

India Inc - Companies Act 2013

An overview



Building a better
working world

Foreword

Dear Reader,

The new Indian regime governing companies has arrived - with the President's approval on 29 August 2013. Companies in India will be governed by this regime over the next few decades.

This booklet, "India Inc - Companies Act, 2013 - An overview " captures significant updates on the law. Transparency with self -reporting and disclosure is the foundation of new Companies Act, 2013. Most provisions intend to map India Inc at par with International company law. Introduction of Class Action Suits, concept of arms length pricing, focus on Corporate Social Responsibility, recognition of inter-se shareholder rights, opening doors to outbound mergers are certainly steps to move towards a global best practices.

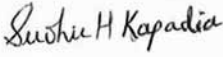
The Rules which will clearly define the operation of the new law are yet to be unveiled. The God is in the details and how the law will be implemented will determine the success of the forward looking provisions.

We compliment the Parliament for approving the Companies Act, 2013; though there is scope for some necessary improvements. The Ministry of Corporate Affairs (MCA) will have to play a key role in formulating the Rules as well as issuing notifications/circulars to have a smooth transition and operationalize the new Companies Act, 2013.

While the detailed consequences and compliances are to be gauged we have compiled a summary of key changes relevant from accounting and tax perspective. For ease of reading, the summary of key amendments and their impact has been divided into broad chapters.

We hope the new Companies Act, 2013 is successful in achieving efficient corporate governance and transparency as intended by the law makers.

Yours sincerely,



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Financial year

Overview of significant changes

1. The existing Companies Act, 1956 defines the term “financial year” as “the period in respect of which any profit and loss account of the body corporate laid before it in AGM is made up, whether that period is a year or not.” The Companies Act, 1956 also states that the financial year of a company will normally not exceed 15 months. However, a company can extend it to 18 months, after getting special permission from the registrar.

According to the Companies Act, 2013, the financial year of a company will be the period ending on 31 March every year.

2. Under the Companies Act, 2013, a company, which is a holding or subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its financial statement outside India, may apply to the Tribunal for adoption of a different financial year. If the Tribunal is satisfied, it may allow the company to follow a different period as its financial year.
3. All existing companies will need to align their financial year with the new requirement within two years from the commencement of the new law.

Accounting

National Financial Reporting Authority

Impact analysis

1. All companies, except companies, which are holding/subsidiary of foreign company and exempted by the Tribunal, will need to follow 1 April to 31 March as their financial year. Consequently, they will not be allowed to have a period longer or smaller than 12 months as financial year. Though the Tribunal can provide exemption to some companies from following a uniform accounting year, listed companies in particular for purposes of better peer comparison can still choose to follow a uniform year and not seek exemption.
2. A company, which is a holding/subsidiary of a foreign company requiring consolidation outside India, will have an option to follow a different period as "financial year." However, this option is not automatic. Rather, it will need to seek specific approval from the Tribunal. This may create additional administrative hurdles, both for the company as well as the Tribunal.
3. The Income-tax Act requires all companies to follow 1 April to 31 March as their previous year, for tax reporting purposes. The requirement of the Companies Act, 2013 is consistent with the Income-tax Act and will eliminate the requirement to prepare separate tax financial statements.
4. Companies in industries with cyclical/seasonal businesses, e.g., sugar industry, will not be able to reflect the results of one production cycle in a single set of financial statements.
5. A company with a foreign subsidiary will be allowed to adopt a different financial year only if it is required to follow a different financial year for preparation of CFS outside India. In case of a foreign subsidiary, CFS will generally be prepared for India purposes. Hence, an Indian company with a foreign subsidiary may not be able to adopt a different financial year.
6. In accordance with AS 21, AS 23 and AS 27, a parent company can use financial statements of subsidiaries, associates and joint ventures up to a different reporting date to prepare CFS if it is impractical to have their financial statements prepared up to the same reporting date. This requirement is contained in the Companies Accounting Standard Rules. This is a subordinate legislation and cannot override the requirements of the Companies Act, 2013. Hence, the relief contained in these three standards may become irrelevant with respect to most subsidiaries, associates and joint ventures, which are established as companies in India
7. Since majority of companies already follow 1 April to 31 March as their financial year, the adoption of a uniform financial year for all of the companies may not be a major challenge for directors (including independent directors), audit committee members and auditors.

Overview of significant changes

1. Under the existing Companies Act, 1956 the Central Government has constituted an advisory committee known as the "National Advisory Committee on Accounting Standards (NACAS)" to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies. The NACAS may also advise the Central Government on other accounting/auditing related matters referred to it. Under the Companies Act, 2013, NACAS will be replaced by the NFRA. The NFRA will:
 - (a) Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies and their auditors
 - (b) Monitor and enforce the compliance with accounting and auditing standards
 - (c) Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service, and
 - (d) Perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
2. The NFRA will:
 - (a) Have the power to investigate, either *suo moto* or on a reference made to it by the Central Government, for such class of bodies corporate or persons, the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the CA Act. No other institute or body will initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated an investigation.
 - (b) Have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:
 - (i) Discovery and production of books of account and other documents, at such place and at such time as may be specified by the NFRA
 - (ii) Summoning and enforcing the attendance of persons and examining them on oath
 - (iii) Inspection of any books, registers and other documents



- (iv) Issuing commissions for examination of witnesses or documents
- (c) Have power to impose strict penalties if professional or other misconduct is proved,
- 3. After examining the recommendation of the NFRA, the Central Government may prescribe standards of accounting and/or standards on auditing or any addendum thereto, as recommended by the ICAI. Till the time, any auditing standards are notified, standards of auditing specified by the ICAI will be deemed to be the auditing standards.

Impact analysis

1. NFRA will act as regulator for members registered under the CA Act working in companies as well auditors. Hence, it may also take action against the company officials if they are chartered accountant and fail to comply with the law.
2. While the Companies Act, 2013 states that till the time, any auditing standards are notified, standards of auditing specified by the ICAI will be deemed to be the auditing standards. However, similar provision does not exist for the accounting standards. In other words, for accounting standards to become mandatory they have to be issued by the NFRA.
3. The Companies Act, 2013 requires that no other institute or body will initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated an investigation. The CA Act also requires the Disciplinary Board/ Committee to deal with the matters of professional and other misconduct by the members of the ICAI. This would result in jurisdiction issues, as powers to the NFRA and the ICAI are provided by the respective Acts. It may be noted that the outcome of an investigation by the NFRA under the Companies Act, 2013 vis-à-vis disciplinary proceedings under the CA Act can be different. Under the CA Act, depending on the nature of misconduct, maximum fine can be either ₹1 lakh or ₹5 lakh. Similarly, the maximum period for which a member's name can be removed from the register of member can be either 3 months or life time. In contrast, under the Companies Act, 2013, minimum penalty for an audit firm is ₹10 lakh, but this may extend to ten times of the fees received. Also, the NFRA can debar either the concerned member or the entire firm from practicing as a member of the ICAI for a minimum period of six months. However, the NFRA may extend this period up to 10 years.

Financial statements

Overview of significant changes

Currently, neither the Companies Act, 1956 nor any notified AS defines the term "financial statements." However, the Companies Act, 1956 requires all companies to prepare the balance sheet and the profit and loss account, to place the same before the AGM. In addition, notified AS 3 requires companies, which are not SMCs, to prepare cash flow statement.

The Companies Act, 2013 defines the term "financial statements" to include:

- (i) Balance sheet as at the end of the financial year,
- (ii) Profit and loss account for the financial year,
- (iii) Cash flow statement for the financial year,
- (iv) Statement of change in equity, *if applicable*, and
- (v) Any explanatory note forming part of the above statements

For one person company, small company and dormant company, financial statements may not include the cash flow statement.

Like the Companies Act, 1956 the Companies Act, 2013 also contains a format for preparation and presentation of financial statements. Except for addition of general instructions for preparation of CFS the format of financial statements given in the Companies Act, 2013 is the same as the revised Schedule VI notified under the existing Companies Act, 1956.

Impact analysis

1. The exemption from preparation of cash flow statement given under the Companies Act, 2013 is different from that under notified AS. Given below is the comparison.

Relevant factor	Notified AS	Companies Act, 2013
One person company	Not a criterion for identification as SMC.	Exempted from preparing cash flow statement.
Dormant company	Not a criterion for identification as SMC.	Exempted from preparing cash flow statement.
SMC vs. small company		
Turnover	Does not exceed ₹50 crore	Does not exceed ₹2 crore unless higher amount is prescribed
Paid-up share capital	No such criterion	Does not exceed ₹50 lakh unless higher amount is prescribed

Financial statements authentication and board's report

Relevant factor	Notified AS	Companies Act, 2013
Listing	Equity or debt securities are neither listed nor are in the process of listing.	Should not be public company.
Special category	Company is not a bank, financial institution or entity carrying on insurance business.	Company is not governed by any special Act. Company is not formulated for charitable purposes.
Borrowings (including public deposits)	Does not exceed ₹10 crore	No such criterion
Holding/ subsidiary	Company is not a holding/ subsidiary of non-SMC.	Company should not be holding/ subsidiary company.

The Companies Act, 2013 requires more companies, e.g., companies with turnover between ₹2 crore to ₹50 crore, to prepare cash flow statement.

2. Till the time applicability of AS 3 is amended, companies, which are currently required to prepare cash flow statement, will continue to do so, even if they do not meet the Companies Act, 2013 criteria for the preparation of cash flow statement. For example, a one person company with a turnover greater than ₹50 crore though not required to prepare cash flow statement under the Companies Act, 2013, will nonetheless have to prepare cash flow statement as required by notified standards. Though the notified standard is a subordinate legislation, the stricter of the two requirements is likely to apply.
3. Since the Companies Act, 2013 does not lay down any format for preparation of cash flow statement, companies will need to follow AS 3 in this regard. In respect of listed companies, the listing agreement requires the indirect method for preparing cash flow statements. Thus, under the Companies Act, 2013, non-listed companies will have a choice of either applying the direct or indirect method under AS 3 to prepare the cash flow statement. Due to the listing agreement requirement, that choice will not be available to listed companies.
4. The addition of words "if applicable" with SOCIE requirement suggests that the same will apply only under Ind-AS. The ICAI has recently issued an exposure draft (ED) of revised AS 1 *Presentation of Financial Statements* to replace notified AS 1 *Disclosure of Accounting Policies*. The said ED does not contain a separate requirement for the presentation of SOCIE.

Overview of significant changes

1. Both the Companies Act, 1956 and the Companies Act, 2013 require financial statements to be approved by the board. The existing Companies Act, 1956 states that the Banking Companies Act, 1956 will govern signing requirements for financial statements of banking companies. For other companies, financial statements need to be signed by manager/secretary (if any) and at least two directors one of whom will be a Managing Director. The Companies Act, 2013 requires both SFS and CFS of all companies (including banking companies) to be signed at least by the Chairperson of the company if he is authorized by the board, or by two directors out of which one will be Managing Director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer, and the Company Secretary, if appointed
2. The Companies Act, 2013 will require the inclusion of the following additional information in the board's report, which is not required under the existing Companies Act, 1956.
 - (a) Extract of the annual return, which covers matters such as indebtedness, shareholding pattern, details of promoters, directors and KMP and changes therein, details of board meetings and attendance, remuneration of directors and KMPs and penalty or punishment imposed on the company, its directors/officers
 - (b) Statement on independence declaration given by independent directors
 - (c) If a company is required to constitute NRC, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and remuneration policy for KMP and others
 - (d) Explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made by the auditor and by the company secretary in their reports
 - (e) Particulars of loans, guarantees or investments (refer section titled "Related party transactions")
 - (f) Particulars of contracts/arrangements with related parties
 - (g) A statement indicating development and implementation of risk management policy, including risk which may threaten the existence of the company

- (h) Details of policy developed and implemented on CSR
 - (i) For all listed companies, and every other public company with paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the board of its own performance and that of its committees and individual directors.
3. Directors' Responsibility Statement will include the following additional information, which is not required under the existing Companies Act, 1956:
 - (a) For listed companies, directors had laid down internal financial controls and such controls are adequate and were operating effectively
 - (b) Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively
 4. If a company contravenes the above requirements, it will be punishable with a fine, which will not be less than ₹50 thousand and can extend up to ₹25 lakh. Every officer of the company who is in default will be punishable with imprisonment for a term, which may extend to three years or with fine which will not be less than ₹50 thousand but which may extend to ₹5 lakh, or with both.
 5. Section 197 of the Companies Act, 2013 requires every listed company to disclose in the board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

Impact analysis

1. Since the Companies Act, 2013 no longer exempts banking companies from signing requirements, they will likely need to comply with the requirements of the Companies Act, 2013 as well as the Banking Companies Act, 1956. The Banking Companies Act, 1956 requires that in the case of a banking company, financial statements will be signed by its manager/principal officer and at least three directors if there are more than three directors. If the banking company does not have more than three directors, all directors need to sign the financial statements.
2. Currently, the listing agreement requires that a listed company should lay down procedures to inform board members about the risk assessment and minimization

procedures. These procedures need to be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. However, there is no such requirement for unlisted companies. Hence, many unlisted companies may not have well documented risk management policies. To comply with disclosure requirements concerning risk management, companies will need to develop and document properly their risk management policies. Also, the senior management may need to review its implementation on regular basis.

3. By attesting the financial statements, the CFO will be assuming an onerous responsibility of ensuring that the financial statements are true and fair. Under the existing listing requirements, which is applicable to listed companies only, CFOs do not have to sign financial statements, but have to certify to the board that the financial statements are free of material misstatements. Going forward the CFO, if he/she is appointed, will have to attest financial statements, and the requirement will apply to both listed and non-listed companies.
4. The Companies Act, 2013 requires explanations or comments in the board's report on every qualification, reservation, adverse remark or disclaimer made by the auditor and by the company secretary in their reports. It appears that such explanations/comments are required only for each qualification, reservation, adverse remark or disclaimer of opinion. Matter of emphasis (MOE) included in the auditor's report does not fall in either of these categories. Hence, board comment/explanation may not be required for the MOE.
5. The Companies Act, 2013 requires listed companies to disclose the ratio of the remuneration of each Director to the median employee's remuneration with a view to bring differences between director remuneration and average employee remuneration to the public domain.

Hopefully, the exact nature of disclosures and the definition of remuneration will be covered in the rules.

Rights of member to copies of audited financial statements

Overview of significant changes

The Companies Act, 2013 will introduce the following key changes:

1. As is the case with the existing Companies Act, 1956 the Companies Act, 2013 also requires that a copy of financial statements, along with auditor's report and every other document required by law to be laid before the general meeting, will be sent to every member, trustee for debenture holders and other entitled persons, not less than 21 days before the date of the meeting. Considering the requirement to prepare CFS, the Companies Act, 2013 requires CFS also to be circulated.
2. Like the existing Companies Act, 1956 the Companies Act, 2013 also allows listed companies to circulate a statement containing the salient features of above documents in the prescribed form (known as AFS).
3. Under the Companies Act, 2013, the Central Government may prescribe the manner of circulation of financial statements for companies with such net worth and turnover as may be prescribed. Such provision does not exist under the Companies Act, 1956.
4. Currently, the listing agreement requires all listed companies to maintain a functional website containing basic information about the company, including financial information. However, it does not specifically require companies to place complete financial statements on the website. The Companies Act, 2013 will require a listed company to place its financial statements, including CFS, if any, and all other documents required to be attached thereto, on its website.
5. Every company (including unlisted companies) with one or more subsidiaries will
 - (a) Place separate audited accounts in respect of each of its subsidiary on its website, if any
 - (b) Provide a copy of separate audited financial statements in respect of each of its subsidiary, to a shareholder who asks for it.

Impact analysis

1. The Companies Act, 2013 does not mandate unlisted companies to have their website. Rather, they are required to place financial statements of subsidiaries on the website, if they have one. The Companies Act, 2013, however, does not mandate unlisted companies to place their own SFS or CFS on the website, even if they have one. Many companies may choose to do so on their own.
2. The Companies Act, 2013 requires companies with one or more subsidiaries to place audited financial statements of each subsidiary on its website, if any. It also requires companies to provide a copy of audited financial statements of each subsidiary to any shareholder who asks for it. The language used in the Companies Act, 2013 indicates that it may be mandatory for a company to have financial statements of all of its subsidiaries audited for this purpose, even if there is no other requirement to have subsidiary financial statements audited. For example, this may often be the case for companies in foreign jurisdictions that do not require an audit of financial statements, in accordance with the law of those jurisdictions.



Re-opening/revision of accounts

Overview of significant changes

1. Currently, the MCA circular allows a company to reopen and revise its accounts after their adoption in the AGM and filing with the registrar to comply with technical requirements of any other law to achieve the objective of exhibiting a true and fair view. The revised annual accounts are required to be adopted either in the EGM or in the subsequent AGM and filed with the registrar. The Companies Act, 2013 contains separate provisions relating to:

- (a) Re-opening of accounts on the court/Tribunal's order
- (b) Voluntary revision of financial statements or board's report

Re-opening of accounts on the court/Tribunal's order

2. On an application made by the Central Government, the Income-tax authorities, the SEBI, any other statutory/regulatory body or any person concerned, the Tribunal/court may pass an order to the effect that:
 - (i) The relevant earlier accounts were prepared in a fraudulent manner, or
 - (ii) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements
3. If the Tribunal/court issues the above order, a company will need to re-open its books of account and recast its financial statements.

Voluntary revision of financial statements or board's report

4. If it appears to directors that financial statements/board's report do not comply with the relevant Companies Act, 2013 requirements, the company may revise financial statements/board report in respect of any of the three preceding financial years. For revision, a company will need to obtain prior approval of the Tribunal.
5. The Tribunal, before passing the order for revision, will give notice to the Central Government and the Income-tax authorities and consider their representations, if any.
6. Detailed reasons for revision of such financial statement/board's report will be disclosed in the board's report for the relevant financial year in which such revision is being made.

7. If copies of financial statements/report have been sent to members, delivered to the registrar or laid before the general meeting, revisions must be restricted to corrections arising from non-compliances stated at 4 above and consequential changes.
8. A company will not revise its financial statements/ board's report more than once in a year.
9. The Central Government may make further rules as to the application of these requirements.

Impact analysis

1. While the Companies Act, 2013 sets out a three-year time limit for voluntary revision of financial statements/board report, no such time limit has been prescribed for re-opening of accounts due to the court/Tribunal's order.
2. Revision/reopening of financial statements for a period earlier than immediately preceding financial year may impact financial statements for subsequent years also.
3. Many merger, amalgamation and reconstruction schemes approved by the court contain an appointed date which is earlier than the beginning of the current financial year. It seems likely that in these cases, a company may be able to voluntarily revise its financial statements for earlier periods after taking prior approval of the Tribunal, to give effect to the court scheme from the appointed date.
4. In case of a voluntary change in the accounting policy, error and reclassification, Ind-AS requires that comparative amount appearing in the current period financial statements should be restated. The ICAI has recently issued an ED of the revised AS 5 *Accounting Policies, Changes in Accounting Estimates and Errors* to replace the notified AS 5 *Net Profit or Loss for the Period, Prior Items and Changes in Accounting Policies*. The said ED contains proposals that are similar to Ind-AS.

One may argue that restatement of comparative amount appearing in the current period financial statements tantamount to revision/re-opening of accounts for earlier periods. If so, a company may have to follow the cumbersome procedure prescribed for voluntary revision, particularly in the case of correction of errors.

Preparation of consolidated financial statements

Overview of significant changes

1. Currently, only clause 32 of the listing agreement mandates listed companies to publish CFS. Neither the existing Companies Act, 1956 nor AS 21 requires other companies to prepare CFS. Under the Companies Act, 2013, a company with one or more subsidiaries will, in addition to SFS, prepare CFS.
2. CFS will be prepared in the same form and manner as SFS of the parent entity.
3. The requirements concerning preparation, adoption and audit will, *mutatis mutandis*, apply to CFS.
4. For this requirement, the word “subsidiary” includes associate company and joint venture.
5. Schedule III of the Companies Act, 2013, which lays down the format for preparation of financial statements, contains the following general instructions for preparation of CFS:
 - (i) Where a company is required to prepare CFS, the company will *mutatis mutandis* follow the requirements of this Schedule.
 - (ii) Profit or loss attributable to “minority interest” and to owners of the parent in the statement of profit and loss will be presented as allocation for the period. “Minority interests” in the balance sheet will be presented within equity separately from the equity of the owners of the parent.
 - (iii) A statement containing information such as share in profit/loss and net assets of each subsidiary, associate and joint ventures will be presented as additional information. Currently, the MCA circular requires information, such as, capital, reserves, total assets and liabilities, details of investment, turnover and profit before and after taxation, to be disclosed for subsidiaries only.
 - (iv) A company will disclose the list of subsidiaries or associates or joint ventures, which have not been consolidated along with the reasons for non consolidation.

Impact analysis

1. All companies, including unlisted and private companies, with subsidiaries will need to prepare CFS. They need to gear up their financial reporting process for the same.
2. For all companies, CFS should comply with notified AS. This will impact companies that are currently preparing CFS only according to IFRS, based on option given in the listing agreement (SEBI discussion paper on clause 41 proposes to remove this option). Those companies will have to mandatorily prepare Indian GAAP CFS, and may choose to continue preparing IFRS CFS on a voluntary basis or stop preparing the same.
3. A company may need to give all disclosures required by Schedule III to the Companies Act, 2013, including statutory information, in the CFS. It may be argued that AS 21 (explanation to paragraph 6) had given exemption from disclosure of statutory information because the existing Companies Act, 1956 did not mandate preparation of CFS. With the enactment of the Companies Act, 2013, this position is likely to change. Also, the exemption in AS 21 may not override Schedule III because there is no prohibition on disclosure of additional information and the two requirements can co-exist.

The collection of statutory information for foreign subsidiaries is likely to be challenging and companies need to gear-up their system for the same.
4. Restrictions regarding reopening/revision of financial statements, after adoption at AGM, will apply to CFS also.
5. Unlike IAS 27, the Companies Act, 2013 does not exempt an intermediate unlisted parent from preparing CFS. Preparation of CFS at each intermediate parent level is likely to increase compliance cost. This may be one area where the MCA may consider providing relaxation to the intermediate parent under the rules.
6. The explanation, which states that “the word subsidiary includes associate company and joint venture,” is not clear and may give rise to differing interpretations. It is not clear whether a company needs to prepare CFS when it has no subsidiary but has an associate or joint venture. To ensure consistency, it may be appropriate for the ICAI and MCA to provide an appropriate clarification on this matter.

Control vs. subsidiary



Overview of significant changes

1. The existing Companies Act, 1956 does not define the term "control." It explains the meaning of terms "holding company" and "subsidiary" as below.

A company will be deemed to be a subsidiary of another company if, but only if:

- (a) The other company controls the composition of its board of directors, or
 - (b) The other company:
 - (i) Where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company,
 - (ii) Where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital, or
 - (c) The first-mentioned company is a subsidiary of any company, which is the other's subsidiary.
2. Notified AS 21 defines the terms "control" and "subsidiary" as below.

"Control":

- (a) The ownership, directly or indirectly through subsidiary(ies), of more than one-half of the voting power of an enterprise, or
- (b) Control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise so as to obtain economic benefits from its activities."

"A subsidiary is an enterprise that is controlled by another enterprise (known as the parent)."

3. The Companies Act, 2013 defines the terms "subsidiary" and "control" as below.

"Subsidiary company' or 'subsidiary,' in relation to any other company (that is to say the holding company), means a company in which the holding company:

- (i) Controls the composition of the board of directors, or
- (ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies."

"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."

Impact analysis

1. The Companies Act, 2013 contains a definition of the term "control," which is broader than the definition given in notified AS 21. In accordance with definition in notified AS 21, only board control and control over voting rights is considered. However, the definition given in the Companies Act, 2013 suggests that a company may control other company through other mechanism also, say, management rights or voting agreements. This may require many more companies to be consolidated, though they are not subsidiaries under AS 21.

Also, the definition of the term "control" given in section 2(27) of the Companies Act, 2013 is broader than the notion of "control" envisaged in the definition of the term "subsidiary" given in the section 2(87) of the Companies Act, 2013.

To avoid differing interpretations and ensure consistency, it may be appropriate for the ICAI and MCA to clarify that definitions/requirements in the Companies Act, 2013 are relevant for legal/regulatory purposes. For accounting purposes, including the preparation of CFS, definitions/requirements of notified AS should be followed.



Definition of the term "associate"

2. Notified AS 21 refers to control over more than 50% voting rights for identifying an entity as subsidiary. In contrast, the definition of "subsidiary" in the Companies Act, 2013 refers to control over more than one-half of total share capital, without differentiating between voting and non-voting shares. Hence, an issue is likely to arise where a company has issued shares with differential voting rights. To illustrate, let us assume that A Limited has the following share ownership in B Limited:

A Limited controls 55% equity share capital of B Limited, i.e., shares with voting rights. However, on inclusion of

Particulars	Equity shares (voting rights)	Preference shares (non-voting)	Total
Total share capital of B Limited (nos.)	1,000,000	600,000	1,600,000
Shares owned by A Limited	550,000	100,000	650,000
% ownership and control	55%	16.67%	40.625%

non-voting preference shares, this holding comes down to 40.625%. In this case, B Limited is a subsidiary of A Limited for the purposes of consolidation in accordance with AS 21. However, based on definition of "subsidiary," one can argue that A Limited does not control one-half share capital of B as required by the Companies Act, 2013.

Overview of significant changes

The existing Companies Act, 1956 does not define the term "associate" or "associate company." Notified AS 23 defines the term "associate" as "an enterprise in which the investor has significant influence and which is neither a subsidiary nor a joint venture of the investor." AS 23 defines the term "significant influence" as "the power to participate in the financial/operating policy decisions of the investee but not control over those policies."

The Companies Act, 2013 defines the term "associate company" as below:

"Associate company, 'in relation to another company, means a company in which the 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."

The explanation to the definition states that for the purposes of this clause, "significant influence" means control of at least 20% of total share capital, or of business decisions under an agreement.

Impact analysis

1. Apparently, the definition of the term "associate" given in the Companies Act, 2013 is not the same as that notified in AS 23. This may potentially result in more or less entities being identified as associates under the Companies Act, 2013 vis-à-vis those identified under AS 23. However, the exact impact will vary for each company and depend on how differences, e.g., the following, are resolved:
 - (a) In accordance with the explanation in the Companies Act, 2013, the term "significant influence" means control over 20% of business decisions. Generally, control over business decisions is an indicator of subsidiary, rather than associate.
 - (b) In accordance with notified AS 23, there is a rebuttable presumption that holding of 20% or more of voting power of investee constitutes significant influence. However, in certain circumstances, a company may demonstrate that 20% share ownership does not constitute significant influence. The Companies Act, 2013 does not recognize such possibility.

Depreciation

- (c) AS 23, Ind-AS and IFRS recognize that even if a company does not hold 20% shares in other company, significant influence can be evidenced in other ways as well, e.g., through representation on board of directors or through material transactions with investor. This aspect is not covered in the definition in the Companies Act, 2013.
2. In accordance with the definition of the term “associate company” in the Companies Act, 2013, the associate also “includes a joint venture company.” Under the notified AS, joint ventures are not included in “associates”; rather, they are a separate category of investment/relation. Hence, the words used in the definition of “associate company” are not clear and may give rise to differing views. One argument is that a company needs to apply the equity method to both its investments in associates and joint ventures in CFS. An alternative argument is that a company will consider associates and joint ventures for appropriate accounting in CFS. The appropriate accounting, such as, application of the equity method or proportionate consolidation, will be decided as per the notified AS.

To avoid differing interpretations, it may be appropriate for the MCA to clarify that definitions in the Companies Act, 2013 are relevant for legal/ regulatory purposes. For accounting including preparation of CFS, definitions as per the notified AS should be used.



Overview of significant changes

1. The existing Companies Act, 1956 requires depreciation to be provided on each depreciable asset so as to write-off 95% of its original cost over the specified period. The remaining 5% is treated as residual value. Further, Schedule XIV to the Companies Act, 1956 prescribes SLM and WDV rates at which depreciation on various asset need to be provided. Other key aspects impacting depreciation under the existing Companies Act, 1956 are as below.
 - (a) In accordance with AS 6, depreciation rates prescribed under Schedule XIV are minimum. If useful life of an asset is shorter than that envisaged under Schedule XIV, depreciation at higher rate needs to be provided.
 - (b) The MCA has issued a General Circular dated 31 May 2011, which states that for companies engaged in generation/supply of electricity, rates of depreciation and methodology notified under the Electricity Act will prevail over the Schedule XIV to the Companies Act, 1956.
 - (c) The MCA amended Schedule XIV in April 2012. The amendment prescribes amortization rate and method for intangible assets (toll roads) created under BOT, BOOT or any other form of PPP route (collectively, referred to as “BOT assets”). In accordance with the amendment, such intangible assets will be amortized using amortization rate arrived at by dividing actual revenue for the year with total estimated revenue.
 - (d) Schedule XIV provides separate depreciation rates for double shift and triple shift use of assets.
 - (e) According to a Circular issued by the MCA, unit of production (UOP) method is not allowed.
 - (f) Assets whose actual cost does not exceed ₹5 thousand are depreciated @ 100%.
 - (g) The ICAI *Guidance Note on Treatment of Reserve Created on Revaluation of Fixed Assets* clarifies that for statutory purposes, such as, dividends and managerial remuneration, only depreciation based on historical cost of the fixed assets needs to be provided out of current profits of the company. Accordingly, the Guidance Note allows an amount equivalent to the additional depreciation on account of the upward revaluation of fixed assets to be transferred to the statement of profit and loss from the revaluation reserve.

2. The key requirements of the Companies Act, 2013 (particularly, Schedule II) are listed below.
- (a) No separate depreciation rate is prescribed for intangible assets. Rather, the same will be governed by notified AS.
 - (b) Depreciation is systematic allocation of the depreciable amount of an asset over its useful life.
 - (c) The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value.
 - (d) The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.
 - (e) All companies will be divided into the following three classes to decide application of depreciation rates:
 - (i) Class of companies as may be prescribed and whose financial statements comply with the accounting standards prescribed for such class of companies –
 These companies will typically use useful lives and residual values prescribed in the schedule II. However, these companies will be permitted to adopt a different useful life or residual value for their assets, provided they disclose justification for the same.
 - (ii) Class of companies or class of assets where useful lives or residual value are prescribed by a regulatory authority constituted under an act of the Parliament or by the Central Government –
 These companies will use depreciation rates or useful lives and residual values prescribed by the relevant authority for depreciation purposes.
 - (iii) Other companies –
 For these companies, the useful life of an asset will not be longer than the useful life and the residual value will not be higher than that prescribed in the proposed Schedule.
 - (f) Useful life specified in the Schedule II to the Companies Act, 2013 is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part will be determined separately.
 - (g) No separate rates are prescribed for extra shift depreciation. For the period of time an asset is used in double shift, depreciation will increase by 50% and by 100% in case of triple shift working.
 - (h) There is no specific requirement to charge 100% depreciation on assets whose actual cost does not exceed ₹5 thousand.
 - (i) Useful lives of fixed assets prescribed under the Companies Act, 2013 are different than those envisaged under Schedule XIV. For instance, the useful life of “buildings other than factory buildings and other than RCC frame structure” prescribed under Schedule XIV is approximately 58 years, whereas the same under the Companies Act, 2013 will be 30 years. The useful life for general furniture and fittings will be reduced from 15 to 10 years. Separate useful lives have been introduced for many items of plant and machinery used in specific industries, e.g., useful lives have been prescribed for machinery used in the telecommunications business, manufacture of steel and non-ferrous metals, which are not currently laid down in Schedule XIV.
 - (j) From the date of the Companies Act, 2013 coming into effect, the carrying amount of the asset as on that date:
 - (a) Will be depreciated over the remaining useful life of the asset according to the Companies Act, 2013
 - (b) After retaining the residual value, will be recognized in the opening retained earnings where the remaining useful life is nil



Impact analysis

1. The useful life of an asset can be the number of production or similar units expected to be obtained from the asset. This indicates that a company may be able to use UOP method for depreciation, which is currently prohibited for assets covered under Schedule XIV.
2. Companies, covered under class (i) above, will be able to use different useful lives or residual values, if they have justification for the same. Although it appears that this provision is aimed at ensuring compliance with Ind-AS 16 for such companies, if the MCA does not prescribe class (i) companies immediately, these companies would fall under class (iii) and may be forced to strictly apply useful lives as per the schedule.
3. Companies will need to identify and depreciate significant components with different useful lives separately. The component approach is already allowed under current AS 10, paragraph 8.3. Under AS 10, there seems to be a choice in this matter; however, the Companies Act, 2013 requires application of component accounting mandatorily when relevant and material.
4. The application of component accounting is likely to cause significant change in accounting for replacement costs. Currently, companies need to expense such costs in the year of incurrence. Under the component accounting, companies will capitalize these costs, with consequent expensing of net carrying value of the replaced part.
5. It is not clear how component accounting will work for class (iii) companies. Since depreciation for the principal asset under the Schedule is meant to be the minimum amount, a component can certainly have a shorter life than the principal asset. However, it may not be possible for a component to have a longer life than what is prescribed under the Schedule for the principal asset.
6. Under the Schedule, depreciation is provided on historical cost or the amount substituted for the historical cost. Therefore, in case of revaluation, depreciation will be based on the revalued amount. Consequently, the ICAI guidance may not apply and full depreciation on the revalued amount is expected to have significant negative impact on the statement of profit and loss. In such a case, the amount standing to the credit of revaluation reserve may be transferred directly to the general reserve. A company may transfer whole of the reserve when the asset is sold or disposed of. Alternatively, it may transfer proportionate amount as the asset is depreciated.
7. Overall, many companies may need to charge higher depreciation in the P&L because of pruning of useful lives as compared to the earlier specified rates. However, in some cases, the impact will be lower depreciation, i.e., when the useful lives are much longer compared to the earlier specified rates, such as metal pot line, bauxite crushing and grinding section used in manufacture of non-ferrous metals.
8. The recent amendment to the existing Schedule XIV of the Companies Act, 1956 regarding depreciation of BOT assets is not contained in the Companies Act, 2013. Rather, it is stated that depreciation of all intangible assets will be according to notified AS. In context of IFRS, the IFRIC and IASB have already concluded that revenue-based amortization is not appropriate, because it reflects a pattern of the future economic benefits being generated from the asset, rather than a pattern of consumption of the future economic benefits embodied in the asset. However, no such clarification has been provided in the context of notified AS. Consequently, it seems unclear at this stage whether infrastructure companies will be entitled to use revenue-based amortization under AS 26 after the enactment of the Companies Act, 2013.

Utilization of securities premium

9. The transitional provision requiring remaining carrying value to be depreciated over remaining useful life can provide very harsh outcomes. For example, consider that the remaining carrying value is 60% of the original cost, whereas the remaining useful life is one year. In this scenario the entire 60% will be depreciated in one year. However, if in this example, the remaining useful life was nil, the entire 60% would be charged to retained earnings. In this case, the remaining carrying value will never get charged to the P&L.

To illustrate, it may be noted that the Companies Act, 2013 has reduced useful life of the "buildings other than factory buildings and other than RCC frame structure" from 58 to 30 years. A company was depreciating such building in accordance with the useful life envisaged in the Schedule XIV to the Companies Act, 1956. If the company has already used building for 30 or more years, it will charge the remaining carrying value to the retained earnings, without routing it through P&L. However, if the company has previously used building for less than 30 years, say, 29 years, it will need to depreciate the remaining carrying value over the remaining useful life (which in this case happens to be one year period) and charge to P&L.

10. If the Companies Act, 2013 is enacted and effective before 31 March 2014 or before finalization of financial statements for the year ended 31 March 2014, companies may have to apply the revised depreciation for the year ended 31 March 2014. This will have a significant impact on financial statements and may give rise to numerous implementation challenges. The MCA should ensure that the Schedule is implemented with at least one year transition period.

Overview of significant changes

1. Both the existing Companies Act, 1956 and the Companies Act, 2013 require that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the premium received will be transferred to the "securities premium account." The existing Companies Act, 1956 permits the same utilization of securities premium to all companies. Under the Companies Act, 2013, utilization of securities premium will be restricted for certain class of companies as may be prescribed and whose financial statement need to comply with the accounting standards prescribed for such class (referred to as "prescribed class" in this section). Given below is the comparative analysis:

Purposes	Companies Act, 1956	Companies Act, 2013	
		Prescribed class	Others
Issue of fully paid equity shares as bonus shares	Yes	Yes	Yes
Issue of fully paid preference shares as bonus shares	Yes	No	Yes
Writing off preliminary expenses of the company	Yes	No	Yes
Writing off equity share issue expenses	Yes	Yes	Yes
Writing off preference share issue expenses	Yes	No	Yes
Writing off debenture issue expenses	Yes	No	Yes
Providing for premium payable on redemption of preference shares/debentures	Yes	No	Yes
Buy-back of its own shares or other securities	Yes (section 77A)	Yes	Yes



Declaration and payment of dividend

2. The Companies Act, 2013 also states that prescribed class of companies will provide for the premium, if any, payable on redemption of preference shares out of their profits, before the shares are redeemed.
3. For prescribed class of companies, the premium, if any, payable on redemption of any preference shares issued on or before the commencement of the Companies Act, 2013 will be provided for either out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

Impact analysis

1. It appears that the Central Government has made changes regarding utilization of securities premium to align accounting with Ind-AS. Many companies use the securities premium account to write off redemption premium relating to debentures, preference shares and foreign currency convertible bonds (FCCB). Therefore, the impact of this provision will be felt from the date the companies are notified as a prescribed class.
2. Except preference shares, no transition provisions have been prescribed for companies impacted by the change. Let us assume that a company covered under the prescribed class has issued debentures/FCCB before the enactment of the Companies Act, 2013. The debentures/FCCBs are outstanding at the enactment date and are redeemable at premium after the enactment. How should the company treat premium payable on redemption? Will it make any difference if the company has already created a provision toward premium payable on redemption? To avoid hardship to companies and ensure parity with preference shares, the MCA may consider allowing premium payable on the redemption of debentures/FCCBs issued before the enactment of the new law against securities premium.
3. The Companies Act, 2013 requires the prescribed class of companies to provide for the premium, if any, payable on the redemption of preference shares out of their profits. Two arguments seem possible on this matter. One argument is that only profit-making companies can pay premium on the redemption of preference shares. Since preference shares are treated as part of "share capital," the premium will be charged to surplus balance in P&L. The counter argument is that the Companies Act, 2013 requires premium to be charged to the statement of P&L and, therefore, it will be treated as an expense. To ensure consistency, it may be appropriate for the MCA to provide clarity on this matter.

Overview of significant changes

1. As in the existing Companies Act, 1956 the Companies Act, 2013 also states that a company will not declare/pay dividend for any financial year except:
 - (a) Out of profits of the company for that year after depreciation
 - (b) Out of accumulated profits for any previous financial year(s) arrived at after providing for depreciation
 - (c) Out of both
 - (d) Out of money provided by Central Government/state government for payment of dividend in pursuance of any guarantee given by them.
2. A proviso in the existing Companies Act, 1956 states that before declaring any dividend "if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation or against both." The Companies Act, 2013 does not contain any such proviso.
3. Under the Companies Act, 1956 the Central Government is empowered to allow a company to declare/pay dividend for any financial year out of the profits arrived at without providing for depreciation, if the Government believes that it is necessary to do so in public interest. However, such power does not exist under the Companies Act, 2013.
4. Currently, a company needs to transfer the following percentage of its profit to reserves if it declares dividend at a rate exceeding 10%. However, it is allowed to transfer an increased amount to reserves, subject to compliance with the prescribed rules.

Rate of dividend	Transfer to reserve - % of current profits
Not exceeding 10%	Nil
10.0% to 12.5%	2.5%
12.5% to 15.0%	5.0%
15.0% to 20.0%	7.5%
Exceeding 20.0%	10.0%

Issue of bonus shares

The Companies Act, 2013 states that a company may, before declaration of dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to its reserves. Hence, the matter has now been left to the discretion of respective companies.

5. The existing Companies Act, 1956 states that the board may declare interim dividend and that the requirements concerning final dividend, to the extent relevant, will apply to interim dividend also. The Companies Act, 2013 contains the following specific requirements for interim dividend:
 - (a) Interim dividend may be declared during any financial year out of the surplus in the P&L and out of profits of the financial year in which such interim dividend is sought to be declared.
 - (b) If a company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend will not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
6. New rules are yet to be framed to declare dividends out of accumulated profits earned in earlier years and transferred to reserves.
7. Under the Companies Act, 2013, no dividend on equity shares can be declared if the company fails to comply with the provisions relating to acceptance and repayment of deposits.

Impact analysis

Unlike the existing Companies Act, 1956 the Companies Act, 2013 does not contain any requirement for recouping past losses/depreciation for the years in which the company incurred losses. Therefore, theoretically, a company may not be required to recoup past losses before declaring dividend out of the current year's P&L. As this may not be the intention,

the MCA should provide appropriate clarification in the rules. However, it may be noted that a sub-ordinate legislation cannot override the main legislation.

Overview of significant changes

The existing Companies Act, 1956 does not contain explicit requirements on issue of bonus shares. However, regulations 96 and 97 of Table A of the Companies Act, 1956 deal with the capitalization of profits and reserves. These two regulations do not specifically prohibit capitalization of revaluation reserve.

In the case of listed entities, the earlier SEBI DIP Guidelines and now the SEBI ICDR regulations requires that bonus issue will be made out of free reserves built out of genuine profits or share premium collected in cash only and prohibits capitalization of revaluation reserves. The Guidance Note on Availability of Revaluation Reserve for Issue of Bonus Shares issued by the ICAI states that a company is not permitted to issue bonus shares out of reserves created by revaluation of its assets. Similar requirements are contained in AS 10 as well. However, the Supreme Court has held in *Bhagwati Developers v Peerless General Finance & Investment Co. (2005) 62 SCL 574* that an unlisted company can issue bonus shares out of revaluation reserve.

The Companies Act, 2013 states that a company can issue fully paid up bonus shares to its members out of free reserves, securities premium and capital redemption reserve. However, a company cannot issue bonus shares by capitalizing revaluation reserve.

The Companies Act, 2013 also imposes certain pre-conditions for issuance of bonus shares, such as:

- (i) Articles of association should authorize the bonus issue
- (ii) On the recommendation of the board the general body meeting should authorize the issue of bonus shares
- (iii) There should be no default in payment of statutory dues to employees
- (iv) There should be no default in payment of principal and interest on fixed deposits or debt securities issue
- (v) Partly paid shares outstanding on the date of allotment should be fully paid-up prior to issue of bonus shares
- (vi) Bonus shares should not be issued in lieu of dividend
- (vii) Any additional conditions as may be prescribed

Free reserves

Overview of significant changes

The existing Companies Act, 1956 does not define the term “free reserves.” However, in the definition of the term “net worth,” free reserves are explained as below.

“For the purposes of this clause, ‘free reserves’ means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation.”

In accordance with the Companies Act, 2013, the term “free reserves” means “such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that

- (a) Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (b) Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in P&L on measurement of the asset or the liability at fair value,

Shall not be treated as free reserves.”

Impact analysis

1. The definition of the term “free reserves” in the Companies Act, 2013 appears to be based on the principle that a company should not include unrealized gains; however, it will provide for expected losses while computing free reserves. Hence, it seeks to exclude only unrealized/notional gains and does not contain any exclusion for unrealized losses.
2. The first proviso may give rise to interpretation issues for companies. For example, it is not clear whether a company will also treat foreign exchange gain arising on restatement of a monetary asset/liability as an unrealized gain. One view is that this proviso is limited to gains that are capital in nature and/or recognized directly in the balance sheet, such as those arising from revaluation of fixed assets. Hence, it should not apply to foreign exchange gain recognized in P&L. The contrary view is that the proviso requires all unrealized gains to be adjusted. Thus, foreign exchange gains on open transactions have to be adjusted for the computation of free reserves. MCA should clarify this issue.

Registered valuers

Overview of significant changes

1. The Companies Act, 2013 has introduced the concept of valuation by a registered valuer. If a valuation is required to be made in respect of any property, stocks, shares, debentures, securities, goodwill or any other asset (referred to as the assets) or net worth of a company or its liabilities under the Companies Act, 2013, it will be valued by a person with such qualifications and experience and registered as a valuer, in a manner as may be prescribed. The audit committee, and in its absence the board, will appoint the registered valuer and decide the terms and conditions of appointment.
2. In case of non-cash transaction involving directors, etc. the notice for approval of the resolution by the company or holding company in general meeting will include the value of the assets calculated by a registered valuer.
3. The registered valuer so appointed will
 - (a) Make an impartial, true and fair valuation
 - (b) Exercise due diligence
 - (c) Make valuation in accordance with rules as may be prescribed
 - (d) Not undertake any valuation of any asset(s) in which he has any direct or indirect interest or becomes so interested at any time during or after the valuation of assets

Impact analysis

1. The Companies Act, 2013 requires registered valuer to be involved only for valuation required under the Companies Act, 2013. There is no requirement for involving registered valuer in other cases. In case, certain valuations are to be used for dual purposes, companies will likely need to involve registered valuers. Otherwise, the same asset may get valued differently for different purposes.
2. Since notified AS will also be part of the Companies Act, 2013, it appears that this requirement will also apply to valuations required under the same. However, it is not absolutely clear whether this requirement will apply to actuarial valuation required under AS 15.
3. Some companies have in-house capabilities to perform certain fair valuation, for example, fair valuation of real estate. In these cases, the Companies Act, 2013 will still require involvement of registered valuers.





Appointment of auditors

Overview of significant changes

1. Currently, the auditor is appointed on an annual basis and holds office only till conclusion of the next AGM. Under the Companies Act, 2013, a company will appoint auditor at its first AGM. The auditor so appointed will hold its office till the conclusion of the sixth AGM.
2. Though the auditor will be appointed for five years, the matter relating to such appointment will be placed for ratification at each AGM.
3. Before appointing/re-appointing an auditor, a company will obtain the following:
 - (a) Written consent of the auditor to such appointment, and
 - (b) A certificate from the auditor that the appointment, if made, will be in accordance with the conditions as may be prescribed. The certificate will also indicate whether the auditor satisfies eligible criteria for such appointment.

Audit and Auditors

Rotation of auditors

4. If no auditor is appointed/re-appointed at the AGM, the existing auditor will continue to be the auditor of the company.
5. Currently, the listing agreement requires that the Audit Committee constituted by a listed company should make recommendation to the board for appointment/re-appointment/replacement of statutory auditors. For non-listed entities, no such requirement is applicable. Under the Companies Act, 2013, all companies, which are required to constitute an Audit Committee, will need to appoint an auditor after taking into account the recommendations of such committee.

Impact analysis

1. The Companies Act, 1956 and the Companies Act, 2013 require an approval from the Central Government to remove an auditor from his office before expiry of term. Since under the Companies Act, 2013, an auditor will be appointed for a five-year term, companies will need to comply with the onerous requirement of taking an approval from the Central Government to remove the auditor during this term. Also they will need to pass a special resolution at the general meeting. This requires companies to consider long-term perspective while appointing an auditor.
2. The prescribed class of non-listed companies, which are required to constitute Audit Committee, will also need to consider recommendations of the Committee for appointing auditors.

Overview of significant changes

1. Listed companies and companies belonging to prescribed class of companies will not appoint or re-appoint the auditor for:
 - (a) More than two terms of five consecutive years, if the auditor is an audit firm
 - (b) More than one term of five consecutive years if the auditor is an individual
2. The auditor, who has completed his term, will not be eligible for re-appointment as auditor in the same company for five years from completion of the term. This restriction will also apply to the audit firm, which has common partner(s) with the outgoing audit firm at the time of appointment.
3. Every company, covered by these requirements, will need to comply with the above requirements within three years from the date of commencement of new law.
4. The revised Guidelines of Network, issued by the ICAI, require that where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.



5. In addition to rotation of auditor, members of a company may decide that:
 - (a) Auditing partner and his team will be rotated at specific intervals, or
 - (b) The audit will be conducted by more than one auditor (joint auditors).

The RBI requires all banks, including banking companies, to rotate auditors every four years. The IRDA requires all insurance companies to rotate auditors every five years. After completing the term, two years cooling off period is required. Other than that, currently, neither the Companies Act, 1956 nor other laws require Indian companies to rotate their auditors.

Impact analysis

1. All listed companies, particularly companies, which have long-term relationship with auditors, need to gear-up for rotation. This will help companies to work closely with proposed auditors and ensure compliance with strict independence requirements upfront. Due to ICAI guidelines, companies cannot appoint a new firm as auditor if it is part of the same network as retiring firm.
2. In the first year of audit rotation, senior management of the company will likely need to spend more time with the new auditor so as to familiarize the new auditor with their systems and processes.
3. Many global companies have listed subsidiaries in India. Typically, they prefer firms, which are part of common network, as their global auditors. This is expected to create some challenging situations.
4. As a result of rotation, the learning curve experience available to previous auditors will not be available to the new auditors, who may have to understand the business of the company, its systems and processes, from scratch. Therefore, cost of audit is likely to increase both for companies and audit firm. Various global studies, including study conducted by the US General Accounting Office, demonstrate this.
5. In accordance with the Companies Act, 2013, a listed/prescribed company will not appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years. Companies will need to comply with this requirement within three years from the application of the new law. It is not clear as to how the years of service before enactment of new law will be considered for rotation. The following two views seem possible.

- (a) An audit firm may not hold office as an auditor of a listed company or of a company covered under prescribed class of companies for more than 10 years. However, companies have been given a three-year time frame to meet this requirement. If this view is accepted, an audit firm, which has already completed seven or more years of service, can continue to hold office for three more years. An audit firm, which has completed six years of service on the date of enactment, can continue to hold office for four more years.
- (b) In accordance with the Companies Act, 2013, an audit firm can have two maximum terms of five consecutive years each. Under the Companies Act, 1956 the company has appointed auditors for term of one year each. Hence, the same is not considered for deciding the auditor rotation. In other words, the rotation requirement will apply prospectively.

It may be appropriate if the MCA provides an appropriate clarification on this matter.

6. For banking companies, the RBI requires auditor rotation every four years. For insurance companies, the IRDA requires auditor rotation every five years. Since these are more stringent requirements, the same will prevail over the Companies Act, 2013.

Similarly, an option given in the Companies Act, 2013 may not override more stringent requirements prescribed by other regulators. For instance, under the Companies Act, 2013, members of a company can decide whether they wish to appoint joint auditor. However, IRDA mandates joint audit in case of insurance companies. In this case, IRDA requirement will prevail over the option given in the Companies Act, 2013.

7. The Companies Act, 2013 states that if no auditor is appointed/re-appointed at the AGM, the existing auditor will continue to be the auditor of the company. Apparently, this provision may not apply if an auditor has already completed its maximum tenure (5/10 years) as auditor. In such a case, it should be mandatory for the company to appoint a new auditor.

Independence/ prohibited services



Overview of significant changes

1. Under the Companies Act, 2013, an auditor will be allowed to provide only such other services to the company as are approved by its board or audit committee. However, the auditor is not allowed to render the following services either directly or indirectly to the company, its holding or subsidiary company:
 - ▶ 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
 - ▶ Management services
 - ▶ Any other kind of services as may be prescribed
2. In case of an audit firm, the above restrictions also apply to rendering of service by:
 - ▶ Audit firm itself
 - ▶ All of its partners
 - ▶ Its parent, subsidiary or associate entity
 - ▶ Any other entity in which the firm or any of its partner has significant influence/ control, or whose name/ trade mark/brand is used by the firm or any of its partners
3. If prohibited, non-audit services are being rendered to a company on or before the commencement of the Companies Act, 2013, the auditor will need to comply with the above restrictions before the end of the first financial year after the enactment of the Companies Act, 2013.
2. The Companies Act, 2013 does not make any distinction between PIEs and Non-PIEs or based on the size/materiality of the company being audited. Hence, the restrictions are likely to apply equally in all cases. This is at variance from independence requirement being followed in other parts of the world, including the US.
3. It is clear that the above restrictions will prohibit an auditor from rendering certain prescribed non audit services to the company and its holding or subsidiary company in India. What is not clear is whether the above restriction will apply to rendering of non-audit services by the auditor or its network firm wherever located to the auditee's holding company or subsidiary located outside of India. One may argue that the requirements of the Companies Act, 2013 cannot be extended to a jurisdiction beyond India. Hence, providing non-audit services to the auditee's holding company or subsidiary located outside of India either by the auditor or its network firm will not be prohibited.
4. The terms investment advisory services, management service, investment banking services have not been defined. Hopefully, these aspects may be covered either by the rules or ICAI Guidance.
5. According to ICAI rules, a member in practice shall be deemed to be guilty of professional misconduct, if he accepts appointment as a statutory auditor of PSU/ government companies/listed companies and other public companies with turnover of ₹50 crores or more in a year and accepts any other work from such undertakings on a remuneration, total of which exceeds the fees payable for carrying out the statutory audit of that undertaking. This is a separate requirement and will continue to apply even after the Companies Act, 2013 is enacted.

Impact analysis

1. Traditionally, companies have engaged auditors to provide a range of non-audit services. This is because an auditor, due to its continuous engagement with the company, is in a better position to provide these services.

Eligibility, qualification and disqualifications



Overview of significant changes

No.	Topic	Companies Act, 1956	Companies Act, 2013
Eligibility for appointment			
1.	Individual	Only if the person is a chartered accountant	Similar requirement.
2.	Firm	All the partners practicing in India should be qualified for appointment.	Majority partners practicing in India should be qualified for appointment.
3.	LLP	Not eligible for appointment	Eligible for appointment if it meets criteria similar to the firm.
Disqualifications for the appointment			
Both under the Companies Act, 1956 and the Companies Act, 2013, the following persons are not eligible for appointment as an auditor of the 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.			
1.	Holding of security	A person holding security in the company is not eligible for appointment.	A person will not be eligible for appointment if he himself, his relative (term not fully defined) or partner holds any security or interest in the company, its subsidiary, holding or associate company or subsidiary of such holding company. However, the relative may be allowed to hold security or interest in the company with face value not exceeding ₹1,000 or the amount as may be prescribed.
2.	Indebtedness/ guarantee/security	A person who is indebted to the company for an amount exceeding ₹1,000, or who has given any guarantee or provided any security in connection with third person indebtedness to the company for an amount exceeding ₹1,000 is not eligible for appointment.	A person will not be eligible for appointment if he himself, his relative or partner is indebted to the company, its subsidiary, holding or associate company, or subsidiary of such holding company in excess of such amount as may be prescribed. A similar disqualification has also been provided in case of guarantee given or security provided in connection with indebtedness of third person.
3.	Business relationship	No restrictions.	A person or firm will not be eligible for appointment, if it, directly or indirectly, has business relationship (of such nature as may be prescribed) with the company, its subsidiary, its holding, or associate company or subsidiary of such holding company or associate company.
4.	Relative's employment	No restrictions.	A person, whose relative is a director or is in the employment of the company as a director or KMP, will not be eligible for appointment.
5.	Full-time employment	A person who is in full time employment elsewhere is not eligible for appointment.	Similar requirement exists under the Companies Act, 2013 also.
6.	Limit on maximum number of companies	No company or its board will appoint/reappoint a person or firm as its auditor, if such person or firm, at the date of appointment, hold appointment as auditor of more than 20 companies. However, private companies are not included in the maximum cap of 20 companies.	A person or a partner of a firm will not be eligible for appointment/reappointment, if such person or partner at the date of appointment, holds appointment as auditor of more than 20 companies. Private companies are included in the maximum cap of 20 companies.
7.	Fraud	No restriction.	A person will not be eligible for appointment, if he 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.
8.	Provision of services other than audit service	Discussed elsewhere in this publication	Discussed elsewhere in this publication (refer section titled "Independence / prohibited services")

In addition, the Companies Act, 1956 contains a general requirement that a person will not qualify for appointment as auditor of a company if he is disqualified, by virtue of one or more of the above disqualifications, for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company, or would be so disqualified if the body corporate was a company.



Impact analysis

1. The Companies Act, 2013 prescribes significant additional restrictions on appointment of auditor. This will require both the company as well as auditor to track these aspects closely and exercise strict measures to avoid potential issues. For example, a person will not be eligible for appointment if his relative or partner is indebted to the company, its subsidiary, holding or associate company, or subsidiary of such holding company etc. or holds securities of those companies. If the government prescribes a long list of relations and any of these relatives inadvertently enter into a disqualifying transaction with the company, its subsidiary, holding or associate company, etc., it may require the auditor to vacate his/her office immediately. Any such situation can create significant practical difficulties for the company.

While prescribing covered relationship, the Central Government may like to consider the fact that a person may not be able to control/ influence other person if the other person is not financially dependent on him/her. Similarly, a person may be able to influence other persons who are financially dependent on him or her, even if they are not covered in specific list or relations. Consider an estranged relative, who is financially independent. He or she can buy shares in a company audited by the person to whom he is related and deliberately or inadvertently disqualify the person from being the auditor of the company. Hence, instead of listing specific relationship, the Central Government may explain that clause (iii) in definition of the term "relative" will mean "financially dependent person." "Financially dependent person" can be explained to include any other persons and/or their spouses who received more than half of their financial support for the most recent financial year from the concerned person."

2. The existing Act does not include private companies in the maximum limit of 20 companies per partner. However, the ICAI has fixed maximum limit that a person/ partner cannot audit more 30 companies, including private companies, per year. Under the new Companies Act, 2013, even private companies will be included in the maximum limit of 20 companies that may be audited by a partner. If the Companies Act, 2013 becomes enactment, it will prevail

over the ICAI requirement. This will significantly reduce the eligibility of a person to be appointed as auditor. A company should obtain certificate of compliance with this requirement from the proposed auditor, before agreeing to appoint the said person as auditor.

3. In the context of point 3 in the above table, it is very important as to which business relationships will be prohibited by the government. It is expected that normal or arms length business relationship will not be prohibited. If this is not done, it may create practical challenges, both for the company and the audit firm. For example, it would be unacceptable to prohibit an auditor from buying a soap that its client has produced from a super market or from using mobile services that its client is providing in normal course of business at arm's length price.
4. The restriction on number of audits applies with respect to companies audited. Thus stand-alone, consolidated financial statements, tax financial statements of a company will be treated as one audit.
5. The full impact of the provisions are not yet clear, as the rules are yet to be fully developed in many areas, such as, in defining the term relative or prohibited business relationships or the amount of indebtedness, etc. As suggested earlier, the Central Government may explain that clause (iii) in definition of the term "relative" will mean "financially dependent person."

Removal/ resignation of the auditor

Overview of significant changes

1. A company can remove the auditor before expiry of his five-year term only by passing special resolution at an AGM and after obtaining prior approval from the Central Government.
2. If an auditor resigns from the company, it will file, within a period of 30 days from the date of resignation, a statement with the company and the registrar, indicating reasons and other facts regarding resignation. No such requirement exists under the current Companies Act, 1956.
3. The Tribunal is likely to direct a company to change its auditors, if it is satisfied that the auditor has, directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud. The Tribunal may pass such order either *suo moto* or on an application made to it by the Central Government or by any person concerned. The existing Companies Act, 1956 does not contain this provision

Impact analysis

The intention of the regulator seems to be to bring more transparency and accountability both for companies and auditors. Though there is no change in the requirement for the Central Government approval to remove an auditor before expiry of the term, the auditor will be appointed for a term of five consecutive years under the new law. Hence, a company will not be able to change its auditors for five years, without getting the Central Government approval.

Reporting responsibilities

Overview of significant changes

1. Considering specific requirement to prepare and audit CFS, the Companies Act, 2013 requires that the auditor of a holding company will have the right of access to the records of all its subsidiaries in so far as it relates to consolidation requirements.
2. The auditor's report will include the following key additional matters (compared to current reporting requirements)::
 - (a) Observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company. Also, such observations/ comments will be read in the AGM and can be inspected by any member. Currently, the Companies Act, 1956 requires the observations or comments of the auditors with any adverse effect on the functioning of the company to be given in bold/italic in the audit report.
 - (b) Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls. Currently, the requirement under the CARO to report on internal control matters is limited. It requires an auditor to comment on whether the company has an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services.

Section 134(5) deals with directors' responsibility statement and explains the term "internal financial control." It explains the term "internal financial control" as below:

"For the purposes of this clause, the term 'internal financial controls' means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information."



3. In the existing Companies Act, 1956 auditors are required to report on fraud in the CARO report. The Companies Act, 2013 also requires that if the auditor, in the course of audit, has reasons to believe that an offence involving fraud is being or has been committed against the company by its officers or employees, he will immediately report the matter to the Central Government within such time and manner as may be prescribed.
4. The requirement to maintain confidentiality by auditors with respect to client matters, does not apply to reporting matters under any regulation.
5. Currently, the Companies Act, 1956 entitles but does not require an auditor to attend AGM. Under the Companies Act, 2013, it will be mandatory for the auditor or its authorized representative, who is also qualified to be appointed as an auditor, to attend the AGM, unless exempted by the company.
4. The Companies Act, 2013 requires the auditor's report to include observations/comments on whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls. In the context of directors' responsibility statement, section 134(5) explains the term "internal financial control" in a very wide manner. It looks at policies and procedures for ensuring orderly and efficient conduct of business – thereby covering not just financial reporting aspects, but also the operational aspects of the business and the efficiency with which those operations are carried out. This makes the scope of this reporting much wider than even the requirements under SOX 404 under US. It may be appropriate for the MCA to provide an appropriate clarification on this and narrow the scope to cover financial controls only.
5. In accordance with SA 240 *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*, the primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management. The auditor needs to maintain an attitude of professional skepticism throughout the audit, recognizing the possibility that a material misstatement due to fraud could exist. However, due to inherent limitations of an audit, there is an unavoidable risk that some material misstatements will not be detected. Hence, the auditor's responsibility to report on fraud will not absolve the board or audit committee of its responsibilities.

Impact analysis

1. Any negative comment or reporting on the internal controls or fraud may have significant legal consequences including winding-up and cause reputational damage to the company.
2. Reporting responsibilities of the auditor will increase significantly. For example, the auditor will be required to report on adequacy and functioning of internal financial control system in all areas. To avoid any adverse comment in the auditor's report, the management will need to ensure adequacy and effectiveness of internal financial control in all the areas.
3. According to SA 265 *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*, the auditor obtains an understanding of internal control relevant to audit for designing its audit procedures, but not for expressing an opinion on the effectiveness of internal control. Hence, reporting on internal financial control beyond the CARO requirement does not fall within the scope of normal audit procedures. Rather, the auditor will need to perform additional procedures. This may increase time and cost involved in the audit.
6. The requirement pertaining to reporting on "financial transactions or matters" is not clear. One interpretation is that the auditor is required to report whether any of the financial transaction or other matters can have an adverse impact on the functioning of the company. If this is correct, the auditor may need to comment on propriety of transactions in order to meet its reporting obligations. It may be argued that the intention of the regulator may not be to require an auditor to challenge and report on management's judgment and propriety with respect to business decisions. It may be appropriate for the MCA/ ICAI to provide further clarification/ guidance on the matter.

Penalties on auditor

7. In case of fraud, the Companies Act, 2013 does not state that auditor's reporting responsibility will arise only in case of material frauds. This indicates that the auditor may need to report all frauds to the Central Government noticed/detected during the course of audit, irrespective of its size. This will create practical challenges for companies, auditors and the Central Government. To avoid these issues, it will be more appropriate if the government frames rules to require only material frauds to be reported.

8. In the context of frauds, the Companies Act, 2013 requires an auditor to report the matter to the Central Government if it has reason to believe that an offence involving fraud **is being** committed against the company. It is not clear whether the reference to "is being committed" includes suspected fraud?

Interpreting the requirement as including suspected frauds will not be consistent either with the public's expectations or with companies' understanding of the auditor's role. There are obvious difficulties in determining the threshold for when a matter is to be regarded as "is being committed". This is because the test is inevitably subjective. It may be appropriate for the MCA to clarify.

9. It appears that all new reporting requirements will apply to the audit of CFS also.
10. Under the existing Companies Act, 1956 auditors are required to report on various matters in the CARO report. At this stage, it is unclear what the reporting responsibilities will be under the new legislation

Overview of significant changes

On contravention of law

1. Where, in case of audit of a company being conducted by an audit firm, 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, the liability, whether civil or criminal as provided in this Companies Act, 2013 or in any other law for the time being in force, for such act will be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Prosecution by NFRA

2. NFRA may investigate either *suo moto* or on a reference made to it by the Central Government on matters of professional or other misconduct by any member/firm of chartered accountants. If professional or other misconduct is proved, NFRA has the power to make order for:
 - (a) Imposing penalty of:
 - (i) Not less than ₹1 lakh, but which may extend to five times of the fees received, in case of individuals, and
 - (ii) Not less than ₹10 lakh, but which may extend to ten times of the fees received, in case of firms.
 - (b) Debarring the member or the firm from engaging himself or itself from practice as member of the ICAI for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the NFRA.

Cost accounting and audit

Class action

3. Members or depositors or any class of them may claim damages or compensation or demand any other suitable action from or against the auditor including audit firm of the company for any improper or misleading statement made in his audit report or for any fraudulent, unlawful or wrongful act or conduct. Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability will be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

Limited Liability Partnership

4. The CA Act has been amended to allow audit firms to function as LLPs. Under the Companies Act, 2013, 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, the audit firm is held responsible jointly and severally with the erring partners. Based on these liability provisions, benefits of the LLP form of partnership is not likely to be available to audit professionals in the case of a fraud or fraudulent behavior.

Overview of significant changes

On the lines of the Companies Act, 1956 the Companies Act, 2013 empowers the Central Government to require specified class of companies to maintain cost accounts and get cost audit done. Given below are some significant changes:

- (a) No specific approval of the Central Government will be required for appointment of the Cost Auditor.
- (b) Since most of the requirements concerning statutory auditor are also applicable to the cost auditor, significant changes explained for statutory audit will apply in case of cost audit also.
- (c) Cost auditor will submit its report to the board of directors, instead of the Central Government. The board will submit the report to the government, along with full information and explanation on each reservation/qualification.
- (d) The cost auditor will need to comply with the cost auditing standards, issued by the ICWAI.





Corporate social responsibility

Overview of significant changes

1. The Companies Act, 2013 requires that every company with net worth of ₹500 crore or more, or turnover of ₹1,000 crore or more or a net profit of ₹5 crore or more during any financial year will constitute a CSR committee.
2. The CSR committee will consist of three or more directors, out of which at least one director will be an independent director. The board's report will disclose the composition of this CSR committee.
3. The CSR committee will:
 - (a) Formulate and recommend to the board, a CSR policy, which will indicate the activities to be undertaken by the company
 - (b) Recommend the amount of expenditure to be incurred on the activities referred to in the CSR policy
 - (c) Monitor CSR policy from time to time
4. The board will ensure that company spends, in every financial year, at least 2% of its average net profits made during the three immediately preceding financial years in pursuance of CSR policy. For this purpose, the average net profit will be calculated in accordance with the section 198.
5. The company will give preference to local area and areas around where it operates, for spending the amount earmarked for CSR activities.
6. The board will approve the CSR policy and disclose its contents in the board report and place it on the company's website.

Corporate Governance

7. If a company fails to spend such amount, the board will, in its report specify the reasons for not spending the amount.
8. Schedule VII of the Companies Act, 2013 sets out the activities, which may be included by companies in their CSR policies. These activities relate to (a) eradicating extreme hunger and poverty (b) promotion of education (c) promoting gender equality and empowering women (d) reducing child mortality and improving maternal health (e) combating HIV, AIDs, malaria and other diseases (f) ensuring environmental sustainability (g) employment enhancing vocational skills (h) social business projects (i) contribution to certain funds such as the Prime Minister's National Relief Fund and other matters that may be prescribed.

The MCA has issued "National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business," for voluntary adoption by companies. In addition, the SEBI has mandated that the top 100 listed entities, based on their market capitalization at the BSE and NSE, should include business responsibility reports as part of their Annual Reports.

Impact analysis

1. The Companies Act, 2013 does not prescribe any penal provision if a company fails to spend amount on CSR activities. The board will need to explain reasons for non-compliance in its report.
2. The Companies Act, 2013 has set threshold of ₹5 crore net profit for applicability of CSR requirements. In comparative terms, this seems to be on lower side vis-à-vis net-worth and turnover thresholds of ₹500 crore and ₹1,000 crore, respectively. This may result in companies getting covered under the CSR requirements, even when they don't meet net-worth/ turnover criteria.
3. Due to determination of average net profit in accordance with section 198, actual expenditure on CSR activities for a company may be higher/ lower than 2% of its average net profit for the past three years determined in accordance with the P&L.
4. Section 149 of the Companies Act, 2013 mandates only public companies whether listed or in other prescribed class to have independent directors. In contrast, applicability of CSR requirements depends on net worth, turnover or net profit criterion, irrespective of whether the company is a public or private company. Every company covered by CSR needs to constitute a CSR committee with at least one independent director. This implies that even a private company will need to have an independent director if it is covered under CSR requirements.
5. It is not absolutely clear whether a company will need to create provision in the financial statements toward unspent amount if it fails to spend 2% amount of the CSR activities in a particular year. The resolution of this issue may depend upon the legal/ other consequences, which may follow, if a company fails to spend the requisite amount in a particular year. For example, if a company can get away with an explanation in the board's report and need not make good past shortfall in the future period, there may be no need to create provision. However, if the company needs to incur the amount currently unspent in future periods legally, a provision in accordance with AS 29 may be needed.
6. Companies may have to realign their CSR strategies in light of the Companies Act, 2013. Although, detailed rules/ clarifications will throw light on the exact requirements, the perception is that Ministry of Corporate Affairs may follow the National Voluntary Guidelines (NVG) for disclosure and encourage the concept of 'shared value' where companies are encouraged to work on common CSR projects which would result in win-win scenario for all participants. One



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may also look at existing expenditure on specific activities and evaluate whether the same can qualify as eligible CSR expenditure.

7. In the absence of any specific provision providing deduction of CSR, questions may arise with regard to tax deductibility of CSR expenditure. While one argument is that there is an obligation to incur such expenses and also, from financial reporting perspective, it will be treated as expense, the counter argument could be that it is in the nature of allocation of profit and, therefore, will be not allowed as deduction for tax purposes.
8. As per the news report, when Sachin Pilot, the Corporate Affairs Minister, was asked whether the companies would get any tax benefits for CSR expenditure, he indicated that CSR expenditure is 2% of profit before tax and therefore, a kind of benefit is already available by way of deduction from taxable income. However, he mentioned that he will speak to Finance Minister and see what can be done.
9. Even where it is concluded that the CSR expenditure may not be a legal obligation, one can explore claiming deduction of the same based on a case-to-case analysis if the same is incurred as a good corporate citizen to earn goodwill and create an atmosphere in which the business can succeed in a greater measure.
10. To clear the ambiguity surrounding the deductibility of the CSR expense, industry expects the Central Board of Direct Taxes to clarify the position on deductibility CSR expenditure.



Overview of significant changes

1. Currently, the SFIO has been set-up by the Central Government under resolution No. 45011/16/2003-Adm-I dated 2 July 2003. Under the Companies Act, 2013, statutory status will be conferred upon the SFIO. Till the time SFIO is established under the Companies Act, 2013, the SFIO previously set-up by the Central Government will be deemed to be SFIO under the Companies Act, 2013.
2. The Central Government may assign investigation into the affairs of a company to SFIO (i) on receipt of a report of the registrar or inspector, (ii) on intimation of a special resolution passed by a company that its affairs are required to be investigated, (iii) in public interest, or (iv) on request from any department of the Central Government/ state government.
3. Where any case has been assigned by the Central Government to SFIO for investigation, no other investigating agency of the Central Government/state government will proceed with investigation in such cases.
4. If authorized by the Central Government, SFIO will have the power to arrest in respect of certain offences, which attract the punishment for fraud. Those offences will be cognizable and the person accused of any such offence will be released on bail only upon fulfilling stipulated conditions.
5. Investigation report of SFIO filed with the special court for framing of charges will be deemed as a report filed by a police officer.
6. Stringent penalties are prescribed for fraud-related offences.
7. SFIO will share any information or documents, with any investigating agency, state government, police authority or Income-tax authorities, which may be relevant or useful for them in respect of any offence or matter being investigated by them under any other law.

Directors

Overview of significant changes

1. Under the Companies Act, 2013, each company will need to have minimum one director who stayed in India for at least 182 days in the previous calendar year. The Companies Act, 1956 does not contain this requirement.
2. The Companies Act, 2013 will require prescribed class of companies to have at least one woman director on the board. Existing companies will be given a one-year transition period to comply with this requirement.
3. Under the Companies Act, 1956 a public company either with (a) paid-up capital of `5 crore or more, or (b) 1,000 or more small shareholders, may have a director elected by the small shareholders. Under the Company Companies Act, 2013, only listed companies will be given an option to have one director elected by the small shareholders.
4. Under the Companies Act, 1956 a public company or a private company, which is a subsidiary of a public company, can have a maximum of 12 directors or the number mentioned in its Articles. Any further increase in the number of directors requires an approval from the Central Government. Under the Companies Act, 2013, this limit has been set at 15 and will be applicable to all companies. For any further increase in number of directors, a company will need to pass a special resolution at its General Meeting. There will not be any need to obtain an approval from the Central Government.
5. Under the Companies Act, 1956 a person cannot hold directorship in more than 15 companies. Under the Companies Act, 2013, a person will be able to become director of 20 companies. However, out of this, not more than 10 companies can be public companies.
6. Keeping in view the fiduciary capacity of directors, the Companies Act, 2013 has prescribed duties of directors. A director of the company will (i) act in accordance with the articles of the company, (ii) act in good faith to promote the objects of the company, (iii) exercise his duties with due and reasonable care, skill and diligence, (iv) not get involved in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company, (v) not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates, and (vi) not assign his office.

Independent directors

Overview of significant changes

1. Currently, clause 49 of the listing agreement requires that a board of a listed company will have an optimum combination of executive and non-executive directors with not less than 50% of the board comprising non-executive directors. It also provides that where the Chairman of the board is a non-executive director, at least one-third of the board should comprise independent directors. In case the Chairman is an executive director, at least half of the board should comprise independent directors.

The Companies Act, 2013 states that every listed company will have at least one-third of total number of directors as independent directors, with any fraction to be rounded off as one. Unlike the listing agreement, the Companies Act, 2013 does not contain any specific requirement for 50% independent directors if the Chairman of the board is an executive director.

2. The listing agreement requires that the board of all the material non-listed subsidiaries of a listed parent company will have at least one independent director from the board of directors of the parent company. The Companies Act, 2013 does not have similar requirement.
3. Under the Companies Act, 2013, the Central Government will have the power to prescribe minimum number of independent directors in other class of public companies. The Companies Act, 1956 does not contain any such requirement.
4. The meaning of the term "independent director" given in the Companies Act, 2013 contains most of the attributes prescribed in the listing agreement. The Companies Act, 2013, however, contains certain additional criteria, e.g.,:
 - (a) An independent director should be a person of integrity and possess relevant expertise and experience.
 - (b) The language used in clause 49 suggests that a person to be appointed as "independent director" should not have any material pecuniary relationship/ transactions with the company, its promoters, its directors or its holding company, its subsidiaries and associates, which will affect independence of the director. The listing agreement does not specify any particular timeframe to be considered in this regard.

However, the Companies Act, 2013 states that such relationship should not have existed either in the current financial year or immediately preceding two years.

Also, the Companies Act, 2013 covers all pecuniary relationships, instead of material pecuniary relationships covered under the listing agreement.

- (c) A person will not be eligible to be appointed as "independent director," if parties listed in (b) above have/had pecuniary relationship/transactions exceeding prescribed amount with a relative of the said person. The listing agreement does not prohibit appointment based on pecuniary relationship/transactions with relatives.
 - (d) Clause 49 prohibits a person from being appointed as "independent director," if that person is/was a partner/ executive in statutory audit firm, internal audit firm, legal firm and/or consulting firm(s), which have association with the company. The Companies Act, 2013 also prohibits a person from being appointed as "independent director" if that person's relative is/was a partner/executive in the said firm.
 - (e) Under the Companies Act, 2013, the Central Government may prescribe additional qualifications for an "independent director."
 - (f) Clause 49 states that the nominee directors appointed by an institution, which has invested in or lent to the company, is deemed to be an independent director. The Companies Act, 2013, however, states that an independent director will be a director other than the nominee director.
 - (g) In accordance with the Companies Act, 2013, an independent director should not be a Chief Executive or director, by whatever name called, of any non-profit organization, which receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company.
5. The Companies Act, 2013 requires that every independent director, 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 circumstances, which may affect his status as an independent director, will have to give a declaration that he meets the criteria of independence. The listing agreement requires that an independent

director, prior to the appointment, disclose their shareholding (both own or held by/for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed.

6. The Companies Act, 2013 requires that the independent director may be selected from a data bank maintained by a body, institute or association, as may be notified by the Central Government.
7. Under the Companies Act, 2013, an independent director will not be entitled to any stock options in the company. Under the listing agreement, there is no such prohibition. Rather, maximum limit on stock options granted to independent directors can be fixed by shareholders' resolution.
8. No independent director should hold office for more than two consecutive terms of five years each. This provision will apply prospectively. An independent director who completes two terms will be eligible for appointment after expiry of three years of ceasing to being in the post, provided during that period of three years, he remains independent with respect to the company.

Impact analysis

1. The SEBI may need to amend the listing agreement to bring it in line with the Companies Act, 2013. Till such time, listed companies will need to follow the requirement of the listing agreement/ Companies Act, 2013, whichever is more stringent.
2. Considering additional criteria prescribed in the Companies Act, 2013, many listed companies may need to revisit appointment of their independent directors.
3. The Companies Act, 2013 lays down various restrictions, on the person as well as its relatives, for being eligible to be appointed as independent director. If the government prescribes a long list of relations, the company, the person who is or seeking to be an independent director and the relatives of such person will have to keep track of this, to ensure compliance on a going forward basis. For example, a company cannot appoint any person as an independent director if that person or his relative is/was a partner/ executive in the preceding three financial years in the firm of auditors of the company.
4. The Companies Act, 2013 states that an independent director will not be entitled to any stock option. The Companies Act, 2013 is not clear as to how a company will deal with stock options granted in the past and which are outstanding at the date of its enactment. It seems possible that a company will likely need to cancel/forfeit these stock options immediately. It may be appropriate for the MCA to clarify this matter.

Code of conduct for independent directors

Overview of significant changes

The listing agreement requires the board of directors to lay down a “Code of Conduct” for all board members and the senior management of the company. The code is to be posted on the company website and all board members and senior management personnel are required to affirm compliance with the same on an annual basis.

The Companies Act, 2013 lays down detailed “Code for independent directors” containing detailed guidelines for professional conduct, roles and responsibilities. The company and independent directors are required to comply with the same. Some key examples of guidelines are:

- (a) Uphold ethical standards of integrity and probity
- (b) Act objectively and constructively while exercising his duties
- (c) Exercise responsibilities in a bona fide manner in the interest of the company
- (d) Devote sufficient time and attention to his professional obligations for informed and balanced decision making
- (e) Not allow any extraneous considerations to vitiate his objectivity and independent judgment
- (f) Not abuse his position to the detriment of the company or its shareholders or for personal advantage
- (g) Bring an objective view in the evaluation of the performance of board and management
- (h) Safeguard the interests of all stakeholders, particularly the minority shareholders

- (i) Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company
- (j) Keep themselves well informed about the company and the external environment in which it operates
- (k) Satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible.
- (l) Seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts
- (m) Pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company
- (n) Report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

Impact analysis

Most of the attributes of independent directors prescribed in the Companies Act, 2013 are qualitative in nature. Therefore, it may not be possible to demonstrate compliance or otherwise with these criteria. Accordingly, it is possible that these aspects may become subject matter of significant debate.



Liabilities of independent director

Overview of significant changes

Under the Companies Act, 2013, an independent director and a non-executive director not being promoter or KMP, will be held liable, only in respect of such acts of omission or commission by a company, which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently. There is no such provision under the Companies Act, 1956; however the MCA has included such provision vide general circular no. 8/2011 dated 25 March 2011 directing all the RDs, ROCs and OLs to spare the independent directors and nominee directors from routine prosecution under the Companies Act, 1956.

Audit committee

Overview of significant changes

1. Under the Companies Act, 2013, each listed company and such other class of companies, as may be prescribed, will constitute an audit committee. Currently, the Companies Act, 1956 requires all public companies with paid-up capital of not less than ₹5 crore to constitute an Audit Committee. The listing agreement requires all listed companies to constitute an audit committee.
2. Under the Companies Act, 2013, an audit committee will comprise minimum of three directors with independent directors forming a majority. Under the Companies Act, 1956 audit committee should consist of minimum three directors of which two-third members will be directors, other than managing/whole-time directors. The listing agreement requires the audit committee to comprise minimum three directors with two-third members being independent directors.
3. The Companies Act, 2013 requires that majority of audit committee members including its chairperson will have an ability to read and understand the financial statement. There is no qualification prescribed under the existing Companies Act, 1956. In contrast, the listing agreement requires that all members should be financially literate and at least one member should have accounting or related financial management expertise.
4. The existing companies are allowed a one-year timeline for reconstituting its audit committee in accordance with the new requirements.



5. The existing Companies Act, 1956 does not define role and responsibilities of the audit committee in detail; rather, it states that the board will determine the terms of reference. The listing agreement lists down the role of the audit committee in detail. The Companies Act, 2013 prescribes certain specific responsibilities of the audit committee and states that the board of directors will prescribe further terms of reference. Some key additional responsibilities prescribed in the Companies Act, 2013 vis-à-vis listing agreement include:
 - (a) To review and monitor the auditor's independence and effectiveness of the audit process
 - (b) Approval to any new or any subsequent modification to transactions of the company with related parties
 - (c) Scrutiny of inter-corporate loans and investments
 - (d) Valuation of undertakings or assets of the company, if necessary
 - (e) Monitoring the end use of funds raised through public offers and related matters instead of reviewing the monitoring report prepared by the monitoring agency
6. Each listed company and such other class of companies, as may be prescribed, will establish a vigil mechanism for directors and employees to report genuine concerns. The vigil mechanism will provide for adequate safeguards

against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. Under the listing agreement, "whistle blower policy" is a non-mandatory requirement.

7. In case of any contravention of these requirements, the company will be punishable with a fine, which will not be less than ₹1 lakh but which may extend to ₹5 lakh. Every officer of the company who is in default will be punishable with imprisonment for a term, which may extend to one year or with fine, which will not be less than ₹25 thousand but which may extend ₹1lakh or with both.

Impact analysis

1. Non-listed companies, which belong to class of companies as prescribed by the government and thereby required to constitute an audit committee, will need to revisit the composition in light of new requirements.
2. Prima facie, it appears that the composition of audit committee constituted as per clause 49 of the listing agreement will be in compliance with the Companies Act, 2013 requirement. However, any change in independent directors, due to independent director qualification criteria discussed earlier, will trigger change in the composition of the Audit Committee as well.



Other committees

Overview of significant changes

Nomination and remuneration committee

1. Under the existing Companies Act, 1956 Schedule XIII requires the approval by the remuneration committee for payment of managerial remuneration when a company has no profits or inadequate profits. The listing agreement contains provisions regarding NRC as a non-mandatory requirement. The Companies Act, 2013 will mandate all listed companies and such other class of companies as may be prescribed to constitute NRC.
2. The NRC will consist of three or more non-executive directors out of which not less than one half will be independent directors.
3. The NRC will identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down. NRC will recommend to the board their appointment and removal. It will also carry out an evaluation of every director's performance.
4. The NRC will formulate criteria for determining qualifications, positive attributes and independence of a director and recommend to the board a policy, relating to the remuneration for the directors, KMP and other employees. Such policy will be disclosed in the board's report.

Stakeholders Relationship Committee

Overview of significant changes

1. The board of a company, which consists of more than 1,000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year will constitute an SRC. The SRC will comprise a chairperson who will be a non-executive director and such other members as may be decided by the board.
2. The SRC will consider and resolve the grievances of security holders of the company.
3. Currently, the listing agreement requires listed companies to constitute a board committee under the chairmanship of a non-executive director. Such committee specifically looks into the redressal of shareholder and investors complaints. This committee is designated as 'Shareholders/Investors Grievance Committee.'

Impact analysis

Publication and public availability of policy for remuneration to directors, KMPs and other employees in the board report is likely to put a company in a competitive disadvantageous situation.

Internal audit

Overview of significant changes

1. The existing Companies Act, 1956 does not require companies, except producer companies, to appoint internal auditor and have internal audit done. However, paragraph 4(vii) of the CARO requires an auditor to report on the following:

“In the case of listed companies and/or other companies having a paid-up capital and reserves exceeding ₹50 lakh as at the commencement of the financial year concerned, or having an average annual turnover exceeding ₹5 crore for a period of three consecutive financial years immediately preceding the financial year concerned, whether the company has an internal audit system commensurate with its size and nature of its business.”

The Companies Act, 2013 states that such class or class of companies, as may be prescribed, will appoint an internal auditor to conduct internal audit of the functions and activities of the company.

2. Such internal auditor will either be a chartered accountant or a cost accountant, or such other professional as may be decided by the board.
3. The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

Impact analysis

The Companies Act, 2013 does not require a company to appoint only an external agency to get internal audit done. A company may either engage external agency or have internal resources to conduct internal audit.





Definition of relative

Overview of significant changes

The Companies Act, 2013 defines the term “relative” as “with reference to any person means anyone who is related to another, if:

- (i) They are members of a Hindu Undivided Family
- (ii) They are husband and wife, or
- (iii) One person is related to the other in such manner as may be prescribed”

The existing Companies Act, 1956 also explains the term “relative” in a similar manner. It has prescribed a list of persons who will be treated as relative under (iii) above.

Related party transactions, loans and investments

Definition of related party

Father	Mother (including step-mother)	Son (including step-son)
Son's wife	Daughter (including step-daughter)	Father's father.
Father's mother	Mother's mother	Mother's father
Son's son	Son's Son's wife	Son's daughter
Son's daughter's husband	Daughter's husband	Daughter's son
Daughter's son's wife	Daughter's daughter	Daughter's daughter's husband
Brother (including step-brother)	Brother's wife	Sister (including step-sister)
Sister's husband		

The Central Government has still not prescribed list of relations that will be covered under the Companies Act, 2013. The discussion elsewhere in this publication suggests that this definition is likely to have significant impact on aspects such as appointment, qualification and disqualification of auditor and independent directors. While prescribing covered relationship, the Central Government should consider this aspect and the fact that a person may not be able to control/ influence other person if the other person is not financially dependent on him/her. Similarly, a person may be able to influence other persons who are financially dependent on him or her, even if they are not covered in specific list or relations.

Hence, instead of listing specific relationship, the government may explain clause (iii) above to mean "financially dependent person." "Financially dependent person" can be explained to include any other persons and/or their spouses who received more than half of their financial support for the most recent financial year from the concerned person. Consider an estranged relative, who is financially independent. He can buy shares in a company audited by the person to whom he is related and deliberately or inadvertently disqualify the person from being the auditor of the company.

Overview of significant changes

The Companies Act, 2013 defines the term "related party" to mean:

- (i) A director or his relative
- (ii) KMP or his relative
- (iii) A firm, in which a director, manager or his relative is a partner
- (iv) A private company in which a director or manager is a member or director
- (v) A public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital
- (vi) A body corporate whose board, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager, except if advice is given in the professional capacity
- (vii) Any person on whose advice, directions or instructions a director or manager is accustomed to act, except if advice is given in the professional capacity
- (viii) Any company which is:
 - (A) A holding, subsidiary or an associate company of such company; or
 - (B) A subsidiary of a holding company to which it is also a subsidiary;
- (ix) Such other person as may be prescribed

This term is not defined currently under the Companies Act, 1956. However, notified AS 18 defines the term "related party" by stating that "parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions." According to AS 18 it will apply only to the following list of relations:

- (a) Enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries)
- (b) Associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture



Related party transactions

- (c) Individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual
- (d) KMP and relatives of such personnel, and
- (e) Enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.

Impact analysis

1. From the above, it is clear that definition of the term “related party” under AS 18 and the Companies Act, 2013 is different. However, the likely impact that these differences will have may vary on case-to-case basis. For example, “a firm, in which a director, manager or his relative is a partner” and “a private company in which a director or manager is a member or director” will be identified as related parties under the Companies Act, 2013 but perhaps not under AS 18.
2. The Companies Act, 2013 defines the term related party to control/regulate related party transactions and investor protection. AS 18 definition is relevant from disclosure in the financial statements perspective. The MCA may clarify that definitions in the Companies Act, 2013 are relevant for legal/regulatory purposes. For financial statement purposes, definition as per the notified AS should be used. It is also suggested that aligning the definitions in the near term will be a useful exercise to be considered by the MCA.
3. The definition and the scope of “covered transaction” and “related party” under the Companies Act, 2013 are different from that of “international transactions”/“specified domestic transactions” and “related party” under the Income-tax Act.

For example, one of the thresholds for a public company to be treated as a related party is 2% of paid-up capital as provided under the Companies Act, 2013 as against 20%/26% for domestic/international transactions under the Income-tax Act.

Therefore, there is a need to align the scope of related parties in the Companies Act, 2013 with that of the Income-tax Act.

Overview of significant changes

Like the existing Companies Act, 1956 the Companies Act, 2013 states that a company will not enter into certain transactions unless its board has given its consent for entering into such transactions. However, there are many differences between the requirements of the existing Act and the Companies Act, 2013. Given below is an overview of significant changes:

1. The Companies Act, 1956 states that a company with a paid-up share capital of not less than ₹1 crore will not enter into specified contracts, except with the previous approval of the Central Government. The Companies Act, 2013 does not require any government approval. Rather, it states that in the following cases, a related-party transaction can be entered into only if it is approved by a special resolution at the general meeting:
 - (i) The company has paid-up share capital, which is not less than the prescribed amount, or
 - (ii) Transactions not exceeding the amount, as may be prescribed

No member of the company who is a related party can vote on such special resolution.
2. Under the Companies Act, 2013, the Central Government may prescribe additional conditions for entering into related party transactions.
3. Under the Companies Act, 1956 restrictions apply only to transactions with specified persons/ parties, namely, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director. In contrast, the Companies Act, 2013 will cover all persons covered in the definition of the term “related party”.
4. Under the existing Companies Act, 1956 restrictions apply only to the following two transactions:
 - (a) Sale, purchase or supply of any goods, material or services
 - (b) Underwriting the subscription of any shares in, or debentures of, the company

In addition, the Companies Act, 2013 will also cover the following related party transactions:

- (a) Selling or otherwise disposing off or buying property
- (b) Leasing of property

- (c) Appointment of agent for purchase or sale of goods, material, services or property
 - (d) Related party's appointment in the company, its subsidiary companies and associate companies
 - (e) Underwriting the subscription of derivative on securities of the company.
5. Under the Companies Act, 2013, the above restrictions will not apply to any transactions entered into by the company in its ordinary course of business other than transactions, which are not on an arm's length basis. In accordance with the Companies Act, 2013, an arm's length transaction implies "a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest."

The Companies Act, 1956 exempts transactions entered into by parties for a cash consideration at prevailing market prices.

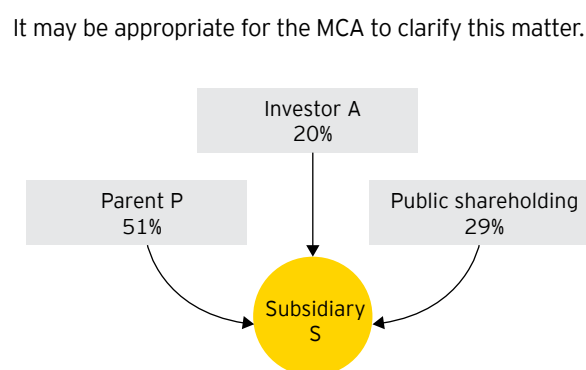
6. The Companies Act, 2013 requires that every contract or arrangements entered into with a related party will be referred to in the board's report to shareholders, along with justification for entering into such transactions. This disclosure is currently not required. The Companies Act, 2013 states that without prejudice to provisions relating to subsequent approval, it is open to a company to proceed against a director or any other employee who had entered into such contracts or arrangements in contravention of these requirements to recover any loss sustained by it as a result of such a contract or arrangement. No such provision exists under the Companies Act, 1956.

Impact analysis

1. There will not be requirement to obtain an approval from the Central Government for entering into related party transactions. Rather, companies will need to pass special resolution at the general meeting, if relevant criteria are met. Interested members will not be entitled to vote on such resolution. This provision is intended to protect minority interest. Actual implementation of this requirement could result in different consequences – (a) minority interest may be protected (b) the minority may remain silent spectators or (c) minority may end up oppressing the majority.
2. Even if a company has entered into related party transaction at arm's length, it appears that the same will need to be referred to in the board's report, along with justification for entering into the transaction. The disclosure requirement is also likely to cover non-cash

transactions involving directors (covered elsewhere), if they are entered into with a related party.

3. The Companies Act, 2013 requires related party transactions to be approved by a special resolution at the general meeting, if the transaction is not in the ordinary course or business or not at arm's length. No member will be entitled to vote on such resolution, if such member is a related party. However, it is not clear which related parties will be considered for this purpose. Consider example below. Subsidiary S intends to make royalty payment to Parent P. It is clear that P is not entitled to vote on the special resolution. However, it is not clear if investor A who owns 20% of S and therefore S is a related party to A, entitled to vote or not. Further, will it make any difference if A is also a related party to P?



It may be appropriate for the MCA to clarify this matter.

4. It also needs to be noted that for the purposes of SDT under the Income-tax Act, all expenses are covered and only limited types of income, for example, profit-linked tax holiday units are covered.
5. However, the Companies Act, 2013 is wider in its scope than SDT provisions, since the former includes all types of income earned from a related party. Therefore, there is a need to align the scope of related party transactions in the Companies Act, 2013 with that of the Income-tax Act.
6. While the Companies Act, 2013 does not provide any guidance on determining the manner in which "arm's length principles" should be applied, it needs to be seen whether it is useful/ possible to refer to the manner in which the principle is applied under the Income-tax Act to test whether the transaction is in accordance with the "arm's length principles" or not.

Similarly, it also needs to be seen whether a transaction meeting the "arm's length principles" under the Companies Act, 2013 can be used as a basis to support an arms length test under the Income-tax Act.

Restriction on non-cash transactions involving directors

Overview of significant changes

1. The Companies Act, 2013 contains a new requirement to the effect that without prior approval of the company in a general meeting, a company will not enter into an arrangement by which:
 - (a) A director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company, or
 - (b) The company acquires or is to acquire assets for consideration other than cash, from such director or person so connected
2. If the director or connected person is a director of the holding company, an approval will also be required by passing a resolution in the general meeting of the holding company.
3. Any arrangement entered into by a company or its holding company without getting requisite approval will be voidable at the instance of the company unless
 - (a) The restitution of any money or other consideration, which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it, or
 - (b) Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Impact analysis

One needs to analyze the applicability of transfer pricing provision under the Income-tax Act on non-cash transactions involving directors.

Loans to directors and subsidiaries

Overview of significant changes

Like the existing Companies Act, 1956 the Companies Act, 2013 contains restrictions on advancing any loan, including any loan represented by a book debt, to any director or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. Given below is an overview of key differences:

1. Under the existing Companies Act, 1956 prohibited loans/ guarantees can be made with the approval of the Central Government. Under the Companies Act, 2013, this possibility does not exist.
2. Unlike the existing Act, the Companies Act, 2013 does not contain any specific exemption/ exclusion with regard to loan given by a private company or by a holding company to its subsidiary or for guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company.
3. Under the Companies Act, 2013, restrictions on making loan/giving guarantee/providing security will not apply to the following.
 - (a) Making of a loan to the managing/whole-time director either as part of service condition extended by the company to all its employees, or pursuant to any scheme approved by the members by a special resolution.
 - (b) A company, which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the RBI.

The existing Act does not contain this exemption.

4. The Companies Act, 2013 provides for more stringent penalty and imprisonment for contravention.

Loans and investments by company

Impact analysis

In accordance with the Companies Act, 2013, the expression “to any other person in whom director is interested” includes “anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.” Apparently, this clarification may cover subsidiary companies. This along with the fact that the Companies Act, 2013 does not contain any specific exemption/exclusion for giving loan to/guarantee/security on behalf of subsidiary seems to suggest that a holding company may not be able give loan to/guarantee/security on behalf of its subsidiary. If this view is correct, it is likely to create significant hardship for many companies. Our experience of dealing with many group structures indicates that in many cases, a subsidiary may not be able to raise finance without the support of the holding company.

The counter argument is that, although this section does not have any specific exemptions/exclusions for a holding company giving loan to/guarantee/security on behalf of its subsidiaries, the holding company may still be able give loan to/guarantee/security on behalf of its subsidiary according to the requirements discussed under the head “Loans and investments by company” (section 186 of the Companies Act, 2013).

It may be appropriate for the MCA to clarify this matter.

1. The Companies Act, 2013 introduces a new requirement that a company cannot make investment through more than two layers of investment companies. However, this requirement will not affect:
 - (a) A company from acquiring another company incorporated outside India if such other company has investment subsidiaries beyond two layers according to the law of that country
 - (b) Subsidiary company from having any investment subsidiary for the purpose of meeting the requirement of any law for the time being in force

In accordance with the Companies Act, 2013, “Investment Company” means a company whose principal business is the acquisition of shares, debentures or other securities.

2. Like the existing Companies Act, 1956 the Companies Act, 2013 also prohibits a company from giving loan to, giving guarantee or providing security in connection with a loan to any other body corporate or acquiring securities of any other body corporate, exceeding the higher of:
 - (a) 60% of its paid-up share capital, free reserves and securities premium, or
 - (b) 100% of its free reserves and securities premium.

Under the existing Act, the above restriction is applicable only in connection with provision of loan to/guarantee/security on behalf of other body corporate. The Companies Act, 2013 will extend this restriction to provision of loan to/guarantee/security on behalf of any person or entity.

3. Both the existing Act and the Companies Act, 2013 allow companies to provide loan/give guarantee/security exceeding the above limit if they take prior approval by means of a special resolution passed at the general meeting. In exceptional cases, the existing Act allows companies to provide guarantee in excess of the limit without taking prior approval; however, the same needs to be confirmed at the general meeting within 12 months. This option will not be available under the Companies Act, 2013.
4. The Companies Act, 2013 contains new requirement that a company will disclose to the members in the financial statements the full particulars of loans given, investments made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.

5. Under the Companies Act, 1956 the rate of interest on loan cannot be lower than the prevailing bank rate, i.e., the standard rate made public under section 49 of the Reserve Bank of India Act, 1934. Under Companies Act, 2013, the rate of interest cannot be less than prevailing yield on one year, three year, five year or ten year Government Security closest to the tenor of the loan.
6. The existing Companies Act, 1956 exempts the following from these requirements. These exemptions have been dispensed with under the Companies Act, 2013:
 - (a) A private company, unless it is a subsidiary of public company
 - (b) Loan made by a holding company to its wholly owned subsidiary
 - (c) Guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary
 - (d) Acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly owned subsidiary

Impact analysis

1. Prohibition on having more than two layers of investment companies may require many groups to reconsider their investment structures. However, it seems that the same restriction/ prohibition may not apply on making investment through other than investment companies.
2. Removal of exemption for loans made/guarantee/security given by holding company to/on behalf of its wholly owned subsidiary will create hardship for many subsidiary companies, which are significantly dependent on their parent for financing. In many cases, loans given by the parent to its subsidiary are substantial and may breach the 60% or 100% limit as soon as the Companies Act, 2013 is effective.
3. Loan given to/guarantee given/security provided on behalf of any person or entity will also be included in the maximum limit.
4. A company will make disclosure regarding full particulars of loan given, investment made or guarantee given along with purpose for which such amount is to be utilized by the recipient of the loan/guarantee/security in the financial statements. Hence, the same will also be subjected to audit.
5. No specific transitional provisions have been prescribed for new/additional requirements such as restrictions on loans made/guarantee/security given by holding company to/on behalf of its wholly owned subsidiary and prohibition on having more than two layers of investment companies. It is also not clear whether change regarding interest will apply only to new loans or it will apply to existing loans also.
6. It needs to be seen whether the interest rate as prescribed under the Companies Act, 2013 meets the test of the "arm's length principle" under the Income-tax Act.
7. A company's commercial feasibility is put to test while charging compulsory interest at the rate prescribed to a subsidiary that does not have the financial capacity to pay this. Therefore, consequent transfer pricing impact needs to be considered.

Disclosure of interest by directors

Overview of significant changes

1. Like the existing Companies Act, 1956 the Companies Act, 2013 also requires interested director to disclose his interest in a contract/arrangement at the board meeting at which such contract/arrangement is being discussed. It also prohibits interested director from participating in such meetings. In addition, the Companies Act, 2013 requires a director to disclose his interest in a contract/arrangement entered/proposed to be entered into with:
 - (a) A body corporate in which such director or such director in association with any other director, holds more than 2% shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate, or
 - (b) A firm or other entity in which, such director is a partner, owner or member.
2. The Companies Act, 2013 requires that every director, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in each financial year or whenever there is a change in the earlier disclosure, will disclose his interest in companies, bodies corporate, firms or other association of individuals. Similar requirement with regard to general disclosure of interest in companies, bodies corporate, firms or other association of individuals also exists in the Companies Act, 1956.
3. Any contract/arrangement entered into by the company in contravention of the above requirements will be voidable at the option of the company.
4. The Companies Act, 2013 provides for stricter penalty and imprisonment for contravention.



Mergers, reconstruction and capital raising

Overview of significant changes

Restructuring related

1. As under the existing Companies Act, 1956 the company will file a scheme with Tribunal for approval for: (i) reduction in share capital, (ii) making compromise/ arrangement with creditors and members and (iii) merger/ amalgamation of companies.
2. The Companies Act, 1956 does not permit outbound cross-border deals, i.e., merger of an Indian company with a foreign company. The Companies Act, 2013 allows, subject to RBI approval, both inbound and outbound cross-border mergers and amalgamations between Indian and foreign companies. However, the overseas jurisdictions where cross border merger and amalgamations would be permitted will be notified.
3. The Companies Act, 1956 does not contain any specific provision regarding a high court approval of a CDR scheme. However, the Companies Act, 2013 states that an application can be made to the Tribunal to make compromise or arrangement involving CDR. Any such scheme should, among other matters, include:



Mergers, amalgamation and reconstruction

- (a) A report by the auditors of the company to the effect that its fund requirements after the CDR will conform to a liquidity test based on the estimates provided by the board of directors.
 - (b) A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.
4. Currently, SEBI requires all listed companies, while filing any draft scheme with the stock exchange for approval, to file an auditors' certificate to the effect that the accounting contained in the scheme is in compliance with notified AS. There is no such requirement for unlisted companies, including subsidiaries of listed companies. However, currently the MCA requires all RDs to ensure that accounting treatment clause in the scheme is in compliance with notified AS.
- Under the Companies Act, 2013, the Tribunal will not sanction a scheme of capital reduction, merger, acquisition or other arrangement unless the accounting treatment prescribed in the scheme is in compliance with notified AS and a certificate to that effect by the company's auditor has been filed with the Tribunal.
5. The Companies Act, 1956 does not prohibit companies from creating treasury shares under the scheme. The Companies Act, 2013 prohibits such practices. It requires that a transferee company will not hold any shares in its own name or in the name of trust either on its behalf or on behalf of its subsidiary/associate companies. It will require such shares to be cancelled or extinguished.
6. In case of merger/amalgamation of companies, the following documents also need to be circulated for meeting proposed between the company and concerned persons:
- (a) Report of the expert on valuation, if any
 - (b) Supplementary accounting statement if the last annual financial statements of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for approving the scheme.
7. The Companies Act, 2013 clarifies that the merger of a listed company into an unlisted company will not automatically result in the listing of the transferee company. Furthermore, it also states that if, shareholders of the transferor company decide to opt out of the transferee company, provision will be made for payment





of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made. The amount of payment or valuation under this provision for any share will not be less than what has been specified under any regulation framed by the SEBI. There are no such provisions under the Companies Act, 1956.

8. The Companies Act, 2013 introduces a simplified procedure for merger and amalgamation between (i) holding company and its wholly owned subsidiary, or (ii) two or more small companies. Any such merger can come into effect without the approval of the Tribunal or High Court. The procedure primarily involves obtaining approval of at least 90% of the shareholders and creditors (in value) to the proposed scheme. Furthermore, notice of the proposed scheme would have to be sent to the ROC and OL inviting objections/suggestions to the scheme.
9. Under the existing Companies Act, 1956 any shareholder, creditor or other interested person can raise objection to a scheme placed before the court if such person's interests are adversely affected. However, under the Companies Act, 2013, only persons holding not less than 10% of the shareholding or having outstanding debt not less than 5% of the total outstanding debt, can raise objections to the scheme.
10. The Companies Act, 2013 empowers the Tribunal to dispense meeting of creditors if 90% or more of such creditors or class of creditors (in value terms) agree to scheme through affidavit. Though the Companies Act, 1956 does not provide for such dispensation specifically, this is the practical position adopted by several high courts while sanctioning schemes.
11. Under the Companies Act, 1956 public companies and subsidiaries of public companies can sell/lease or otherwise dispose of whole or substantially the whole of undertaking only with an ordinary resolution of the shareholders in general meeting. However, the terms "undertaking" and "substantially the whole of undertaking" are not explicitly defined.

Under the Companies Act, 2013, special resolution of the shareholders will be required for such disposals by all companies – private or public. Furthermore, the Companies Act, 2013 will provide the following definitions:

- (a) "Undertaking": Undertaking in which the investment of the company exceeds 20% of net worth or which generates 20% of the total income
- (b) "Substantially the whole of the undertaking": implies 20% or more of the value of the undertaking

For the above purposes, the audited balance sheet of the preceding financial year will be considered. Hence, any disposals falling below the limits prescribed is not likely to require shareholder approval.

12. The Companies Act, 2013 prohibits a company from making investments through more than two layers of investment companies subject to certain exceptions. There is no such restriction under the Companies Act, 1956.
13. Under the Companies Act, 1956 it is arguably interpreted that multiple consecutive buybacks may be undertaken within a period of one year if it is pursuant to special resolution passed by the shareholders of the company. Vide a recent amendment, the SEBI has imposed a cooling off period of one year between two buybacks, irrespective of whether it is pursuant to a resolution of the board of directors or the shareholders. The Companies Act, 2013 states that such cooling off period would be applicable in case of all buybacks.
14. The Companies Act, 2013 includes specific provisions requiring the company to send a notice of the scheme inviting objections/suggestions from inter alia the Income tax authorities, RBI, Competition Commission of India and such other sectoral regulators or authorities likely to be affected by the scheme. The regulators/ authorities are required to send representation within 30 days, failing which it will be presumed that they have no representations. Currently, the Companies Act, 1956 does not require such notification to regulators/authorities unless provided under specific laws governing the companies.

Deal related

1. The Companies Act, 1956 does not have specific entrenchment provisions (akin to veto rights). However, the Companies Act, 2013 stipulates that the articles of the company can include entrenchment clauses, whereby specific provisions could be altered only if the conditions or procedures that are more restrictive than those applicable to special resolution are complied with.
2. The Companies Act, 2013 also includes specific provision stating that contracts or arrangement between two or more persons as regards share transfer be enforceable as contracts. There are no such specific provisions under the existing Companies Act, 1956.
3. Under the Companies Act, 1956 preference shares are mandatorily redeemable within a period of 20 years. However, the Companies Act, 2013 will permit companies

Capital raising

with infrastructure projects to issue preference shares, which are redeemable beyond 20 years, provided a percentage of shares are redeemed on an annual basis at the option of the preference shareholders. Infrastructure projects will include transportation, water management, telecommunication, petroleum, power, real estate development including industrial park or special economic zones, etc.

Provision action suits

The Companies Act, 2013 introduces the concept of class action suits in India. The number of shareholders/depositors required for filing such suits is specified to be lower of 100 or such percentage of total shareholders/depositors as may be prescribed. The provisions will enable shareholders/depositors to seek compensation not only from the company but also from the directors, auditors and expert advisors for any unlawful or wrong conduct.

This concept is well-recognized internationally and is now introduced in India through the Companies Act, 2013. However, its effectiveness will depend on the manner in which it is implemented.

Liquidation

There have not been major amendments in the Companies Act, 2013 with regard to the liquidation process and the timelines involved therein. However, the Companies Act, 2013 introduces the summary liquidation procedure, which will be applicable only to companies with assets of book value not exceeding INR10 million and which belong to a prescribed class of companies.

Impact Analysis

The Companies Act, 2013 appears to be opening new and simple avenues for mergers, acquisitions and restructuring operations in India. While the Companies Act, 2013 retains the old provisions, it also adds robust and progressive new provisions. It is expected that the new legislation will reduce shareholders litigation and propagate shareholder rights. It endeavors to make restructuring a smooth and easy procedure. Recognition of inter-se shareholder rights takes the law one step forward to a investor-friendly regime.

However, the Companies Act, 2013 seeks an alignment of other laws such as income tax and exchange control provisions with the provisions of the Companies Act, 2013 to facilitate efficient implementation of the new law.

Overview of significant changes

1. The Companies Act, 2013 provides for the manner in which companies may issue securities, i.e., through public offer through issue of prospectus (in case of public companies only), through private placements or by way of rights issue/bonus issue.
2. Under the existing Companies Act, 1956 there are no detailed provisions relating to private placement. The Companies Act, 2013 provides for conditions for private placement (which now extend to private companies). Any offer not in compliance with this would be treated as public offer.

Private placement has been defined to mean any offer of securities or invitation to subscribe to securities to a select group of persons by a company through issue of private placement offer letter and which satisfies the conditions as prescribed.

Key conditions for private placement are as under:

- (a) The offer will be made to maximum of 50 persons (excluding qualified institutional buyers and employees under the employees stock option scheme).
 - (b) Allotment will be made within 60 days from the date of receipt of the application money.
 - (c) No fresh offer or invitation under this section will be made pending allotment under earlier offer.
 - (d) Prohibition of public advertisements or use of media, marketing or distribution channels or agents in relation to offer.
3. The Companies Act, 2013 also provides that a private placement done six months prior to a public offer or in respect of which consideration is outstanding on the date of the public offer needs to be appropriately disclosed in the prospectus as well as necessary documents be kept open for inspection.
 4. Under the existing Companies Act, 1956 the provisions relating to kinds of share capital, voting rights etc are applicable only to a public company or a private company which is a subsidiary of a public company. Under the Companies Act, 2013, such conditions are also applicable to private companies. However, this will be required to be read with the rules that may be prescribed in this regard.
 5. Under the existing Companies Act, 1956 preferential

allotment conditions were applicable to public companies or private companies which are subsidiary of public companies. Under the Companies Act, 2013, the conditions are extended to private companies as well.

Additionally, the preferential allotment will need to be supported by a valuation report.

6. The Companies Act, 2013 does provide for issue of sweat equity shares of an existing class of equity shares to employees/directors after 12 months of business commencement and if so authorized through a special resolution and with appropriate disclosures.

Impact analysis

The Companies Act, 2013 extends many capital raising provisions/compliances previously governing public companies to private companies also. Therefore, under the Companies Act, 2013 there may be increased compliances from the perspective of the private companies.



Glossary

1 Crore	10 Million
10 Lakh	1 Million
Abridged Financial Statements	AFS
AS 14 Accounting for Amalgamations	AS 14
Accounting Standards	AS
Accounting Standards notified under the Companies (Accounting Standards) Rules 2006 (as amended)	notified AS or AS
Annual General Meeting	AGM
AS 1 Disclosure of Accounting Policies	AS 1
Exposure draft of revised AS 1 Presentation of Financial Statements	ED AS 1
AS 3 Cash Flow Statements	AS 3
AS 5 Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies	AS 5
Exposure draft of revised AS 5 Accounting Policies, Changes in Accounting Estimates and Errors	ED AS 5
AS 6 Depreciation Accounting	AS 6
AS10 Accounting for Fixed Assets	AS 10
AS 15 Employee Benefits	AS 15
AS 18 Related Party Disclosures	AS 18
AS 21 Consolidated Financial Statements	AS 21
AS 23 Accounting for Investments in Associates in Consolidated Financial Statements	AS 23
AS 26 Intangible Assets	AS 26
AS 27 Financial Reporting of Interests in Joint Ventures	AS 27
AS 29 Provisions, Contingent Liabilities and Contingent Assets	AS 29
Build Own Operate Transfer	BOOT
Built Operate Transfer	BOT
The Chartered Accountants Act, 1949	CA Act
Central Board of Direct Taxes	CBDT
Companies (Auditor's Report) Order, 2003 (as amended)	CARO
Companies Act, 1956	Companies Act, 1956 or Act
Companies which are not SMC	Non-SMC
Consolidated Financial Statements	CFS
Corporate Debt Restructuring	CDR
Corporate Social Responsibility	CSR
Exposure Draft	ED
Extraordinary General Meeting	EGM
Foreign Currency Convertible Bonds	FCCB
Generally Accepted Accounting Principles	GAAP
Generally Accepted Accounting Principles in India	Indian GAAP
IAS 27 Consolidated and Separate Financial Statements	IAS 27
IFRS Interpretation Committee	IFRIC
IFRS 13 Fair Value Measurement	IFRS 13
Income Tax Act, 1961	Income-tax Act

Glossary

Ind-AS 16 Property, Plant and Equipment	Ind-AS 16
Indian Accounting Standards notified by MCA as Indian equivalent of IFRS	Ind-AS
Insurance Regulatory and Development Authority	IRDA
Institute of Chartered Accountants of India	ICAI
Institute of Company Secretaries of India	ICSI
Institute of Cost and Works Accountants of India	ICWAI
International Accounting Standards Board	IASB
International Accounting Standards	IAS
International Federation of Accountants	IFAC
International Financial Reporting Standards	IFRS
Key Managerial Personnel	KMP
Limited Liability Partnership	LLP
Ministry of Corporate Affairs	MCA
National Advisory Committee on Accounting Standards	NACAS
National Company Law Tribunal	Tribunal
National Financial Reporting Authority	NFRA
Nomination and Remuneration Committee	NRC
Non Public Interest Entities	Non-PIEs
Official Liquidator	OL
Public Interest Entities	PIEs
Public Private Partnership	PPP
Public Sector Undertakings	PSU
Regional Directors	RD
Registrar of Companies	ROC
Reserve Bank of India	RBI
SEBI (Disclosure and Investor Protection) Guidelines 2000	SEBI DIP guideline
SEBI (Issue Of Capital And Disclosure Requirements) Regulation 2009	SEBI ICDR regulation
SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997	SEBI Takeover Code
Securities and Exchange Board of India	SEBI
Serious Fraud Investigation Office	SFIO
Small and Medium Sized Company as defined under the Companies (Accounting Standards) Rules, 2006	SMC
Specified Domestic Transactions	SDT
Stakeholders Relationship Committee	SRC
Stand-alone Financial Statements	SFS
Standards on Auditing issued by ICAI	SA
Statement of Change in Equity	SOCIE
Statement of Profit and Loss / Profit and Loss Account	P&L account / P&L
Straight Line Method	SLM
Unit of Production	UOP
Unites States	US
Written Down Value	WDV

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