

Companies (Amendment) Bill 2003

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The Companies (Amendment) Bill, 2003 spurs the same expectation and excitement as a Harry Potter release does world over. The bill introduced in the Rajya Sabha on 7.5.2003 is an amalgamation of recommendations made by the Naresh Chandra Committee on Corporate Audit and Governance (NCC), Joint Parliamentary Committee (JPC) and the remaining portion of Companies Bill, 1997 in the back drop of Joshi Committee Report (JPR) with or without modifications. The effective date has not been notified. The Bill has been released with a customized make up in response to hotly debated issues on corporate governance.

The laudable objectives appear broadly as below:

1. Strengthening the standards of independence of directors and auditors.
2. Improved investors' protection and shareholder democracy.
3. Increased transparency by mandatory disclosures of derivatives, option etc., as well as segment reporting in director's report.
4. Fixation of responsibility for maintenance of books of accounts by creating a new post called chief accounts officer.
5. Reservation policy - women to the forefront by their representation in the board.
6. Punishment of wrong doers (in excess of the guilt ?)
7. Modernising & keeping pace with IT developments.
8. Taking note of the changes ushered in by Oxley Sarbanes Act 2002 in US.
9. Procedural reforms.
10. Elimination of redundant provisions.

The author is member of the Institute. The views expressed herein are the personal views of the author and do not necessarily represent the views of the Institute.

The collapse of big corporations like Enron, Worldcom & Arthur Anderson has shaken the world. The Government of India takes moral and economic responsibility for growth of Indian Corporate sector on desired lines, as it is the wearer who best knows where the shoe pinches. The Bill believes that success of the business is a matter of choosing the right directors and right auditors as means to the end, not merely choosing the right corporate policies, and that better disclosure has its own reward. In this uphill task of renaissance and reawakening, there is tightening of regulatory framework.

During January 2003, the Companies Act, 1956 has been amended by two notifications issued by the Department of Company Affairs. Before we analyse the bill, let us take a brief note at the amendments.

Companies (Amendment) Act 2002: This was notified vide notification number S.O 135(E) published on 1st January 2003 and was brought into effect on and from 6th February 2003 vide circular number 6/2003 of DCA. Under this amendment, a new Part IX A was introduced to the Act pertaining to producer companies and interstate co-operative societies, their incorporation and other matters vide Sections 581A to 581ZT.

Companies (Second Amendment) Act, 2002: This was published vide notification number S.O 344(E) on 14th January 2003.

The salient features of this amendment are as follows:

- Constitution of National Company Law Tribunal (Part 1B) [Sections 10E to 10EP] brought into effect from 1st April 2003;
- Constitution of Appellate Tribunal (Part 1C) [Sections 10FQ to 10GF] brought into effect from 1st April 2003;
- Dissolution of Company Law Board;
- Vesting of existing administrative powers of the Court in Tribunal;

- ❑ Bifurcation of the regulatory powers of existing CLB to the Central Government and Tribunal;
- ❑ Collection of new sickness cess from corporate world at not less than 0.005% but not more than 0.1% on the annual turnover or annual gross receipt, which ever is more as prescribed to be paid by the companies within 3 months from the close of financial year (Section 441A) (A case of robbing Peter to pay Paul !);
- ❑ Certification by the statutory auditor about payment of the above mentioned cess by the company in his report u/s 227(3)(f);

Section 2 pertaining to definitions and Section 6 pertaining to establishment of National Company Law Tribunal have been brought into effect from 1st April 2003. Except these, the other provisions of Companies (Second Amendment) Act, 2002 including cess are yet to be notified.

Companies (Amendment) Bill 2003 : The government has brought out extensive and intensive 174 amending clauses.

For the sake of simplicity, the major amendments are presented here in two parts : Part A containing present versus proposed and Part B containing new provisions. The author's views are marked in italics.

SECTION	PRESENT PROVISION	PROPOSED AMENDMENT
3(5) - proviso added Small capital companies.	The Companies (Amendment) Act 2000 required minimum paid up capital limits as below: Private company - Rs. 1 lakh Public company - Rs. 5 lakhs This was to be ensured by 13.12.2002.	If paid up capital is not so raised (or) is not carrying on business or profession, the liability of every director, or manager or shareholder becomes unlimited. <i>The provision will act as an effective deterrent.</i> <i>But against the principle of "limited liability" of members.</i> <i>Does not mention the 'no-activity' period, which will invoke unlimited liability.</i> <i>Uncontrollable factors beyond the directors' control need to be condoned.</i> <i>Does 'or' include 'and' here?</i>
4(1) substituted Becoming a subsidiary.	If more than 50% of paid-up equity share capital is held by another company - 4(1)(b)(ii)	<u>Securities & equity shares have same voting right 4(1)(b):</u> More than 50% of its total voting power is held by another <u>Other cases - 4(1)(c)</u> More than 50% of paid-up capital. <i>Equity removed means both equity and preference to be added. This means holding less in equity and more in preference capital will not work.</i>
4(1A) added Ban on subsidiaries	A subsidiary can have another subsidiary -4(1)(c) [chain subsidiaries]	A subsidiary cannot have another subsidiary -4(1A). <i>This will hinder the functioning of large infrastructure groups.</i> <i>It does not state that existing subsidiaries will get desubsidiarised from a notified date.</i> <i>There is no relaxation to provide for one more tier of subsidiary in case of a subsidiary of a foreign company operating in India.</i>

<p>The JCR recommends "to put some control on unending chain of subsidiaries which are set up by big companies/corporate houses as these are being used as investment vehicles for the purpose of siphoning of funds or manipulating the tax liability. Such a restriction is also called for in the context of diversion of funds by some unscrupulous management. As such it is becoming ultimately very difficult to trace the final recipient or end user of such money".</p>		
<p>4(7) substituted</p> <p>Status of an Indian private company held by a foreign public company(s) (FPC):</p>	<p>(a) <u>If 100% of entire share capital is held by such FPC:-</u> Treated as a private company, which is not a subsidiary of a public company.</p> <p>(b) <u>If less than 100%:-</u> then it is deemed to be a subsidiary of a public company.</p>	<p>(a) <u>If not less than 99% of share capital is held by FPC:-</u> Treated as a private company which is not a subsidiary of a public company.</p> <p>(b) <u>If less than 99%:</u> Deemed to be a subsidiary of a public company.</p> <p><i>A small & subtle amendment. Merely because 1% shareholding in subsidiary is held by Indian nominees, in all fairness, it should not lose the exemptions and privileges that are otherwise available to it as a private company, which is what being addressed in the bill</i></p>
<p>5 modified</p> <p>Officers in default.</p>	<p><u>Means the following</u></p> <ul style="list-style-type: none"> ➤ Managing Director ➤ Whole time Director ➤ Manager ➤ Secretary ➤ Directors Specified by the board etc. 	<p>More persons become "Officers in default"</p> <ul style="list-style-type: none"> ➤ Part time directors for contravention committed with his consent or due to his negligence. <p><i>The Naresb Chandra Committee recommended exclusion of this from 1997 Bill but it is included now.</i></p> <ul style="list-style-type: none"> ➤ Chief Accounts Officer(CAO) ➤ Employee drawing more than MD/WTD and holding 2% or more of equity share capital by himself or along with his spouse or dependent children. ➤ Share transfer agents, bankers, registrars, merchant bankers in respect of issue or transfer of securities. <p><i>What role do bankers play? Their associations will have to represent quickly seeking exclusion</i></p> <ul style="list-style-type: none"> ➤ Debenture Trustee.
<p>11(2) proviso inserted.</p> <p>Prohibition of partnership</p>	<p>Upto 20 persons can form a partnership firm for carrying on non-banking business for gain without getting registered as a company under the Companies Act.</p> <p><i>However the respective legislations governing these professions do not allow firms to incorporate. Further sec.226(3) disqualifies a body corporate from taking appointment as an auditor. All these are not conducive to the growth of firms.</i></p>	<p>Now upto 50 person can form a association, partnership for carrying on the profession of</p> <ul style="list-style-type: none"> ➤ advocates, ➤ chartered accountants, ➤ cost accountants, ➤ company secretaries, ➤ doctors, ➤ architects or ➤ other notified professions.

		<p><i>This will be fruitful only if the respective legislations are also amended.</i></p> <p><i>It is understood that internationally, there is no restriction on the size of professional firms.</i></p>
13(1) substituted Memorandum of Association	<p>Memorandum to contain objects clause spilt as</p> <ul style="list-style-type: none"> ➤ Main objects ➤ Incidental objects ➤ Other objects 	<p>Memorandum to contain objects clause spilt as</p> <ul style="list-style-type: none"> ➤ Main objects ➤ Other objects <p>Applicable for companies incorporated after the commencement of the Amendment Act.</p> <p><i>In line with global trend, the 'incidental objects' deleted.</i></p>
42(3A) added Membership of Holding company	<p>A holding company cannot allot any shares to its subsidiary company.</p> <p>Prohibition is for any kind of shares - rights shares or bonus shares.</p>	<p>A holding company can allot bonus shares (no rights shares) to its subsidiary company.</p> <p><i>End of a long pending issue.</i></p>
51 modified Service of documents on company.	<p>A document may be served</p> <ul style="list-style-type: none"> ➤ Under certificate of posting. ➤ By registered post. ➤ Personal delivery 	<p>Now service by means of electronic mode is also possible.</p>
52 modified Service of documents on Registrar.	<p>A document may be served</p> <ul style="list-style-type: none"> ➤ Under certificate of posting. ➤ By registered post. ➤ Personal delivery 	<p>Now service by other prescribed means is also possible.</p> <p><i>The addition could be for speed post, courier service, e-mail etc.</i></p>
68 substituted Penalty for fraudulently inducing persons to invest money.	<p>A person is liable for false or misleading statement, promise or forecast and for dishonest concealment of material facts as below:</p> <p>Imprisonment - Upto 5 years or Fine - Upto 1 lakh Or both.</p>	<p><u>Imprisonment - 68(1)</u> Minimum - 6 months Maximum - upto 5 years and with Fine - Upto 1 lakh.</p> <ul style="list-style-type: none"> ➤ NCLT is empowered to impose a minimum penal 200% of amount raised by fraudulent means. Penalty is recoverable from such person and his liability becomes unlimited. NCLT to refund money to affected persons out of this recovery- 68(2) <p><i>To save the innocent public, the concept of disgorgement of illegally derived benefit introduced.</i></p>
69 substituted Allotment of securities	<p>Section applies to shares.</p> <p>Application money shall not be less than 5% of nominal amount of share.</p>	<p>Section applies to securities including shares.</p> <p>Application money shall not be less than 25% of nominal amount of share.</p>

		If allotment is made before receipt of minimum subscription, every promoter, director etc punishable with imprisonment upto 2 years plus fine upto Rs. 10,000/-.
73 section substituted Allotment	Section 73(2) Prescribed rate of interest is payable by the company if application moneys is not repaid to the applicant (for non-receipt of listing permission from the exchange) from the expiry of eighth day. Rate of Interest Minimum : 4% Maximum : 15% Section 73(2A) Similar provisions exist for the return of application money in excess of the allotment.	Section 73(4) The rates of interest have been sharply increased. Rate of Interest Minimum : 6% Maximum : 20% Section 73(5) Similar rigorous provisions exist for the return of excess application money. <i>This ensures that public money is not mishandled by companies. (Once bitten twice shy.)</i>
77(1) substituted Buy back.	A company cannot buy its own shares.	Made clear that a company cannot buy its shares directly or indirectly . Circular trading curbed u/s 77(1A) - Refer Part B.
78(2)(e) added Application of securities premium.	Under sec.77A, a company may buy-back its own securities out of its (interalia) securities premium account.	Sec. 78 contains purposes for which the premium account can be applied. Though its utilisation for buyback is permitted under sec.77A, it was not finding place in sec.78. <i>This is a clarificatory amendment. Internal anomaly corrected.</i>
81 substituted Further issue of equity shares	<i>The board of private companies have a free hand to issue shares to persons other than existing shareholders, subject to restrictions if any imposed by articles of association. This exemption is available in sec. 81(3)(a).</i> - -	This does not find place in new sec. 81(8). That is even private companies will be required to obtain special resolution from shareholders for this issue. If the issue is made at a premium, the premium amount payable by existing or new shareholders to be approved by a special resolution. In respect of preferential placement, the proposed allottee will not have voting right on the special resolution. Private and public companies treated on par. Prof. Verma Committee report is expected on the pricing of preferential issues by unlisted public companies.
81(6) new section Employees stock option.	No specific provision or guidelines laid down.	➤ Recognises stock option under a scheme to employees, officers or working directors. ➤ Can be at prevailing market price or price specified in the offer. ➤ As per SEBI guidelines <i>This will ensure uniformity.</i>

87(1)(b) substituted Voting right in a poll	In proportion to paid up equity capital.	Extending this to equity shares with differential rights will give a sigh of relief to many corporate secretaries.
94(1)(a) substituted Share capital	It is well settled that capital referred to in section 94 is authorized capital and not issued capital. The increase is by issuing new shares	By creating new shares <i>Drafting error corrected.</i>
94(1)(c) deleted. stocks	A limited company having a share capital may convert its fully paid-up shares into stock.	By this deletion, shares cannot be converted into stock.
111(1A) added. Transfer of shares by private company.	The Articles contain restriction that the board may, in their absolute discretion, decline to register the transfer of any share, whether fully paid or partly paid. Thus the board is the approving authority. This is probably required for restricting the number of members to 50.	The amendment takes away the unrestricted power of the board. Now share transfer requires approval by all the shareholders at its meeting. <i>The requirement is not ordinary or special resolution but consent of 100% shareholders. This means attendance of all shareholders in the meeting is required which is an unrealistic expectation and further holding a general meeting for every transfer is impracticable.</i> <i>This interpretation is not beyond doubt and needs to be clarified.</i>
114(4) inserted. Share warrant	A public company, if authorised by its articles, could, with prior approval of CG, issue a warrant in respect of its fully paid-up shares. A share warrant entitles the bearer to the shares specified therein.	Share warrants can no longer be issued after the commencement of Companies (Amendment) Act 2003. <i>This deletion necessary in view of the serious attendant risk.</i>
133 substituted Debenture stock	Debenture stock certificate can be issued.	Can no longer be issued. In any case, the issue of this was not in practice.
149(7) substituted. Privilege of a private company.	The provisions are explained: A private company is not required to obtain certificate of COB and can start its business immediately upon incorporation and if at any time thereafter a new business is intended, approval by a special resolution from the shareholders is not required nor is there any stipulation on filing of forms with ROC.	Now these concessions will be available to government companies <i>The concessions enjoyed by a private company so far are gone with the wind.</i>
149(2A) substituted Commencement of business (COB)	A public company requires special resolution to commence business pursuant to other objects clause in MOA. Not required if it pertains to main or incidental objects.	Both public and private companies require special resolution to start business pursuant to whether main or incidental objects.

153 substituted Trusts	No notice of trust can be entered on register of members or debenture holders. This is to ensure that company is not put to the difficulty of locating the real owner. Registered owner is treated as the true owner.	No notice of trust, other than mutual trusts and other trusts, can be entered. <i>In view of the dissenting views this amendment will make things clear.</i>
Annual return 159(1) substituted 161 deleted	Filing of Annual Return: 60 days from AGM. Signing of annual return by practicing secretary in case of listed companies sec.161(1)	Cut by 50% to 30 days. This signing will be required for all public companies new 159(3). <i>To minimize the error in Return through verification by professionals for all public companies(listed and unlisted).</i>
169(1) substituted EGM.	The EGM can be held at any place, within India or outside India .	The EGM has to be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. <i>Like AGM S166 (2), the EGM will also be subject to place restriction. This will affect the wholly owned private subsidiaries registered in India (of foreign companies) whose meetings are held outside India.</i>
169A new section introduced Annual general meeting.	AGM on a day that is not a public holiday Sec. 166(2) EGM can be held on a Sunday (No restriction in the Act)	Notwithstanding , AGM / EGM can be held on Sunday. <i>This will enable participation in large numbers by shareholders. Experts feel that corporate democracy will be more robust if proxy holders are allowed to speak and vote on show of hands at general meetings. Public holidays other than sunday are still under restriction.</i>
173(2) substituted. Enlarging the scope of explanatory statement to be annexed to notice.	Where any item of business to be transacted at the meeting is special, the explanatory statement has to disclose the interest of director.	To include the interest of relatives of any director if any and in such a manner to enable a meaningful judgment by the shareholder. If due to non-disclosure or insufficient disclosure, any benefits accrue to director or his relatives, the director has to hold in trust and reimburse or compensate the company. <i>This proposal strengthens the disclosure requirement. A greater responsibility is being cast upon directors to ensure utmost transparency while disclosing their interest.</i>
175 substituted Chairman of meeting.	Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.	The chairman of the board shall be the chairman of the general meeting.

176(5)(c) added Proxy.	A proxy can be made in favour of one (or) another person alternatively. (Schedule IX). No restriction to issue more than one proxy form.	A proxy in favour of one or more persons alternatively. Only one proxy form can be issued.
192(4)(ee) omitted Registration of resolutions etc.	Filing with ROC resolutions passed u/s. 293 (pertaining to board's powers exercised with the consent of company relating to the following:- (a) Disposal of the undertaking (b) Borrowing money in excess of networth. (c) Contribution to charitable and other funds)	The reason for this waiver is not known.
192(7) added Registration of resolutions.	Filing with ROC of certain resolutions & agreements with prescribed fees.	Now registration charges, if any, are also payable. Filing effective upon payment of fees & registration charges. <i>The Act does not call for filing of all resolutions. Given this, the subsection suddenly refers to resolution passed under the Act. It needs to be corrected as 'resolution under this section'. But if this is the intention, then every resolution including routine ones passed at the meetings of board/shareholders needs to be filed with ROC (of what use?). This does not appear compatible as the section applies only to certain resolutions listed under 192(4) which remains untouched by this Bill.</i>
205 Declaration of dividends out of reserves.	<u>205A(3)</u> ➤ In accordance with Companies (Declaration of dividend out of reserves) Rules, 1975. ➤ If not in accordance - then prior approval of Central Government required.	<u>Sec. 205(8)</u> ➤ Unanimous consent of all directors present in board meeting. ➤ Prior approval of financial institutions. ➤ Special resolution in AGM. ➤ (Plus) the rigours of existing 205A(3) maintained.
205(9) new section Use of revaluation reserve for bonus issue.	➤ Prohibited by SEBI Guidelines 2000 for listed companies. ➤ DCA circular dt. 6.9.94 extended this to unlisted companies. This is advisory in nature in the absence of any delegated power under any provision.	➤ Now laid down in the Act itself that reserves created by revaluation of company's assets cannot be used for issue of bonus shares. ➤ Applicable to all companies. <i>Revaluation reserve is not made out of profits. It is a book adjustment, a welcome amendment.</i>
209(6)(a) - substituted. Responsibility for books of Account.	<u>Where there is a Managing Director</u> ➤ MD or Manager, ➤ Officers & employees.	<u>Where there is a Managing Director</u> ➤ MD or Manager ➤ WTD in charge of Finance ➤ Chief Accounts Officer. ➤ Officers and other employees (excluding bankers, auditors and legal advisers)

211(1) - modified. Form and content of Balance Sheet etc.	Balance sheet as per Part I of Schedule VI and general instructions appearing as foot notes.	Balance Sheet as per Part I, general instruction and Accounting Standards (AS) issued by the Institute of Chartered Accountants of India <i>Interestingly, AS is now defined in new section 2 (1A)</i>
215(1)(ii) modified Authentication of Balance Sheet and P&L account	Authentication by ➤ Manager or secretary, if any ➤ Minimum 2 directors (one being MD when there is one)	Authentication by ➤ Manager or secretary or Chief Accounts Officer (CAO). ➤ Minimum 2 directors (one being MD when there is one) <i>This means CAO can sign instead of manager or secretary. The CAO would know the financial statements better.</i>
217(2A) proviso added Board's report.	Remuneration of high paid employees given in Board's Report. (Rs. 2 lakhs p.m.)	CG can exempt from this inclusion companies whose employees are posted outside India. (other than relative of director). But information to be sent to ROC, CG & prescribed authority.
220(1) & (1A) substituted. Filing with registrar.	The Balance Sheet and P&L amount are filed separately with ROC by a private company (First proerro) A non-member is not entitled to inspect or obtain copies of P&L (second proirro) Filing of B/S & P&L within 30 days of AGM with ➤ Registrar	Both provisos have been withdrawn-private companies take the notherly protection so far enjoyed by them. Filing within 30 days of AGM with ➤ Registrar ➤ Director (Research & statistics) of DCA. ➤ RBI.
224(1) proviso substituted Appointment of auditors.	Written certificate to be obtained by company from auditor that number of audits is within statutory limits.	Written certificate from the auditors that appointment complies with prescribed conditions. (i.e. Global ?) <i>The auditor stand committed zero hour. Most likely these conditions would cover the expanded disqualifications u/s 226 and the new 226A.</i>
224(5) modified	First auditor to be appointed by Board within one month from the date of registration.	Time extended to 3 months.
225(1) modified Auditor related.	Ordinary resolution for appointing as auditor a person other than a retiring auditor.	Now a special resolution will be required.
227(1A)(C) substituted.	Today the auditor has to inquire whether the shares, debentures etc., have been sold less than purchase cost for companies (other than investment/banking companies)	Upon substitution of this, it appears that auditor has to make this inquiry for investment companies. It is to be seen whether this is the intention or a drafting error?
227(3)(d) substituted Audit report	Auditor to report whether P&L and B/S comply with the Accounting Standards.	Auditor to <u>report</u> whether: (i) Accounting policies of the company are in conformity with the accounting standards (ii) Deviation from company's accounting policies & its impact. (iii) Accounting treatment in P&L and B/S in respect of any item is inappropriate.

		This makes it more comprehensive and enables the shareholders and potential investors to assess the quality of company's management.
233A(1) substituted Special audit by Central Government	3 situations may lead to special audit of company's accounts: ➤ Company not managed prudently ➤ Prejudicial to the interest of trade, industry or the business it is in. ➤ Endangers its solvency Audit by a CA Special audit of company's accounts directed by CG.	More situations added like ➤ Prejudicial to holders of securities / securities market. ➤ Management indulging in insider trading or market manipulation. ➤ Contravention on maintenance of accounts or conduct of audit. Audit by CA, ACS, CWA. Special audit, Cost audit or Secretarial audit directed by CG.
233B(1) substituted Cost audit	Previous approval of CG required for appointment of cost auditor.	Approval of CG no longer required. This will minimise the lead time.
252 substituted Minimum number of directors for public company.	3	Paid up & free reserve - 5 Crores or more (or) turnover of Rs. 50 Crores or more - 7 directors. Laid down irrespective of the borrowed capital. Gradation may be thought of. Other Companies - 3 directors
252 Private company.	Minimum: 2 directors	Minimum: 2 directors <i>Though there is no change, this has to be specifically noted</i>
257(1) substituted Appointment of non-retiring directors	Even one member can propose. Deposit of Rs. 500/- refundable if he gets elected.	100 shareholders or holders of 1% to propose Deposit of Rs. 10,000/- . This is forfeited if votes cast less than 1% of votes in favour. <i>There appears to be a drafting error. It should be less than 1% of total votes.</i>
259 proviso substituted Maximum number of directors for a public company	As fixed under its Articles. More than 12 - Approval of CG required.	15 If more than 15, Govt. approval given earlier expires after 180 days.
270 deleted Share qualification.	As per Articles.	No need to hold qualification shares. <i>Consequently 272 and 273 also require deletion</i>

<p>274(1) enlarged D i s q u a l i - f i c a t i o n o f d i r e c t o r s</p>	<p>Failure by a public company to repay on due date ➤ Deposit ➤ Interest on deposit ➤ Debentures ➤ Dividend disqualifies its director from being appointed as director in another company.</p>	<p>Failure to repay debenture interest on due date by a public company (clause g) & conviction for default punishable with imprisonment (clause h) will also debar a person in addition to existing disqualifications.</p>
<p>283(2A) substituted V a c a t i o n o f o f f i c e b y d i r e c - t o r .</p>	<p>If a director continue to act as a director when he knows that his office has been vacant, then he is punishable: With fine upto Rs. 5,000 per day.</p>	<p>Imprisonment upto 3 years plus existing fine. This is expected to act as an effective deterrent.</p>
<p>275 substituted M a x i m u m n u m b e r o f d i r e c t o r s h i p s b y a p e r s o n</p>	<p>15</p>	<p>Now in two scenarios: If MD or WTD in any company : Yes: then 10 No : then 15</p>
	<p>There is no change in the exclusion of certain directorships (private company, unlimited company, alternate directorships etc.,) under sec. 278 in the above counting.</p>	
<p>285(1) substituted F r e q u e n c y o f b o a r d m e e t i n g f o r p r i v a t e a n d p u b l i c c o m p a - n i e s . (I A) a d d e d T e l e c o n f e r e n c - i n g / V i d e o c o n f e r e n c i n g S i g n i n g o f m e e t i n g s</p>	<p>Board meeting once in every 3 months with no restrictions as to the time interval between two meetings. Thus a meeting on 01.01.03 and another on 30.06.03 was sufficient compliance. Signing within 30 days of meeting u/s 193. Non compliance would not render the meeting invaled but certain benefits are lost.</p>	<p>Gap between 2 consecutive meetings to be not more than 3 months. <i>The real spirit is achieved now. This time limit is tighter than the maximum time gap of four months allowed under the listing agreement.</i> Board meeting through teleconferencing or video conferencing can be held. Minutes of this meeting to be signed by all participating directors. <i>This will put an end to the travelling pain of outstation directors and will bring down the cost of conducting the meeting.</i> <i>Signing is not by chairman alone as being done today. and if not signed, the meeting becomes invalid.</i></p>
<p>286(1) substituted N o t i c e o f b o a r d m e e t i n g .</p>	<p>No notice period for a board meeting. Notice can be sent without agenda.</p>	<p><u>Minimum 7 days notice</u> before the date of the meeting. Not required for an emergency meeting if majority of the directors agree. Emergency meeting is valid if majority of independent directors are present in case of company with paid up capital & reserve Rs. 10 crore or more or turnover of Rs. 50 crores. <i>Notice has to be sent along with the agenda.</i></p>

<p>292(1) / (3) clauses added</p> <p>Certain powers by Board only at meeting</p>	<p>(a) To make calls on shareholders. (b) To issue debentures (c) To borrow money otherwise than on debentures. (d) To invest the funds of the company (e) To make loans</p> <p>(Note :- Delegation to committee for (c), (d) & (e)</p>	<p>(e) To grant loans or give guarantee or provide security in respect of loan - amended Some more powers added namely: (f) To approve P&L, Balance Sheet and Directors Report (g) To diversify business (h) To approve amalgamation, merger or reconstruction (i) To take over or acquire controlling stake (j) To make contribution to charitable or other funds (Note :- Delegation to committee for (c), (d), (e) & (j).</p>
<p>292(3)</p> <p>Financial limits on delegation.</p>	<p>Power of the board to delegate to committee for purpose of investment is without any cap on amount.</p> <p>Board resolution making delegation requires approval by majority.</p>	<p>Limit on delegation introduced. The delegated amount cannot exceed 20% of paid up capital and free reserves in a financial year.</p> <p>This is different from the power of a company u/s 372A to make inter-corporate loan, investment upto 60% of paid up capital and free reserves etc. <i>This point could be made clear in 292(3).</i></p> <p>Now the board resolution requires consent of all directors present at the meeting.</p>
<p>292A(1)/(1A)</p> <p>Audit committee of the directors for a public company</p> <p>Role</p> <p>MD / WTD Chairmanship</p>	<p>Minimum: 3 Maximum: can be decided by the company</p> <p>Briefly laid down</p> <p>Can be members of the committee Chairman of the company is invariably the chairman of the committee</p>	<p>AC can comprise of only independent directors: Minimum: 2 Maximum: To be prescribed by C.G.</p> <p>Reconstitution of A.C. within one year from commencement of the Act as per above provisions</p> <p>Functions and powers of the audit committee would be prescribed - 292A(1A)</p> <p>Can no longer be members of the committee This is ruled out. Only independent director can become a chairman</p>
	<p><i>It is to be noted that the NCC considered exemption for unlisted public companies (which are debt free and have not more than 50 shareholders) and unlisted subsidiaries of listed companies which has not been excluded in the Bill.</i></p>	
<p>293(1)(a)</p> <p>Powers of the Board for disposal.</p>	<p>Sale, lease or otherwise disposal of whole or substantially the whole of the undertaking possible with the consent of the company. Applicable for public companies and its private subsidiaries.</p>	<p>Sale, lease etc., cannot exceed 20% of total assets of the undertaking; or 10% of total assets of company whichever is higher. with exception for creation of charge in favour of bank, FIs etc.</p>

<p>295 substituted</p> <p>Loans to directors, companies.</p>	<p>The lending company requires prior approval of central government to make loans to</p> <p>(a) any director of the lending company or of a company which is its holding company or any partner or relative of any such director;</p> <p>(b) any firm in which any such director or relative is a partner;</p> <p>(c) any private company of which any such director is a director or member;</p> <p>(d) impractical provisions</p> <p>(e) impractical provisions</p>	<p><i>Central Government approval no longer required which will remove the bottleneck.</i></p> <p>Instead previous consent by a special resolution is required.</p> <p>Clauses (d) & (e) are deleted.</p> <p><u>Loan can be given for specific purposes only:</u> Medical, House property, Education of children.</p> <p><u>Maximum Loan</u> 5 times of remuneration (What about honorary directors ?)</p> <p>Loan is O/s.: <u>Further loan not possible.</u></p> <p>For loan to relative of directors, to holders of more than 3% of equity etc., in lending company, Board resolution with consent of all directors present and with prior approval of FI's is required.</p>
<p>Exemption withdrawn</p> <p>Holding to subsidiary.</p>	<p><u>S. 295(2)</u></p> <p>Exemption was available for loan made by a holding company to its subsidiary company and to any guarantee given or security provided by holding company in respect of loan to its subsidiary.</p>	<p><u>S. 295(6)</u></p> <p>This exemption has been withdrawn.</p> <p>Government of India is licensed to kill silently. Perhaps the government feels that the exemption is not in the interest of shareholders of holding company.</p>
<p>297(1)(aa) added</p> <p>Interested directors.</p>	<p>Board's consent is required for a director, his relative etc to enter into any contract with the company:</p> <p>➤ for sale, purchase or supply of any goods, materials or services; or</p> <p>➤ for underwriting the subscription of any shares in, or debentures of the company</p>	<p>This consent is also required in addition</p> <p>➤ for the sale, purchase or lease of any property</p>
<p>297(2)(b) Board's sanction.</p>	<p>For contracts upto Rs. 5,000/- in the aggregate in any year, this sanction was not required.</p>	<p>Upto the prescribed amount, the sanction will not be required.</p>
<p>309(1) Remuneration to directors for other services.</p>	<p>Remuneration to director includes remuneration payable for other services.</p> <p><u>Proviso</u></p> <p>Not included if services are of professional nature and director has the required qualification in the opinion of CG.</p>	<p>This proviso is withdrawn.</p> <p>That is remuneration for other services will also be included within 1% / 3% limits under 309(4)</p>
<p>309(4) Part - time directors</p>	<p>Approval of CG required for:</p> <p>➤ To pay monthly, quarterly, annual remuneration.</p> <p>➤ To pay remuneration exceeding 1% / 3% of net profits</p>	<p>Prior approval of Central Government henceforth.</p>

313(1) substituted A l t e r n a t e director.	Need to appoint alternate director when original director is out of state .	Now, alternate director to be appointed when the original director is out of India .
314 substituted Office or Place of profit	Applies to partner or relative of a director only when the directors holds office or place of profit. Applies to public & private companies.	Will apply to partner or relative even when director does not hold office or place of profit. Special resolution will be required. <i>The decision of the Madras High Court in Madras Pursawalkam Hindu Janopakara Saswatha Nidhi Ltd. (1985) 57 Com cases 776 has been reversed.</i> The words 'such' appearing in 314(1)(b) deleted. Does not apply to a private company unless it is a subsidiary of public company. Require CG approval for appointing a relative of <ul style="list-style-type: none"> ➤ a director ➤ a person holding more than 2% of equity if remuneration exceeds prescribed limits.
316 substituted No. of compa- nies MD & WTD	<u>A public co., or private co., which is a subsidiary of a public company</u> <ul style="list-style-type: none"> ➤ may appoint a person ➤ as its MD ➤ if he is MD or Manager ➤ of not more than one other Company. 	<u>A public company</u> <ul style="list-style-type: none"> ➤ may appoint a person ➤ as its MD or WTD ➤ if he is MD or manager or WTD ➤ of not more than one other company Appointment is approved by a Board resolution with the unanimous consent of all directors present at the meeting. Special notice to all directors in India. CG may allow the appointment of Managing Director in more than two companies. Private companies are free to appoint without restriction.
317(1) substituted MD & WTD	MD can be appointed for a term upto 5 years.	MD or WTD can be appointed for a term upto 5 years.
391(6) substituted Compromise or arrange- ment.	'Buy back' was getting covered under Court order on 'Compromise or arrangement' The decision of the Bombay High Court in the Sterlite Industries case has been reversed.	This route is no longer applicable. New proviso exclude 'Buy back' from compromise etc. 'Buy back' u/s. 77A only which is a separate code by itself.

<p>629B new section</p> <p>Failure to credit to IEPF u/s.205C</p>	<p>Unpaid dividends, matured deposits, matured debentures, application moneys due for refund etc have to be credited to Investor Education and Protection Fund [IEPF], if they remain unclaimed and unpaid for 7 years after becoming due for payment.</p>	<p>No penal provision was laid down to secure compliance.</p> <p>Now punishable as below:</p> <p>Company and every officer in default - Minimum fine equal to the amount not deposited and</p> <p>Every officer in default - Imprisonment of minimum three months and maximum two years.</p>
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The new provisions are given in Part B.

PART B

<p>2(9B) added</p> <p>Chief accounts officer.</p>	<p>"Chief accounts officer" means the chief accounts officer, of a company appointed under section 215A, by whatever name called.</p> <p>This post is being created for the first time in the Act.</p>
<p>2(19AA) added</p> <p>Independent Director.</p>	<p>For the first time, an independent director is defined in the Act as a director referred to in S.252A (given below in the order of section)</p>
<p>2(39A) Register</p>	<p>Register includes computer readable media (floppy, tape etc)</p> <p>Thus company can maintain registers on computer.</p>
<p>13 substituted</p> <p>Memorandum of Association.</p>	<p>Two clear copies of recent photographs of all subscribers to the memorandum and the witness to be attached and signed by them along with proof of identity of subscribers.</p> <p>Why proof of identity of witness excused? Identification of promoters at the time of incorporation has been mandatory. This helps to trace out the bad elements who disappear leaving the bare shell after cheating the public (popularly called as vanishing companies). A fog cannot be dispelled by a fan. Nevertheless, a welcome measure.</p> <p>A subscriber has to only sign and need not write his name, address, description and occupation, if any, in his own handwriting. - 13(1)(f).</p> <p>These provisions are applicable to Articles as well (S.30)</p>
<p>72 substituted</p> <p>Application for allotment of securities.</p>	<p>The persons described in the prospectus as promoters, directors, relatives will not be able to revoke their application once having been made.</p> <p>To prevent the unscrupulous promoters from withdrawing their application for subscription, this safeguard is provided.</p>
<p>77(1A) introduced</p>	<p>Circular trading curbed.</p> <p>A company is deemed to have purchased its own shares if the purchasing company makes payment to a stock broker or a sub broker for purchase of shares of another company and such broker purchases the securities of the purchasing company.</p> <p>This is to correct the situations noticed during stock scams. The latest episode is the ingenious technique adopted by the directors of Home Trade on Pune and Bangalore exchanges. This regulatory provision should not become a nine day's wonder. Effect lies in its enforcement.</p>

83A introduced Reconciliation of securities.	Every company has to reconcile the securities held with the depositor. Already, SEBI requires this reconciliation from listed companies on a quarterly basis duly certified by a company secretary vide circular D&CC / FITTC / CIR-16 dated 31st December 2002 starting from the quarter ending 31.12.2002 and placing this report before the board of directors.
205 substituted Dividends.	<ol style="list-style-type: none"> 1. Arrears of depreciation for last 10 previous financial years to be provided. 2. Previous years losses to be provided. There is a view that this should mean only the loss of the previous year only. (i.e. in singular) 3. Interim dividend declared by the board cannot be revoked. Today the board may, on further consideration and at any time before payment, rescind the resolution for payment. Even in this Bill, it is not clarified whether an interim dividend declared by the board should be confirmed at the general meeting. 4. Prohibition of gifts at any general meeting in lieu of or in addition to dividend.
209(1)(e) - added. Books of Account.	In the case of a company dealing in goods, details of goods bought and sold during the year (excluding retail), particulars of buyer and sellers and unsold goods on balance sheet date. Wholesale transactions are covered.
210 A n n u a l accounts.	<p><u>210(1)(b) proviso added</u> If a holding company opts to prepare consolidated accounts, then laying down such group accounts at its AGM is sufficient. That is the holding company is exempt from placing its stand alone financial statements at its AGM. The subsidiary are however not unexpect from this</p> <p><u>210(1A) added</u> Balance sheet to state derivative options and shares with different voting rights.</p>
212(10) - pro- viso added Balance sheet of holding company.	If the Holding Company opts to prepare consolidated accounts, then subsidiary's balance sheet, P&L, director's report, auditor's report etc need not be to the Balance Sheet of Holding Company.
212A - introduced Consolidated Accounts	<ul style="list-style-type: none"> ➤ Compulsory preparation of consolidated accounts from a date to be notified and placing before AGM of holding company. ➤ Holding company can opt to prepare consolidated accounts until it is made mandatory. ➤ Consolidated B/S & P&L to be in prescribed format. ➤ Consolidated B/S & P&L to comply with schedule VI ➤ Notes to consolidated accounts to be given as additional information. ➤ It is pointed out by JCR that consolidation of group accounts is an internationally established practice. This will help investors to get first hand information about Group as a whole for taking informed decision for investment. This will also help financial/lending Institutions/banks to take decision for financing/investment etc.

<p>215A - introduced Chief accounts officer (CAO).</p>	<p>Every public company having paid up share capital of Rs. 3 crores or more to have whole time CAO (either CA or CWA)</p> <p>CAO responsible for:</p> <ul style="list-style-type: none"> ➤ proper maintenance of books of accounts ➤ preparation of annual accounts ➤ disclosure of required information in prospectus or any other offer document ➤ compliance with provisions relating to accounts of the company <p>The threshold limit of Rs.3 crores is low. Accounts of small companies with capital of 3-5 crores are being handled by post graduates. Inducting professionals may appear as entailing additional cost but given today's complexity and degree of non-compliance (presumably due to lack of awareness) and its associated cost on a future date, this is a welcome amendment.</p>
<p>Board's report. 217 (1)(e) / (f) added</p>	<p>To contain measures taken for the protection of environment</p> <p>Due attention has been given to environment management. Environmental cleaning and greening is emerging as a national priority.</p> <p>Any other matter which may be prescribed.</p> <p>This gives the clue that there could be add ons making the board report a "all in one" document.</p>
<p>217(2C) - added</p>	<p>To contain segmentwise review of operations, market conditions and future prospects. Norm of 10% of total turnover for this segment reporting in line with AS 17.</p> <p>The board's report which was so far historic is now becoming forward looking. This means the board will have to exercise their judgment about future on the different business segments of the company and project reliable & fair information which is not an easy task in view of the uncertain economic and political environment. This provision is not so easy to take off particularly in industries where the competition is tough and increasing both internally and also from overseas products. It cannot be any casual information as the board's estimate of future is going to be relied upon by banks, FIs and investors of tomorrow.</p> <p>Experts say that Indian companies listed on American bourses are caught in between as any US listed company making forward looking statement could be held responsible for misstatement or omission unless the statements are accompanied by meaningful cautionary statements. Accordingly, taking the US style, our forward looking statements could also be tempered by such cautionary statements.</p>
<p>226(3)(f) added Disqualification of auditors.</p>	<p>Additional disqualifications for an auditor who</p> <ul style="list-style-type: none"> (i) has any "direct financial interest" in the company This expression needs to be defined to avoid any problem at the time of implementation (ii) receives any loan or guarantee from or on behalf of the company (iii) has any business relationship (other than as an auditor) in the company (iv) has been in the employment in the company (v) whose relative is in the employment in the company." <p>Schedule 1A specifies 22 relationships. For this section it is sufficient if it is a smaller circle. Imagine in a large company having 10,000 employees in 15 locations, an auditor would be disqualified if his grand daughter is working as a stenographer in some remote location.</p>

<p>226(3A) added</p> <p>Audit remuneration.</p>	<p>Audit fees cannot exceed 25% of his total income in any financial year as his remuneration from the company.</p> <p>Exemption is given to new auditors (i.e. initial 5 financial years from the date of practice) and small auditor whose total income is less than Rs. 15 lakhs in any year.</p> <p>This is to prohibit undue dependence on an audit client. Yet comes heavily.</p>
<p>226A - introduced</p> <p>Bar on audit services.</p>	<p>A negative list of non audit service has been prescribed.</p> <p>An auditor cannot provide certain specified services to company (including its holding company or subsidiary company) for which he does statutory audit :</p> <p>(a) accounting and book-keeping services, relating to the accounting records or financial statements of the audit client;</p> <p>(b) internal audit services;</p> <p>(c) financial information systems design and implementation, including services relating to information technology system for preparing financial or management accounts and information flow of the company;</p> <p>(d) actuarial services;</p> <p>(e) broker or as intermediary referred to in section 12 of the Securities and Exchange Board of India Act, 1992 or investment adviser or investment banking services;</p> <p>(f) outsourced financial services as may be specified by notification in the Official Gazette;</p> <p>(g) management functions, including the provision of temporary staff to audit clients;</p> <p>(h) any form of staff recruitment, and particularly hiring of senior management staff for the audit client;</p> <p>(i) valuation services and fairness opinion; and</p> <p>(j) any other service as may be prescribed."</p> <p>By this, the auditor will have no other point of contact with the company which will enable due diligence and unbiased application of mind without succumbing to forces/influences within the organization. This is basically to counter the management rewarding of an accommodating auditor discreetly through high fees for other services disproportionately in relation to real value of such services. The law makers have to be thanked for leaving out tax consultancy and representation in proceedings in this long list.</p>
<p>227</p> <p>(1A)(g) added</p> <p>(1A) (h) added</p>	<p>Auditor to inquire:</p> <p>whether unpaid dividend has been credited to bank account. (within 37 days of declaration)</p> <p>about the adequacy of steps taken by the company to pay overdue deposits and interest along with reasons for non payment of deposits</p>
<p>227(3)(h) added</p>	<p>Auditor to report whether the company has taken adequate steps to repay deposits / interest / dividend declared.</p> <p>The ICAI has opened that the auditor is not required to report on matters under section (IA) under he has any special comments. In contrast, sub-section (3) imposes mandatory reporting. Since the above sselyect is covered here, professionals feel that the duplication under (IA) could be avoided.</p>
<p>227(4) proviso added</p>	<p>Qualification to be read out by auditor or his nominee in AGM and forwarding same to Registrar, SEBI & concerned stock exchange within 30 days.</p>

<p>233</p> <p>Penalty for non-compliance with S.226A (as above)</p>	<p>Punishable as below:</p> <p>Officer of the company: Fine of Rs.500 per day</p> <p>Auditor of the company: Fine equivalent to three times the total remuneration received by him or Rs. 50,000 whichever is more.</p> <p>Company : Fine of paid up capital and free reserves of such company or one crore rupees, whichever is less.</p>
<p>233B(5)</p> <p>Disqualification of cost auditor.</p>	<p>Under the existing provisions, the disqualifications applicable to statutory auditor are fastened on the cost auditor also. This means the cost auditor will also be subject to the disqualifications now added under 226(3) Interestingly, he will not be prove to the rigors of new 226A.</p>
<p>252</p> <p>Directors</p> <p>Public company</p>	<p>A public company required to have 7 directors (refer Part A) :</p> <p>to have atleast 50% of the directors as independent directors</p> <p>to have prescribed minimum number of women directors.</p> <p>to have prescribed number of women directors and independent directors</p> <p>The Secretary of Dept. Of Company Affairs, Mr.Vinod Dhall has recently clarified that this majority of independent directors will have to seen after excluding the nominee directors from the total strength of the board.</p> <p><i>To fulfill this quota, companies should not induct token women for namesake. It implies women of professional skill and competence. India is a country where women gods are more in number and women as rising phenomenon are found winners be it films, politics or sports. An attempt in corporate world should therefore be successful.</i></p>
<p>252A</p> <p>introduced</p> <p>Independence of directors - Public company.</p>	<p><i>This is rooted in the concept that independence of a director and thereby his objectivity and integrity is best established when he has no personal stake in the business and there is no room for temptation or pressures.</i></p> <p>Comes out with novel criteria (his horoscope spared ?):</p> <p>Here it goes..... Not an independent director if</p> <p>(a) he is a whole-time director or a managing director of the company; or</p> <p>(b) he has any transaction with the company (including its holding company or subsidiary company) or its chairman or managing director or whole-time director or secretary or manager or any officer who can be considered as an officer in default in connection with business or profession or in any other capacity; or</p> <p><i>The expression 'transaction' is not defined. Does it refer only to on-going / running transactions (or) would transaction completed in near past also be covered and if so, how far in the past?. Will small value transactions also disqualify?</i></p> <p><i>The expression 'any other capacity' is dangerous. It needs to be elaborated and clarified as to whom it relates to?</i></p> <p>(c) he is relative of the chairman or managing director or whole-time director etc.</p> <p><i>While a chairman is not covered under clause (a), his relative is disqualified ?</i></p> <p>(d) he has held any post in the company; or</p> <p>(e) he has been an auditor or internal auditor or consultant (including advocate or legal advisor) of the company during any of the three preceding financial years; or</p>

(f) he is or has been a supplier or vendor or customer of the goods or services of the company; or

This means even a former supplier/customer is roped in. Does it hit those suppliers and customers with whom there are regular transactions by the company or even those who had a stray transaction in the past and if so, how far in the past?

Further in respect of (b) and (f), will this also apply to a person acting in official capacity?. Also, materiality seems to be ignored.

(g) He holds two per cent or more of the securities of the company having voting rights; or

Is it legally acceptable if the shares held in one's own name are transferred to relatives for reducing the holding below 2%.

(h) He has been a director or an independent director for a consecutive period of nine years or more; or (part time directors)

(i) He is holder of any equity shares of the company in which he is an independent director during his tenure as such a director and six months after he ceases to be an independent director; or

That is, a shareholder cannot be an independent director. There is however a contradiction between (g) and (i) - former permits upto 2 percent while latter does not permit anything.

(j) he is a nominee director or employee or executive director of any bank or financial institution or corporation which has offered financial assistance to the company; or

(k) he is nominated director in any other company which has nominated a director in the company in which he is an independent director. (This requires clarification for better understanding)

Overall, this will necessitate restructuring of a large number of Boards. Companies will have to ramp up in a dramatic way and mine the mettle to find a new set of people who satisfy. Also, this creates an alarming situation in case of closely held public companies. Hypothetically, the newly inducted independent directors may form a ring and veto any resolution put forward by the management leading to stalemate. To avert this, the Government has to consider exempting those public companies whose borrowing from banks / FIs is (say) nil or less than 10% of equity subject to review once in 6 months.

In the other extreme, no special rights or obligations under the Act have been cast on an independent director by this Bill. Those aspiring to a career as an independent director should note that the part time director will run the risk of being called officer in default under the new provisions for daily management failures. Being in the board, where he differs with the whole-time directors, will he be able to survive? (Nadi mein rabkar magar se ber?)

He also can be covered under directors' liability risk cover and the insurance premium paid by the company which is not prohibited u/s 201.

Training for independent directors	<p>Has taken training in the 2 years before his appointment as independent director (ID). ID appointed before the start of Companies Amendment Act 2003 also to take training from notified date. He may take training within 18 months of his appointment failing which he will cease to be independent director but continues to be a director in that company.</p> <p>The period and place of training not notified</p> <p><i>The boards may have experienced advocates, chartered accountants, engineers, MBAs etc. Requiring them to undergo training appears silly. Hence it is absolutely necessary to exempt professionals of different fields and also foreign directors, directors above sixty having the required skills by their experience under self certification. Those directors who undergo this training and get reappointed after a gap of two years should be exempt from the training requirement.</i></p>
260 proviso added	Losing candidate cannot be appointed as additional director till the next AGM.
276 substituted Maximum directorships	<p>Refer Part A.</p> <p>Where a person is holding in excess, he has to choose and resign his office in other companies within 60 days from the commencement of the Act.</p> <p>Resignation effective immediately on dispatch of intimation to the companies. Does not have to wait for approval by the board or filing of Form 32 with ROC.</p>
280 Retiring age for director etc.	<p>The age limit of 75 years has been prescribed for MD, WTD, director and manager of the company. If he attains the age of 75 years, he will hold office until the expiry of his term. If he attains the age of 75 years, he will hold office until the expiry of his term.</p> <p>Currently the retiring age of director is not specified. However for appointment of MD or WTD or Manager under Schedule XIII i.e. without C.G. approval, he must not have attained the age of 70 years and if attained this age, approval by a special resolution is required.</p> <p>Companies will lose the knowledge and valuable experience of the seniors.</p> <p><i>No exception provided for. Even promoter directors will have to quit. This will affect family owned business. It should be left to the individual to decide when his stamina ends and inertia begins. Laying down a uniform policy would be a negative step. There are politicians and economists who are found active even above 75 years. A blend of old and young for maturity and speed is always a winning mix in the board room.</i></p> <p><i>Further ours is a culture which reveres age and experience. It is the deep rivers that move with silent majesty. It is for the corporate board to decide who should continue. This is the doctrine of indoor management and the government should not meddle with this.</i></p> <p><i>It is to be seen whether a company can overcome this hurdle by making the retiring director as a permanent director (within one-third restriction u/s.255) or extending the term of office beyond 75 years before the commencement of the Act by passing resolution or amending their articles.</i></p>
289 proviso added	Resolution by circulation to be ratified at a subsequent meeting of the Board/Committee and is made part of the minutes of such meeting.
292(1) Enlarged. Board's power.	<p>Refer Part A.</p> <p><i>Some more powers can be exercised by the board only at the meeting. These are subjects which are crucial and involve a number of strategic decisions and cannot be comprehensively deliberated if resolution is passed by circulation.</i></p>
293(1)(a) Disposal of undertaking.	<p>Please refer Part A.</p> <p>By this provision, no company can sell an undertaking in one instalment and such action will have to be spread over a minimum period of 5 years. This is unrealistic as no corporate buyer will acquire an undertaking in such piece-meal nor can an undertaking be divided (fragmented) into several parts as required by the amendment. Demerger appears to be the solution.</p>

<p>294 Recast</p> <p>Sole selling agent (SSA)</p>	<p><u>For any area in India</u> Appointment requires previous consent by a special resolution. If he has substantial interest in the company, particulars of SSA to be disclosed in Board's report for every year in the prescribed format.</p> <p><u>For any area outside India</u> Requires previous consent of the Board and particulars of SSA disclosed in Board's report. If SSA has substantial interest, appointment requires the previous consent by a special resolution and prior approval of all the lending financial institutions.</p> <p><u>Under the current provision</u> Appointment to be approved by company in first general meeting held after the date of appointment.</p>
<p>294AA omitted</p> <p>Sole selling agent (SSA)</p>	<p>Appointment requires approval by Central Government if the SSA has substantial interest in the company or if the paid up share capital is Rs. 50 lakhs or more.</p> <p>Approval by Central Government will no longer be required as per amended provisions but vested with the right of post scrutiny and investigation in interests of the company.</p>
<p>309(2)</p> <p>Sitting fees</p>	<p>Currently the setting fees per board meeting or a committee thereof shall not exceed Rs. 5000/-. The responsibilities of part time directors have increased over a period of time in view of the spate of amendments under the Companies Act and other enactments. The deliberations at the board meeting / committee meeting require their increased time and involvement. At a time when corporate houses are expecting flexibility in deciding the quantum of sitting fees, it has come as a rude shock that the provisions relating to sitting fees u/s.309(2) have been abolished. A company would not be able to pay setting fees to its non-executive directors including independent directors.</p>
<p>372A(9A) added</p> <p>Inter company investment.</p>	<p>A company can make investment only through one investment subsidiary. No discretionary power to CG for relaxation on merits.</p> <p>However there appears to be no prohibition in making investment through other operating companies so as to proliferate the investments. To be clarified whether a company can make direct investment.</p>
<p>383A</p> <p>Regarding secretaries.</p>	<p>Function of the whole time secretary laid down in the Act for the first time. A Company not required to employ a company secretary but having one may attach his certificate to the Board's Report u/sec. 217 and certificate from practicing secretary is not required.</p> <p><i>This saves the time and cost for such companies.</i></p>
<p>383B introduced</p>	<p>CG can order secretarial compliance audit of any company if the affairs of the company are not conducted as per statutory provisions.</p>
<p>383C introduced</p> <p>Pre-certification.</p>	<p>All documents, forms, returns filed with ROC to be <u>pre-certified by a Company Secretary in whole time practice</u>. No exception is given. Hence applicable to private and public companies. <i>Experts opine that something is missing in this section and raise a query whether this certificate is required even where a whole time secretary is employed?</i></p>
<p>629C</p> <p>Attachment of bank account</p>	<p>The Central Government is empowered to attach bank account of any intermediary or person associated with securities market, if he is involved in violation of provisions of Companies Act. The Central Government can do so in the interest of investors or security market. The attachment of bank account can be made for a period of one month with approval of Judicial Magistrate.</p> <p><i>This is a bold amendment arising out of the stock market scam- An example of relative smartness.</i></p>

The sensitive provisions of the Act vis a vis the listing requirement is tabulated below

Reference	Companies Act (Refer Part A above)		Listing Requirement
	Present	Proposed	
Public coy - S. 252 No. of independent directors	No specific requirement	<u>Where the reqd. minimum is 7</u> Majority to be independent <u>Where the reqd. minimum is 3</u> No requirement of independent directors	<u>In the case of executive chairman:</u> 50 % of the board should be independent <u>In the case of non executive chairman:</u> 33 % of the board should be independent
Minimum no. of women directors	No specific requirement	As prescribed	No specific requirement
Nominee directors	Nothing specific	Not considered as independent 252A(1)(j)	Considered as independent (Explan to clause 49 IA)
Independent directors	-	Criteria laid down in new S.252A	Left to the discretion of the board (Explan as above)
Whole time director receiving remuneration only	-	With or without remuneration, not considered as independent 252A(1)(a)	Treated as independent director
Age limit of directors	Not specified	75 Applies to public companies and its subsidiaries.	Not specified
Audit committee of directors: Minimum Maximum	3 Decided by coy	2 indep. directors Prescribed by CG	3, majority to be independent Not specified
Management discussion and analysis report (MDAR)	Not specified	Directors' report to contain segmentwise reporting 217(2C) (refer part B) Similar to MDAR	MDAR forms part of directors' report under clause 49 Contents specified

It would be interesting to note that Government has constituted expert groups including Naresh Chandra Committee II to consider aspects relating to valuation of shares and assets, limited liability partnerships and especially self-compliance which will obviate need for obtaining approval from DCA. These mark further liberalisation measures by the Government.

Overall, the Bill is highly appreciable in its all-pervading approach and would be off to a flying start after getting the assent of the President. Certain grey areas have to be resolved and a few hardships minimized. It is better the sections containing reference to rules are implemented after those prescribed rules (as they are too many) are laid down by the DCA, some of which are mentioned in the annexure. The role of the Govt is not over with mere introduction of the Bill. Thousands of companies at large all over the country will have to know about the new provisions and perhaps the Department of Company Affairs could form regional help centers either on its own or outsource to agencies for 6 months from effective date for dissemination of information. It is going to be a challenging time for the chartered accountancy, secretarial and law professions participating in this silent revolution in assimilating and adapting these amendments to the corporate world.

Annexure

The Central Government will have to come out with detailed rules in the prescribed areas, some of which are given below:

- Service of documents on company by other prescribed means u/s 51
- Service of documents on Registrar by other prescribed means u/s 52.
- Employees stock option shall be as per prescribed conditions u/s 81.
- Reconciliation within the prescribed period the securities issued by it with the securities held with a depository u/s 83A.
- Written certificate from the auditors that the appointment or re-appointment in accordance with prescribed conditions u/s 224(1).
- Further services that the auditor cannot provide to auditee company u/s 226A.
- Prescribed number of women directors for a public company having paid-up capital and free reserves of five crores rupees or more; or a turnover of fifty crores rupees, or more u/s 252(1)
- Prescribed number of women directors and independent directors for a public company having more than seven directors u/s 252(4)
- Prescribed minimum number of directors, maximum number of directors, independent directors and woman directors for existing companies within the prescribed period u/s 252(4)
- Notification of Institute for training of an independent director and notification of date of training for an existing independent director u/s 252A
- The authority to whom details of remuneration of high paid employees posted outside India (other than relative of director) are to be sent u/s 217(2A)
- The functions and powers of the audit committee u/s 292A(1A)
- Prescribed conditions for loan to managing director or any director for the purposes of meeting expenses on medical treatment, purchase or construction of residential house or education of his children u/s 295(1)
- The amount upto which board consent is not required for certain contracts in which directors are interested u/s 297(2)
- Amount or percentage of profits or turnover beyond which the appointment of a relative of a person holding more than two per cent of the equity of the company or the relative of any director of the company requires approval of Central Government u/s 341(1)
- Different methods for determining profits for a class or classes of companies u/s 349(6)
- Form and manner of pre-certification of documents, forms etc., by a company secretary in whole-time practice u/s 383C ■

DID YOU KNOW

3. Royal Exchange established in 1571 to promote International Trade.
4. In 1848 the Chicago Board of Trade (CBOT) was formed to provide a place where buyers & Sellers could exchange commodities.
5. The earliest recorded CBOT forward contract was made on 13th March, 1851 for 3000 bushels of corn to be delivered in June.