unclaimed dividend.**



GENERAL

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Penal Provisions

Penal Provisions have been made welcome with:

- **the longer period of imprisonment.**
- **substantial increase in quantum of fine.**

Liable Persons for Penal Provisions

Act penalizes only 'every officer in default' as against the proposed bill where in some clauses penalizes 'every key officer of the Company & Board' e.g. whole time director , CFO , persons charged by Board etc. shall be observed irrespective of his active indulgence and culprit mind.

Role of Central Government

Special Audit

Act empowers Central Government to direct special audit in certain areas in section 233 A. **[Dropped in Bill]**

Powers of Exemption

Act empowers power to Central Government at various places regarding certain exemptions.

While Bill under clause 421 entrusts CG to exempt any provisions of Chapter- Prospectus & Allotment of Securities, Share Capital & Debentures , Management & Administration , Accounts, Managerial Personnel , Directors & their meetings and Audit.



OTHER MAJOR CHANGES PROPOSED IN THE BILL

One Person & Small Company

|Others|

One Person Company (OPC) & Small Companies (SC)

There is no such concept of OPC or SC in the Act.

One Person Company (OPC)- can have only 1 member who shall also be a director & having nominated some other person in MOA who shall be member in the event of his death.

Various provisions relating to meetings etc. have been modified for the one person company.

Small Company- shall be a non-public Company having maximum capital up to INR 50 Million and Annual Turnover not exceeding Rs. 200 Millions and SC will be given various procedural relaxations by issuing notifications by Central government.

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Independent Directors

|Others|

Definition of Independent Directors

- Term Independent Director now clearly defined by various parameters in Bill as follows:
 - a. Non-Executive Director who does not have any pecuniary relationship or transaction with the company.
 - b. Not an employee of the Company for preceding last 3 years.
 - c. Should not be a partner of the Audit, Legal or consulting firms.
- The Bill prescribes to have at least 1/3rd Independent Directors on the Board.

Key Managerial Persons (KMP)

|Others|

In Act :

- No Statutory recognition of KMP
- No provision in case of vacancy in KMP.

Proposed amendments in the Companies Bill, 2009:

- Bill statutorily recognizes the following as KMPs:
 - a. MD, CEO or Manager, where there is no MD or Manager, a Whole Time Director (WTD) or Directors.
 - b. Company Secretary (CS) and
 - c. Chief Financial Officer (CFO).
- Every CS and KMPs shall be appointed by a Board resolution, which shall contain the terms and conditions of appointment including remuneration.
- KMPs required to be appointed in prescribed companies and vacancy to be filled up within 6 months.

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Registered Valuer

| Others |

Act- does not contain any provisions/ chapter for Registered valuers.

Bill – have a separate chapter dealing with provisions of registered valuers:

• prescribes CA, CWA, CS or other persons possessing prescribed qualifications are eligible for becoming registered valuer.

• For following areas valuation from a registered valuer is compulsory:

- Preferential issue of shares by unlisted companies
- Debt restructuring schemes
- Merger or Demerger
- Valuation of assets transferred between company and its directors for non-cash consideration
- Valuation of assets for report by the Company Liquidator
- Declaration of solvency in case of voluntary winding-up.

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Special Courts

|Others|

Act- does not contain any provisions/ chapter for Special Courts.

Bill – have a separate chapter dealing with provisions of special Court:

- **For speedy trial of offences, the Central Government has been empowered to establish special courts**
- **They would have the liberty to try summary proceedings**
- **All offences under this Act shall be triable by the special courts as may be specified in this behalf by the High Court concerned.**

Conclusion

The new bill is an attempt towards:

- **Strict** auditor's independence
- More **shareholder's participation**
- **Withdrawal** of government's controls at several places.

Corporates and especially Auditors will look towards Government to overcome the shortcomings and inconsistencies reconciled before the law is enacted.

Thank You.



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