

PREFACE

The Companies Act, 2013 is the outcome of prolonged debate over 2003-2013 and high quality benchmarking of international good practices in various aspects of company management and oversight including incorporation, fund raising, board and governance, accounts, audit, dividend payout, investors' protection, corporate governance and corporate social responsibility. Implementation experience of 283 out of 470 sections for little over one year reveals drafting inconsistencies and conflicts between the Act and Rules made thereunder apart from 'in principle dissonance' in the areas of fund raising through private placement route, inter-corporate fund movement and non-arm's length transactions, and quantum penalty. Restrictions in 'doing business' easily as enshrined in the Act and related Rules are essentially for protecting the interest of minority shareholders and other stakeholders. They are intensely re-debated, various Rules have been amended and liberalized, e-Forms are revised, exemptions to different class of companies are worked out, various Schedules to the Act are revised, and even the Act itself has been amended by the Companies (Amendment) Act, 2015. Yet the whole Act could not be notified although more than two years have been elapsed since it was agreed upon. One critical hurdle in the whole episode is the discord in the company law judicial mechanism that passed through a prolonged twelve years of legal battle - the National Company Law Tribunal (NCLT), and the other is pending insolvency and bankruptcy code.

Major issues that are awaiting implementation include—

- 1. New investor education and protection fund under section 125 and related investors' protection measures which was one of key themes of the Act;*

2. *Revision of accounts under sections 130 and 131;*
3. *Constitution of National Financial Reporting Authority under section 132 to replace existing oversight mechanism;*
4. *Implementation of Chapter XIV Inspection, Enquiry and Investigation - Sections 212(8) & (10), 213, 216(2), 218, 221, 222, 224(2) & (5) 226 and 227;*
5. *New compromises, arrangements and amalgamations system under Chapter XV (Sections 230-240) including Fast Track mergers between two or more small companies under section 233;*
6. *Stronger mechanism of prevention of oppression and mismanagement as per Chapter XVI (Sections 241-245) including much publicized class action suit;*
7. *Establishing registered valuer and valuation principles under Chapter XVII (Section 247);*
8. *Revival and rehabilitation of sick companies under Chapter XIX (Sections 253-269) which grants special right to secured creditors to appeal for the determination sickness and constitution of Rehabilitation and Insolvency Fund;*
9. *New judicial mechanism comprising of National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and Special Court and abolition of the Company Law Board (CLB);*
10. *Removal of names of companies from the register of companies under Chapter XVIII (Sections 248-252); and*
11. *The winding up process comprising of winding up by Tribunal or voluntary winding up by members requiring approval of the creditors as per Chapter XX (Sections 270-365).*

In 2015, the High Powered Committee was appointed to review issues relating to corporate social responsibility, and the Company Law Committee was appointed to review difficulties encountered by the users during the first year of operation of the new law.

The Company Law Committee has identified many inconsistencies and recommended rectification. The Committee has also made certain recommendations which affect the balance between 'ease of doing business' and 'investors' protection'. It necessitates to effectively discuss those twenty four major issues. Certain recommendations of the Committee if implemented will have the effect of throwing

away ten years' of debate on legal safeguards against corporate scams, manipulations, siphoning of funds through shell companies, refund of blocked unpaid dividend, and weaken the framework of corporate social responsibility rejecting even the view of the High Powered CSR Committee. Based on long research and teaching experience, I wish to highlight these critical issues. In addition, I have highlighted the contemporary issues of audit exemption for small companies which many countries have introduced to reduce compliance cost for these companies, and examined inherent difficulties of 'one person company' model of business structure. Also Chapter 5 of the book contains critically analysis of the Ind AS compliant Schedule III, Lastly, Chapter 6 contains discussion about the wider coverage of the proposed CARO which are mostly in the nature of compliance audit, and the audit rotation in the context of the developments in the EU.

This book will be a supplementary reading to my publication T.P. Ghosh on the Companies Act, 2013 (3rd Edition, February 2016) and Illustrated Guide to Indian Accounting Standards, June 2015 (Taxmann).

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I welcome suggestions for further improvement of the book. Please e-mail your views to tpghosh@imtdubai.ac.ae.

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