

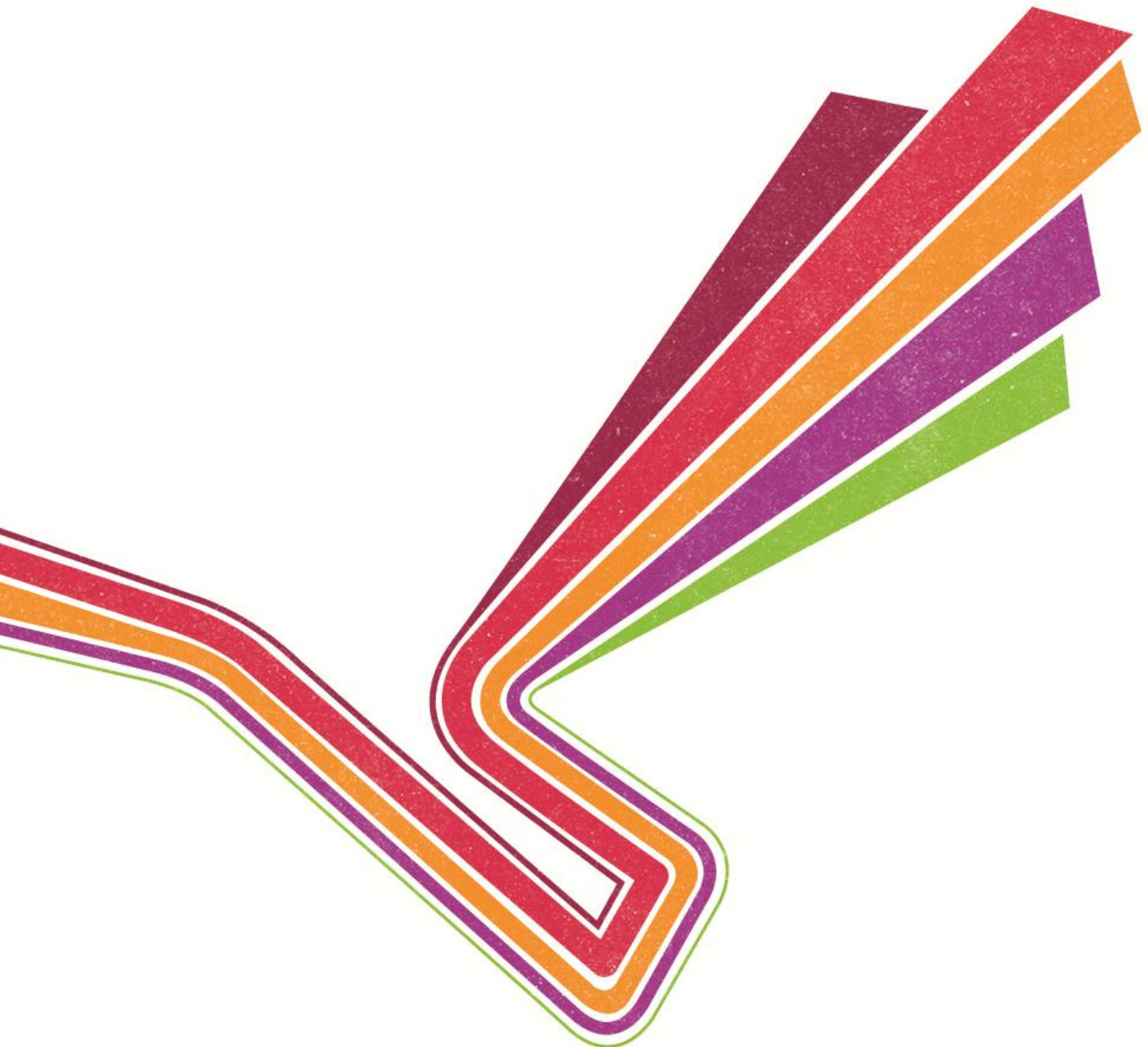


Grant Thornton

An instinct for growth™

# Tracking Changes- Companies Act, 2013

Edition -1



# The Companies Act 2013: An overview

The Companies Act, 2013 (“2013 Act”) was enacted on 29 August 2013 on accord of Hon’ble President’s assent and has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The 2013 Act replaces the nearly 60-year old Companies Act, 1956 (“1956 Act”). The 2013 Act provides an opportunity to make our corporate regulations more contemporary, and also potentially to make our corporate regulatory framework a model to emulate for other economics with similar characteristics. The 2013 Act is more a rule-based legislation containing only 470 sections, which means that the substantial part of the legislation will be in the form of rules.

The 2013 Act was set to be implemented in a phased manner. Moving in this direction, on 12 September 2013, the Ministry of Corporate Affairs (MCA) notified 98 sections with immediate effect. On 27 February 2014, MCA notified rules relating corporate social responsibility activities to become effective from 01 April 2014. On 26 March 2014, MCA notified another 183 sections and schedules to the 2013 Act to become effective from 01 April 2014. As a result, many of the key requirements of the new 2013 Act including those relating to incorporation, management, board functioning, accounts and audit become effective from 01 April 2014. The MCA is yet to notify certain parts of the new Act relating to National Financial Reporting Authority, Investor & Education Protection Fund, compromise and arrangement, oppression & mismanagement, winding up, sick companies, special courts and National Company Law Tribunal which are also expected to be notified soon in the due course.

This edition primarily highlights some of key sections out of the 183 sections that have been recently notified in addition to schedules and which may be expected to have significant impact to the functioning of the companies.

**"In a yet another big step forward, the MCA on 26 March notified 183 sections more of the Companies Act 2013 in addition to six schedules to the Companies Act 2013. This follows the notification of 98 sections in September 2013. This is an exciting development that makes the reformative new company law indeed a reality however considering the immediate effective date (01 April 2014) timelines to ensure compliance is expected to be of concern for the corporates. What will now be interesting to see is how soon are the related rules notified and become effective and whether they provide any additional transition time."**

Yogesh Sharma  
Partner  
Grant Thornton India LLP

# New sections- A summary



## Chapter I- Preliminary/ Definitions

### Section 2(41)-Financial Year

The 1956 Act provides companies to elect financial year. The 2013 Act eliminates the existing flexibility in having a financial year different than 31 March. The 2013 Act provides that the financial year for all companies should end on 31 March, with certain exceptions approved by the National Company Law Tribunal. Companies should align the financial year to 31 March within two years from 01 April 2014.

### Section 2(85)-Small Company

Small Company means a company (other than a public company) whose paid –up capital does not exceed Rs 5 million (or such other higher amount as may be prescribed, not exceeding Rs 50 million) or whose turnover does not exceed Rs 20 million ( or such other higher amount as may be prescribed, not exceeding Rs 200 million) as per last profit and loss account. Small Company cannot be a holding or a subsidiary company.

The 2013 Act provides exemptions to Small Companies primarily from certain requirements relating to board meeting, presentation of cash flow statement and certain merger process.

## Chapter IV-Share Capital and Debenture

### Section 52-Application of premium received on shares

Section 52 deals with utilisation of securities premium. While the 1956 Act does not distinguish the manner of utilisation of securities premium, section 52 restricts utilisation of securities premium for certain class of companies (as may be prescribed) and companies that comply with accounting standards prescribed under section 133 of the 2013 Act.

### 55(except for sub-section 5)-Issue and redemption of Preference Shares

Notified part of section 55 deals with issue and redemption of preference shares. It does not change the 1956 Act requirements except that company may issue preference shares with a redemption period exceeding 20 years for specified infrastructure projects. Infrastructure projects are notified vide Schedule VI to the 2013 Act.

## Chapter V- Acceptance of Deposit by Companies

### Section 73, 74(1) and 76- Provisions related to acceptance of deposits

The 2013 Act provides more stringent requirements to enable the company to accept deposits from public. Section 74 (1) requires companies to repay the deposits (including interest thereon) accepted under the 1956 Act within one year from the commencement of this section.

## Chapter VII-Management and Administration

### Section 108- Voting through electronic means

Section 108 permits shareholder voting by electronic means for prescribed class of companies.

# New sections- A summary



## Chapter IX-Account of Companies

### Section 129- Financial Statement

The 2013 Act mandates preparation of consolidated financial statements for all companies which have one or more subsidiaries in addition to the standalone financial statements.

### Section 134- Financial statement, Board's report, etc.

Section 134 seeks to make the board's report more informative with extensive additional disclosures like a statement on declaration of independence by the independent directors, related party transactions, policy on director's appointment and remuneration, ratio of remuneration to each director to the median employee's remuneration, policy developed and implemented by the company on corporate social responsibility.

Further, Director's responsibility statement should include the following additional matters as compared to the 1956 Act:

- (i) In case of a listed company, the directors had laid down internal financial controls to be followed by the company and they are adequate and operating effectively; and
- (ii) The directors have devised proper systems to ensure compliance with all applicable laws and such systems are adequate and operating effectively.

### Section 138- Internal audit

Section 138 mandates internal audit for prescribed class of companies (*\*rules have prescribed the applicability of this section to listed company; unlisted public company with a paid up capital of Rs 500 million or more, or turnover of Rs 2000 million or more, or outstanding bank/financial institution borrowings of Rs 1000 million or more, or outstanding deposits of Rs 250 million or more at any time during the last financial year; and every unlisted public company with a turnover at any time during the last financial year; and private company with a turnover of Rs 2000 million or more, or outstanding bank/financial institution borrowings of Rs 1000 million or more, or outstanding deposits of Rs 250 million or more at any time during the last financial year*)

## Chapter X-Audit and Auditors

### Section 139- Appointment of auditors

Auditors' appointment will be for a five year term (subject to ratification by members at every annual general meeting). In case of listed companies and such class of companies as prescribed (*draft rules have prescribed the applicability of this section to all companies except Small Company and One Person Company*), the term of appointment of an individual auditor/ an audit firm is restricted to a period of five years/ten years. An auditor/ audit firm should mandatorily rotate at the expiry of the term and can get appointed only after a cooling off period of five years. Act provides for a transition period of three years, from 01 April 2014, to comply with the mandatory rotation requirement.



# New sections- A summary



## **Section 141-Eligibility, qualifications and disqualifications of auditors**

The 2013 Act provides that a firm wherein a majority of the partners practising in India are qualified for appointment may be appointed to be an auditor of a company. Where a firm, including a Limited Liability Partnership, is appointed as an auditor of the company, only partners, who are chartered accountants are permitted to act and sign on behalf of the Firm. Further, the 2013 Act restricts the number of audits to 20 companies for an individual/partner and provides additional stringent disqualifications like business relationship and non-audit service disqualification.

## **Section 144- Auditor not to render certain services**

Section 144 prohibits auditors of a company to render non-audit services to an audit client (or its holding company or its subsidiary company). Prohibited non-audit services include accounting and book keeping services, internal audit, design and implementation of any financial information system; actuarial services; investment advisory services; investment banking services; rendering of outsourced financial services and management services. Other restricted service may be further prescribed. There is a transition period of one year from 01 April 2014 to comply with this requirement.

## **Section 148-Central Government to specify audit of items of cost in respect of certain companies**

Section 148 mandates cost audit by Cost Accountant in practice for prescribed class of companies.

## **Chapter XI-Appointment and Qualification of Directors**

### **Section 149 and 164- Company to have Board of Directors and Disqualifications for appointment of director**

The 2013 Act requires that the company shall have a maximum of fifteen directors and appointing more than fifteen directors will require special resolution by shareholders. Further, it requires appointment of at least one woman director on the board for prescribed class of companies.

It also requires that company should have at least one resident director i.e. who has stayed in India for a total period of not less than hundred and eighty two days in the previous calendar year.

The 2013 Act defines the term "Independent Director" and in case of listed companies, one third of the board of directors should be independent directors. There is a transition period of one year form 01 April 2014 to comply with this requirement. The 2013 Act also provides additional qualifications/ restrictions for independent directors as compared to the 1956 Act.

### **Section 150- Manner of selection of independent directors and maintenance of databank of independent directors**

Section 150 enables selection of independent directors out of data bank maintained by a prescribed body.

### **Section 165- Number of directorships**

Section 165 provides that a person cannot have directorships (including alternate directorships) in more than twenty companies, including ten public companies. It further provides for one year transition from 01 April 2014 to comply with this requirement.

# New sections- A summary



## Chapter XII-Meetings of Board and its Powers

### Section 177- Audit Committee

Section 177 enhances the role and responsibilities of the audit committee which includes the recommendation for appointment, remuneration and terms of appointment of auditors of the company; review and monitor the auditor's independence and performance, and effectiveness of audit process, examination of the financial statement and the auditors' report thereon; approval or any subsequent modification of transactions of the company with related parties; scrutiny of inter-corporate loans and investments; valuation of undertakings or assets of the company, wherever necessary; evaluation of internal financial controls and risk management systems; and monitoring the end use of funds raised through public offers and related matters.

Further section 177 requires every listed company or such prescribed class of companies (*\*rules have prescribed the applicability of this section to listed companies and every other company which accepts deposits from the public and companies which has bank/public financial institution borrowings in excess of Rs 500 million*) to establish vigil mechanism to enable their directors and employees to report genuine concerns. The vigil mechanism will provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the Chairperson of the audit committee in appropriate exceptional cases.

### Section 188- Related party transactions

Section 188 requires that related party transactions exceeding prescribed amount (*\*rules have prescribed the threshold either as an absolute amount or amount determined as a percentage of turnover / net worth per last audited financial statements, threshold varies depending on the nature of related party transactions*) or all such transactions entered by prescribed class of companies (*\*rules have prescribed the applicability of requirement to company having a paid up capital of Rs 100 million or more*) which are not in the ordinary course of business or not at arm's length basis should be approved by the special resolution. Related party shareholders are not permitted to exercise their voting rights in such special resolution.

It also requires every related party transaction should be referred to in the Board's report along with the justification for entering into such transactions.

## Chapter XIII- Appointment and Remuneration of Managerial Personnel

### Section 203- Appointment of key managerial personnel

Section 203 mandates appointment of whole time key management personnel (Chief Executive Officer/ a whole-time director, Chief Financial Officer and Company Secretary) for prescribed class of companies (*draft rules have prescribed the applicability of this section to public companies and every other company with a paid up share capital of Rs 50 million or more*).

### Section 204- Secretarial audit for bigger companies

Section 204 mandates Secretarial Audit by a Company Secretary in practice for listed companies and other prescribed classes of companies (*draft rules have prescribed the applicability of this section to every public company with a paid up share capital of Rs 1,000 million or more*).

# New sections- A summary



## Schedules to the Act 2013

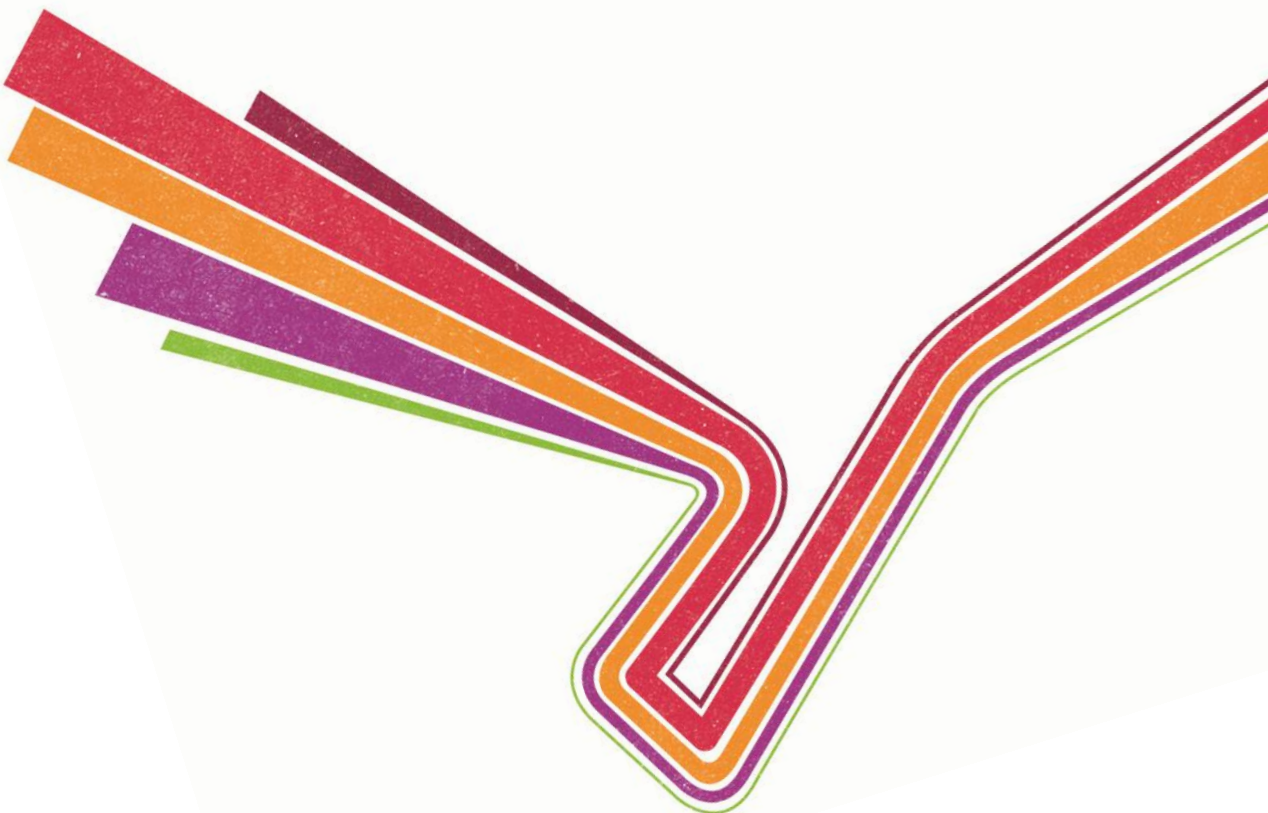
### **Schedule II- useful lives to compute depreciation**

Schedule II prescribes useful life and residual value of an asset. Certain class of companies (as may be prescribed) and companies that comply with accounting standards prescribed under section 133 of the 2013 Act should disclose the justification if the useful life and residual value of an asset are different from those prescribed under Schedule II.. Impact of change in useful life and residual life should be recognised over the revised remaining useful of the asset.

### **Schedule III – General instructions for preparation of balance sheet and statement of profit and loss of a company**

Schedule III (*similar to existing revised schedule VI of the 1956 Act*) prescribes the format for presentation of consolidated financial statements and requires minority interest to be presented separately within equity.

\*While MCA has just published the rules, these rules are to be published in the Gazette of India. More detailed analysis will be included for recently published rules in the next edition of Tracking Changes.



# About Grant Thornton India LLP



Grant Thornton India LLP is a member firm within Grant Thornton International Ltd. It is a leading professional services firm providing assurance, tax and advisory services to dynamic Indian businesses.

With a partner led approach and sound technical expertise the Firm has extensive experience across many industries and businesses of various sizes. Moreover, with our robust compliance solutions and ability to navigate complexities we help dynamic organisations unlock their potential for growth through global expansion, global capital or global acquisitions.

Today, the Firm is recognised as one of the largest accountancy and advisory firms in India with nearly 1,500 professional staff in New Delhi, Bengaluru, Chandigarh, Chennai, Gurgaon, Hyderabad, Kolkata, Mumbai, Noida and Pune, and affiliate arrangements in most of the major towns and cities across the country.

As a member firm within Grant Thornton International Ltd, the Firm has access to member and correspondent firms in over 120 countries, offering our clients specialist knowledge supported by international expertise and methodologies

## **NEW DELHI**

National Office  
Outer Circle  
L 41 Connaught Circus  
New Delhi 110 001  
T +91 11 4278 7070

## **GURGAON**

21st floor, DLF Square  
Jacaranda Marg  
DLF Phase II  
Gurgaon 122 002  
T +91 124 462 8000

## **CHANDIGARH**

SCO 17  
2nd floor  
Sector 17 E  
Chandigarh 160 017  
T +91 172 4338 000

## **HYDERABAD**

7th floor, Block III  
White House  
Kundan Bagh, Begumpet  
Hyderabad 500 016  
T +91 40 6630 8200

## **CHENNAI**

Arihant Nitco Park, 6th floor  
No.90, Dr. Radhakrishnan Salai  
Mylapore  
Chennai 600 004  
T +91 44 4294 0000

## **BENGALURU**

“Wings”, 1st floor  
16/1 Cambridge Road  
Ulsoor  
Bengaluru 560 008  
T +91 80 4243 0700

## **KOLKATA**

10C Hungerford Street  
5th floor  
Kolkata 700 017  
T +91 33 4050 8000

## **NOIDA**

Plot No. 19A, 7th Floor,  
Sector 16-A,  
Noida 201301.  
T +91 120 7109001

## **MUMBAI**

16th floor, Tower II  
Indiabulls Finance Centre  
SB Marg, Elphinstone (W)  
Mumbai 400 013  
T +91 22 6626 2600

## **PUNE**

401 Century Arcade  
Narangi Baug Road  
Off Boat Club Road  
Pune 411 001  
T +91 20 4105 7000

