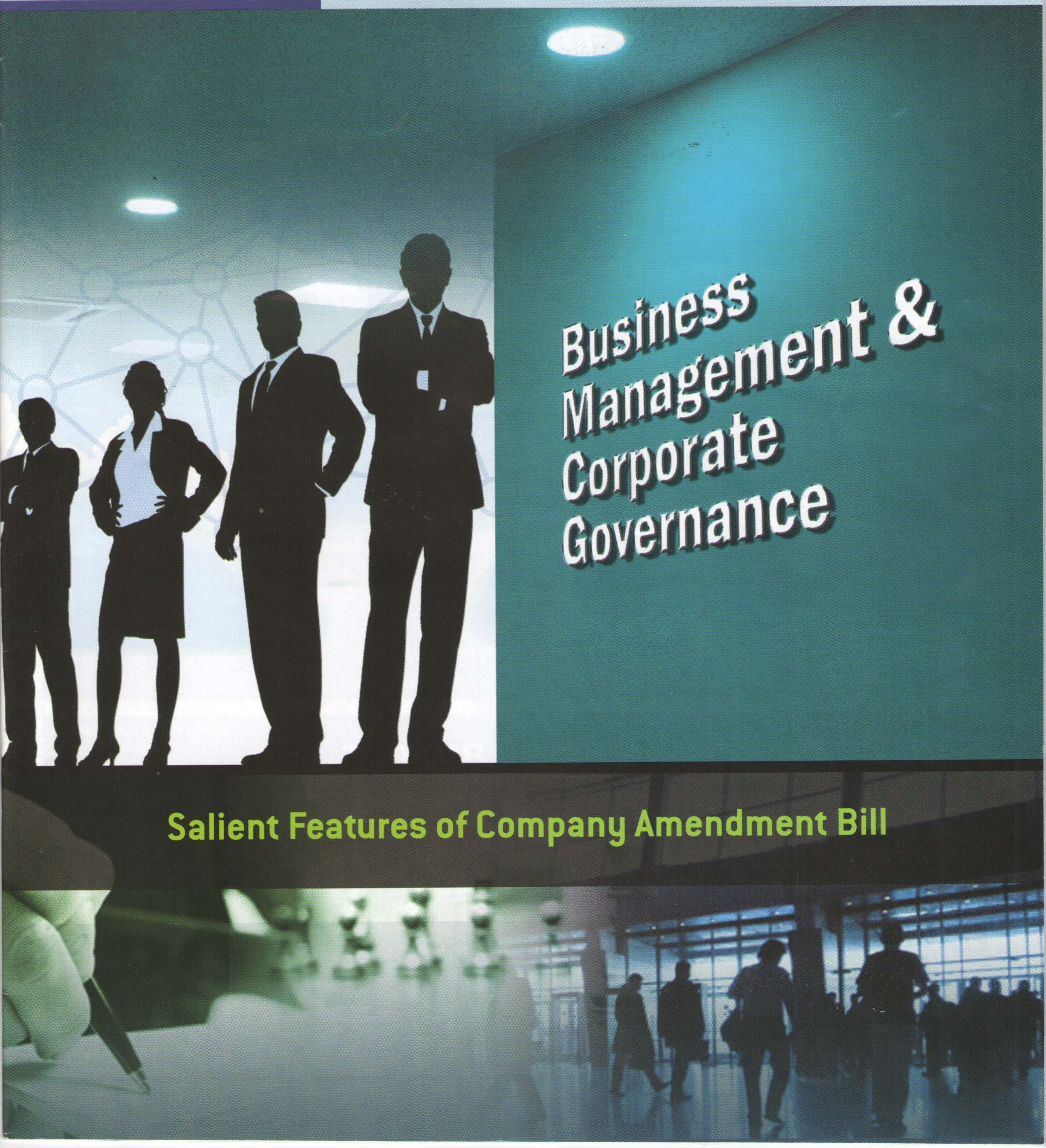
SIRC Newsletter

PRICE - Rs.5

FEBRUARY 2013 | Volume 38 ▪ Part 08

Southern India Regional Council ▸ THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ▸ SET UP BY AN ACT OF PARLIAMENT



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Companies Bill - 2012 - The Dawn of a New Era

The entire corporate India woke up to the morning of 19th December 2012 with a fresh breeze, new hopes and exciting challenges. With just two days left for the much hyped Armageddon of 21st December 2012 when the world was supposed to end as per a famous prediction, the Lok Sabha passed the much awaited Companies Bill, 2012 which marks the dawn of a new era, an era of progressive thinking, greater investor democracy and higher corporate growth with higher responsibility.

The Companies Bill, 2012 is all set to replace the 55 Year old Companies Act of 1956 which has been the single most important legislation for all incorporated companies in India and bread and butter for many professionals.

Companies Bill, 2012, a vibrant initiative is meant to replace the existing Companies Act of 1956, one of the most important legislation governing all companies in India for the past 56 years. Companies Bill 2012 proposes to give it after much speculation and eagerness on the subject, Lok Sabha finally approved the Bill on the night of 18th December, 2012.

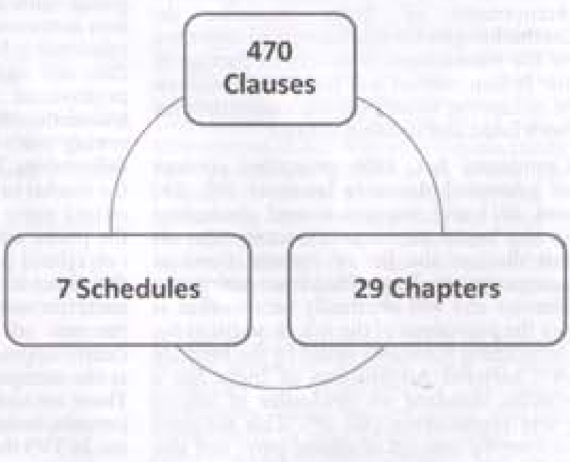
A GLIMPSE AT THE ORIGIN OF COMPANIES ACT IN INDIA

ORIGIN OF COMPANIES ACT IN INDIA	AMENDMENTS TO THE COMPANIES ACT, 1956
The oldest piece of legislation in India relating to companies was started and emerged by the following Acts enacted from time to time: ➢ Act of 1857 ➢ Companies Act ,1866 ➢ Replaced by Indian Companies Act, 1913 ➢ Recommendations of Company law committee set up in 1950 ➢ Indian Companies act,1956	Amended for about 24 times since 1956 ➢ Major amendment to the Companies Act, 1956, was made by enacting the Companies Amendment Act, 1988 ➢ Recent Amendment was made by the Companies Amendment Act, 2002

PATH WAY OF COMPANIES BILL 2012

23rd October 2008	Companies Bill, 2008 was introduced in the Lok Sabha to Replace Existing Companies Act, 1956
3rd August 2009	Companies Bill 2009 was reintroduced in the Lok Sabha on to replace Existing Companies Act, 1956 with modifications and the same was referred to SCF for further process
31st August 2010	Report of Standing Committee on finance on companies bill, 2009 was introduced in the Lok Sabha
14th December 2011	Companies Bill 2011 introduced in Lok Sabha
18th December 2012	Companies Bill 2012 passed by Lok Sabha

OVERVIEW OF COMPANIES BILL 2012



NEW DEFINITIONS INTRODUCED IN SECTION 2

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

DEFINITIONS WHICH HAVE BEEN DISCONTINUED FROM EXISTING ACT

District Court Industrial Company Industrial Undertaking Information memorandum	State Level Institution Option in Securities Operating Agency Public Holiday	Share with Differential Rights Sick Industrial Company Issued generally

SOME INTERESTING NEW DEFINITIONS

"One Person Company"
means a company which has only one person as a member

"Small company"
means a company, other than a public company, -

(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

(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:

Provided that nothing in this clause shall apply to -

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act

COMPARISON OF EXISTING COMPANIES ACT, 1956 WITH COMPANIES BILL, 2012

ON

IMPORTANT AREAS

1. INCORPORATION

Basis for Comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
Maximum number of members for private companies	50 (Fifty)	200 (Two Hundred)
Minimum Number of members	Public company to have minimum seven members and private companies to have minimum 2 members	No change for private and public companies. New concept of one person company introduced which can have a single member
Object Clause of MOA	Object clause bifurcated into – Main Objects, Incidental or Ancillary Objects and Other Objects.	MOA to contain the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Registered Office	Companies are required to furnish the details of the Registered office of the company by filing e-Form 18 at the time of incorporation. Notice of every change of the situation of the registered office, shall be given to the Registrar within thirty days of the change, who shall record the same.	A company shall, on and from the fifteenth day of its incorporation have a registered office. The company is also required to furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in a prescribed manner. Notice of every change of the situation of the registered office, shall be given to the Registrar within fifteen days of the change, who shall record the same.
Commencement of Business	Provision is applicable only to public limited companies	Applicable to all companies having share capital
Alteration of Article **Conversion of Companies**	**Section 31** Special Resolution passed for conversion of Private to public limited companies and public to private Limited Companies are required to be filed within **thirty days** from the date of General meeting approving the special resolution	**Clause 14 (2)** Special Resolution passed for conversion of Private to public limited companies and public to private Limited Companies are required to be filed within **fifteen days** from the date of General meeting approving the special resolution
Charitable Institutions	**Section 25** No specific provisions relation to amalgamation of the kind of company with which amalgamation can be done Default Made in compliance with the clause punishable with fine of Five Thousand Rupees for Every day of default	**Clause 8** (10) A Company registered under this section shall amalgamate only with another company registered under this section and having similar objects.Penal provisions has been increased substantially Default Made in compliance with the clause punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both
Authentication of documents, **Proceedings and contracts.**	**Section 51,52 and 53** Can be Signed by the Director, the manager, the secretary or other authorised officer of the Company	**Clause 21** Authentication of documents, proceedings and contracts can be done by the Key managerial Personnel or an officer of the company duly authorised by the board.
Service of Documents	**Section 51,52 and 53** Documents may be served by the company or an officer by post under a certificate posting or by registered post	**Clause 20** Documents may be served by the company or an officer by registered post, speed post or courier.

2. SHARES AND SHARE CAPITAL

COMPANIES ACT, 1956	COMPANIES BILL, 2012
ISSUE OF SHARES AT A DISCOUNT	
Section 79 permits issue of shares at discount subject to compliance with conditions	Issue of shares at discount is prohibited except in case of sweat equity shares
ISSUE OF PREFERENCE SHARES FOR MORE THAN 20 YEARS	
Section 80 prohibits issue of irredeemable preference shares and preference shares redeemable after 20 years	Issue of preference shares for period exceeding 20 years is permitted for infrastructure projects
ISSUE OF SHARES ON PRIVATE PLACEMENT, BONUS SHARES AND GDRS	
No specific provision for issue of shares on private placement, bonus shares and GDRs exist in the present Act.	Specific provision introduced for issue of shares on private placement, bonus shares and GDRs in the Bill
CONSOLIDATION AND DIVISION OF SHARES	
Company permitted to consolidated or sub divide its shares by passing resolution in general meeting	Consolidation and division which results in changes in the voting percentage of shareholders shall require approval of the Tribunal to be effective

3. BOARD MEETINGS

COMPANIES ACT, 1956	COMPANIES BILL, 2012
FIRST BOARD MEETING	
No specific time stipulated for holding first board meeting.	Every company shall hold the first meeting of the Board of Directors within **thirty days** of the date of its incorporation
TIME GAP BETWEEN TWO MEETINGS	
At least one meeting to be held in every quarter	Not more than **one hundred and twenty days** shall intervene between two consecutive meetings of the Board
LENGTH OF NOTICE	
No specific length of notice specified	Meeting of the Board shall be called by giving not less than **seven days'** notice
PENALTY	
Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to **one thousand rupees**.	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of **twenty-five thousand rupees.**
BOARD MEETINGS THROUGH VIDEO-CONFERENCING ALLOWED NOW	
➢ Under clause 173(2), participation of directors at Board Meetings has been permitted through video-conferencing or other audio visual means ➢ Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.	

4. ANNUAL GENERAL MEETINGS

COMPANIES ACT, 1956	COMPANIES BILL, 2012
MAXIMUM TIME FOR HOLDING FIRST AGM	
18 months from incorporation or 9 months from closure of accounts, whichever is earlier	9 Months from closure of accounts
TIME AND DAY	
Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday	Every annual general meeting shall be called during business hours, that is, between 9 A.M. and 6 P.M. on any day that is not a National Holiday
LENGTH AND MODE OF NOTICE	
Private companies can specify the length of notice in their Articles of Association. Written Notice mandatory	21 days clear notice to be given by all companies. Notice may be given in writing or in electronic form in the manner prescribed
CONSENT FOR SHORTER NOTICE	
Consent to be given by all members entitled to vote at the meeting	Consent to be given by not less than 95% of the members entitled to vote at the meeting
QUORUM	
Private Companies – 2 Members Public Companies – 5 Members	Private Companies – 2 Members Public Companies – 5 members where total number of members do not exceed 1000 - 15 members where total number of members exceed 1000 but do not exceed 5000 - 30 members where total number of members exceed 5000
STATUTORY MEETING	
Every Public limited company to hold statutory meeting after one month but before 6 months from the date of entitlement to commence business and file statutory report with ROC	No similar provision is there in the new bill

5. DIRECTORS

COMPANIES ACT, 1956	COMPANIES BILL, 2012
MAXIMUM NUMBER OF DIRECTORS	
12	15 More than 15 can be appointed by passing special resolution
MAXIMUM NUMBER OF DIRECTORSHIP	
15 Excludes private companies, unlimited companies, alternate directorship and directorship in non-profit associations	20 Out of which not more than 10 can be public companies. Includes Alternate Directorship also. No specific exclusions are provided.

COMPOSITION OF BOARD	
Minimum 2 directors in case of private and 3 in case of public companies. Maximum 12 Directors	Certain class of companies to have atleast 1 women director. Every company to have atleast one director who has stayed for atleast 182 days in India in previous Calendar year. Listed Companies to have atleast 1/3rd independent directors.
DISCLOSURES IN BOARD'S REPORT	
Section 217 contains disclosure requirements of Board's report	Additional Disclosures proposed by the bill, namely, Extract of Annual Return, Number of board meetings, CSR initiatives and policy, particulars of loans, guarantees, investments etc
DIRECTORS RESPONSIBILITY STATEMENT	
Section 217(2AA) prescribes the content of Director's responsibility statements which contains 4 clauses	Additional clauses proposed by the bill in respect of "Internal Financial Controls" and "Systems to ensure compliance with laws"

6. AUDIT, AUDITORS AND ACCOUNTS

COMPULSORY CONSOLIDATION OF ACCOUNTS:

Existing Companies Act - Consolidation is not mandatory. Balance Sheet of subsidiary to be attached by holding company while filing return to ROC

Companies Bill 2012 - Companies having subsidiary company to prepare consolidated financial statements in addition to standalone statements. Subsidiary companies include Associate and Joint Ventures also.

CERTIFICATION

Existing Companies Act - Balance Sheet and Profit & Loss Account to be signed by Manager or Secretary, if any, and by not less than 2 directors one of whom shall be the MD where there is one.

Companies Bill 2012 - Financial statements can be signed by Chairman alone if so authorised by the Board.

FINANCIAL YEAR AND EXTENSION

Existing Companies Act - Financial year not to exceed fifteen months. Financial year can end on date other than 31st March. Financial Year can be extended up to 18 months by ROC.

Companies Bill 2012 - Financial year to end on 31st March every year for all companies. No explicit provision regarding extension of financial year is given.

HIGHLIGHTS OF COMPANIES BILLS 2012 – OTHER PROVISIONS

MAINTENANCE OF ACCOUNTS

- Maintenance of Accounts in electronic form permitted
- Financial statements to include Balance Sheet, Profit & Loss and Cash Flow Statement
- Consolidation made mandatory for companies having subsidiaries, associates and Joint Ventures

FILING OF REPORTS AND RETURNS

Disclosures required in Board's report have been made more comprehensive.

Board's report to include extract of annual return, number of board meetings etc

Annual Return

Annual return to be made up to end of financial year not up to date of AGM. Scope of return enlarged to great extent

All annual returns as stated above to be certified either by company secretary of the Company or by a Company Secretary in practice

Every Listed company to file return to ROC regarding changes in shares held by promoters and top 10 shareholders within 15 days of the change

KEY MANAGERIAL PERSONNEL AND THEIR REMUNERATION

No company can have both Managing Director and Manager at the same time

Maximum limit of 11% (of net profits) for overall managerial remuneration is retained.

Every company belonging to such class or description of companies as may be prescribed, to have managing director, or chief executive officer or manager and in their absence, a whole-time director, company secretary and chief financial officer

INSPECTION, INQUIRY & INVESTIGATION

- Statutory status to SFIO proposed and SFIO is given wide powers
- SFIO's report to be treated as report filed by Police Officer
- SFIO will have power to arrest in certain cases which attract punishment for Fraud and person accused of such offence shall be released on bail subject to conditions as mentioned in the relevant provisions of this bill.
- Protection of employees during investigation by the authority is provided
- During inquiry and investigation or on request of creditor having due of more than one lakh, the central government may by order direct that transfer, removal or disposal of funds, assets, properties of the company shall not take place during such period not exceeding three years or may put restrictions and conditions as deemed fit
- Foreign companies are also covered

PREVENTION OF OPPRESSION & MISMANAGEMENT

Clause 241 of the Bill corresponds to Section 397 of the Act with the difference that from the language used in the bill it appears that relief can be sought even for past concluded acts under the provisions of the Bill, whereas same was not possible under the existing Act.

Class Action Suits (New Clause 245) – Class action by member of members, depositor or depositors or any class of them (not applicable to banking companies.

SECRETARIAL AUDIT & CSR

Secretarial Audit mandated for all listed companies and certain other class of companies. Board to respond to qualifications contained in Secretarial Audit by means of explanation in Board's report.

CORPORATE SOCIAL RESPONSIBILITY

Followings Companies Shall constitute a CSR Committee:

- Net worth of rupees five hundred crore or more, or
- Turnover of rupees one thousand crore or more, or
- Net profit of rupees five crore or more

Committee to consist of at least three directors out of which at least one should be independent director

Board to ensure that at least 2% of the average net profits of last 3 years is spent by the company on CSR activities every financial year, else reasons for not spending to be specified in the Board's report.

RELATED PARTY TRANSACTIONS

- Every related party transaction to be disclosed in Board's report.
- Clause 188 of the bill which carries provisions regarding related party transactions, combines existing sections 297 and 314.
- Central Government Approval has been done away with.

COMPROMISES AND ARRANGEMENTS

- Simplified procedure for compromise or arrangement between two or more small companies or between holding and wholly owned subsidiaries introduced
- Cross-border mergers permitted with any foreign company with prior approval of RBI. Countries and rules to be notified by Central Government. Consideration can be in cash or in Depository receipts or partly in cash and partly in Depository receipts
- Objections to the compromise or arrangement shall be made only by persons holding not less than 10% of shareholding or having outstanding debt amounting to not less than 5% percent of total outstanding debt as per the latest audited financial statement.
- The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.
- Auditor of the company shall confirm that, accounting treatment proposed in scheme of compromise or arrangement is in conformity with Accounting standards prescribed under section 133.The certificate needs to be filed with tribunal.
- Notice of scheme along with documents shall also be sent to SEBI, RBI, IT authorities, Registrar, stock exchanges, official liquidator, Competition commission of India and other sector regulators or authorities which are likely to be affected by the compromise or arrangement and the representation of authorities shall be made within thirty days from the date of receipt of documents, failing which it would be presumed that, they have no representations to make.

Certificate from company secretary/chartered accountant/cost accountant in practice is required to be filed with Registrar in such form as to whether the scheme is being complied in accordance with the orders of tribunal or not.

New terminologies "merger by absorption" and "Merger by formation of a new company" introduced.

In a creditor compromise, report of the auditor that fund requirement after restructuring shall conform to liquidity test based on estimates provided to them by board needs to be provided

A company registered under Section 8 of the New Act (non-profit companies) shall amalgamate only with another company registered under that section and having similar objects.

APPOINTMENT OF FIRST AUDITOR

NON-GOVERNMENT COMPANIES

Appointed by the Board of Directors within thirty days from the date of registration of the company

if Not

shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor

GOVERNMENT COMPANIES

Controller and Auditor-General of India within sixty days from the date of registration of the company

if Not

Board of Directors of the company shall appoint such auditor within the next thirty days

if Not

Members of the company, who shall within sixty days at an extraordinary general meeting appoint such auditor

WHAT'S IN STORE FOR AUDITORS

➢ **AUDITORS**

Appointment	Encouraging Clauses	Restrictive Clauses
• **Listed Companies** - Individual Auditor to retire every five years. Ten years in case of firm of Auditors • **Other Companies** - Auditor to be appointed for a term of 5 years in each appointment. Appointment to be ratified in each AGM.	• **Internal audit** may be made mandatory for prescribed companies	• Auditors not to render other services like book keeping, accounting etc. directly or indirectly to the company or its holding company or subsidiary company • Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.

➢ **COST AUDITORS**

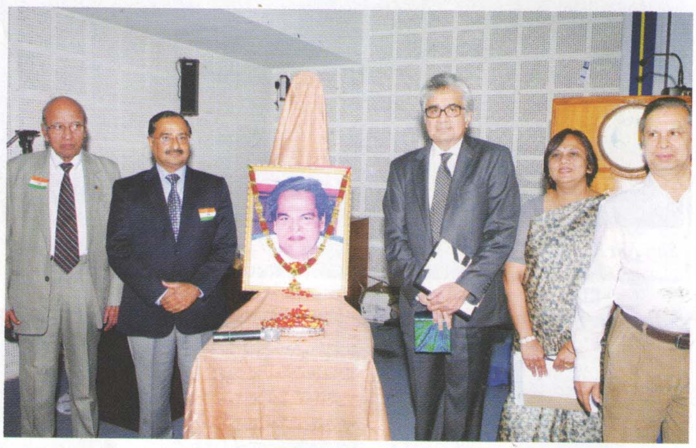
- Cost auditing standards' have been mandated.
- Central Government may direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

Date of posting 6th February 2013

Registered - RNI Reg. No. 28192 - RNP Registered No. TN/CH(C)327/12-14
WPP No. TN/PMG(CCR)/WPP-354/2012-14

SHRI ASHOK KUMBHAT MEMORIAL LECTURE

January 26, 2013 - Chennai



CA. Harish Salve, Senior Advocate, Hon'ble Supreme Court, offering floral tributes to Shri Ashok Kumbhat along with CA. K. Viswanath, Chairman, SIRC of ICAI, CA. G.V. Raman and family members of Shri Ashok Kumbhat on the occasion of Shri Ashok Kumbhat Memorial Lecture.

REPUBLIC DAY CELEBRATIONS

January 26, 2013 - Chennai

CA. K. Viswanath, Chairman, SIRC unfurling the tricolour Indian Flag on the occasion of Republic Day at SIRC premises, Chennai

NATIONAL SEMINAR ON TAX AWARENESS

January 28, 2013 - Ernakulam

CA. Jaydeep Narendra Shah, President, ICAI inaugurating the National Seminar at Ernakulam in the presence of CA. K. Viswanath, Chairman, SIRC, Members of SIRC of ICAI and other dignitaries of Ernakulam Branch of SIRC of ICAI.

CPE SEMINAR ON COMPANIES BILL - 2012

January 30, 2013 - Chennai

Resource Persons

Shri B. Ravi
Chennai

CA. N. Nityananda
Bangalore

CA. S. Ramakrishnan
Chennai

CA. P. S. Kumar
Chennai

Shri S. Dhanapal
Chennai

UNVEILING THE BUST OF CA. G.P. KAPADIA

January 31, 2013 - Chennai

Padma Bhushan Shri. Nandan Nilekani, Chairman, Unique Identification Authority of India unveiling the bust of CA. G.P. Kapadia, First President of ICAI in the presence of Shri Mani Sankar Aiyar, Hon'ble Member of Parliment, CA. K. Viswanath, Chairman, SIRC of ICAI, other Dignitaries and Central and Regional Council Members.

V. SANKAR AIYAR MEMORIAL LECTURE

January 31, 2013 - Chennai

Padma Bhushan Shri. Nandan Nilekani, Chairman, Unique Identification Authority of India offering floral tributes to CA. V Sankar Aiyar along with Shri Mani Sankar Aiyar, Hon'ble Member of Parliment, CA. K. Viswanath, Chairman, SIRC of ICAI, other Dignitaries and Central and Regional Council Members on the occasion of V Sankar Aiyar Memorial Lecture.

Published and Printed by Dr. P.T. Giridharan, Joint Director on behalf of Southern India Regional Council of the Institute of Chartered Accountants of India, ICAI Bhawan, # 122, Mahatma Gandhi Road, Nungambakkam, Chennai -600034. Phone: 044 39893989, 30210320. **Email:** sro@icai.in / sirc@icai.in. **Website:** www.sircoficai.org - Printed at M/s. Chennai Micro Print (P) Ltd., # 130, Nelson Manickam Road, Aminjikarai, Chennai -600029. **Editor:** CA.K. Viswanath, Chairman, SIRC of ICAI.