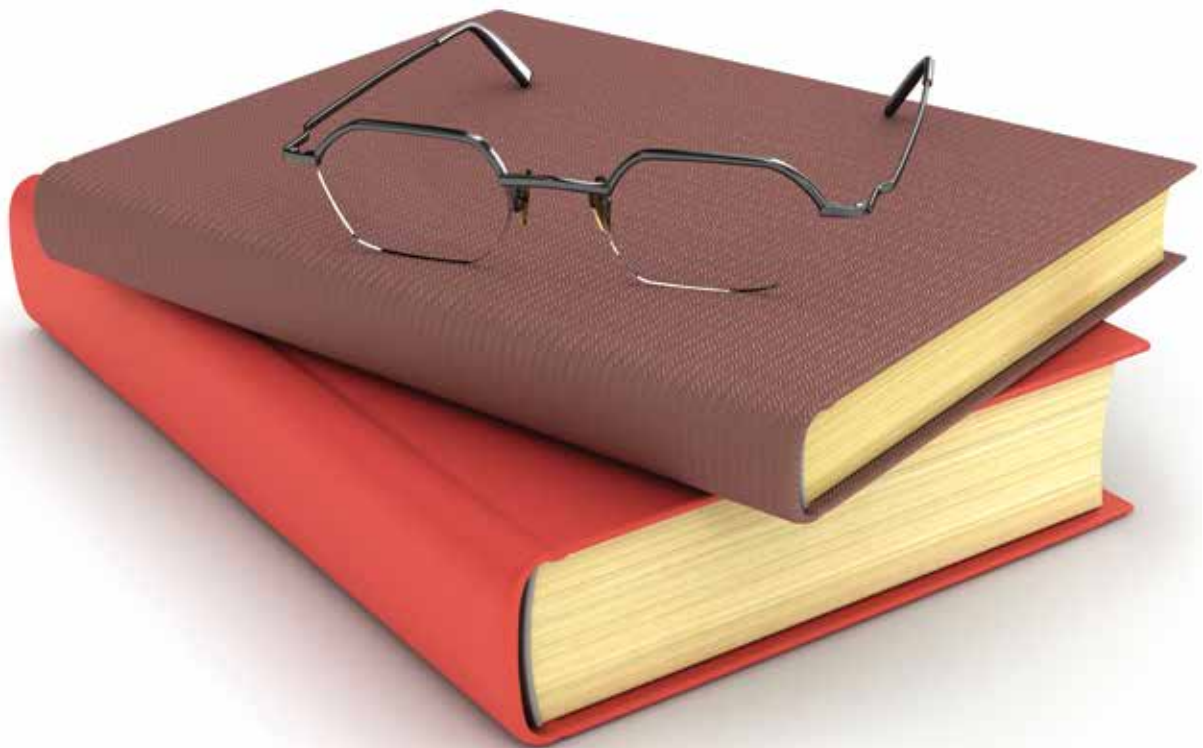


An Update on the Companies Act, 2013 from Professional Perspective



As many as 183 Sections of the Companies Act 2013 have been already notified and operational since 1st April, 2014. The Ministry has notified 98 Sections of the new legislation along with the rules governing the CSR. The author has tried to decode the intricacies of this new legislation and gives an update on some of the key concerns of accountancy profession in this article. Read on...



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This Companies Act, 2013, a historic legislation, will have comprehensive and encompassing consequences in the corporate sector of our nation. And the industry understands it. Exposure to the Act will impact the overall corporate sector eventually.

On a deeper review of the Companies Act, one would understand that the profession's roles and responsibilities have been substantially enhanced now. There are going to be severe challenges and unintended inclusion of certain provisions of the Act.

The Companies Act, 2013

NFRA

First amongst the list is introduction of the National Financial Regulatory Authority (NFRA).

Worldwide, there has been criticism about the need to have segregation of monitoring from the standard-setting and accounting professionals' body which was sought to be removed. However, in a country like India, both these aspects have been in the administrative control of an institution set up by an Act of Parliament, which would not be the case in other countries.

Even assuming that such segregation has to be done, it has not been actually achieved since once again standard-setting and disciplinary mechanism would be with NFRA.

By creating two Acts under the very same Parliament of India, I am not sure what objective will be achieved eventually. I am pretty certain that the Government, which has been receptive to all our suggestions, would look at our suggestion on bringing certain changes which are essential.

Penal Provisions

The penalties and other related provisions would certainly cause hardship both financially and otherwise on the profession. Further, it has not given the profession adequate protection from the certain acts of professionals which are not with any criminal intentions. Here again, I am confident that the Government would look at these suggestions from the ICAI sincerely and seriously.

Fraud Reporting

Reporting on fraud is another major issue which would pose not so much of a problem to the profession but to the company and to the government itself. Each and every fraud will have to be reported to the Central Government. The Act does not make a distinction between fraud on the management and fraud by the management. Consequently, every small fraud like stealing of stamps, inflated travel expenses bills, or, even a hundred rupee fraud should

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The concept of materiality has not been considered. Further, greater challenge is going to be before the Ministry in taking action or disposing off such a large number of reporting. The Government will not have the required machinery to do the same.

I think, essentially, it is a welcome move, but its drafting is not considerate. Consequences are so severe that this section should be clarified and suitably amended under removal of difficulties.

Internal Financial Controls

Another aspect of the Act is that an auditor is required to report on the *internal financial controls*, which is not clearly defined to be even limited to financial reporting (as in the case of SoX). Further, this requirement is to be applied to companies of all sizes and hues, without any consideration of concepts of 'systemically important' or 'public interest entity'. It is also interesting to note, that Directors are required to give an assertion on such *internal financial controls* only in case of listed companies.

This is going to pose significant challenges to the companies in order to document and provide evidence of such *internal financial controls* which would be sufficient and appropriate for the profession to comment upon. It is also a contradiction that in case of unlisted entities, the management is not required to provide an assertion on the *internal financial controls*, though the auditors are called upon to comment on the same.

Albeit, all these specific issues, where I am sure, that the Government will also be receptive to suggestions and provide solutions, on an overall basis, this act has brought us new challenges and provided consulting opportunities. It's yet another opportunity for the profession to help the government in implementing the new Companies Act and become true leaders in the corporate world into great times ahead. ■