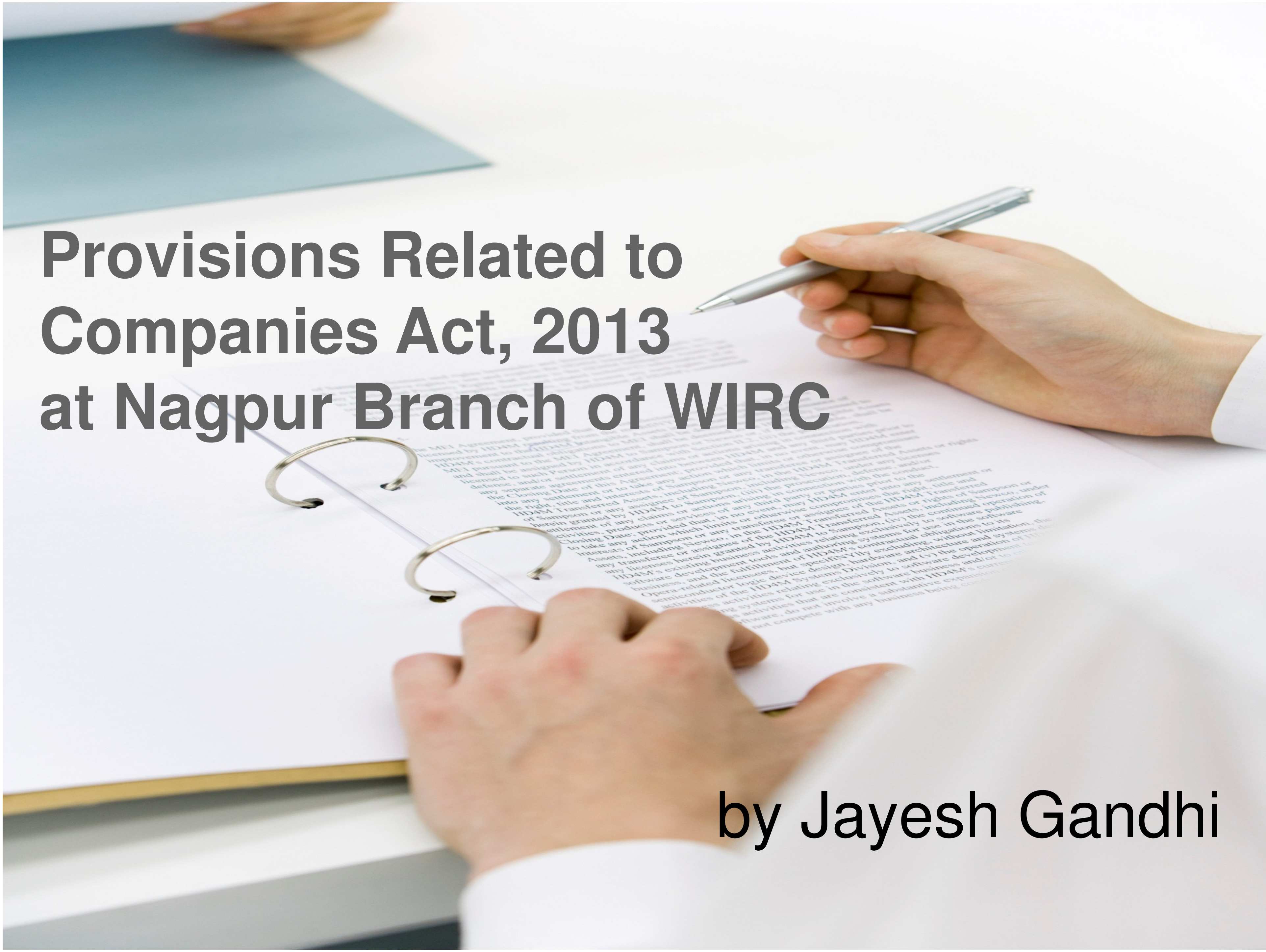
Provisions Related to Companies Act, 2013 at Nagpur Branch of WIRC



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Contents

- The Companies Act, 2013 - Overview
- Accounting
- Audit & Auditors
- Acceptance of Deposits
- Dividend declaration
- Independent Directors

Companies Act 2013 - Overview

Highlights of the Companies Act 2013

- Significant changes in financial reporting requirements – Moved closer to International best practices
- Significant change in auditors reporting requirements and also making auditor rotations mandatory
- Significant responsibilities on Independent directors and restrictions on certain transactions with directors.
- Corporate social responsibility rules are defined which in a way mandates the prescribed class of companies to spend 2% of net profits on social cause
- Significant penalties (including imprisonment) is prescribed at several places
- Rules on Mergers and Acquisitions are simplified as well as redefined

Companies Act 2013 - Overview

Highlights of the Companies Act 2013 (cont'd)

- 29 Chapters, 470 Sections, 7 Schedules
- 283 sections notified till date along with all the 7 schedules and 187 sections are yet to be notified
- 185 sections come into effect on 1 April 2014. 98 sections were made effective from 12 September 2013.
- 18 set of rules notified. 4 rules come into force from 1 April 2014 [Rules on Acceptance of deposits, Audit and Auditors, Appointment and Remuneration of Managerial personnel, Inspection/Investigation/Inquiry] and the balance on the date of their publication in the official gazette.
- The remaining sections not yet notified includes sections relating to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, revival and rehabilitation of sick companies, national company law tribunal and appellate tribunal, National Financial Reporting Authority etc.

Accounting

Coverage

- Chapter IX- deals with Accounts (Section 128 to 138)
  - Maintenance of Records
  - Consolidated Financial Statements
  - Re-opening or Voluntary Revision of Financial Statements
  - Applicable Accounting Standards
  - National Financial Reporting Authority (NFRA)
  - Board's Report
  - Corporate Social Responsibility (CSR)
  - Fixed Assets & Depreciation
  - Other Provision

Maintenance of Records

- Books of Accounts and other records can be maintained in Electronic mode. Rule prescribes it should remain accessible in India – To be retained in original form and should be legible.
- Should be maintained on Accrual Basis – To make sure that accounting policies do not mention any Cash Basis of Accounting.
- For Branch offices, summarized Periodical returns may be maintained – Balance can be kept at Branches, including out of India
- It should be maintained for Eight financial years immediately preceding current financial year – If investigation is going on, Eight year period is extended
- Financial Year
  - Has to be April to March. For new company, it can have more than 12 months period provided it has been incorporated after 1st January.
  - Transition period of two years is provided.
- Cash flow statement will be part of FS – Exemption is only for one person company, small company and dormant company.

Consolidated Financial Statements (CFS)

- A definition of Control & Subsidiary under AS 21
  - Ownership of more than 50% voting rights
  - Control of more than 50% over a governing body
- Under Companies Act
  - Broad definition
    - Right to appoint majority directors
    - Control over management / policy decisions
    - Control via management rights / other agreements
    - Control of more than 50% of total share capital
    - U/S 129 – Include JVs and associates
- Preparation of CFS mandatory for all companies including intermediate holding companies
- Methodology for Accounting
  - As per provision of Accounting Standards
  - Separate FS and Consolidated FS may be one and the same!!-in certain scenario
- Under Clause 41, half years results have to be prepared on a consolidated basis for certain companies

Consolidated Financial Statements (CFS)

- CFS has to be in same form and manner in which Standalone Financial Statement is maintained
- It means all disclosures under AS is also required for CFS.
- Additionally, separate statement containing salient features of each subsidiary is required in the prescribed form.
- CFS needs to be prepared for each stage.

Applicable Accounting Standards

- Central Government to prescribe Accountings Standards u/s 133
- This will be done with consultation and recommendation of NFRA
- Role of ICAI will be to formulate & recommend to NFRA
- Rule Prescribes that Section 211 (3C) standards under the Companies Act 1956 will be applicable standards at present
- Based on the General Circular no. 8/2014 dated 4 April 2014, the position is as under:
  - Applicable to board report, auditor report and financial statements
  - Financial years beginning earlier than 1 April 2014 are governed by the 1956 Act
  - For 31 March year-end company, new requirements apply for year-ending 31 March 2015
  - For 31 December year-end company, new requirement apply for year-ending 31 December 2015

Re-opening/revision of FS

Under Order of Court/ Tribunal Section 130

- On application made by the Central Government, Income-tax authorities, SEBI, any other statutory/regulatory body or any person concerned, the tribunal may pass order to the effect that:
  - Accounts were prepared in a fraudulent manner or
  - Company's affairs were mismanaged casting a doubt on reliability of financial statements

  If the order is passed, the company needs to reopen its books and recast its financial statement.
- No Time limit, means FS of eight years can be reopened.

Voluntary revision Section 131

- Voluntary revision of financial statements/ board report permitted for any of the 3 preceding financial years if they do not comply with the relevant requirement of 2013 Act.
- Approval of tribunal required to be obtained for such revision
- Detailed reasons for revision to be disclosed in the board report
- Revision cannot be done more than once in a year
- If Auditors are changed, Tribunal will hear previous Auditors

Responsibility of Directors and Auditors in Revision of FS

- Fresh Approval of General Body is required
- It should be supplemented by
  - A summarized statement of Revisions made
  - Copy of the Tribunal Order
  - The Revised Auditor's Report, if applicable
- For distinguishing, the word 'Revised' is prefixed prominently on all the documents
- Proposed Revision shall be first presented to the original signatory of FS and auditors.
- Opinion of the auditors should be considered by the Board & discussions should be properly recorded in the minutes.
- The Auditors shall give in bold the reasons for revision on FS
- Auditors shall review the steps taken by the Management to ensure that anyone who is in receipt of the previously issued FS is informed of the Revision. Rule does not specify what is the action required if steps taken are not sufficient.
- It is also worthwhile to examine whether any subsequent period FS requires Revision.

Corporate Social Responsibility (CSR)

- Applicable for company having one or more of
  - Net worth of Rs. 500 crores or more
  - Turnover of Rs. 1000 crores or more
  - Net profit of Rs. 5 crores or more
- Corporate Social Responsibility Committee shall have 3 or more directors and minimum 1 Independent Director which shall -
  - Formulate and recommend policy and chose activities out of Schedule VII
  - Recommend amount of expenditure to be incurred
  - Monitor such policy
- Board approved policy
  - Content to be disclosed in Board's Report and on Company's website
- In every financial year, atleast 2% of average net profits (as per section 198) of last three years, are required to be spent on CSR activities. If not spent, the Board shall specify the reasons for not spending in its Report.
- Net Profit is before tax and shall not include profits from Branches outside India

Corporate Social Responsibility (CSR)

Continued…..

- Articulation of policy and identifying and separately accounting such expenditure is important.
- Income arising from CSR activities cannot be business profit but should be added to corpus.
- Contribution can be given to a trust formed by the Company provided:
  - It is for specific projects / programmes
  - There is monitoring mechanism in place.
- Company can contribute to unrelated trust having track record of at least 3 years in carrying such activities in related areas.
- Amount need to be spent for projects within India
- Company can be out of CSR ambit only if the conditions given are not satisfied for 3 consecutive years.

Fixed Assets & Depreciation

Fixed Assets:

- Component approach has been provided for
- Depreciation schedule II prescribed lives to be used which are significantly different than existing rates under Schedule XIV.
- Useful lives prescribed for tangible assets only. For intangibles notified accounting standard to govern the same (maximum limit: 10 years).
- No separate rate for double and triple shifts, increase by 50% and 100% respectively.
- No specific requirement to charge 100% depreciation on assets whose actual cost does not exceed Rs.5 thousand
- Residual value should not be more than 5% of original cost (if different, justification to be disclosed)
- Continuous process plant (where no special rate prescribed) – useful life 25 years

Comparison of life for certain assets:

Assets	Schedule II	Schedule XIV
Buildings (other than factory buildings) Other than RCC Frame Structure	30	60
Plant & Machinery (General)	15	21
Computers and data processing units		
► Servers and networks	6	6
► End user devices, such as, desktops, laptops, etc.	3	6
Office equipment	5	21
Furniture & Fittings	10	15
Motor Cars	8	10

Fixed Assets & Depreciation

- Residual value of the asset cannot be taken at more than 5% of the original cost.
- Amortization of BOT / BOOT projects shall be in proportion of actual revenue to total projected revenue.
- For regulated entities , authority may provide different rates and the same needs to be followed.
- Transitional Provision
  - Carrying value as on 1 April 2014 to be depreciated over the remaining useful life.
  - If remaining useful life is NIL as on 1 April 2014, the carrying value shall be adjusted from opening balance of Retained Earnings
  - Deferred Tax need adjustments.

Other Provision

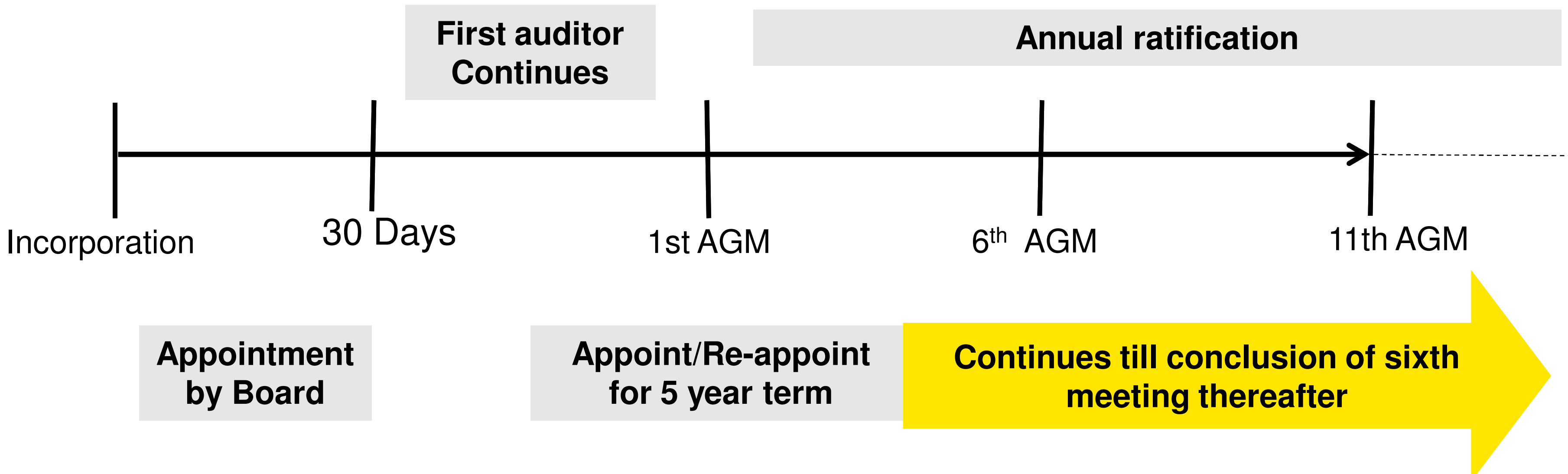
- Utilization of Securities Premium
  - For certain class of companies, there is restrictive use, i.e. cannot be utilized for providing premium payable on debentures or writing off of preliminary expenses.
  - Class of companies not yet specified.
- Accounting for Merger & Acquisition
  - To be in line with Accounting Standards. However de-merger accounting to be in line with requirements of Sec 2 (19AA) of the IT Act.
- Internal Auditor mandatory for all listed companies, public company having a paid up share capital of Rs. 50 crores or more OR public deposits of Rs. 25 crores or more at any time during the preceding year. Also applicable to any company having turnover of Rs.200 crores or more OR borrowings from Banks / Public Financial Institutions of Rs.100 crores or more at anytime during preceding financial year. –what about 1st year of incorporation??
- Prohibition for buy-back of own shares, if Section 129 is not complied with – i.e. if Accounting Standards are not followed in preparation of FS.

Audit & Auditors

Coverage

- Chapter X deals with Audit & Auditors (Section 139 to 148)
  - Appointment and Term of Auditors
  - Rotation of Auditors
  - Removal and Resignation of the Auditors
  - Qualification & Restriction for Auditors
  - Power & Duties of Auditors
  - Internal financial controls
  - Other Provisions

Appointment and term of auditors



- Before appointment, the Audit Committee / Board shall also consider the completed and **pending** proceedings against the auditor before ICAI or NFRA or **any court of law.**
- All Companies except one person companies and small companies – rotation rules apply
- Onus of intimation to Registrar shifted to management (within 15 days)
- Ratification – what purpose does it serve?
- Whether non ratification means Removal?
- Branch Audit can either be conducted by the Company's auditor or separate branch auditor can be appointed
- Duties & power of a branch auditor shall be same as applicable to the company's auditor, except that his report shall be submitted to the main auditors.

Rotation of auditor

Individual auditor → Maximum of 5 years

Firm as auditor → 1 term of 5 years (or) / 2 terms of 5 years each

Cooling off – 5 years

- Cannot be reappointed during this period
- Firms with common partner(s) cannot be appointed as auditor

- Companies have up to 3 years from commencement of Act to comply – early compliance is possible
- Firm under the same network / trademark / Brand or having a common partner shall be considered as one firm for rotation
- Rotation rules applied to branch auditors, can branch auditor become main auditor after completion of his terms?

Rules prescribe retrospective application only for calculation of terms elapsed.

Removal & Resignation of Auditors

- Before expiry of term, auditors can be removed only by passing of special resolution at the General Body meeting and after obtaining prior approval of the Central Government.
- Before such action, the auditor shall be given a reasonable opportunity of being heard.
- If auditors are removed (other than for rotation) special notice is required which shall provides that retiring auditor shall not be re-appointed.
- Copy of the special notice shall be sent to retiring auditor and he has right to make representation and can exercise his right to be heard at AGM.
- Tribunal has a right to remove auditors suo motu or an application by CG or by any person concerned. In such case, CG may appoint another auditor.
- If auditor is removed by passing of order by the Tribunal, the firm can not be appointed as an auditor of any company for the period of 5 years. Further, the firm can be liable for action u/s 447- fine can be 3 times the amount involved in fraud

Removal & Resignation of Auditors (Contd.)

- On Resignation by the auditors, he shall file within a period of 30 days, a statement in Form ADT 3 to the company and the Registrar, indicating the reason and other facts as may be relevant, leading to his resignation. In case of default by the auditors, he shall be punishable with fine of upto Rs. 5 lakhs.
- Casual vacancy can be filled by the Board of Directors within 30 days. If vacancy is due to resignation, such appointment is valid for max 3 months by which it is to be ratified by General Body of the company.

Qualification and Restrictions

- Multi disciplinary firm is allowed to be an auditor if majority of its partners are Chartered Accountants practicing in India. But signing on behalf of the firm shall be done only by CA .
- LLPs are allowed to be auditors.
- Following person are not eligible to be appointed as Auditors of a company, amongst other:
  - A person who, or his relatives or partner
  - is holding any security or interest in the company or its subsidiary or Holding, associate or fellow subsidiary. With the exception that relative may hold upto Rs, 1 lac face value. (Debenture is a security)
  - Is indebted in excess of Rs. 5 lacs
  - Has given a guarantee or provided any security for any indebtedness of any third person to the company, in excess of Rs. 1 lac
- It must be noted that –
  - A person or partners cannot hold any security
  - Limit prescribed appears to be separate for each category
  - Definition of Relative is wider
  - It will be challenge for giving declaration of eligibility

Qualification and Restrictions

- An auditor should not have any business relationship, directly or indirectly, with the Company and other group Company.
  - All transactions for commercial purpose other than allowed professional services are covered.
  - Commercial transactions in the ordinary course of business and at arm's length are not covered
- Limit of Audit is 20 companies per partners, and all companies are included without any exemptions.
- Section 144 prescribes host of services which cannot be provided by the auditors to the company or its holding or subsidiary company.
  - Associate company is not included
  - Direct or indirect services are included which includes other vehicles and relatives
  - All services to be approved by the Audit Committee / Board
  - 'Management Services' is a wide term and clarity is required as which services can be provided
  - For existing non audit services cooling period of one financial year is given.

Power & Duties of Auditors

Auditor's report to include additional matters

- Observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company will be reported and read in the AGM.
- Adequate internal financial controls system in place and the operating effectiveness of such controls.

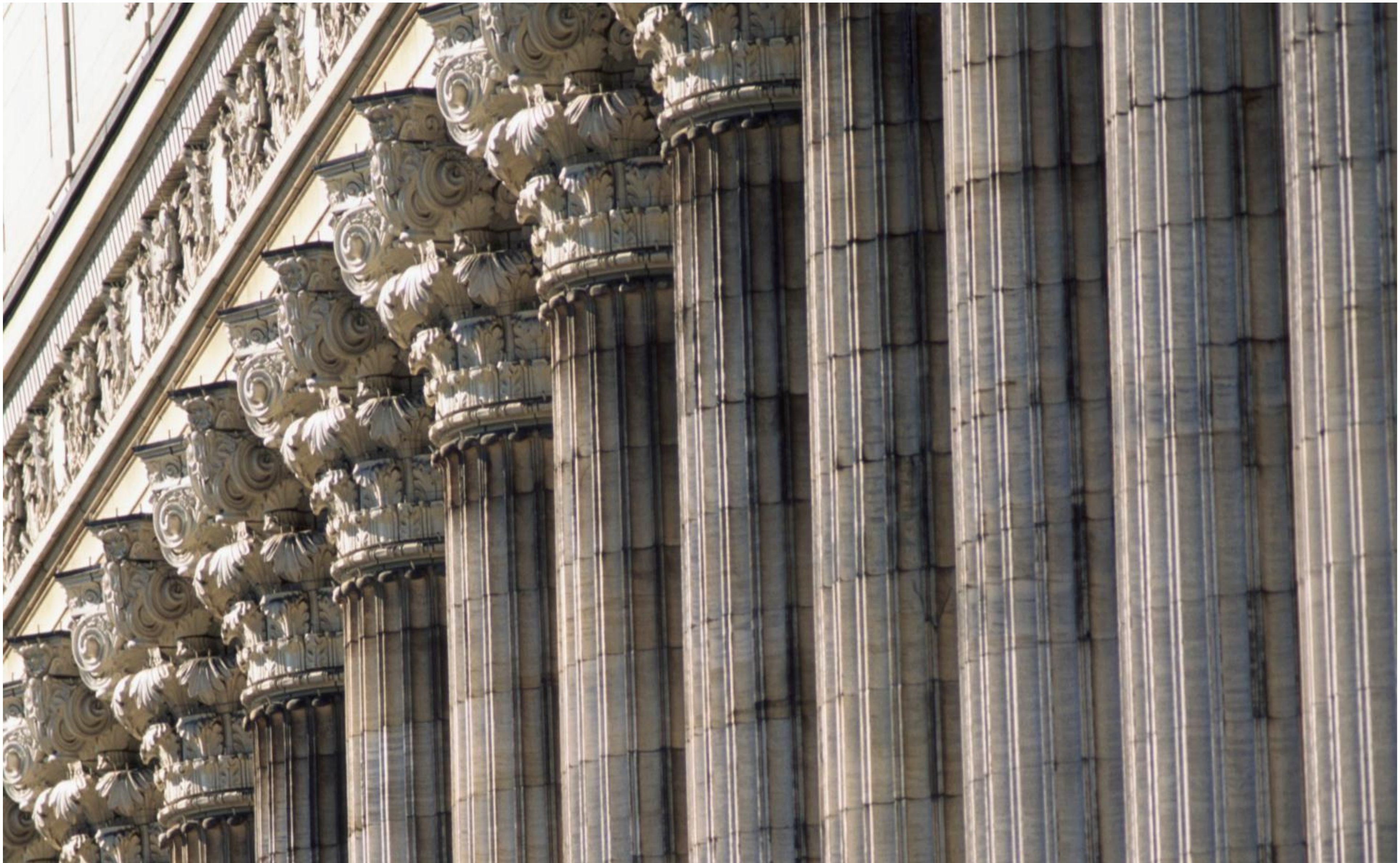
Now Act requires Auditor to immediately report to the Central Government within 60 days an offence involving fraud against the company by officers or employees

Power & Duties of Auditors

- It specifies that reporting is required if auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed.
- Now it will be mandatory for the auditor or its authorized representative to attend the AGM, unless exempted by the company
- Management responsibility to maintain internal control and monitor /detect fraud continues.
- Holding co. Auditors will have right to access records of all its subsidiaries for CFS – In a way, this is as per the provisions of SA 600.

Power & Duties of Auditors

- Rule 11 provides - The Auditor's Report shall include views and comments on the following.
  - Whether the company has disclosed the effects of pending litigations on its financial position in its FS – AS 29 if followed properly, no further reporting may be required.
  - Whether the Company has made provision for forseeable losses on long term Contracts including derivative contracts. – Unrealized loss may be considered as forseeable losses, which would have generally provided as per various AS. No need to comment whether it has been charged to P&L.
  - Whether there has been delay in depositing money into IEPF by the Company – Now shares are also required to be transferred to IEPF, but the same is not covered for reporting.



Acceptance of Deposits

Acceptance of Deposits - Transitional Provisions

- For deposits accepted and outstanding before commencement of the Act,
  - Repayment with accrued interest shall be made within one year of the Commencement or one year from the date on which such payments are due, whichever is earlier.
  - Tribunal can grant further time. The said sub section is not yet notified. If it remains un notified, this route is not availiable.
  - Rules provides that if deposits are paid on due dates, above provisions will not apply
- If not repaid, the company shall be fined between Rs. 1 to 10 crores and officer between 25 lakhs to 2 crores and imprisonment upto 7 years.

Acceptance of Deposits

- Banking Companies and NBFCs will continue to get governed by RBI.
- Exempt Deposits now covers:
  - Amount received from foreign collaborators, Mutual Funds (SEBI registered) and insurance companies.
  - Amount received against issue of Commercial papers/Other instruments, as per RBI guidelines
  - Share Application money or advance against securities to be issued is exempt only for 60 days. If securities are not allotted, it should be refunded within next 15 days. If not, will be treated as Deposits. Refund has to be made in cash and adjusted for any other purpose cannot be considered as refund.
  - Any amount received from relative of directors or shareholders in case of Private Company, not exempted any more. Amount from director continue to be exempt, provided declaration of own fund is given.
  - Any debentures or bonds secured by first charge of assets other than intangible assets. Previously, it was only if secured by any immovable property. Security market value, as assessed by registered valuer, should be higher than amount of bonds.
  - Secured Compulsorily Convertible Bonds, provided it is convertible into shares within 5 years.
  - Amount received by Security Deposits from employees, provided it is as per contract of employment, it does not exceed annual salary and is non interest bearing.

Acceptance of Deposits

Continued….

- Any non-interest bearing amount received or held in trust
- Any amount received in the course of business of the Company provided -
  - Advance for goods and services should be appropriated within 365 days,
  - Advance received against agreement or arrangement for sale of property
- Advance received for supply of capital goods of long term project or Performance Deposits.
- Any amount brought in by the promoters or by their relatives by way of unsecured loan pursuance to the stipulation.

Eligible Companies

- Eligible Companies are –
  - A Public company
  - Having Net worth of Rs. 100 Crores or more or turnover of Rs. 500 Crores or more.
  - Special Resolution is passed in the General Meeting and filed with ROC. If total borrowings is within the limit of paid capital and free reserves then ordinary resolution will do.
- Only eligible companies can invite deposits from public. Other companies can accept deposits from its members.
- Previously company having net owned fund of less than Rs.1 crore was not allowed to invite Public deposits.

Limits and Period of Deposits

- Period of Deposit cannot be less than 6 months or more than 36 months. It can be repayable on demand after 6 months period.
- Exception is to meet short term requirement of funds, where deposit for a period of 3 to 6 months can be accepted, within a limit of 10% of paid up share capital and Free Reserves.
  - To note share capital includes preference capital
  - Surplus in P&L on measurement of the asset or liability at fair value not part of Free Reserves!
- If no deposits are invited from the Public, limit for acceptance of deposits from members is 25% of the paid up capital and free reserves. It has to issue circular to members giving specified details.
- For eligible company limit is 10% from members and additional 25% from public. To note that limit available under one cannot be substituted by another.
- For Government Company, limit is 35% without bifurcation between members and public.
- Rate of Interest and maximum brokerage in line with stipulation by RBI for NBFCs.

Free Reserves

- Means such reserves which, as per the latest audited FS, are available for distribution as dividend.
- Securities premium and Capital Redemption Reserve are not free reserves, which were earlier considered as free reserves.
- Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as reserves or otherwise cannot be treated as Free Reserves.
- Forex gain as per AS-11?
- Gain on Hedge derivative contracts, taken directly to Reserves?

Deposit holders’ Protection

- Advertisement inviting deposits or circular to members should be published in 2 newspapers and to be uploaded on the website of the company, if any. Advertisement be given only under authority of the Board of Director.
- Deposit Insurance – It should minimum cover amount of Rs.20000 for all depositors.
- Appointment of deposits trustees is required in case of Secured Deposits. Duties have been defined in the Rules.
- Rating to be disclosed.
- Provides penal rate of interest of 18% per annum for deposits claimed but remaining unpaid
- For contravention there is a fine of Rs.5000 plus Rs.500 for each day.
- Maintenance of Liquid Assets
  - 15% of the amount of deposits maturing during the current financial year and **next financial year.**
  - Amount should be deposited with scheduled bank under ‘Deposit Repayment Reserve Account.

Debentures

- Any unsecured Debentures will be treated as Fixed Deposits
- If Debentures are issued to corporate, whether they are covered under exempt deposits.
- Section 71 logically applies only to secured debentures.
- Option to convert the debentures into shares either full or partly is allowed
  - If approved by the special resolution of the shareholders and option is at the time of redemption
  - Companies Act, 1956 allowed re issue of redeemed debentures which is not covered in the Companies Act, 2013
- Debenture Redemption Reserve (DRR)
  - Sec 117 C of 1956 Act had mandated creation of DRR but no limits were specified
  - DRR to be created as follows:
    - All India Financial Institutions and Banks – Not required
    - NBFCs and Other FIs – 25% for public issue and Nil for private placement
    - Others including manufacturing and infrastructure companies – 25% for both public issue and private placement
  - Rule 18 provides maintenance of liquid assets to the extent of 15%
  - Rule 18(1) provides that redemption should not exceed 10 years (30 years for Infrastructure companies)

Declaration of Dividend

Declaration of Dividend

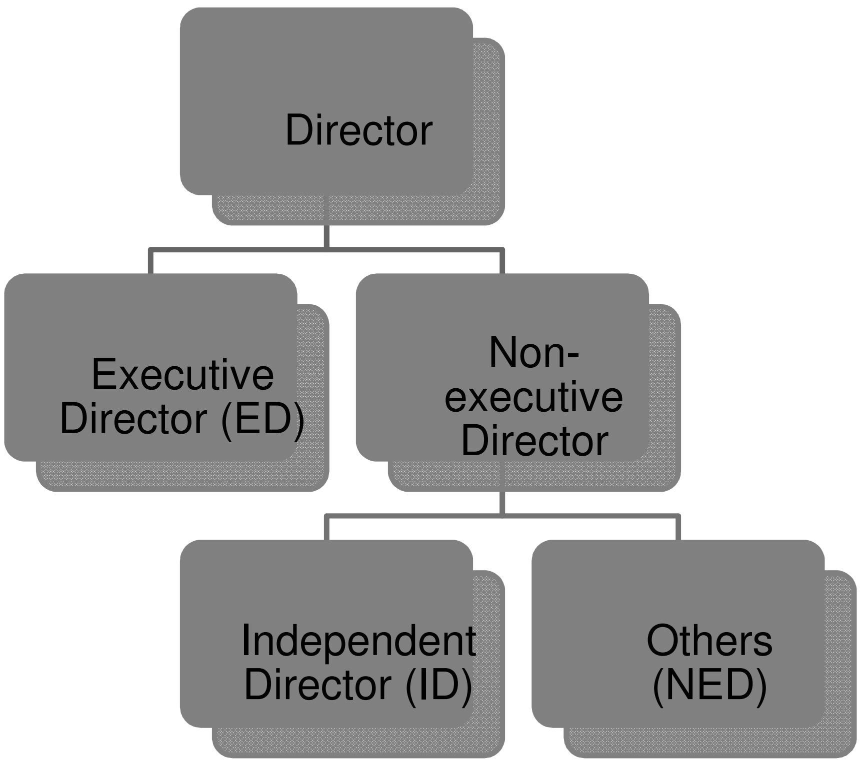
- In 1956 Act, the percentage of profits to be transferred to Reserve before declaration of dividend was prescribed. Now the company needs to decide.
- Before declaration, depreciation as per the provisions of Schedule II needs to be provided. If dividend is declared out of previous years profit, how to comply with Provision of Depreciation as per Schedule II?
- For Interim dividend, surplus in the P&L can also be utilised. However, if the loss is incurred in the current financial year, rate of dividend shall not be higher than average of the last three years.
- In the first quarter, this limit is not applied! However, Rule – 3 prescribes overall limit for all dividend including interim.
- If there is any default continuing in complying with Section 73 & 74 relating to Public deposits, no dividend can be declared on its Equity Shares.
- As per 1956 Act, if there is default in redemption on Redeemable Preference Shares, equity dividend cannot be declared – No such provision in the current Act.

Declaration of Dividend (contd.)

- Declaration out of Reserves
  - Restriction of 10% is removed
  - Rate cannot exceed average of last three years, instead of 5 years earlier.
  - Withdrawal is restricted to 10% of Paid up capital and free reserves and balance reserves shall not be less than 15% of Paid up Capital.
  - Amount drawn shall first be utilized to set off losses incurred in the current year.
  - Before declaration, previous losses or unprovided depreciation, whichever is lower, needs to be adjusted
- Unpaid Dividend
- After 30 days of declaration, within 7 days the amount to be transferred to unpaid Dividend A/c.
- Within 90 days of such transfer name of the shareholders and amount shall be disclosed on the Company's website and also Govt. approved website.
- After 7 years from the date of transfer it shall transfer it to Investor Education & Protection Fund.
- With dividend amount, even shares needs to be transferred

Independent Directors

Composition of the board/ non-executive director



- 2013 Act prescribes minimum no. for ID; company to choose between ED and NED
- RC49 requires that board should have minimum 50% non-executive directors, i.e., IDs + NEDs
- No specific information about functions, roles and responsibilities of NED
- 2013 Act states that ID & NED, not being a promoter KMP of the company, 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
- RC49 contains such a clause only for ID, but not for NEDs.

Woman director
Overview and key changes

Company	Final rules
Listed companies	All companies
Non-listed public companies meeting either of the following two criteria	
Paid-up share capital	`100 crores or more
Turnover	`300 crores or more

- Atleast one woman director on the board
- A newly incorporated company, which meets prescribed criteria, needs to appoint woman director within six months
- RC49 , applicable from 1 October 2014, allows no transitional period – Listed companies to have woman director by 1 October 2014
- 2013 Act, applicable from 1 April 2014, allows one year – Covered non-listed companies may have Woman Director by 1 April 2015

Independent directors
Overview and key changes

Particulars	Final rules
All listed companies	
No. of independent directors	1/3rd of board size
Non-listed public companies	
No. of directors	Two
Criteria – either of the following	
Paid-up share capital	`10 crores or more
Turnover	`100 crores or more
Aggregate outstanding loans, debentures and deposits	Exceeding `50 crores

2013 Act

- If a company ceases to fulfil any conditions for 3 consecutive years, it is not required to appoint ID
- If higher number of ID is required due to composition of audit committee or is prescribed under any other governing law, company will comply with the same.

Listing Agreement

- If the Chairman of board is non-executive director, at least 1/3rd of the board should comprise of ID
- If the Chairman is an ED/ promoter/ related to promoter, 50% of the board should comprise of ID

Independent Director
2013 Act vs. RC49

Point of difference	2013 Act	RC49
Subsidiary company	No requirement	At least one ID on the board of the holding company will be a director on the board of material non-listed Indian subsidiary
Manner of selection	To be selected from a data bank maintained by a body, institute or association, as may be notified by the Central Government	No such provision
Meaning		
Director	Should be a person other than managing director or whole-time director or nominee director	Should be non-executive director of the company
Others	No such requirement	Should not be a material supplier, service provider or customer or a lessor or lessee of the company Should not be less than 21years of age

Independent directors
2013 Act vs. RC49 (Contd.)

- *Nominee directors:* Both under the 2013 Act and RC49, nominee director is not treated as an independent director.
- *Stock options*: Both under the 2013 Act and RC49, an independent director is not entitled to any stock options in the company
  - No clarity as to how a company should deal with stock options granted in the past
  - Whether a company needs to cancel/ forfeit these options immediately
  - MCA/ SEBI to clarify this matter.
- *Limit on number of directorship*:
  - RC 49 requires that a person can serve as an ID in not more than 7 listed companies
  - If the person is WTD in any other listed company, then he can serve as an ID in not more than 3 listed companies
  - 2013 Act restricts no. of directorship to 20 – Max 10 public companies

Independent directors
2013 Act vs. RC49 (Contd.)

- *Tenure and rotation requirement*: Under the 2013 Act, an independent director holds office for a term up to 5 consecutive years on the board of a company
  - Eligible for reappointment on passing of a special resolution by the company
  - No ID can hold office for more than 2 consecutive terms of five years each
  - Under the 2013 Act, this provision will apply prospectively
  - An ID that completes two terms will be eligible for appointment after the expiry of 3 years
  - RC49 also contains similar provision for independent directors' rotation, except that rotation requirement is not entirely prospective
  - RC49: A person, who has already served as an ID for five or more years in a company as on 1 October 2014, is eligible for appointment, on completion of present term, for one more term of up to five years
- *Limitation of liability*: RC49 states that an independent director 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
- The 2013 Act also contains similar protection clause

Code of Conduct: Independent Director

Overview and key changes

- Listing agreement requires board to lay down Code of Conduct for all board members and senior management. Detailed code for independent director containing guidelines for professional conduct, roles and responsibilities laid down
- Key examples of guidelines:
  - Uphold ethical standards of integrity and probity
  - Safeguard interest of minority shareholders
  - Act objectively and constructively while exercising his duties
  - Undertake appropriate induction and regularly update/ refresh skills
  - Assure themselves that related party transactions are in the interest of the company
  - Satisfy themselves on integrity of financial information and financial controls
  - Keep themselves well informed about the company and external environment
  - To hold at least one meeting annually (without presence of non-independent directors), for evaluating performance of board, performance of chairperson

Key impact

- Most of the attributes are qualitative in nature - It may not be possible to demonstrate compliance.

Audit Committee
The 2013 Act

Company	Final rules
Listed companies	All companies
Non-listed public companies meeting either of the following criteria	
Paid-up share capital	`10 crores or more
Turnover	`100 crores or more
Aggregate outstanding loans, or borrowings, or debentures or deposits	`50 crores or more

Area	2013 Act	RC49
Composition	Minimum 3 directors with independent directors forming a majority	Minimum 3 directors. Out of this, 2/3rd will be independent directors.
Financial knowledge of members	Majority members, including Chairperson, should have ability to read and understand the financial statements	All members should be financially literate and at least one member should have accounting or related financial management expertise
Chairman	No such requirement	Chairman should be an independent director

Nomination and Remuneration Committee
Overview and key changes

Company	Final rules	RC49
Listed companies	All companies	All companies
Non-listed public companies meeting either of the following criteria		
Paid-up share capital	₹10 crores or more	NA
Turnover	₹100 crores or more	NA
Aggregate outstanding loans, or borrowings, or debentures or deposits	₹50 crores or more	NA

- NRC will comprise of three or more non-executive directors - Atleast one-half should be independent directors
- RC49 requires that the Chairman of NRC should be an ID - No such requirement under the 2013 Act

Nomination and Remuneration Committee
Overview and key changes

- Recommend appointment and removal of director and evaluate director's performance
- Formulate policy for determining qualification, positive attributes and independence of director
- Identify persons qualified to become directors and who may be appointed in senior management

Additional matters under RC49

- Formulate criteria for evaluation of independent directors and board
- Devise a policy on board diversity

Stakeholder Relationship Committee
Overview and key changes

- Company with more than 1,000 shareholders, debenture holders, deposit holders and any other security holders at any time during the year to constitute SRC
- SRC will consider and resolve the grievances of security holders
- RC49 requires all listed companies to constitute 'SRC' under the chairmanship of non-executive director

Vigil mechanism
Overview and key changes

- Establishment of vigil mechanism for directors and employees to report genuine concerns
  - Listed companies
  - Companies which accept deposits from the public
  - Companies which have borrowed money from banks and public financial institutions in excess of `50 crores
- Companies to operate the vigil mechanism through the Audit committee.
- If there is no Audit Committee, the board will nominate a director to play this role
- Mechanism to provide for adequate safeguards against victimization
- Direct access to the chairperson of the Audit committee.
- In case of repeated frivolous complaints, suitable action may be taken against the concerned director or employee including reprimand
- RC49 also contains similar provisions except:
  - Does not specify how to oversee the mechanism
  - No specific provision for taking action in the case of repeated frivolous complaints


Thank you