

## “Companies Act, 2013: Significant Provisions in relation to Accounting”

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**Abstract:**

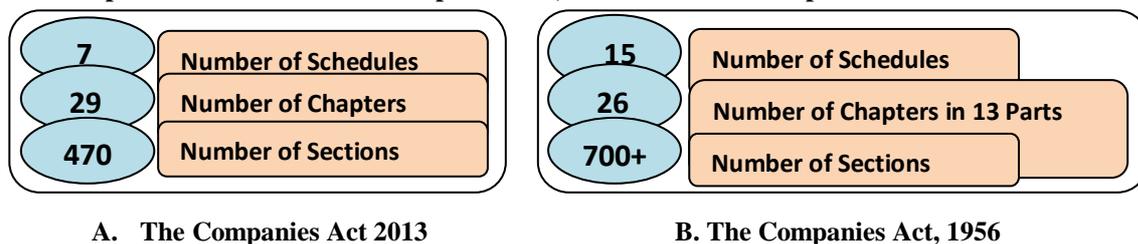
*The Companies Act 2013 brings various significant changes compared to the Companies Act 1956. The new act introduces innovative changes in governance, e-management, compliances, enforcement, disclosure norms, auditors, accounting practices and mergers and acquisitions etc. Some new concepts like one Person Company, small companies, dormant company, class action suits, registered valuers, corporate social responsibility are included in the Companies act 2013. Like this many key changes have been included as per the current corporate practices in accordance with social responsibility. The research paper studies the new act and describes the key changes regarding accounting practices. It will also reflect and analyse the difference between Companies Act 1956 and Companies Act 2013.*

**Key Words:** Accounting, Auditing, Company, Corporate, Compliance, Financial Statement

**Introduction**

Accounting practices in the corporate has always playing a key role in the corporate framework. The firms which are registered under Companies Act 1956 have to follow the rules and regulations which are mentioned and made mandatory for them. The act was performing well till date from its introduction. Some amendments also took place as the need was there. But the corporate scenario is changing and much different compare to the 1956 decade to 2013decade. So the change in environment implies that to introduce the fresh act for the companies. The 1956 act has been in need of a substantial revamp for quite some time now to make it more contemporary and relevant to corporates, regulators and other stakeholders in India (PWC, 2013). The 2013 Act marks a major step forward and appreciates the current economic environment in which companies operate. It goes a long way in protecting the interests of shareholders and removes administrative burden in several areas. The 2013 Act is also more outward looking and in several areas attempts to align with international requirements (KPMG, 2013).

**The Companies Act 2013 Vs The Companies Act, 1956: Statistical comparison**



**Fig1. Statistical Comparison**

**The Historic moments of introducing Companies Act, 2013:**

While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to

revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

### **Research Objectives**

1. To study the newly introduced Companies Act, 2013.
2. To study and analyse the significant provisions in relation to accounting.
3. To highlight some key provisions which are newly included in the act
4. To know the basic difference between 1956 act and 2013 act.

### **Research Methodology**

The present study is descriptive and analytical. It studies the newly introduced Companies Act, 2013 as well as the older Companies Act, 1956. The views and opinions are included only on the basis on these two acts. The research is based on secondary data. The sources have been used for data collection viz. books, corporate magazines, websites, e-books, journals etc.

The 2013 Act has introduced several new concepts and has also tried to streamline many of the requirements by introducing new definitions viz. One Person Company, Private Company, Small Company, Dormant Company etc. A few of these significant aspects have been discussed in this paper.

### **Data Analysis**

#### **Reporting Framework:**

In the new act the focus is given on corporate reporting framework. The focus given because increased requirement of relevance and consistency in the financial information. The changes made in both of the framework i.e. internal as well as external.

Following are the highlights of the changes made in the reporting framework;

1. Mandatory requirement for consolidated financial statements. (Sec 29)
2. New definition of subsidiary, associate, joint venture Company. (Sec 2(6) & 2 (87))
3. Revision in Financial Statement (Sec 130, 131)
4. Financial year to be uniform (Sec 2(41))
5. Changes in depreciation regulation (Sec 123(2) and Schedule II)
6. Mandatory internal audit and reporting on internal financial controls (Sec 138)
7. Other Changes

#### **Management and Administration:**

The 2013 Act also intends to improve corporate governance by requiring disclosure of nature of concern or interest of every director, manager, any other key managerial personnel and relatives of such a director, manager or any other key managerial personnel and reduction in threshold of disclosure from 20% to 2%. The term 'key managerial personnel' has now been defined in the 2013 Act and means the chief executive officer, managing director, manager, company secretary, whole-time director, chief financial officer and any such other officer as may be prescribed (*PWC, 2013*).

#### **Significant provisions in relation with accounts and audit:**

Comparing the 1956 act several key changes have been made in the new act. These changes made on the basis of the requirement from corporate and other stakeholders.

#### **A. Accounts**

##### **1. Books of Accounts:**

Every company, similar to the requirement of the existing 1956 Act, is required to maintain books of accounts at its registered office [Sec 128(1) of the 2013 Act]. Further, with respect to branches, while the existing 1956 Act provides that where company has a branch office(s) proper summarized returns, made up to date at interval of not more than three months was supposed to be sent by branch to the company at its registered office or another place etc., such a requirement has now been done away with and only returns are to be periodically sent by the branch to the registered office [Sec 128(2) of 2013 Act]. Also, in keeping with the times, books of accounts and relevant papers can now be maintained in electronic mode [Sec 128(1) of 2013 Act].

##### **2. Accounting Standards:**

In several instances across the 2013 Act, there are provisions which are also covered within the accounting standards currently notified under section 211(3C) of the 1956 Act and the Companies (accounting standards) Rules, 2006 there under. The difference may be there in the terms of associate company, subsidiary company and related party.

##### **3. Consolidated Financial Statements:**

The 2013 Act now mandates CFS for any company having a subsidiary, associate or a joint venture [section 129(3)]. The manner of consolidation is required to be in line with the requirements of AS 21 as per the draft rules.\* Further, the 2013 Act requires adoption and audit of CFS in the same manner as standalone financial statements of the holding company [section 129(4)].

In regard to this salient feature of financial statement also to included in CFS. Since there is already a requirement to attach a statement containing salient features of the financial statements of the subsidiary, associate and joint venture, preparation of a CFS will would lead to duplication of preparing and presenting the same information in different forms.

##### **4. Re-opening of accounts and voluntary revision of financial statements or the board's report:**

Sec 130 of 2013 Act allows that re-open the books of accounts of the company. But it requires making an application to the central government, income tax authority, SEBI, any other regulatory body or any concerned person. In this matter if under following circumstances are happened.

1. Relevant books of accounts were prepared in a fraudulent manner.
2. Mismanaged affairs of the company with regard to books of accounts in a relevant period.

Further, a company would be able to undertake voluntary revision of financial statements or Board's report if it appears to the director of a company that the financial statement of the company or the board report does not comply with the provisions of section 129(financial statement) and section 134 of the 2013 Act (financial statements and board reports) in respect of any of three preceding financial years, after obtaining approval from the Tribunal.

The provisions envisaged by the 2013 Act in respect of re-opening and voluntary revision of the financial statements and board report is yet to be acknowledged by SEBI in the equity listing agreement and thus, pending similar amendment in the equity listing agreement, listed companies may face unnecessary hardships.(PWC, 2013)

##### **5. Financial Year:**

The 2013 Act has introduced a significant difference in the definition of the term, 'financial year', which has been defined in section 2(41) of the 2013 Act to mean April to March.

There are several reasons for a company to use a year-end which is different from April to March. These include companies which are subsidiaries of foreign companies which follow a different year-end or entities which have significant subsidiaries outside India which need to follow a different year-end, etc.

Accordingly, it would not be appropriate to mandate a single year-end for all companies. Since the 2013 Act does not mandate any specific rules or requirements on the basis of a specific year, as in the case of tax laws, the reason for requiring a uniform year-end under the 2013 Act, seems to be unclear.

**B. Audit and Auditors:**

To enhance the audit effectiveness and accountability of the auditors various changes brought in the 2013 act. Some new concepts also introduced in this part like rotation of audit and class action suits. These changes will have a considerable impact on company in terms of time, expectations, work management, administration etc.

**1. Appointment of auditors:**

Unlike the appointment process at each annual general meeting under the 1956 Act, the auditor will now be appointed for a period of five years, with a requirement to ratify such an appointment at each annual general meeting [sec 139(1) of 2013 Act]. Further, the 2013 Act provides that in respect of appointment of a firm as the auditor of a company, the firm shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 [Explanation to sec 139(4) of 2013 Act]. Also, the 2013 Act specifies that where a firm, including a limited liability partnership is appointed as an auditor of a company, only those partners who are chartered accountants shall be authorised to act and sign on behalf of the firm [sec 141 of 2013 Act].

Disqualification of auditor is mentioned in Sec 141 as follows:

1. A person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company of face value exceeding one thousand rupees or such sum as may be prescribed; is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs.1,00,000\* ; or 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 Rs.1,00,000\*, will not be eligible to be appointed as an auditor. Additionally, a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or it's holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed, will be disqualified from being appointed as an auditor.
2. It would be relevant to note that the draft rules include 15 relationships in the list of relatives including step son/daughter and step brother/sister.
3. The ineligibility also extends to person or a partner of a firm who holds appointment as an auditor in more than twenty companies as well as a person who is in full time employment elsewhere. [Sec 141 (3)(g) of the 2013 Act]. (*PWC, 2013*)

**2. Mandatory Firm Rotation:**

The 2013 act introduces the rotation of firms every five years. The listed companies have to rotate it by compulsory. In case of audit firm it is every 10 years the appointment of an audit firm. 1956 act; it was not included that the rotation of auditor and audit firms. The code of ethics issued by ICAI has a requirement to rotate audit partners.

**3. Non Audit services to audit clients:**

The 2013 Act states that any service to be rendered by the auditor needs to be approved by the board of directors or the audit committee. Additionally, the auditor is restricted from providing specific services, which include the following:

- Accounting and book keeping services
- Internal audit
- Design and implementation of any financial information system
- Actuarial services
- Investment advisory services

- Investment banking services
- Rendering of outsourced financial services
- Management services, and any other service which may be prescribed

**4. Joint Audits:**

The 2013 Act provides that members of the company may require the audit process to be conducted by more than one auditor [Sec 139(3) of the 2013 Act].

**5. Auditors Liability:**

The liability of auditors is enhanced under the new act. Auditors now should not only follow the regulations of ICAI but also they have to follow the rules and regulations of NFRA (National Financial Reporting Authority). If the auditor failed to follow the given rules and regulations the penalty provisions included in the act.

Penalties included;

1. Monetary penalties
2. Imprisonment
3. Debaring of the auditor firm and auditor
4. Class action suits etc.

**6. Additional Responsibilities of the Auditor:**

New act 2013 introduced some changes in the auditor’s report.

The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company [Sec 143(3)(f) of the 2013 Act]

Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith [Sec 143(3)(h) of the 2013 Act]

Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls [Sec 143(3)(i) of the 2013 Act]

The 2013 Act requires an auditor to report to the central government within 30 days in a format prescribed within the draft rules, if he or she has any reasons to believe that any offence involving fraud is being committed or has been committed against the company by its officers or employees \* [section 143(12) of the 2013 Act]. Further, where any auditor does not comply with the above requirements, he or she shall be punishable with a fine which shall not be less than 1 lakh INR, but which may extend to 25 lakh INR [section 143(15) of the 2013 Act]. The above requirements are in addition to the existing requirements under the 1956 Act.

**Major Difference between 2013 vs. 1956 Act**

Sr. No.	Subject Matter	2013 Act	1956 Act
1	Composition	7 Schedules 29 Chapters 470 Sections	15 Schedules 26 Chapters 700+ Sections
2	Definitions	Section 2 contains 67 Definitions	Section 2 contains 95 Definitions
3	Formation of Company (Minimum persons)	One person can form one person company Minimum 2 Persons for private company Minimum 7 for a public co.	One Person can’t form a company. Minimum 2 for a private company. Minimum 7 for a public co.
4	Types of Company	15 types of company can be formed	10 types of companies can be formed
5	Maximum persons	200 (for a private company other than OPC)	50

6	Books of accounts	Company may keep such books of accounts or other relevant papers in electronic mode in such manner as may be prescribed.- <b>All companies</b>	No provisions in the 1956 Act enabling company to keep books of accounts in electronic mode.
7	CFS	Mandatory if company has one or more subsidiaries or associates or joint ventures.- <b>PL/GPAEL/ SUN TAN</b>	Not mandatory. No provisions in this regard in the 1956 Act.
8	Auditor's disqualifications – All companies	The list of disqualifications for appointment as auditors under section 141 of the 2013 Act is longer than that under section 226(3) of the 1956 Act. The following are the new disqualifications that were not there in 1956 Act: <ul style="list-style-type: none"> <li>• A person or a firm who has business relationship with the company, or its subsidiary, or its holding company or subsidiary of such holding company or associate company of such nature as may be prescribed.</li> <li>• A person whose relative is a director or in the employment of the company as a director or key managerial personnel;</li> <li>• A person convicted for fraud and 10 years not elapsed from date of conviction;</li> <li>• A person whose subsidiary or associate company or any other form of entity is engaged in consulting and specialized services as provided in section 144 of the 2013 Act.</li> </ul>	Much narrower list of disqualifications under the 1956 Act compared to the 2013 Act.
9	<b>Compulsory appointment of woman director</b>	Such class or classes of companies as may be prescribed shall have a woman director.- <b>PL/GPAEL may</b>	No provisions regarding this in the 1956 Act.
10	<b>At least 1 director who stayed in India for 182 days or more</b>	Every company shall have at least one of the directors who has stayed in India for 182 days or more in the previous calendar year.	No provisions regarding this in the 1956 Act.

### Conclusion

Time has gone but the things were the same. Like this the company act 1956 was the good at those days and it has changed and amended time to time. The corporate environment really in need of a fresh act with various changes and 2013 act expected to fill up the place of 1956 act very positively. The 2013 act is expected to create a business friendly corporate environment, improve corporate governance norms, enhancing accountability and strict the audit norms as well. This new act definitely has the provisions which will provide the more transparency in the accounts and audit field. It should raise the level of transparency; help to manage investors' interests.

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