

An Overview of The Companies Bill, 2008

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Government of India has, on 23 October 2008, introduced the Companies Bill, 2008 in the Lok Sabha, to replace the existing Companies Act, 1956. Companies Bill is intended to modernize the structure for corporate regulation in India and represents a major reform statement by the Government to promote the development of the Indian corporate sector. There has been a requirement to enable corporate regulation in an effective and efficient manner with reasonable costs of compliance so that Indian companies are competitive in attracting investment for growth. Companies Bill seeks to enable the corporate sector in India to operate in a regulatory environment of best international practices that foster entrepreneurship, investment and growth. This handbook titled “ An overview of the Companies Bill,2008” gives a synopsis of the provisions proposed in the Companies Bill 2008 and also provides an insight into the company legislations in other countries.

As the Panchatantra saying goes “Knowledge is the true organ of sight, not the eyes”.

The qualification, education and experience of Chartered Accountants provides a foundation of knowledge, skills and professional values that enables them to continue to learn and adapt to changes throughout their professional lives

For our Knowledge base to grow there must be a constant flow of information. As part of the ongoing drive for professional updating and growth, I have brought out this handbook, which I hope would be of value to my professional colleagues. I take this opportunity to encourage members and experts to participate in my desire to expand our Knowledge base by writing useful articles and write ups on topics for professional development, especially on economic and commercial laws. Interested persons who

would like to do so and also those interested in presenting papers at seminars and workshops could reach me at rajkumarfca @ gmail.com

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CHAPTER I

INTRODUCTION TO COMPANIES AND COMPANY LAWS

1.1 Meaning of Company

The word 'Company' is an amalgamation of the Latin word 'Com' meaning "with or together" and 'Pains' meaning "bread". Originally, it referred to a group of persons who took their meals together. A company is nothing but a group of persons who have come together or who have contributed money for some common purpose and who have incorporated themselves into a distinct legal entity in the form of a company for that purpose.

Generally, a company is a form of business organization. The precise definition varies from country to country.

Companies, whether public or private, are an indispensable part of an economy. They are the modes through which a country grows and expands worldwide. Their performance is an important parameter of a country's economic position.

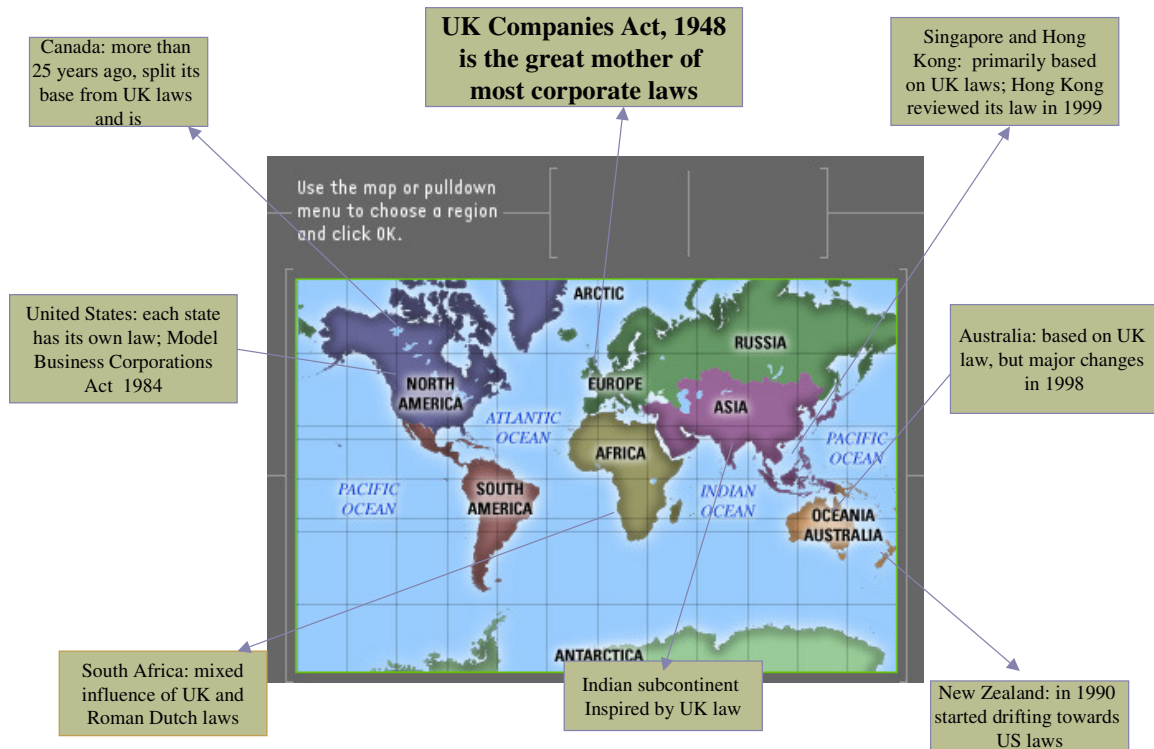
1.2 Companies Law

The basic theory behind all business organizations is that, by combining certain functions within a single entity, a business can operate more efficiently, and thereby realize a greater profit. Governments seek to facilitate investment in profitable operations by creating rules that protect investors in a business from being held personally liable for debts incurred by that business, either through mismanagement, or because of wrongful acts.

Companies' law (or the law of business associations) is the field of law concerning business and other organizations. It is an establishment formed to carry on commercial enterprises. This includes corporations, partnerships and other associations which usually carry on some form of economic or charitable activity. Company law is directly related to enterprise: it can either promote it or hold it. Most enterprise is corporatized and corporate regulation has a huge impact on the economy.

1.3 Sources of Company Law in Various Countries

Company law in the commonwealth (UK, Australia, Hong Kong, Singapore, India, and Malaysia) has common sources and influences. Common features also exist in European Union and US laws. However, the UK Companies Act 1948 is the great mother of most corporate laws world over, but has undergone several changes over time.



CHAPTER II

INTERNATIONAL SCENARIO

2.1 Companies law in selected Countries

The Company / Corporation (or by whatever other name it may be known in different countries) types of business entity exist and are defined in the legal systems of various countries. There are various types of company that can be formed in different jurisdictions and Countries have their own Company Law to govern them, of which some of them are listed below:

- i. **United States** - US corporations emanated from chartered corporations, allowing people to form corporations under a general corporation law. In the United States, the individual states incorporate most businesses, and some special types are incorporated by the federal government. For federal tax purposes,

the Internal Revenue Service has separate entity classification rules. Under the rules, an entity classified as a corporation may be either an S corporation or a C corporation. The main business designations for the State incorporated Corporations are - Corp., Inc. (Corporation, Incorporated), which are used to denote corporations (public or otherwise). These are the only terms universally accepted by all 51 corporation chartering agencies in the United States. However in some states other suffixes may be used to identify a corporation, such as Ltd., Co./Company, or the Italian term S.p.A. (in Connecticut). Some states that allow the use of "Company" prohibit the use of "and Company", "and Co.", "& Company" or "& Co.". Also Delaware corporation, Nevada corporation are the others. Since the US is a federal system, Company law can vary substantially from state to state. Delaware General Corporation Law is the statute governing corporate law in the state of Delaware. [Delaware](#) is well known as a corporate haven. Over 50% of US publicly-traded corporations and 60% of the Fortune 500 companies are incorporated in the state. The Delaware General Corporation Law consists of XVII sub-chapters.

- ii. **United Kingdom** – Companies Act, 2006 (CA 2006)
United Kingdom company law is governed by the Companies Act 2006. The Insolvency Act 1986, the Company Directors Disqualification Act 1986, and the old Companies Act 1985 are also important statutes. It applies across the United Kingdom, and is highly influential within Europe around the world.
The Companies Act of United Kingdom consists of 1300 sections under 47 parts and 16 Schedules.
- iii. **Germany** – Germany has separate regulatory structure for public and private companies: AG (Aktiengesellschaft) is a German public company and GmbH (Gesellschaft mit beschränkter Haftung) is a German private company
- iv. **France** - Two types of companies: Public companies Societe Anonyme (SA) and Private companies called Societe a Responsabilite Limitee, or abbreviated as SARL for which separate law exists. Single member companies, called EURL (Enterprise Unipersonnelle a Responsabilite Limite) also exist.
- v. **South Africa** - Republic Of South Africa Companies Act, 1973

- vi. **Australia** - Corporations Act, 2001 and Commonwealth Authorities and Companies Act 1997

The Corporations Act of Australia consists of 1471 sections under 7 volumes.

- vii. **Pakistan** - Legal regime for establishment and regulation of companies in Pakistan is given in the Companies Ordinance, 1984. The function of administration of these companies is vested in the Securities and Exchange Commission of Pakistan and the Registrar of companies appointed by the Securities and Exchange Commission of Pakistan for a Province of Pakistan where such company is to be registered. The Ordinance consists of 514 sections under 16 parts with 8 schedules.

2.2 List of Company Regulators around the World

<u>COUNTRY</u>	<u>AGENCY</u>
Albania	National Registration Center (NRC)
Algeria	Centre National du Registre du Commerce
Argentina	INDEC
Armenia	National Statistical Service of the Republic of Armenia
Australia	National Statistical Service, Business Demographics Section
Austria	Bundesministerium für Justiz
Azerbaijan	Ministry of Justice
Bangladesh	Registrar of Joint Stock Companies and Firms
Belgium	Business Register
Bolivia	Fundación para el Desarrollo Empresarial
Bosnia and Herzegovina	Companies Registry.
Botswana	Office of the Registrar of Companies. Department in the Ministry of Trade, Industry, Wildlife and Tourism
Brazil	Brazilian Institute of Geography and Statistics (IBGE)
British Virgin Islands	Development Planning Unit of the Government of the British Virgin Islands

Bulgaria	Commercial Registry. Ministry of Justice
Burkina Faso	AFRISTAT
Cambodia	Ministry of Commerce
Canada	Statistics Canada
Chile	Ministry of Commerce, Industry and Tourism, State Administration for Industry and Commerce
Colombia	Confecamaras
Congo	Djunga and Risasi, Attorneys at Law
Costa Rica	Registro Nacional. Registro Mercantil.
Croatia	Central Bureau of Statistics
Curacao, Netherlands Antilles	Curaçao Chamber of Commerce
Cyprus	Ministry of Commerce, Industry and Tourism. Department of Registrar of Companies and Official Receiver
Czech Republic	Ministry of Justice. Czech Statistical Office
Denmark	Danmarks Statistik
Dominican Republic	Registro Industrial y de Comercio
Ecuador	Ministerio de Industrias y Competitividad
Egypt	Central Agency for Public Mobilization and Statistics (CAPMAS)
El Salvador	Dirección del Registro de Comercio
Estonia	Centre of Registers, Ministry of Justice of Estonia
Finland	Business Register
France	Institut National de le Statistique et des Etudes Economiques
Georgia	Ministry of Economic Development
Germany	Statistisches Bundesamt
Ghana	Ghana Investment Promotion Center

Greece	Athens Chamber of Commerce - ACCI
Guatemala	Registro Mercantil de Guatemala
Haiti	Direction Générale des Impôts
Hong Kong	Companies Registry.
Hungary	Hungarian Central Statistical Office, Business Register Unit
Iceland	Statistics Iceland
India	Registrar of Companies (ROC)
Indonesia	Ministry of Law and Human Rights
Ireland	Companies Registration Office
Israel	Registry of Companies
Italy	InfoCamere
Jamaica	Registry of Companies
Japan	Ministry of Justice
Jordan	Companies Control Department
Kazakhstan	Agency of Statistics of the Republic of Kazakhstan
Kenya	Registrar of Companies
Kosovo	Statistical Office of Kosovo
Kyrgyzstan	National Statistics Office
Latvia	Ministry of Justice
Lebanon	Central Administration for Statistics
Lithuania	State Enterprise Center of Registers. Department of Register of Legal Entities
Luxembourg	Registre de Commerce et des Societes
Macedonia	Macedonia Statistics Office
Madagascar	Direction Générale de la Statistique
Malasya	Malaysian Entrepreneurship Development Centre
Malawi	Registry General
Malta	Malta Financial Services Authority
Mexico	Sistema de Informacion Empresarial Mexicano, SIEM
Moldova	State Registration Chamber

Morocco	Institut National de Statistique et D'Economie Appliquee
Netherlands	Dutch Association of Chambers of Commerce
New Zealand	New Zealand Companies Office
Nicaragua	Registro de la Propiedad Inmueble y Mercantil
Norway	Brønnøysundregistrene
Oman, Sultanate of	Company Registrar's Office, Department of Industry
Pakistan	The Securities and Exchange Commission (SEC)
Paraguay	Ministerio de Industria y Comercio
Peru	Ministerio de Economia y Finanzas
Phillipines	Philippines Securities and Exchange Commission
Poland	Business Register
Portugal	Centro de Formação dos Registos e do Notariado
Romania	Registrar of Corporations
Russia	Federal State Statistics Service
Rwanda	National Institute of Statistics
Senegal	AFRISTAT
Serbia	Department for Statistical Registers and Standards
Singapore	Accounting and Corporate Regulatory Authority (ACRA)
Slovak Republic	Analyses and Information Service Unit, Statistical Office of the Slovak Republic
Slovenia	AJPES
South Africa	Companies and Intellectual Property Registration Office
Spain	Registro Mercantil Central de Madrid
Sri Lanka	Board of Investment of Sri Lanka. Registrar of Companies
Sweden	Swedish Companies Registration Office
Switzerland	Eidg. Amt für das Handelsregister
Syria	Central Bureau of Statistics
Tajikistan	State statistical committee of the Republic of Tajikistan
Tanzania	National Bureau of Statistics

Thailand	Business Register
Tunisia	Institut National de la Statistique
Turkey	Istanbul Chamber of Commerce
Uganda	Uganda Bureau of Statistics
UK	International Relations Manager at the Companies House
Ukraine	State Registrar
United States	Dun & Bradstreet
Uruguay	Registro Departamental de Entidades del Sector Privado
Uzbekistan	State Committee on Statistics of Uzbekistan
Vietnam	Department of Planning and Investment of HCMC
Yemen	Deputy Minister for Trade Affairs
Zambia	Business Register

CHAPTER III

INDIAN SCENARIO

3.1 Origin of Companies Act in India

The earliest piece of legislation in India relating to companies was the Act of 1857. Next was the Indian Companies Act, 1866. After this the Companies Act, 1882 was enacted. The Act of 1913 replaced the Indian Companies Act of 1882.

Following the recommendations of the Company Law Committee known as the Bhaba Committee set up in 1950 the Companies Act, 1956, was enacted with the object to amend and consolidate the law relating to companies and certain other associations by repealing the Companies Act, 1913. The Companies Act, 1956, has been amended many times since 1956.

3.2 The Companies Act 1956

In India, the Companies Act, 1956, is the most important piece of legislation that empowers the Central Government to regulate the formation, financing, functioning and winding up of companies. The Act contains the mechanism regarding organizational, financial, and managerial and all the relevant aspects of a company. It provides for the powers and responsibilities of the directors and managers, raising of capital, holding of company meetings, maintenance and audit of company accounts, powers of inspection, etc. The Act applies to whole of India and to all types of companies, whether registered under this Act or an earlier Act. But it does not apply to universities, co-operative societies, unincorporated trading, scientific and other societies.

The Companies Act is administered by the Central Government through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) controls the task of incorporation of new companies and the administration of running companies.

3.3 Various Committees under Companies Act,1956

The major amendment to the Companies Act, 1956, was made after considering the recommendations of the Sachar Committee by enacting the Companies Amendment Act, 1988. The next major amendment was made by the Companies Amendment Act, 2002, consequent to the report of the high powered Eradi Committee.

The Department of Company Affairs constituted a Committee on April 4, 2002, under the Chairmanship of Mr.R.D. Joshi, Director General (Investigation & Registration), MRTP Commission, to examine the remnants of the Companies Bill, 1997

It was observed that a prosecutions launched against the companies and its Directors under various Sections of the Companies Act, were not getting concluded expeditiously. It was also observed that the Companies Act provides for prosecution for a number of offences committed by the companies. In order to review the whole scheme and systems

of prosecution, the Ministry had constituted a Committee under the Chairmanship of Shri O.P. Vaish. The Committee after examining all the aspects of the prosecution mechanism under the Companies Act submitted its final report in October 2005

Given below is a briefing on selected reports of the committees

A) Joshi Committee

The Department of Company Affairs constituted a Committee on April 4 2002, under the Chairmanship of Mr.R.D. Joshi, Director General (Investigation & Registration), MRTTP Commission, to examine the remnants of the Companies Bill, 1997. The Committee has come up with several significant recommendations which if implemented would help in reducing unwarranted restrictions. At the same time the Committee has made certain other recommendations which are bound to lead to a strong debate in the corporate sector.

Some of the major recommendations made by the Committee:

1. Verification of Persons Forming Companies

It is no secret that while forming a company the subscribers are never identified except for the signing by a witness. Under the Act, when a new company is formed the subscription clause of its memorandum is required to contain the details of its subscribers such as their addresses, description and occupations, etc. These details are merely required to be attested by a witness and there is no procedure of verification of the declarations made. In fact, the Registrar accepts these details prima-facie as they appear in the Memorandum of Association presented to him. There have been a large number of instances over the years wherein promoters of certain companies have disappeared after collecting funds from the public through public issues of shares and other securities. In the absence of much information about the persons behind such companies, the investors as also the Department of Company Affairs have to face serious problems. The Department finds it difficult to even initiate legal action against such vanishing companies and their promoters / directors. Therefore, the Committee has

recommended that a subscriber to the memorandum of association should be required to furnish details of his/her Permanent Account Number (PAN), Identity Card issued by Election Commission of India, etc., along with his/her address/description, occupation and proof of his/her identity. With the establishment of the identity of the subscribers, it would be relatively easier for the Government to trace out the unscrupulous promoters / directors who either disappear or otherwise take the investors for a jolly ride. In fact, the subscribers and the directors should be made to submit their latest photographs, duly attested by a bank manager or some other authority.

2. Prohibiting Promoters to withdraw once having subscribed to a Public Issue

The Committee has observed that certain unscrupulous promoters first subscribe to the issue and/or purposely follow up by public announcement to this effect to create and enhance public confidence and then surreptitiously withdraw their application for subscription. With a view to curb such a malpractice, the Committee has proposed to prescribe that persons described in the prospectus as promoters or directors including relatives thereof and who have applied pursuant to such prospectus should not be entitled to revoke their application for shares or debentures once having been made. Consequently, this would effectively disable the promoters from playing a double game with the investors.

3. Prohibition on distribution of Gifts

Gifts by companies has been a double edged weapon that has been used by certain company managements to attract shareholder support while proposing difficult resolutions, while in most of the cases companies are under pressure to distribute gifts. Surprisingly, there is no provision in the Act that prohibits the companies from distributing any gifts at the time of general meetings or otherwise. So even those companies who are not keen to distribute any gifts, have no legal support under the Act. The Committee has proposed to prohibit a company from giving any gift either in cash or kind at any general meeting or otherwise. The interesting part of the recommendation is that even the shareholders would be prohibited from demanding or even accepting

gifts from companies.

4. The Committee has excluded giving of discount coupons from the definition, so that companies like Bata, Bombay Dyeing, Indian Hotels and scores of others can continue offer discount coupons to their shareholders. Similarly, providing any food or beverage at a general meeting by the company management will not be treated as gift.

B) Expert group for streamlining the prosecution mechanism under companies act, 1956 (Vaish committee)

The Ministry constituted an Expert Group on 4th May 2005 under the Chairmanship of Shri O.P. Vaish, Senior Advocate, to examine issues relating to streamlining the prosecution mechanism under the Companies Act, 1956. The Terms of Reference of the Expert Group were as under:-

- i) Identification of broad categories of offences for which cases filed for violations of Companies Act, 1956 are pending and the period thereof;
- ii) The reasons for excessive pendency where relevant;
- iii) Review of the steps taken in the past to expedite disposal of these cases, their outcome and the constraints;
- iv) Identifying ways and means through which disposal of these cases could be expedited;
- v) Ways and means for expeditious disposal of cases of purely technical nature and workable mechanism to enable this in a definite time frame.

The Group has submitted its report on 19th October 2005 to the Ministry. The recommendations of the Expert Group are under examination.

C) Eradi Committee

In the year 1999, the Government of India set up a High Level Committee headed by Justice V.B. Balakrishna Eradi, a superannuated Judge of Supreme Court of India for remodeling the existing laws relating to insolvency and winding up of companies and bringing them in time with the international practices in this field.

Recommendations of the Committee

- The jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal which should be vested with the functions and power with regard to rehabilitation and revival of sick industrial companies, a mandate presently entrusted with BIFR under SICA.
- The 1956 Act should be suitably amended to take the power away from High Court and the transfer of the pending winding up proceedings to the Tribunal.
- The adoption of the international trend in law relating to corporate bankruptcy, namely, sell the assets first as quickly as possible, and relegate to a later stage the adjudication of claims and distribution of proceeds.
- An in depth assessment of the office of Official Liquidators, in view of inadequate and incompetent manpower and absence of latest office equipments and technologies.
- A liquidation Committee consisting of creditors of the company on the lines of Section 141 of the Insolvency Act, 1986 of UK be set up to assist the Liquidator.
- The repeal of SICA and recommended the ameliorative, revival and reconstructionist procedures obtaining under it to be reintegrated in a suitably amended form in the structure of the 1956 Act except that there is no stand still provision like Section 22 of SICA.
- Part VII of the Companies Act, 1956 should incorporate a new substantive provision to adopt the UNCITRAL Model Law as approved by the United Nations and the Model Law itself may be incorporated as a Schedule to the Companies Act, 1956, which shall apply to all cases of Cross-Border insolvency.
- Adopt the necessary principles enunciated under the heading "Legal Framework", "Orderly and Effective Insolvency Procedures - Key issues", to bring the provisions of the Companies Act, 1956 in line with international practices.

The Committee completed its work and submitted its report to the Central Government in the year 2000.

3.4 Important amendments under the Companies Act, 1956

The Companies (Amendment) Ordinance 1998 which came into force w.e.f the 31st October, 1998 introduced provisions facilitating Buy Back of Shares and issuance of sweat equity shares, liberalized the provisions relating to inter-corporate loans and investments by removing the condition of government approval *in toto* and replacing the same by the shareholders' approval, introduction of the nomination facility for holders of securities, mandatory compliance with the accounting standards and setting of an Investors Education and Protection Fund. The said Ordinance was validated by the Companies (Amendment) Act of 1999.

The Companies (Amendment) Act, 2000 which came into force w.e.f the 13th December, 2000 introduced the concept of Postal Ballot, appointment of directors by small shareholders, removed the concept of deemed public companies and introduced the concept of minimum capital adequacy for public and private companies, introduced provisions for the protection of small deposits holders, defining the role of Debenture Trustees and introduced the remedy of approaching the Company Law Board for the aggrieved debenture holders, recognized the process of book building and introduced the provisions relating to issuance of Indian Depository Receipts by foreign entities, introduced the concept of secretarial audit in case of companies not required to appoint company secretaries, restricting directorships to 15 companies, disqualification of a person to act as a Director in the event of non compliance with stipulated provisions of the Act by the company on whose Board he is a director etc.

The Companies (Amendment) Act, 2006 provides for allotment of a unique Director Identification Number (DIN) to any individual, intending to be appointed as a director in a company or to any existing director of a company. The Amendment Act provides to insert sections 610B, 610C, 610D and 610E in the Act to make provisions for electronic filing system and for payment of fee through electronic form under the Act which are essential for successful implementation of MCA-21 e-Governance system.

CHAPTER IV

COMPANIES BILL 2008

4.1 Background of Companies Bill, 2008

The Ministry of Corporate Affairs took up a comprehensive revision of the Companies Act, 1956 (the Act) in 2004 keeping in view that not only had the number of companies in India expanded from about 30,000 in 1956 to nearly 7 lakhs, Indian companies were also mobilizing resources at a scale unimaginable even a decade ago, continuously entering into and bringing new activities into the fold of the Indian economy. In doing so, they were emerging internationally as efficient providers of a wide range of goods and services while increasing employment opportunities at home. At the same time, the increasing number of options and avenues for international business, trade and capital flows had imposed a requirement not only for harnessing entrepreneurial and economic resources efficiently but also to be competitive in attracting investment for growth. These developments necessitated modernization of the regulatory structure for the corporate sector in a comprehensive manner.

Earlier, a Bill called Companies (Amendment) Bill, 2003 had been introduced by Ministry of Corporate Affairs (MCA) (then Department of Company Affairs) in the Rajya Sabha on 7.5.2003. Later on, a large number of changes were found to be necessary in the Bill. A decision was, therefore, taken to carry out a comprehensive review of the Companies Act, 1956 and to introduce a new Companies Bill for the consideration of the Parliament.

The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs on the basis of a detailed consultative process. A 'Concept Paper on new Company Law' was placed on the website of the Ministry on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December 2004 to advise on new Companies Bill. The Committee submitted

its report to the Government on 31st May 2005. After considering the report of the Committee and other inputs received from time-to-time, the Government took up the exercise of comprehensive review of the Companies Act, 1956.

4.2 Highlights of the Companies Bill, 2008

1. Harmonise corporate regulation with other sectoral regulators;
2. Ensure shareholder democracy with due rights to minority;
3. Introduce e-governance in all company processes;
4. Ensure liability of Board and senior management;
5. Bring new scheme for penalties and punishment for violations;
6. Specific framework for Merger and Acquisitions of companies;
7. Concept of One Person Company introduced.
8. Company (except NBFC and Banks) prohibited from accepting public deposits.
9. One-third directors to be independent in all listed companies; for others government to prescribe number of such directors;
10. Key managerial personnel (KMP) to include Managing Director (MD) or Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Company Secretary (CS). [Note: No Qualifications have been prescribed for the post of KMP except in the case of CS];
11. Make insider trading a criminal offence;
12. Make consolidation of financial statements of subsidiaries with holding companies mandatory;
13. Single forum for approval of mergers and acquisitions;
14. Framework for fair valuation in companies for various purposes;
15. Administration of Investor Education and Protection Fund through a statutory authority;
16. Revised framework for regulating insolvency;
17. Have special courts for offences under the Companies Law; and
18. Create National Company Law Tribunal for matters like Merger and Acquisition, amalgamation, reduction of capital and winding up.

4.3 Important Provisions of the Companies Bill, 2008 in Brief

The Companies Bill, 2008 inter alia provides for –

- (i) Reduction of Government Control over internal Corporate Processes. The basic principles for all aspects of internal governance of corporate entities and a framework for their regulation, irrespective of their area of operation, from incorporation to liquidation and winding up, in a single, comprehensive, legal framework to be administered by the Central Government. In doing so, the Bill also seeks to harmonise the Company law framework with the sectoral regulation;
- (ii) articulation of shareholders democracy with protection of the rights of minority stakeholders, responsible self-regulation with adequate disclosures and accountability.
- (iii) easy transition of companies operating under the Companies Act, 1956, to the new framework as also from one type of company to another. Freedom with regard to the numbers and layers of subsidiary companies that a company may have, subject to disclosures in respect of their relationship and transactions or dealings between them;
- (iv) a new entity in the form of One-Person Company (OPC) while empowering Government to provide a simpler compliance regime for small companies. Retention of the concept of Producer Companies, while providing a more stringent regime for companies with charitable objects to check misuse;
- (v) Application of the successful e-Governance initiative of the Ministry of Corporate Affairs (MCA-21) to all the processes involved in meeting compliance obligations. Company processes may also be carried out through electronic mode;
- (vi) Speedy incorporation process, with detailed declarations and disclosures about the promoters, directors, etc., at the time of incorporation itself. Every company director would be required to acquire a unique Director identification number;

- (vii) Relaxation of restrictions limiting the number of partners in entities such as partnership firms, banking companies, etc., to a maximum 100, with no ceiling as to professional associations regulated by Special Acts;
- (viii) Duties and liabilities of the directors and every company to have at least one director resident in India. The Bill also provides for independent directors to be appointed on the Boards of such companies as may be prescribed, along with attributes determining independence. The requirement to appoint independent directors, where applicable, to listed public companies is a minimum of one-third of the total number of directors. For other public companies, the requirement and number may be prescribed through rules;
- (ix) statutory recognition to audit, remuneration and stakeholders relationship committees of the Board and the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary to be as Key Managerial Personnel (KMP);
- (x) Companies not to be allowed to raise deposits from the public except on the basis of permission available to them through other Special Acts. The Bill prohibits insider trading by company directors or Key Managerial Personnel and declares it as an offence with criminal liability;
- (xi) Recognition of both accounting and auditing standards. The role, rights and duties of the auditors defined so as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding companies is proposed to be made mandatory;
- (xii) A single forum for approval of mergers and acquisitions along with a shorter merger process for holding and wholly owned subsidiary companies or between two or more small companies as well as recognition of cross border merges. Concept of deemed approval also provided in certain situations;
- (xiii) A framework for enabling fair valuations in companies for various purposes. Appointment of valuers is proposed to be made by audit committee or in its absence by the Board of Directors;

- (xiv) Claim of an investor over a dividend or a benefit from a security not claimed for more than a period of seven years not to be extinguished, and Investor Education and Protection Fund (IEPF) to be administered by a statutory authority;
- (xv) Shareholders associations or group of shareholders to be enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and 'Class Action Suits';
- (xvi) A revised framework for regulation of insolvency, including rehabilitation, liquidation and winding up of companies and the process to be completed in a time bound manner;
- (xvii) Consolidation of fora for dealing with rehabilitation of companies, their liquidation and winding up in the single forum of National Company Law Tribunal with appeal to National Company Law Appellate Tribunal with suitable transitional provisions. The nature of the Rehabilitation and Revival Fund proposed in the Companies (Second Amendment) Act, 2002 to be replaced by Rehabilitation and Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency;
- (xviii) a more effective regime for inspections and investigations of companies while laying down the maximum as well as minimum quantum of penalty for each offence with suitable deterrence for repeated defaults. Company is identified as a separate entity for imposition of monetary penalties from the officers in default. In case of fraudulent activities, provisions for recovery and disgorgement have been included;
- (xix) Levy of additional fee in a non-discretionary manner for procedural noncompliance, such as late filing of statutory documents, to be enabled through rules. Defaults of procedural nature to be penalised by levy of monetary penalties by the adjudicating officers not below the level of Registrars. The appeals against orders of adjudicating officers to lie with suitably designated higher authorities;
- (xx) Special Courts to deal with offences under the Bill. Company matters such as mergers and amalgamations, reduction of capital, insolvency including rehabilitation, liquidations and winding up are proposed to be dealt with by the National Company Law Tribunal.

4.4 Arrangement of Sections under Companies Act, 1956 and Companies Bill, 2008

The Companies Bill, 2008 consists of 426 clauses in 28 chapters whereas the Companies Act, 1956 consists of 658 sections under 13 Parts and 15 schedules.

Arrangement of sections:

Chapter	Title	Clauses as per 2008 Bill	Corresponding sections of Companies Act, 1956
1	Preliminary	1, 2	1 to 10
2	Incorporation of companies	3 to 21	11 to 54
3	Prospectus and allotment of securities	22 to 36	55 to 81
4	Share capital and debentures	37 to 65	82 to 123
5	Acceptance of deposits by companies	66 to 68	58A to 58B
6	Registration of charges	69 to 77	124 to 145
7	Management and administration	78 to 109	146 to 197
8	Declaration and payment of dividend	110 to 115	205 to 207
9	Accounts of companies	116 to 122	209 to 223
10	Audit and auditors	123 to 131	224 to 233B
11	Appointment and qualification of directors	132 to 153	252 to 284
12	Meeting of Board and its powers	154 to 173	285 to 308
13	Appointment and remuneration of managerial personnel	174 to 178	309 to 311
14	Inspection, Inquiry and Investigation	179 to 200	234 to 251

15	Compromise, Arrangements and Amalgamations	201 to 211	390 to 396A
16	Prevention of oppression and mismanagement	212 to 217	397 to 409
17	Registered valuers	218 to 223	
18	Removal of names of companies from the Register	224 to 228	560
19	Revival and rehabilitation of sick companies	229 to 244	424A to 424L
20	Winding up	245 to 340	425 to 559
21	Companies incorporated outside India	341 to 355	591 to 608
22	Government companies	356, 357	617 to 620
23	Registration offices and fees	358 to 365	609 to 614A
24	Companies to furnish information and statistics	366	615
25	Nidhis	367	620A
26	NCLT and NCLAT	368 to 395	10FB to 10GF
27	Special Courts	396 to 406	
28	Miscellaneous	407 to 426	621 to 658

CHAPTER V OVERVIEW OF COMPANIES BILL 2008

Some of the important changes proposed by the Companies Bill, 2008 are as follows:

I. Definitions

There are 93 definitions under the Companies Bill, 2008 while there are only 66 definitions under the Companies Act, 1956.

Some of the important definitions that have been included in the Companies Bill, 2008 are given hereunder.

1. **“Accounting Standards”** means such accounting standards as the Central Government may notify under Section 119, in consultation with the National Advisory Committee on Accounting and auditing Standards constituted under Section 118. (Clause 2 (1)(b))
2. **“Associate Company”**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence or of any other company. Explanation - For the purpose of this clause, “significant influence” means control of at least twenty-six percent of total voting power, or of business decisions under an agreement. (Clause 2(1)(f))
3. **“Auditing standards”** means such auditing standards as the Central Government may notify under Sub-section (10) of Section 126, in consultation with the National Advisory Committee on Accounting and auditing Standards constituted under Section 118. (Clause 2(1)(g))
4. **“Authorised capital” or “nominal capital”** means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. (Clause 2(1)(h))
5. **“Books of account”** includes records maintained in respect of- All sums of money received and expended by a company and matter in relation to which the receipt and expenditure take place; All sales and purchases of goods and services by the company; The assets and liabilities of the company; and In the case of a company which belongs to any class of companies specified under Section 131, such items of cost as may be prescribed under that section; (Clause 2(1) (m))
6. **“Called-up-capital”** means such part of the subscribed capital, which has been called for payment. (Clause 2(1)(o))
7. **“Charge”** means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage. (Clause 2(1)(p))

8. **“Company limited by guarantee”** means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. (Clause 2(1)(u))
9. **“Company limited by shares”** means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. (Clause 2(1)(v))
10. **“Controlling interest”** means the largest voting power a member may exercise in a general meeting of a company, whether directly or indirectly and either alone or in association with his relatives, bodies corporate or firms controlled by such person or his relatives. (Clause 2(1)(za))
11. **“Deemed director”** means a person under whose advice, instructions or directions, the Board of Directors is accustomed to act, but does not include a person who has been engaged by the company to advise it in a professional capacity. (Clause 2(1)(ze))
12. **“Financial statement”** in relation to a company, includes-
 - (i) A balance sheet as at the end of the financial year;
 - (ii) A profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) Cash flow statement for the financial year; and
 - (iv) Any explanatory note attached to, or forming part of, any document referred to in sub-clause(i) or sub-clause (ii). (Clause 2(1)(zp))
13. **“Foreign company”** means any company or body corporate incorporated outside India which has a place of business in India whether established before or after the commencement of this Act. (Clause 2(1)(zr))
14. **“Global Depository Receipt (GDR)”** means any instrument in the form of a deposit receipt, by whatever name called created by a foreign depository outside

- Indian and authorized by a company making an issue of such depository receipts.
(Clause 2(1)(zt))
15. **“Indian Depository Receipt (IDR)”** means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporate outside India making a issue of such depository receipts.
(Clause 2(1)(zx))
16. **“Interested Director”** means a director who is in any way, whether by himself or through any of this relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into ot to be entered into by or on behalf of a company. (Clause 2(1)(zy))
17. **“Issued capital”** means such capital as the company issues from time to time for subscription by the public. (Clause 2(1)(zz))
18. **“Key managerial personnel”** in relation to a company, means –
- (i) The Managing Director, the Chief Executive officer or the Manager or where there is not managing director or manager, a whole time director or directors;
 - (ii) The Company Secretary; and
 - (iii) The Chief Financial officer. (Clause 2(1)(zza))
19. **“One Person Company”** means a company which has only one person as a member.
(Clause 2(1)(zzk))
20. **“Paid-up share capital” or “share capital paid-up”** means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued, but does not include any other amount received in respect of such shares, by whatever name called. (Clause 2(1)(zzl))

21. **“Postal ballot”** means voting by post or through any electronic communication.
(Clause 2(1)(zzm))

22. **“Promoter”** means a person who has-

- (a) Been named as such in a prospectus; or
- (b) Control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise:

Provided that nothing in sub-clause (b) shall apply to a person who is acting in a professional capacity. (Clause 2(1)(zzq))

23. **“Red herring prospectus”** means a prospectus which does not include complete particulars of the quantum or price of the securities or class of securities included therein.
(Clause 2(1)(zzv))

24. **“Related party”** with reference to a company means-

- (i) A relative of a director or key managerial personnel;
- (ii) A firm, in which a director, manager or his relative is a partner;
- (iii) A private company in which a director or manager is a member or director;
- (iv) A public company in which a director or manager is a director or holds along with his relatives, more than two percent of its paid-up share capital.
- (v) Any body corporate whose Board of Directors, managing director, or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vi) Any person under whose advice, directions or instructions a director or manager is accustomed to act;
- (vii) 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;

Provided that nothing in sub-clauses (v) and (vi) shall apply to the advice, directions or instructions given in a professional capacity. (Clause 2(1)(zzy))

25. **“Remuneration”** means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961. (Clause 2(1)(zzza))

26. **“Shelf prospectus”** means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. (Clause 2(1)(zzzf))

27. **“Small company”** means a company, other than a public company, -

- (i) Whose paid-up share capital does not exceed such amount as may be prescribed and the prescribed amount shall not be more than five crore rupees; or
- (ii) Whose turnover as per its last profit and loss account does not exceed such amount as may be prescribed and the prescribed amount shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to-

- (A) A holding company or a subsidiary company;
- (B) A company registered under Section 4; or
- (C) A company or body corporate governed by any special Act. (Clause 2(1)(zzzg))

28. **“Subscribed capital”** Means such part of the capital which is for the time being subscribed by the members of a company. (Clause 2(1)(zzzh))

29. **“Voting right”** means the right of a member of a company to vote in any meeting of the company. (Clause 2(1)(zzzn))

Change in Definitions

- "Subsidiary company" or "Subsidiary", in relation to any other company (referred to as the holding company), means a company in which the holding company –
 1. Controls the composition of the Board of Directors; or
 2. Exercises or controls more than ½ of total voting power.

Explanation – For the purposes of this clause, a company shall be deemed to be subsidiary company of the holding company even if the control referred to in sub-clause (1) or sub-clause (2) is of another subsidiary company of the holding company.
- "Financial Year", in relation to any company or body corporate has been defined to mean the period ending on the 31st day of March every year. Where a company has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year shall be the financial year. Earlier the Companies had the flexibility of determine any period of 12 months as its financial year. Approval of Tribunal required for allowing any other period as financial year.
- "Financial Institution" includes a Scheduled Bank.
- "Relative" with reference to any individual means the spouse, brother, sister and all lineal ascendants and descendants of such individual related to him either by marriage or adoption.

II. General

A. One Person Company -

For the first time, the concept of a “one-person company”, or OPC, has been introduced in the Bill, and the intent is apparently to permit entrepreneurship of a single individual to obtain the benefit of a corporate form of organization.

According to Sec.2(1)(zzk) of the Companies Bill, 2008 “**One Person Company**” means a company which has only one person as a member. It is a one shareholder corporate entity, where legal and financial liability is limited to the company only.

Some important features of the Bill in this regard are:

- One Person Company may be registered as a private Company with one member and also have at least one director. (Clause 132(1)(a) of the Companies Bill, 2008)
- The memorandum of a One Person Company has to prescribe the name of the person who will be member in the event of the death, disability or otherwise, of the one member of the company. (Clause 3(1)(c) of the Companies Bill, 2008)
- It is also the duty of the member of a One Person company to intimate the Registrar, the change of name of the person mentioned in the memorandum and such change will not be deemed to be an alteration of the memorandum. (second proviso to clause 3(1))
- Letters “OPC Limited” should be suffixed with the name of the company to distinguish it from other companies. (clause 5(1)(a))
- Annual return of a One Person Company should be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company. (proviso to Clause 82 (1))
- Provision of Annual General Meeting is not applicable for a One Person Company. (Clause 85(1))
- Where One person Company enters into a contract with the sole member of the company who is also a director, the company should, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract and every such contract should be informed to the Registrar. (Clause 171)

B. Small Company –

The concept of Small Company has also been introduced in the Companies Bill, 2008.

According to (Clause 2(1)(zzzg) of the Companies Bill, 2008, “**Small company**” means a company, other than a public company, -

(i) Whose paid-up share capital does not exceed such amount as may be prescribed and the prescribed amount shall not be more than five crore rupees; or

(ii) Whose turnover as per its last profit and loss account does not exceed such amount as may be prescribed and the prescribed amount shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to-

(A) A holding company or a subsidiary company;

(B) A company registered under Section 4; or

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

C. Types of companies –

The Companies Act, 1956 broadly classifies the companies into private and public companies and provides for regulatory environment on the basis of such classification. However, with the growth of the economy and increase in the complexity of business operation, the forms of corporate organizations keep on changing. Classification of Companies can therefore take many shapes and a multiple classification of companies can be made.

i) On the basis of size:

a. Small companies

b. Other companies

ii) On the basis of number of members:

a. One person company

b. Private companies

c. Public companies

iii) On the basis of control:

- a. Holding companies
- b. Subsidiary companies
- c. Associate Company

iv) On the basis of liability

a. Limited

I) by Shares

II) by Guarantee (with or without share capital)

b. Unlimited

v) On the basis of manner of access to capital

- a. Listed companies
- b. Un-listed companies

vi) On the basis of nature of business

- a. Dormant Company (Clause 414 of the Companies Bill 2008)
- b. Government Companies (Chapter XXII of the Companies Bill 2008)
- c. Companies incorporated outside India (Chapter XXI of the Companies Bill 2008)
- d. Companies with charitable objects etc. (Clause 4 of the Companies Bill 2008)
- e. Nidhi Companies (Chapter XXV of the Companies Bill 2008)

D. Minimum capital requirements –

The provisions relating to minimum capital requirements for public and private companies have been dispensed with.

E. Commencement of Business –

The provisions with regard to Certificate of Commencement of business have been dispensed with under the Companies Bill, 2008. Only declaration and verification is required by the Public Company under the Companies Bill, 2008.

III. Incorporation of company

- The number of documents to be submitted for registration has been increased under the Companies Bill, 2008 compared to the lesser number of documents to be submitted under the Companies Act, 1956.
- Clause 7(1) of Companies Bill, 2008 lists the documents and information for registration
- Documents to be filed at the time of incorporation should also contain name of first directors, their Director Identification Number (DIN), address etc, along with their consent and particulars of interest. (Clause 7(f) of Companies Bill, 2008)
- The provision with regard to printing of Memorandum under Section 15 of the Companies Act, 1956 has been dispensed with under the Companies Bill, 2008.
- The registered office of a company should not be shifted outside city limits without a special resolution. No other permission is required in this regard. (Clause 11(5) of Companies Bill, 2008)
- If the registered office of the company is to be shifted outside the State, then approval of the Central Government will be required apart from the special resolution. (Clause 12(4) of Companies Bill, 2008)
- A company can re-register itself after effecting requisite changes in the Memorandum and Articles of Association. (Clause 17(1) of Companies Bill, 2008)

IV. Share Capital and Debentures

- Issuing shares with differential voting rights is prohibited under the Companies Bill, 2008.
- A suit can be filed or any action can be taken by any person, group of persons or association of persons who have been affected by misleading statement or inclusion or omission of any matter in the prospectus. (Clause 32 of Companies Bill, 2008)

V. Acceptance of Deposits by companies

- Acceptance of deposits from public has been prohibited. Deposits can be accepted only from members subject to compliance of certain conditions. (Clause 66 (1) of Companies Bill, 2008)
- NBFC and Banking companies only are allowed to accept deposits from the public.[proviso to clause 66(1)]
- Deposits accepted before the Companies Bill, 2008 should be repaid within a period of one year. (Clause 67(1)(b) of Companies Bill, 2008)

VI. Registration of Charges

- Every company creating a charge within or outside India on its property or assets or any of its undertakings should register the particulars of the charge with the Registrar within thirty days of its creation. If the company fails to register the charge within the prescribed period, then the person in whose favour the charge is created can apply to the Registrar for registration of the charge along with the instrument created for the Charge. (Clause 70 of Companies Bill, 2008)

VII. Management and Administration

- The register and index of beneficial owners maintained by a depository under Section 11 of the Depositories Act, 1996, will be deemed to be the corresponding register and index for the purposes of the Companies Bill. (Clause 78(3) of Companies Bill, 2008)
- Annual return prepared by the Company should form part of the Board's report. (Clause 82(2) of Companies Bill, 2008)
- Annual General Meeting should not be held on a National Holiday. (Clause 85(2) of Companies Bill, 2008). In the Companies Act, 1956 it is mentioned as Public Holiday.
- If the explanatory statement to the general meeting does not disclose interest of director or manager or managerial personnel, he will be liable to compensate to company to the extent of benefit received by him, without prejudice to any other action that is taken against him under the Act. (Clause 91(4) of Companies Bill, 2008)
- In case of adjournment of meeting or change of day, time or place of meeting, the company should give not less than three day's notice to the members either individually or by a press announcement. (Proviso to Clause 92 of Companies Bill, 2008)
- Voting by members through electronic means is permitted under Clause 97 of the Companies Bill, 2008.
- A company can transact the items of business notified by the Central Government by means of postal ballot. It can also transact any item of business other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting. This can be done by means of postal ballot instead of transacting such business at a general meeting. (Clause 99 (1) (b) of Companies Bill, 2008)
- Every listed public company should file a report on each annual general meeting with the Registrar of Companies within 30 days of the conclusion of the annual general meeting. (Clause 109 (2) of Companies Bill, 2008)

VIII. Declaration and payment of dividend

- Unpaid dividend can be claimed any time and the time limit of seven years will not apply. ((Clause 112(9) of Companies Bill, 2008)

IX. Accounts of Companies

Books Of Accounts Etc, To Be Kept By Company- Clause 116

- Corresponding Sec in Companies Act,1956- Sec 209
- Books of accounts to be maintained - Clause 116 (1)
 - At the registered office
 - To give true and fair view
 - Including branch offices
 - Accrual basis
 - Double entry system of accounting
- Clause 116(2)- If branch outside India, it is sufficient if branch sends summarized returns to the registered office
- Clause 116(3)- Books of accounts open for inspection by any director of the company within office hours, However the books of accounts of the subsidiary can be done only by any person authorised in this behalf by a resolution of the Board of Directors.
- Clause 116(5)- Books of accounts to be preserved for eight financial years immediately preceding a financial year. But in case of investigation has been ordered by the Central Government, it may direct that the books be preserved for a longer period
- In case of default, the officer in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. –
[Clause 115 (6)]

Financial Statements – Clause 117

- Corresponding Sec in Companies Act,1956- Sec 210

- At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting a financial statement for the financial year.[Clause 117(2)]
- If the company has one or more subsidiaries, then a consolidated financial statement of all the subsidiaries should be prepared in the same form and manner of the company and should be presented at the annual general meeting of the company along with its financial statement. ((Clause 117(3))
- Where the financial statements of a company do not comply with the accounting standards the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation[Clause 117(4)]
- The Central Government may exempt a class of companies from complying with any of the requirements of this section [Clause 117(5)]
- In case of default the officers in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.[Clause 117(6)]

Constitution Of National Advisory Committee On Accounting And Auditing

Standards- CLAUSE 118

- Corresponding Sec in Companies Act,1956- Sec 210A
- The Committee shall, after consulting the Institute of Chartered Accountants of India, submit its recommendations to the Central Government on matters relating to accounting and auditing policies and standards for adoption by companies or class of companies or their auditors[Clause 118(5)]

Central Government to Lay Down Accounting Standards- Clause 119

- Corresponding Sec in Companies Act,1956- Sec 211(3C)]
- The Central Government may, after consultation with the Advisory Committee, by notification, lay down accounting standards for adoption by companies or class of companies

Financial statements, Board's Report etc- Clause 120

- Corresponding Sections in Companies Act, 1956- Sec 215, 216, 217
- The financial statement to be signed by the Chairman where he is authorized by the Board or by two directors out of which one shall be the Managing Director or Chief Executive Officer
- The auditors' report shall be attached to every financial statement. [Clause 120(20)]
- Board report to also include:- Clause 120(3)]
 - (a) The extract of the annual return as provided under sub-section (2) of section 82,
 - (b) Number of meetings of the Board,
 - (c) Directors' Responsibility Statement,
 - (d) Declaration by independent directors where they are required to be appointed under sub-section (3) of section 132,
 - (e) Report of the committee on directors' remuneration,
 - (f) Explanations or comments by the Board on every qualification, reservation or adverse remark made by the auditor in his report,
 - g) Particulars of loans, guarantees or investments under sub-section (2) of section 164, and
 - (h) Particulars of contracts or arrangements under sub-section (1) of section 166.
- Clause 120 (4)]-The Director's Responsibility statement shall state that
 - (a) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
 - (b) The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls have been complied with.

- The requirement of disclosing particulars of employees having specified remuneration has been removed
- In case of default it shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees, or with both

Right of Member to Copies of Balance Sheet- clause 121

- Corresponding Sec in Companies Act,1956- Sec 219
- A copy to be sent to every person entitle 21 days before the general meeting. However, the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed- Clause 121 (1)
- If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees- Clause 121(3)].

Copy of Financial Statement to Be Filed With Registrar- Clause 122

- Corresponding Sec in Companies Act,1956- Sec 220
- Within thirty days of the date of general meeting, once it is adopted

- In case the company fails to file financial statement within period specified under Clause 164, the same shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees, and the managing director or the managing director and the Chief Financial Officer, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.[Clause 122(3)]

X. Audit and Auditors

Appointment Of Auditors- Clause 123

- Corresponding Sec in Companies Act,1956- Sec 224- Appointment and remuneration of auditors; Sec 619- Application of Sec 224 to 233 to Government companies
- The appointed Auditor has to give a written consent and a certificate that his appointment will be in accordance with the conditions as may be prescribed – [Proviso to clause 123(1)]
- The Company must notify ROC for every appointment/ reappointment within 15 days [Second Proviso to clause 123(1)]
- In the case of a Government company or any other company owned and controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the adoption of accounts of that financial year.[Clause 123(2)]

- The first auditor shall be appointed by the Board of Directors within thirty days of registration of the company. In the case of a Government company, the first auditor shall be appointed by the Comptroller and Auditor-General of India within thirty days of registration of the company [Clause 123(3) and (4)]
- Any casual vacancy in the office of an auditor shall,—
 - (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the approval of the Board;
 - (ii) in case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled within thirty days, failing which by the Board.[Clause 123(5)]

A retiring auditor may be re-appointed subject to certain conditions.
[Clause 123(6)]

If at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company [Clause 123(7)]

If the company constitutes an Audit Committee, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee and the auditor so appointed may be removed from his office before the expiry of his term only by a special resolution of the company.[Clause 123(8) and (9)]

The Tribunal, if it is satisfied that the auditor of a company has acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors[Clause 123(10)]

Eligibility, Qualifications And Disqualifications Of Auditors- Clause 124

- Corresponding Sec in Companies Act,1956 – Sec 224(IB)
- Clause 124 (3)- None of the following persons shall be eligible for appointment as an auditor of a company, namely:—
 - (a) a body corporate;
 - (b) an officer or employee of the company;
 - (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
 - (d) a person who, or his relative or partner—
 - (i) is holding any security of the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of value in terms of such percentage as may be prescribed;
 - (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company; or
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;
 - (e) a person or a firm who has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;
 - (f) a person whose relative is in the employment of the company as a director or key managerial personnel;
 - (g) a person who is in employment elsewhere or a person or firm who holds appointment as an auditor in companies exceeding such number as may be prescribed on the date of his appointment.
- In case an auditor incurs any disqualification post appointment, he would be required to vacate the office of auditor [Clause 124 (4)]

Remuneration Of Auditors – Clause 125

- Corresponding Sec in Companies Act,1956 – 224(8)

- The remuneration of the Auditor needs to be fixed by a company in its general meeting or in such manner as may be prescribed [- Clause 125(1)]
- Remuneration includes – fee payable +expenses in connection with the audit but does not include any other service rendered at company’s request

Powers And Duties Of Auditors And Auditing Standards – Clause 126

- Corresponding Sec in Companies Act,1956 – 227
- Auditor of a holding company shall have right to access records of all subsidiaries so far as required for consolidation of accounts- Proviso to Clause 126(1)
- Clause 126 (3)- The auditor’s report shall state—
 - (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;
 - (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
 - (c) whether the report on the accounts of any branch office of the company audited by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
 - (d) whether the company’s balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
 - (e) whether, in his opinion, the financial statements comply with the accounting standards and the auditing standards;
 - (f) the observations or comments of the auditors which have any adverse effect on the functioning of the company;
 - (g) whether any director is disqualified from being appointed as a director
 - (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) in case of listed companies, whether the company has complied with the internal financial controls and directions issued by the Board; and

(j) such other matters as may be prescribed.

- In the case of a Government company, the audit report should be submitted to the Comptroller and Auditor General of India. The Comptroller and Auditor General of India may within sixty days of the report comment on the report or conduct any supplementary audit. He may also cause test audits of the accounts of the company
- Every auditor of a company should also comply with the auditing standards.
[Clause 126(9)]

Auditor Not To Render Certain Services – Clause 127

- **New clause**
- The auditor of a company should provide only the services that have been approved by the Board of Directors or the Audit committee and should not include any of the following services
 - a) accounting and book keeping services;
 - b) internal audit;
 - c) design and implementation of any financial information system;
 - d) actuarial services;
 - e) investment advisory services;
 - f) investment banking services;
 - g) rendering of outsourced financial services; and
 - h) Management services.

Auditor To Sign Audit Reports Etc – Clause 128

- Corresponding Sec in Companies Act,1956 – 229
- Only the person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company, and the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Auditors To Attend General Meeting- Clause 129

- Corresponding Sec in Companies Act,1956- 231
- Auditors and his authorized person (provided he is qualified to be appointed as Auditor) needs to attend the general meeting unless otherwise exempted by the company

Punishment For Contravention – Clause 130

- Corresponding Sec in Companies Act,1956 – Sec 232, 233
- Punishment for contravention of the provisions of the Companies Act by an auditor of a company has been made more stringent in the Companies Bill.
- Where an auditor contravenes any provisions with regard to his duties and functions / renders services that he is not allowed under the Bill / signing the audit report, then he will be punishable with fine which is not less than Rs.25,000 but may extend to Rs.5 lakhs.
- Where the auditor willfully contravenes these provisions, then he will be punishable with imprisonment for a term which may extend to one year or with fine not less than Rupees One Lakh but may extend to Rupees Twenty Five lakh or with both.
- Where the auditor has been so convicted, he shall be liable to refund the remuneration received by him to the company and also pay for damages for losses resulting from any incorrect or misleading statements in his audit report

Central Government To Specify Audit Of Items Of Cost In Respect Of Certain Companies – Clause 131

- Corresponding Sec in Companies Act,1956- 233B
- Cost auditors to be appointed by the Board
- In case of any default in complying with the provisions of this clause,
(a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;

(b) the cost auditor who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

XI. Appointment and Qualifications of Directors

- Maximum number of directors in a company should be twelve, excluding the directors nominated by the lending institutions. (Clause 132(b) of Companies Bill, 2008)
- At least one director of the company should be a person ordinarily resident in India. “Ordinarily resident in India” means a person who stays in India for a total period of not less than one hundred and eighty-two days in a calendar year. (Clause 132(2) of Companies Bill, 2008)
- A listed public company having the prescribed paid up share capital should have at least one-third of the total number of directors as independent directors. (Clause 132(3) of Companies Bill, 2008)
- Every person intending to be a director of a company should obtain a Director Identification Number (DIN) from the Central Government. (Clause 134, 135, 136 of Companies Bill, 2008)
- No person should be a director of more than fifteen companies. (Clause 146 of Companies Bill, 2008) Under the Companies Act, 1956, the limit of directorships is twenty.
- The duties of the director have been enumerated in Clause 147 of the Companies Bill, 2008.
- The office of the director will become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board. (Clause 148(1)(b) of Companies Bill, 2008) Under the Companies Act, 1956, it is prescribed as three meetings or meetings held within a period of three months.

- The director's resignation becomes effective when his resignation is received or the date specified in his resignation letter, whichever is later. Further the director can send the details of his resignation to the Registrar of Companies. (Clause 149 of Companies Bill, 2008)

XII. Meetings of Board

- The Bill allows company directors to participate in the board meeting through video conferencing or any other electronic means. (Clause 154(2) of Companies Bill, 2008)
- At least seven days prior notice should be given to the directors for a Board Meeting. But a Board meeting can be called at a shorter notice to transact urgent business if at least one independent director is present at the meeting. (Clause 154(3) of Companies Bill, 2008)
- Detailed provisions with regard to Composition of Audit Committee, Remuneration Committee and Stakeholders Grievance Committee have been mentioned in Clause 158 of Companies Bill, 2008.
- Stakeholders' grievance committee should be formed to resolve grievances of shareholder, debenture holders and other security holders, if the combined membership is more than 1,000. (Clause 158(12) of Companies Bill, 2008)
- Restrictions have been imposed on non-cash transactions involving directors. (Clause 170 of Companies Bill, 2008)
- Directors and key managerial personnel of a company are prohibited on forward dealings in securities of the company. (Clause 172 of Companies Bill, 2008)
- Directors and key managerial personnel of a company are prohibited from dealing in securities of the company or counseling, procuring or communicating any non-public price-sensitive information to any person. (Clause 173 of Companies Bill, 2008)

XIII. Appointment and remuneration of managerial personnel

- Appointment of key managerial personnel who is above the age of seventy years should be made by passing a special resolution. (Clause 174(4)(a) of Companies Bill, 2008)
- A managing director, whole-time director or manager should be appointed by the Board of Directors at a meeting with the consent of all the directors present at such meeting. The same is subject to approval by a special resolution at the next general meeting of the company. (Clause 174(5) of Companies Bill, 2008)
- Whole-time key managerial personnel of a company can be appointed by a Board resolution. Such Whole-time key managerial personnel should not hold office in more than one company at the same time. (Clause 178 of Companies Bill, 2008) “Key managerial personnel” in relation to a company, means –
 - (iv) The Managing Director, the Chief Executive officer or the Manager or where there is not managing director or manager, a whole time director or directors;
 - (v) The Company Secretary; and
 - (vi) The Chief Financial officer. (Clause 2(1)(zza))

XIV. Inspection, Inquiry and Investigation

- The Tribunal can freeze the assets for a period not exceeding three years, on an inquiry and investigation of a company, if transfer or disposal of funds, properties or assets is likely to take place which is pre-judicial to the interest of the company. (Clause 191 of Companies Bill, 2008)
- No suit or proceeding will lie in respect of any action initiated by the Central Government for making an investigation or for appointment of an inspector and no proceedings of an inspector can be called in question or stayed by any Court, Tribunal or other authority till the submission of final report by the inspector. (Clause 194 of Companies Bill, 2008)

- The provisions of inspection or investigation as applicable to Indian companies will be applicable to foreign companies also. (Clause 199 of Companies Bill, 2008)

XV. Compromises, Arrangements And Amalgamations

- Merger and amalgamation of companies will be handled by the National Law Tribunal. (Clause 203 of Companies Bill, 2008) Presently this is handled by the respective High Courts.
- Provisions have been made for merger or amalgamation between two small companies or between a holding company and its wholly-owned subsidiary company. (Clause 204 of Companies Bill, 2008)
- Provision has been made for merger or amalgamation between registered Indian companies and companies incorporated in the jurisdiction of countries notified by the Central Government. (Clause 205 of Companies Bill, 2008)
- Every offer of schemes or contract involving the transfer of shares in the transferor company to the transferee company should be presented to the Registrar for registration. (Clause 209 of Companies Bill, 2008)
- Liability in respect of offences committed by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition will continue after such acquisition, merger or amalgamation. (Clause 211 of Companies Bill, 2008)

XVI. Prevention Of Oppression And Mismanagement

- Any one or more members or class of members or one or more creditors or any class of creditors may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or creditors, may file an application before the Tribunal to restrain the company from oppression and mismanagement. Order passed by the Tribunal will be

binding on the company and all its members and creditors. (Clause 216 of Companies Bill, 2008)

XVII. Registered Valuers

- Procedure has been prescribed for registration of Valuers. (Clause 219 of Companies Bill, 2008)
- If valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or net worth of a company or its assets, it should be valued by a person registered as a valuer and appointed by the Audit Committee or in its absence by the Board of Directors of that company. (Clause 218 of Companies Bill, 2008)

XVIII. Removal of Names of Companies from Register

- When registrar believes that a company has not commence its business within one year of incorporation, or the subscribers have not paid subscription money within 180 days of incorporation or the company which has not applied for dormant status in operative for period of one year it may send notice for removal of name of company from register.
- Company by consent of 75% of its members may also apply for removal of name from the register of companies in above cases.
- Tribunal will still have power to order winding up of the company.
- Anyone aggrieved by the order may appeal to the tribunal.

XIX. Revival and Rehabilitation of Sick Companies

- Provision has been made for determination of sickness of a company. Where company has fail to meet the demand of secured creditors representing 50% or more of the total amount outstanding, it will be regarded as sick company.(Clause 229 of Companies Bill, 2008)

- Interim administrator can be appointed by the Tribunal for management of the company. (Clause 231 of Companies Bill, 2008)
- Appointment of Committee of Creditors. (Clause 232 of Companies Bill, 2008)
- Tribunal to appoint interim company administrator from a panel consisting of advocates, CS, CA,ICWA or other professional upon such terms and conditions as may be specified by Tribunal [Clause 234(1)]
- Powers and duties of company administrator have been enumerated in Clause 235 of Companies Bill, 2008.
- Scheme of revival and rehabilitation should be prepared by the company administrator. (Clause 236 of Companies Bill, 2008)
- If the Scheme is not approved by the creditors of the company, then the Tribunal can order winding up of the company upon submission of report by the company administrator. (Clause 240 of Companies Bill, 2008)

XX. Winding up

- Company Liquidator will be a person appointed from a panel of professional firms or bodies corporate or may be a body corporate consisting of such professionals and having at least ten year's experience in company matters. (Clause 232 of Companies Bill, 2008) It does not include a whole-time or a part-time officer appointed by the Central Government as the liquidator.
- The Tribunal is empowered to recover any loss or damage from the liquidator for loss or damage caused to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his powers and functions. (Clause 251(3) of Companies Bill, 2008)
- The jurisdiction of the Tribunal with regard to winding up of a company has been given under Clause 255 of Companies Bill, 2008.

- Submission of report by Company Liquidator to the Tribunal. (Clause 256 of Companies Bill, 2008)
- The promoters, directors, officers and employees, past and present, of the company should extend full co-operation to the Company Liquidator. Failure to do so will result in imprisonment/fine. (Clause 259 of Companies Bill, 2008)
- Provision has been made for obligations of directors and managers in case of limited company, whose liability is unlimited. (Clause 261 of Companies Bill, 2008)
- The Company liquidator should submit quarterly reports to the Tribunal with regard to the progress of the winding up of the company. (Clause 263 of Companies Bill, 2008)
- Apart from company liquidators, provision has been made for appointment of Official Liquidators. (Clause 334 of Companies Bill, 2008)
- Winding up of company having assets of book value not exceeding one crore rupees may be done through summary procedure. (Clause 336 of Companies Bill, 2008)

XXI. Companies incorporated outside India

- The Central Government may make rules for the offer of Indian Depository Receipts, requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts, the manner in which the Indian Depository Receipts should be dealt with in a depository mode and by custodian and underwriters and the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, and whether or not it has established a place of business in India. (Clause 352 of Companies Bill, 2008)

XXII. Other provisions

- Provision has been made for expeditious disposal by the National Company Law Tribunal and Appellate Tribunal. (Clause 383 of Companies Bill, 2008)
- Provision has been made for establishment of Special Courts for speedy trial of offences. (Clause 396, 397 of Companies Bill, 2008)
- Compensation will be provided for accusation without reasonable cause before the Special Court or the Court of Session. (Clause 405 of Companies Bill, 2008)
- New concept of dormant company has been introduced in the Companies Bill. A dormant company is a company that is formed and registered under the Companies Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction or a company which is inactive i.e a company which has not carried any business and not filled its annual accounts and financial statements for last two years (Clause 414 of Companies Bill, 2008)
- Association of persons or partnership consisting of more than 100 persons has been prohibited. (Clause 422 of Companies Bill, 2008)
- The provisions of Part IX A of the Companies Act, 1956 will be applicable *mutatis mutandis* to a producer company in a manner as if the Companies Act, 1956 has not been repealed.
- Till the formation of National Company Law Tribunal and Appellate Tribunal, the provisions of Companies Act, 1956 with regard to Company Law Board will continue to apply.

CHAPTER VI

Professional Opportunities for Chartered Accountants under the Companies Bill, 2008

Chartered Accountants have been entrusted with responsible functions under the Companies Act, 1956. They are expected to exercise due care and diligence in handling

their duties. Some of the new opportunities [apart from the statutory audit] that have arisen in lieu of the new Companies Bill, 2008 are:

1. advise on choice of form of business organization LLP, One person Company, private & Public Limited Company
2. Registration of companies
3. advisory services
4. drafting memorandum & articles, schemes of amalgamations
5. appearance for compliances before registrar, Regional Director ,NCLT & NCLAT
6. A Chartered Accountant can get himself registered as a Valuer. (Valuer is a person who is appointed by the audit committee or in its absence by the Board of Directors of a company to do valuation in respect of any property, stocks, shares, debentures, securities or goodwill or net worth of a company or its assets.)
7. Chartered Accountants may be appointed by the National Company Law Tribunal as interim administrators or company administrators of a company from a panel maintained by the Central Government.
8. In the same manner Chartered Accountants may also be appointed by the National Company Law Tribunal as company liquidators of a company from a panel maintained by the Central Government.
9. Chartered Accountants who have been in practice for at least twenty years are eligible to be appointed as technical members of the National Company Law Tribunal or the Appellate Tribunal.
10. advise on compounding of offences
11. filing of various e forms & regular annual compliance
12. to act as independent director
13. internal audit
14. statutory audit
15. framing internal control framework and its compliance
16. Assistance in Mergers and Amalgamation

ANNEXURES

ANNEXURE I

Overview of the provisions of the Companies Act, 2006 of United Kingdom

The Companies Act of United Kingdom consists of 1300 sections under 47 parts and 16 Schedules.

1. **Types of companies** are:
 - a. Limited and unlimited companies
 - b. Private and public companies
 - c. Companies limited by guarantee and having share capital
 - d. Community interest companies

2. **Community interest companies**

In accordance with Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)— (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and (b) a company limited by guarantee and having a share capital may become a community interest company.

3. **Re-registration** as a means of altering a company's status has been dealt with in detail under the UK Act. Section 89 to Section 111 deals with Private Company becoming public, Public company becoming private, private limited company becoming unlimited, unlimited private company becoming limited and Public company becoming private and unlimited. Whereas under the Indian Companies Bill, 2008, only Section 58 and 59 deals with re-registration.
4. **Concept of single member company** is dealt with under Section 38 and Section 123 of the UK Act.
5. Section 129 to 135 of the UK Companies Act deals with **Overseas Branch Registers**.

A company having a share capital may, if it transacts business in a country or territory which has been mentioned in the above sections of the Act, keep a branch register of members resident there. India is one of the countries mentioned in Section 129(2). An overseas branch register is regarded as part of the company's register of members ("the main register"). The Register or duplicate should be kept available for inspection in UK also.

6. There is a separate chapter on **Prohibition on subsidiary being member of its holding company**. Section 136 to Section 144 of the UK Companies Act, 2006 deals with general prohibition, Subsidiary acting as personal representative or trustee, Subsidiary acting as dealer in securities etc.
7. There is no provision with regard to **Prospectus** under the UK Companies Act. The same is dealt with under The Financial Services and Markets Act 2000.
8. Part 10 of the UK Companies Act deals with provisions with regard to **Directors of a company**.
 - a. Appointment and removal of directors.
 - b. General duties of directors have been enumerated in Sections 170 to 181.
 - c. Shadow director – Sections 187 and 251. "Shadow director", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.
 - d. Transactions With Directors Requiring Approval Of Members – Sections 188 to 226 deals with Service contracts, Substantial property transactions, Loans, quasi-loans and credit transactions, Payments for loss of office etc.
 - e. Directors' service contracts – 227
 - f. Provision protecting directors from liability.
 - g. Directors' Residential Addresses: Protection From Disclosure.
9. **Derivative Claims and Proceedings by Members** are dealt with under Part 11 of the UK Act.

Derivative claims apply to proceedings by a member of a company in respect of a cause of action vested in the company and seeking relief on behalf of the company. A derivative claim under this Chapter may be brought only in respect of

a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

10. Part 12 of the UK Companies Act, 2006 consists of provisions with regard to **Company Secretaries**. Public company should have a secretary whereas it is not necessary for a private company. There are also provisions with regard to register of secretaries and the particulars to be mentioned in it. [Under the Indian Companies (Appointment and Qualifications of Secretary) Rules, 1998, every company having a paid-up share capital of not less than Rupees fifty lakhs should have a whole time secretary.]

11. **Resolutions and meetings** are given under Part 13 of the UK Companies Act.

- a. Meaning of ordinary resolution, special resolution and written resolution are mentioned.
- b. There is a separate chapter on written resolutions that deals with certain general provisions, circulation of written resolutions, agreement to written resolutions etc. A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members.
- c. Resolutions at meetings.
- d. Application of provisions to class meetings.
- e. Additional requirements for quoted companies

12. Part 14 i.e Sections 362 to 379 of the UK Companies Act, 2006 deals with **Control of Political Donations and Expenditure**.

According to the UK Act, a company should not make a political donation unless the donation or expenditure is authorised by a resolution of the members of the company. Further resolution is not required for donations not amounting to more than 5000 pounds in any twelve month period. Whereas under the Indian Companies Bill, 2008, Section 161 alone deals with political contributions and the aggregate of the amount which may be contributed by the company in any

financial year should not exceed five per cent of its average net profits during the three immediately preceding financial years.

13. Part 15 of the UK Companies Act, 2006 deals with **Accounts and Reports of a company**. Some of the important provisions are:

- a. Companies subject to small companies regime.
- b. Quoted and unquoted companies

A “quoted company” means a company whose equity share capital— (a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8), or (b) is officially listed in an EEA State, or (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq. An unquoted company means a company that is not a quoted company.

The concept of quoted company is similar to that of a listed company under the Indian laws.

- c. Accounting records
- d. Individual accounts
- e. Group accounts
- f. Information to be given in notes to the accounts
- g. Directors reports
- h. Publication of accounts and reports
- i. Revision of defective accounts and reports

14. Chapter 1 of Part 16 of the UK Companies Act deals with requirement for **audited accounts**.

15. Sections 485 to 539 of the UK Companies Act deals in length about **auditors**. Some of the important provisions are:

- a. Appointment of auditors of private company is compulsory unless the directors reasonably resolve that audited accounts are unlikely to be required.
- b. Appointment of auditors of public company is compulsory unless the directors reasonably resolve that audited accounts are unlikely to be required.

- c. Fixing of auditor's remuneration.
- d. Functions of auditor
 - i. Auditor's report on company's annual accounts
 - ii. Auditor's report on directors' report
 - iii. Auditor's report on auditable part of directors' remuneration report
- e. Duties and rights of auditor
 - i. Duties of auditor
 - ii. Auditor's general right to information
 - iii. Auditor's right to information from overseas subsidiaries
 - iv. Auditor's rights in relation to resolutions and meetings
- f. Senior statutory auditor

The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with— (a) standards issued by the European Commission, or (b) if there is no applicable standard so issued, any relevant guidance issued by— (i) the Secretary of State, or (ii) a body appointed by order of the Secretary of State. The person identified as senior statutory auditor must be eligible for appointment as auditor of the company in question.

- g. Names to be stated in published copies of auditor's report
- h. Where any offence is committed by an auditor, he is only liable to fine on conviction. (Whereas under the Indian Companies Bill, 2008, if an auditor has knowingly or willfully contravened any of the provisions of the Act, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees, or with both.
- i. Special notice required for resolution removing auditor from office
- j. Failure to re-appoint auditor: special procedure required for written resolution
- k. Resignation of auditor and rights of resigning auditor
- l. Where the auditor ceases to hold office before the end of his term of office, he should give notice to the appropriate audit authority. The

company should also give notice to the appropriate audit authority. Thereafter the audit authority should inform the accounting authorities.

m. The members of a quoted company have the power to require website publication of audit concerns.

n. Liability limitation agreements

A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts, of which the auditor may be guilty in relation to the company. A liability limitation agreement may be authorised between a company and its auditor by passing a resolution in the general meeting.

16. Part 17 i.e. Sections 540 to 657 of the UK Companies Act, 2006 deals with a **company’s share capital**. Some of the major provisions in this regard are:

- a. Called up share capital and Equity share capital
- b. Registration of allotment of shares
- c. Submission of return of allotment of shares by company limited by shares and company limited by guarantee and having share capital.
- d. Submission of returns by unlimited company that allots shares of a class with rights that are not in all respects uniform with shares previously allotted.
- e. Allotment of equity securities and existing shareholders’ right of pre-emption.
- f. Provisions with regard to allotment of shares of a public company where the issue is not fully subscribed.
- g. Prohibition of allotment of shares at a discount.
- h. General rules for payment for shares.
- i. A public company must not allot shares unless the consideration for the allotment has been independently valued. This provision will not be applicable in case of proposed merger with another company.

- j. Provisions with regard to share premium. If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account called “the share premium account”.
 - k. Alteration of share capital and redenomination of share capital. “Redenominate” means convert shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency.
 - l. Classes of shares and class rights.
 - m. Reduction of share capital – A private limited company having a share capital can reduce its share capital by special resolution supported by a solvency statement and in other cases by a special resolution confirmed by the Court.
17. Part 18 deals with **acquisition by limited company of its own shares**.
18. Part 19 – Sections 738 to 754 deals with **debentures**.
19. Part 20 of the UK Companies Act deals with **prohibition of public offers by private companies and minimum share capital requirement for public companies**. “The authorised minimum”, in relation to the nominal value of a public company’s allotted share capital is— (a) £50,000, or (b) the prescribed euro equivalent.
20. **Certification and transfer of securities**, issue of share warrants etc are mentioned in Part 21.
21. **Information about interests in a company’s’ shares** should be given by public companies. (Sections 791 to 828)
22. Part 23 (Sections 829 to 853) deals with **Distributions**. Distribution is the term equivalent to dividend under the Indian Companies Act. Some of the important provisions under the UK Act in this regard are:
- a. Distributions to be made only out of profits available for the purpose
 - b. Net asset restriction on distributions by public companies
 - c. Distributions by investment companies out of accumulated revenue profits
 - d. Justification of distribution by reference to relevant accounts

- e. Requirements where last annual accounts / interim accounts / initial accounts were used
 - f. Realized losses and profits and revaluation of fixed assets
 - g. Determination of profit or loss in respect of asset where records are incomplete
 - h. Realized profits and losses of long-term insurance business
 - i. Treatment of development costs
 - j. A company must not apply an unrealized profit in paying up debentures or any amounts unpaid on its issued shares.
23. Provisions with regard to **Annual returns** are given in detail under Part 24 of the UK Companies Act.
24. **Company Charges** are dealt with under Part 25. According to the UK Companies Act, this Part deals with the following charges:
- (a) a charge on land or any interest in land, other than a charge for any rent or other periodical sum issuing out of land,
 - (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
 - (c) a charge for the purposes of securing any issue of debentures,
 - (d) a charge on uncalled share capital of the company,
 - (e) a charge on calls made but not paid,
 - (f) a charge on book debts of the company,
 - (g) a floating charge on the company's property or undertaking,
 - (h) a charge on a ship or aircraft, or any share in a ship,
 - (i) a charge on goodwill or on any intellectual property.

According to the Indian Companies Bill, 2008, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

- 25. Court sanction is required for **compromise or arrangement**.
- 26. Court has the power to facilitate **reconstruction or amalgamation**.

27. Detailed requirements for **mergers and division of Public companies** have been given in Part 27 of the UK Companies Act, 2006. Some of the important requirements are:
- a. Draft terms of scheme
 - b. Publication of draft terms
 - c. Approval of members of merging companies (*not required under the Indian Companies Bill, 2008*)
 - d. Directors' explanatory report
 - e. Expert's report
 - f. Supplementary accounting statement (*not required under the Indian Companies Bill, 2008*)
 - g. Inspection of documents (*not required under the Indian Companies Bill, 2008*)
 - h. Approval of articles of new transferee company
 - i. Protection of holders of securities to which special rights attached
 - j. No allotment of shares to transferor company or its nominee
- (There is no mention about of division of companies under the Indian Companies Bill.)
28. Under the UK Companies Act, there is a separate Part dealing with **Takeovers**. (Part 28 – Sections 942 to 992) There is a Takeover Panel that deals with issues related to takeovers. Under the Indian Companies Bill, 2008, any compromise or arrangement may include takeover offer, hence the provisions with regard to compromise or arrangement will be applicable to takeovers. Further the National Company Law Tribunal will deal with takeovers.
29. Part 34 of the UK Companies Act deals with **overseas companies**. Overseas company means a company incorporated outside the United Kingdom.
30. Sections 1060 to 1120 deals in detail about the **Registrar of Companies**, his functions, his requirements as to form, authentication and manner of delivery of documents, registers containing information about companies, registrar's index of company names, etc.

31. Section 1128 of the UK Companies Act deals with **summary proceedings**. Summary proceedings for an offence committed under the Companies Act is triable by a magistrates' court in England and Wales if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge. A person guilty of an offence is liable on summary conviction in England and Wales to imprisonment for a term not exceeding twelve months.
32. **Valuation requirements** are mentioned under Sections to 1149 to 1153. According to the UK Companies Act, the valuer should be a person who is eligible for appointment as a statutory auditor. There is no mention about registration of a valuer. Whereas under the Indian Companies Bill, 2008, a Chartered Accountant, Cost and Works Accountant or Company Secretary can act as a valuer and should get registered with the Central Government.
33. **Meaning of Court** under the UK Companies Act - "the court" means— (a) in England and Wales, the High Court or a county court; (b) in Scotland, the Court of Session or the sheriff court; (c) in Northern Ireland, the High Court.
34. Meanings and definitions of certain terms have been dealt with under Part 38 of the UK Companies Act.
35. Part 42 of the UK Companies Act deals with **Statutory Auditors**. It gives in detail the meaning of Statutory auditor, Eligibility for appointment as a statutory auditor, Effect of ineligibility, Independence requirement, Effect of lack of independence, Effect of appointment of a partnership, Appropriate qualifications, Eligibility for appointment as Auditors General, Supervision of Auditors General by the Independent Supervisor, Duties of Auditors General in relation to supervision arrangements, Reports by the Independent Supervisor, The register of auditors, etc.
36. Under the UK Companies Act, there are provisions for **Third Country Auditor**. "Third country auditor" means the auditor of the accounts of a traded non-Community company. (1) "traded non-Community company" means a body corporate—(a) which is incorporated or formed under the law of a country or

- territory which is not a member State or part of a member State, (b) whose transferable securities are admitted to trading on a regulated market situated or operating in the United Kingdom, and (c) which has not been excluded, or is not of a description of bodies corporate which has been excluded, from this definition by an order made by the Secretary of State.
37. According to Section 1248 of the UK Companies Act the Secretary of State has the power to require **second audit of a company** where a person appointed as statutory auditor of a company was not an appropriate person for any part of the period during which the audit was conducted.
38. There is no provision with regard to Company Law Tribunal in the United Kingdom.

ANNEXURE II

Overview of the provisions of the Companies Ordinance, 1984 of Pakistan

The Ordinance consists of 514 sections under 16 parts with 8 schedules. Some of the distinguishing features of this Ordinance compared to the Indian Companies Bill, 2008 are:

1. The Companies Ordinance of Pakistan does not apply to a trading corporation owned or controlled by a Province and carrying on business only within that Province or a co-operative society or a University.
2. Company Benches constituted in each High Court of Pakistan will have the jurisdiction to handle company law matters. Summary procedure alone should be followed and the matters before the Court should be disposed of within 90 days from the date of presentation of the petition or application to the Court.
3. The administration of the companies under the Ordinance is vested in the 'Securities and Exchange Commission of Pakistan and Registrar of Companies.
4. Association or Partnership consisting of more than 20 persons should be registered under the Ordinance. (Under the Indian Companies Bill, 2008, the prescribed number is 100.)
5. Types of companies under the Pakistan Ordinance are Private Limited Companies and Public Limited Companies. The same can be company limited by shares /

- company limited by guarantee / an unlimited liability company. Single Member Company is also allowed.
6. Chief Executive is the person who manages the affairs of the company and includes a director occupying the position of a chief executive. This post is similar to the post of Managing Director under the Indian Company Law.
 7. Provisions with regard to establishment and regulation of non-banking finance companies are given in the Companies Ordinance of Pakistan. (These provisions were inserted in the year 2002).
 8. There is a provision that gives power for companies to refer matters to arbitration and the same will be governed by the Arbitration Act, 1940.

ANNEXURE III

Overview of the provisions of the Corporate Law of United States of America

Corporate law in the United States is a collection of 50 different systems of corporate law, or one law for each state. Two sources of law are, however particularly important. Firstly, the Model Business Corporation Act (MBCA), which is drafted by the American Bar Association was influential and adopted by many states. The MBCA is associated with smaller states which might not have the time or the motive to develop their own corporate statutes.

Secondly, because, under the US Constitution, companies are free to incorporate in any state, regardless of whether they are doing any business there or have their headquarters there, states have competed on various rules to attract business, and many corporations found Delaware's laws and specialized courts attractive. More than half of US corporations are incorporated under the Delaware General Corporation Law (DGCL), and Delaware corporate law is particularly influential.

The corporate laws of large states are also important, for instance New York or California. They have more unique corporate statutes, incorporating rules from many sources.

There are 17 chapters with several sections under each chapter under the Model Business Corporation Act (MBCA). The Delaware General Corporation Law consists of XVII sub-chapters.

Some of the major provisions of the Model Business Corporation Act (MBCA) and Delaware General Corporation Law (DGCL) are:

1. The three **major steps for formation of a company** are submission of Articles of Association, holding an organizational meeting to select board of directors and meeting of board of directors to adopt bylaws, appoint officers and other tasks.
2. There is **no provision for Memorandum of Association** under the laws of United States.
3. **Articles of association** under the Model Business Corporation Act (MBCA) requires only the following four elements:
 - a. corporate name
 - b. number of authorized shares
 - c. name and address of the corporation's registered agent
 - d. name and address of each incorporator
4. Whereas the Articles of Association under the Delaware General Corporation Law (DGCL) also requires:
 - a. a statement of the "nature of the business" of the corporation
 - b. the par value of each share, or a statement that all shares are to be without par value
 - c. name and address of each director, if the incorporator's duties are to end upon filing.
5. A **corporate name** must include the word "corporation", "incorporated," "company," or "limited," or an abbreviation or foreign equivalent thereof.
6. There is a provision for appointment of **Registered Agents** under the laws of United States. A registered agent is a business or individual designated to receive service of process (SOP) when a business entity is a party in a legal action such as a lawsuit or summons. The Registered agent for a business entity can be an individual or more often a third party such as the organization's lawyer or a

service company. The purpose of a Registered Agent is to provide a legal address (not a P.O. Box) within that jurisdiction where there are persons available during normal business hours to facilitate legal service of process being served in the event of a legal action or lawsuit. Generally, the registered agent is also where the state government sends all official documents required each year for tax and legal purposes such as franchise tax notices and annual reports. It is the registered agent's job to forward these suits and notices to the entity itself. The reason that these notifications are a desired function of a registered agent is that it is difficult for a business entity to keep track of legislative changes and report due dates for multiple jurisdictions given the disparate laws of different states. Penalties for not maintaining a registered agent generally will cause a jurisdiction to revoke a business's corporate or LLC legal status as well as in some cases assess additional penalty fees on the entity.

7. **Incorporator** is one of the persons who gets a company incorporated. This is similar to the term Promoter under the Indian Company Law.
8. Dividends are known as **Distributions** under the US Law. Under the Delaware law, distributions can only be made from the "surplus" of the corporation. Surplus is the assets that exceed the legal capital of the corporation—the aggregate par value of its shares. This means that creditors can only rely upon recovering a fraction of the corporation's assets: the rest are free to be distributed to shareholders at any time.

Whereas under the Model Business Corporation Act (MBCA), a corporation must meet two tests before it makes a distribution. These are:

- Equity insolvency test - After the distribution, the corporation must be able to pay its debts as they become due in the usual course of its business.
- Balance sheet test - After the distribution, the corporation's total assets must be greater than or equal to its liabilities plus the amount needed to buy out all of the holders of preferred stock.

9. Model Business Corporation Act (MBCA) provides that **notice** is not necessary for regular board meetings, and that special meetings may be called on two days' notice. There are no provisions for statutory notice under the Delaware Law. The articles or bylaws may fix a different notice requirement.
10. The **statutory quorum** is a majority of the total number of directors, but can be increased or reduced to as low as one-third under the US laws.
11. Delaware General Corporation Law (DGCL) does not address the issue of **director's duties** at all. Whereas the Model Business Corporation Act (MBCA) codifies a simplified version of the common law business judgment rule. According to Business Judgment Rule a director's decision is not subject to review in court so long as it is made in good faith, on an informed basis, and in the best interest of the corporation.
12. Neither the Delaware General Corporation Law nor the Model Business Corporation Act mandates any **specific officer positions**. But traditionally in the United States, there were four officers in the corporation namely, the president, vice president, secretary, and treasurer.
13. Members are known as **shareholders** in the United States.
14. There are two **kinds of shareholder meetings**: the annual meeting that usually happens once a year and a special meeting that may be called for particular purposes from time to time. The Board should call an annual meeting within 15 months of the last one.

Special meetings can be called by the board, or by any other party named in the articles of incorporation or bylaws. Shareholders are also allowed to call special meetings, but they have to have a certain percentage of the stock in order to do so - 10 percent under MBCA while the Delaware Law does not allow shareholders to call a meeting unless authorized by the articles.

ANNEXURE IV

Overview of the provisions of the Corporations Act, 2001 of Australia

The Corporations Act 2001 is an act of the Commonwealth of Australia that sets out the laws dealing with business entities in Australia at federal and interstate level. It focuses primarily on companies, although it also covers some laws relating to other entities such as partnerships and managed investment schemes. It is presently the largest corporation's statute in the world.

The Act is published in seven volumes covering a total of 12 chapters. The chapters have multiple parts, and within each part there may be multiple divisions. Each chapter contains a collection of sections. On the whole there are 1471 sections.

Some of the important provisions of the Corporations Act of Australia vis-à-vis the Indian Companies Bill, 2008 are:

1. The **types of companies** that can be registered under the Australian Act are Proprietary companies and Public companies. Proprietary companies can be companies limited by shares / unlimited with share capital. Public companies can be companies limited by shares / limited by guarantee / unlimited with share capital / no liability company.
2. A company can be registered as a **no liability company** only if:
 - a. (a) the company has a share capital; and
 - b. (b) the company's constitution states that its sole objects are mining purposes; and
 - c. (c) the company has no contractual right under its constitution to recover calls made on its shares from a shareholder who fails to pay them.
3. A **Proprietary company** must have not more than 50 non-employee shareholders. (This provision is similar to that of a Private company under the Indian Companies Bill, 2008).
4. A proprietary company limited by shares must have the words "Proprietary Limited" as part of its name. Those words can be abbreviated to "Pty Ltd".

5. **Association or Partnership** consisting of more than 20 persons should be registered under the Australian law. (Under the Indian Companies Bill, 2008, the prescribed number is 100.)
6. The **concept of single shareholder/single Director Company** is present under the Australian law.
7. Proprietary company may be a large proprietary company or small proprietary company.
8. A **proprietary company is defined as large** for a financial year if it satisfies at least two of the following paragraphs:
 - a. the consolidated revenue for the financial year of the company and any entities it controls is \$25 million or more
 - b. the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$12.5 million or more, and
 - c. the company and any entities it controls have 50 or more employees at the end of the financial year.
9. A **proprietary is defined as small** for a financial year if it satisfies at least two of the following paragraphs:
 - a. the consolidated revenue for the financial year of the company and any entities it controls is less than \$25 million
 - b. the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is less than \$12.5 million, and
 - c. the company and any entities it controls have fewer than 50 employees at the end of the financial year.
10. If a **meeting** is held, an ordinary resolution must be passed by a majority of the votes cast by shareholders of the company entitled to vote on the resolution at the meeting in person or by proxy (if proxies are allowed). A special resolution must be passed by at least 75% of the votes cast by shareholders of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).
11. The **directors** of a company are subject to a wide range of duties under the Corporations Act. Failure to perform their duties will result in penalty of

- \$200,000 or imprisonment for upto 5 years or both. (Under the Indian Companies Bill, 2008, failure of director to perform the duties under Clause 147 will result in fine not less than Rupees One Lakh and that may extend to Rupees Five Lakh.
12. Proprietary companies must have at least 1 director and they are not required to have a secretary.
 13. Public companies must have at least 3 directors and must have at least 1 secretary.
 14. Key managerial personnel are known as **company officers** under the Australian law.
 15. The **Australian Securities and Investment Commission (ASIC)** is the authority administering the provisions of the Corporations Act, 2001.
 16. Under the Australian Corporations Act, there is a procedure wherein the ASIC sends an **annual statement of the company** within a few days of the company's annual review date (usually the anniversary of the company's registration). The annual statement sets out the company's details recorded in ASIC's register, such as the names and addresses of its directors and secretary, registered office, principal place of business, ultimate holding company (if any), members and share details. If these details are correct the company should inform the Commission within 2 months of the review date along with the annual review fee and the directors should pass a solvency resolution. If there are changes in the statement, the same should be informed by the company within 28 days.
 17. Chapter VA of the Corporations Act deals with **reinstatement of a company**. When a company becomes deregistered, it is no longer recorded as a registered company and is therefore unable to trade or take any action as a body corporate. Reinstatement returns the company to registered status as if it were never deregistered. There are two ways of restoring a company:
 - a. By applying to the ASIC
 - b. By applying to the Court (either the Federal Court of Australia or the Supreme Court of one of the States or Territories)

Once the company is reinstated the company will consider to have never been deregistered. All the existing company officers are restored to their roles from the date the company was deregistered.

18. Under the Australian law only certain companies need to prepare and submit **financial reports**. They are:

- a. public companies
- b. disclosing entities
- c. large proprietary companies
- d. managed investment schemes
- e. small proprietary companies that are foreign-controlled
- f. small proprietary companies that are directed to lodge financial reports.

19. The financial reports will include the following:

- a. Balance sheet as at the end of the year
- b. Income statement at the end of the year
- c. Statement of cash flows for the year
- d. Statement of changes in equity/statement of recognised income and expense
- e. Consolidated financial statement, if required by accounting standards
- f. Notes to financial statements (disclosure required by the regulations, notes required by the accounting standards, and any other information necessary to give a true and fair view).
- g. Directors' declaration that the financial statements comply with accounting standards, give a true and fair view, there are reasonable grounds to believe the company/scheme/entity will be able to pay its debts, the financial statements have been made in accordance with the Corporations Act.
- h. Directors' report, including the auditor's independence declaration
- i. Auditor's report

20. Licensing of financial markets, licensing of clearing and settlement facilities, approved compensation arrangements, licensing of providers of financial services,

financial services disclosure, financial records, statements and audit, Financial product disclosure and other provisions relating to issue, sale and purchase of financial products, prohibited conduct, foreign offers that are recognized etc, are deal with in Volume 4 of the Corporations Act, 2001.

21. **Protection for whistle blowers** is covered under Volume 5 of the Australian Corporations Act.
22. **Audit** of an Australian company should be done only by registered company auditors or by an authorised audit company.

ANNEXURE V

Corporate Judicial Pronouncements – Companies Act, 1956

1. **Suessen Textile Bearings Ltd. Vs. Union of India (1984)**

Guarantee commission given to directors for giving surety against loans or credit facilities taken by company from Financial Institutions is NOT a remuneration u/s.309. No central government approval. Nothing linked with his directorship. Sec.198 not attracted.

2. **Murarka Paints & Varnish (P) Ltd. Vs. Mohanlal Murarka (1961)**

Before the general meeting could interfere with a decision of the board the articles shall have to be modified by a special resolution, giving powers to the general meeting to give directions to the board on any matter.

3. **Khetan Industries Pvt. Ltd. Vs. Manju Ravindra Prasad (1995)**

The Bombay HC held that a civil court has no jurisdiction to interfere with the internal management of companies in matters like appointment and removal of directors. Thus, a shareholder cannot file a civil suit for such purpose.

4. Paramanand Chowdhury Vs. Smt. Shukla Devi Mishra (1990) (MP)

Held, the burden is on the company to show that three consecutive meetings were actually held and postal certificate of service of notice have to be produced. (*Vacation of director's office Sec. 284*)

5. Chadha Vs. R.O.C (1998), State of Bihar Vs. Deo Karan Nenshi (1973), Bhagirath Kanoria Vs. State of Madhya Pradesh (1994)

Even after retirement as director of the company, he would be come within the definition of the term “officer in default”.

The director will be liable even though he has resigned (*for Secs.162, 159, 220 – Balance sheet, annual report and statutory report*). The point to be seen is that if the director has resigned during the period to which the default related or not.

6. International Sales & Agencies Ltd. Vs. Macrus (1982)

Director paid his private loans using company's cheques. Director had committed breach of trust.

7. Ravindra Narayan Vs. R.O.C, Jaipur (1994)

(Also Ref CL No.31 & 34)

Ordinary directors of a company cannot be prosecuted u/s.220 for default in filing accounts when the company had a managing director at the relevant time.

(*Refund default of excess application money u/s.73 – Managing director is liable, not the chairman*)

8. G. Vijaya Lakshmi Vs. SEBI 40 CLA 55

(Also Ref CL No.31 & 33)

High Court held that the liability of ordinary directors would arise only in respect of a company which had no managing director.

9. Chandrakant Kale Vs. Shantaram Kale (1989)

Chairman has got inherent power to adjourn AGM, cautiously and in good faith in view of the disorderly atmosphere at AGM.

10. Reliance Industries Ltd. (1997)

Held, that the company and every officer in default are responsible in delivery of the share certificate within the prescribed time. The mere fact that the company has APPOINTED SHARE TRANSFER AGENTS and authorized them to carry the transfer work does not give complete immunity to the company from its liability.

11. Kuldip Singh Vs. Paragon Utility Fineries (P) Ltd. (1988) (RAQ)

By oversight a director has not been served with notice of board meeting u/s.286. Held this is a mandatory requirement, failure to do so will make the meeting and the resolution passed at the meeting null and void.

12. A. Sivasilem Vs. R.O.C (RAQ)

CLB held that, the relationship of managing director and daughter (promoted as Vice-president of the company) is awarded by the board, and it will not be necessary for the director to once again to formerly disclose the interest. Managing director has not violated the provisions of the Act – Sec.299.

13. **Director of the company** alone cannot commit anything on behalf of the company without the sanction of the Board of director. *Shabh Shanti Services Ltd. v. Manula's Agarwalla & Ors.* 2005 SCC (Cri) 993.
14. The Companies Act 1956 - Conviction **u/s 454(5)** of the Act will be challenged in appeal before the Division Bench of the H.C. *P. George Philip v. Official Liquidator*, 2004(4) RCR (Crl.) 98 Kerala FB.
15. Flat allotted to the employee who died. The **legal heirs can be prosecuted** on non vacating the flat after due notice. *Lalita Jalan v. Bombay Gas Co. Ltd.*, 2003(3) RCR(Cri.) 76(SC) 2003 SCC(Cri) 1281 : AIR 2003 SC 3157 : 2003 SC 3157 : 2003 Cri.L.I. 2514.
16. Companies Act – Defamation against the co. Every director of the co. can file the complaint. *Johan Thomas v. Dr. K. Jagadeesam.* JT 2001(5 (SC) 398 : 2001(3) RCR(Cri.) 381 : AIR 2001 SC 2657 : 2001 Cri.L.J. 3322.
17. Companies Act – Offence committed by an Indian in foreign country. The Indian Court will try the offence. *A.V. Mohan Rao v. M. Kishan Rao*, 2002 SSC(Cri.) 1281 : AIR 2002 SC 2653.
18. Section 630 All members of an employee or an ex – employee of a company cannot be prosecuted for the offence. *M/s. J.K. Ltd v. Mrs. Mata Mishar*, JT 2001(2) (SC) 36 : 2001(1) RCR(Cri.) 561: AIR 2001 SC 649.
19. Registrar of the company can file the complaint when the offence is under section 113. *Registrar of Companies v. Rajshree Sugar and Chemicals Ltd.*, 2002(2) Crimes 322 SC3(2000) CCR 21 (SC) : 2000(2) RCR (Cri.) 874 : AIR 2000 SC 1643.
20. Companies Act - Refusal to transfer shares has to be intimated to the applicant with in 2 months from the date of delivery. *Unit Trust of India v. Jagdish Rai*, 2(2000) CPj. 106 Chd. SCDRC..
21. Companies Act – winding up order was passed by the High Court. Court's Leave has to be obtained for further proceedings against the company. *Asia Pacific*

Investment Trust Ltd. v. Amod Juneja, 1(2000) CPJ. 239 Delhi, S.C.D.R.C. New Delhi

22. **Company Court** is not competent to take the cognizance of the offence U/S. 629 of the Act committed by the Managing Director of the *Company. V. Sugandha Lal v. Bobby Varghese, 2000 Cri.L.K. 4121 Kerala.*
23. Section . 628 – Filing of false statement in form 32 in an offence. *K. Radha Krishana v. C.V. Mnaikandan, 1(1999) CCR 11 HC : 1998 Cri.LJ. 3583.*
24. Default in Filing annual return and balance sheet of the company. The continuing offences **U/Ss. 159, 162, 220** attracted. *Anita Chadha v. Registrar of companies, 1999 Cri.L.J. 2433 Delhi.*
25. **S. 391, 393** – For the compromise & arrangement the sanction of the Court is to be obtained and the Court cannot work as an appellate Court for examination of the scheme. *Miheer H, Mafatlal v. Mafatlal Industries Ltd., AIR 1997 SC 506.*
26. The **managing director is responsible for criminal liability** for any offence committed by the employers/Company. *4(1996)CCR 163(SC).*

IN THE SUPREME COURT OF INDIA

CASE NO.:

Appeal (civil) 3067 of 2004

PETITIONER:

Union of India

RESPONDENT:

R. Gandhi

DATE OF JUDGMENT: 18/05/2007

BENCH:

K.G. BALAKRISHNAN, D.K. JAIN & V.S. SIRPURKAR

JUDGMENT:

JUDGMENT

O R D E R

WITH

CIVIL APPEAL NO. 3717 OF 2005

Madras Bar Association _ Appellant

Versus

Union of India _ Respondent

The challenge in these appeals is to the validity of the provisions of Companies Act, 1956 as amended by the Companies (Second Amendment) Act, 2002, which provides for **setting up of National Company Law Tribunal and National Company Law Appellate Tribunal**. Barring the jurisdiction exercised under Articles 226 and 227, almost all jurisdictions hitherto exercised by the High Courts in regard to the company matters would be transferred and exercised by the proposed Tribunal and Appellate Tribunal.

2. We have heard Mr. Gopal Subramaniam learned Additional Solicitor General of India and Mr. A.P. Datar learned Senior Counsel appearing for the Madras Bar Association, at some length.

3. Law relating to the legislative competence to establish Tribunals has been enunciated in several judgments of this court, including L. Chandra Kumar Vs. Union of India and Ors (1997) 3 SCC 261; Union of India & Anr. Vs. Delhi High Court Bar Association & Ors. (2002) 4 SCC 275 and State of Karnataka Vs. Vishwabharathi House Building Cooperative Society & Ors. (2003) 2 SCC 412. It has been held that under Entries 77, 78, 95 of List I, Entry 65 of List II and Entry 11A of List III, the Parliament and State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts.

4. However, in none of the decisions rendered so far the question as to what extent such powers of High Court can be transferred to Tribunals, excepting judicial review under Articles 226/227 has not been considered. There is as yet no demarcating line to show that, except for powers exercised under Article 226 & 227, the Parliament has the legislative competence to vest intrinsic judicial functions, traditionally performed by

Courts in any Tribunal or Authority, outside the judiciary. The question to be determined is whether such 'wholesale transfer of powers' as contemplated by the Companies (Second Amendment) Act, 2002 would offend the constitutional scheme of separation of powers and independence of judiciary, so as to aggrandize one branch over the other.

5. Since the issues raised in the appeals are of seminal importance and are likely to have serious impact on the very structure and independence of the judicial system, we are of the view that the issue with regard to the constitution of the Tribunals and the areas of their jurisdiction needs to be given a fresh look and therefore, the matter deserves to be heard by a Constitution Bench.

The above judgement is in response to the appeal filed by the Union of India against the judgment dated 30th March, 2004 of the Madras High Court in Writ Petition No. 2198/2003 by the President of the Madras High Court Bar Association questioning the legality of the provisions of the Companies (Second Amendment) Act, 2002 whereby certain powers currently being exercised by the various High Courts have been transferred to the proposed National Company Law Tribunal ("NCLT"). The Bar Association also questioned the various provisions of the said Amendment Act, 2002 with regard to the appointment of the Members of the NCLT and its Appellate Tribunal and the qualification, tenure of appointment, independence etc. of such high powered NCLT and its Appellate Tribunal.

In its judgment dated 30th March, 2004, the Madras High Court held that certain provisions of the Parts 1B and I-C of the Companies Act introduced by the Companies (Amendment) Act, 2002 for setting up of the NCLT and the Appellate Tribunal were Unconstitutional and alarmingly revealed the ever increasing tendency of the bureaucracy to overshadow, subvert, interfere and dominate the functioning of the special judicial bodies.

In its judgment dated 30th March, 2004, the Madras High Court came down heavily on those provisions of the amended Companies Act, 2002 which restrict the tenure for Members of the Tribunal to three-year period, being disincentive for competent people to join the specialized Tribunal like NCLT. The Madras High Court also held, *inter-alia*, that the qualification and number of experience of the potential appointees are not in

consonance with the law and that the facility of blanket “lien” for Members coming from the bureaucracy as defective, in as much as they are in breach of the basic Constitutional scheme of separation of powers and independence of the judicial function.

DATE OF JUDGMENT: 19/11/2007 –**Supreme Court**

BENCH:

S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:

J U D G M E N T

With

Civil Appeal Nos.3478/2007, 3479/2007, 3480/2007 and 3482/2007.

Whether Accounting Standard 22 (AS 22) entitled ‘accounting for taxes on income’ insofar as it relates to deferred taxation is inconsistent with and ultra vires the provisions of the Companies Act, 1956 (the Companies Act), the Income-tax Act, 1961 (I.T. Act) and the Constitution of India?

HELD: Notification dated 7.12.2006 or Companies (Accounting Standards) Rules, 2006, does not suffer from the vice of excessive delegation. [Para 56] [265-C]

SUPREME COURT JUDGEMENT

Shri V.S. Krishnan & Ors

VS.

RESPONDENT:

M/s Westfort Hi-tech Hospital Ltd. & Ors

DATE OF JUDGMENT: 21/02/2008

BENCH:

Tarun Chatterjee & P. Sathasivam

CIVIL APPEAL NO. 1473 OF 2008

(Arising out of SLP (C) No.19882 OF 2006)

WITH

CIVIL APPEAL NO. 1474 OF 2008

(Arising out of S.L.P. (C) No. 20367/2006)

Companies Act, 1956 - s.172 r/w s.53 -- Meeting -- Annual General Meeting (AGM) - Service of notice - Complaint by Appellant Director that he did not receive notice of the AGM - Tenability of - Held: Not tenable - Appellant was party to Board meeting, wherein date, place and agenda of AGM was fixed - Also, Respondents produced "Certificates of Posting" to establish service of notice of AGM on Directors and other shareholders.

Companies Act, 1956 - s.397 r/w s.398 - Oppression and mismanagement -Plea of Appellants that they invested huge sum in Respondent-company on promise that they would be made permanent directors of company but they were illegally removed from Directorship in AGM - Whether removal of Appellants from directorship was an act of oppression - Held, No - Material on record revealed that there was no specific promise that Appellants would be given Directorship permanently - Provision for retirement of one-third directors in a year by rotation had been also disclosed - Theory of 'legitimate expectation' had no application.

Companies Act, 1956 -- s.397 - Oppression -- Mere unfairness does not constitute oppression - On facts, Appellants were given right to subscribe to 'right issue' along with all others in same proportion - Hence, no prejudice had been caused to them on account of issue of "right shares".

Share capital - Allotment of "right shares" to public - Held: Right shares cannot be offered to outsiders without special resolution by 2/3rd majority shareholders.

Appellants filed Company Petition before the Company Law Board (CLB) under ss.397 and 398 r/w ss. 402, 403 and Schedule XI of the Companies Act, 1956 alleging various acts of oppression and mismanagement in the affairs of Respondent No.1 company. It was alleged that the Appellants invested huge sum of money in Respondent No.1-company on the promise of Respondent No. 2, the Chairman of said company, that they would continue in the company as permanent directors but that promise was not kept and the Appellants were removed from directorship in a Annual General Meeting held without any notice to them. Besides, the Appellants also challenged issuance of "right shares". Held, No - Material on record revealed that there was no specific promise that Appellants would be given Directorship permanently - Provision for retirement of one-third directors in a year by rotation had been also disclosed - Theory of 'legitimate expectation' had no application.

ABOUT THE AUTHOR



Mr. Rajkumar Adukia is an eminent consultant, writer, and speaker. He is a rank holder from Bombay University and did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA . He has also completed the course in Company secretary and secured 3rd Rank in Final Cost Accountancy Course in 1983 .

In addition to being a Chartered Accountant, Company Secretary and a Cost Accountant, Mr. Adukia also holds a degree in law. He has been involved in the activities of the Institute since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was member of J.J. Irani committee which drafted Companies bill 2008. He was also member of secretarial standards Board of ICSI. Currently he represents ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He is member of working group of Competition Commission Of India , National Housing Bank ,NABARD, RBI, CBI etc.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. ltd., Bharat Sanchar Nigam Limited Presently he holds the directorship at SBI mutual funds management Pvt. Ltd. He is also a member of the London Fraud Investigation team

Mr. Rajkumar Adukia has simultaneously expanded his practice to include internal audit, business advisory and planning, commercial law compliance, project work, taxation and trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.

Based on his rich experience, he has written numerous articles on most aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and professional and business magazines. He has authored several

accounting and auditing manuals. He has authored books on vast range of topics including Internal Audit, Bank Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various chambers of Commerce, income tax offices and other professional associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals across the country and abroad.

Besides, Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and traveled very extensively abroad for professional work.