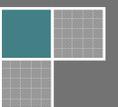
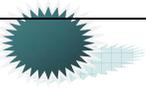


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COMPANIES BILL, 2012

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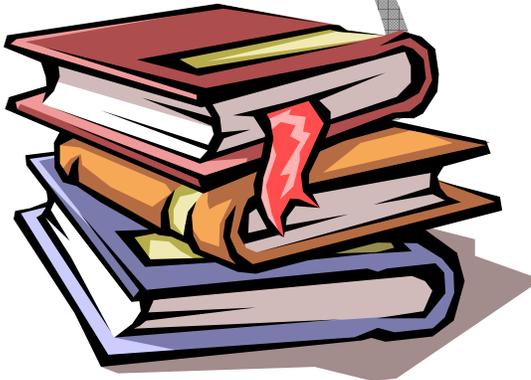




## *HIGHLIGHTS OF COMPANIES BILL, 2012*

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## Background and Structure

The Companies Bill 2011 was laid before the parliament in the month of December 2011 and was referred to the parliamentary standing committee on Finance, headed by Mr. Yashwant Sinha. The standing committee submitted its report in June, 2012. Based on standing committee recommendation, the Companies bill 2011 was amended and was introduced as the Companies bill, 2012. The Bill was passed in Lok Sabha on 18 December, 2012 which was further approved by the Rajya Sabha on 8<sup>th</sup> August 2013.

The Bill has 470 clauses as compared to 658 sections in the existing Companies act, 1956. The entire bill has been divided into 29 chapters. The Bill, aimed at improving corporate governance, also contains provisions to strengthen regulations for corporate as well as auditing firms.

## PRELIMINARY

- ✚ The Financial Year of any company can end only on march 31 and only exception is for companies, which are holding/ subsidiary of a foreign entity requiring consolidation outside India can have a different financial year with the approval of Tribunal.
- ✚ All existing companies need to align their financial year within two years from commencement of the Act.
- ✚ The maximum number of members in case of private company is increased from the existing 50 to 200.
- ✚ The concept of small companies has been introduced and the same has been defined to mean a Company, other than a public Company:

- ❖ having paid-up share capital not exceed fifty lakh rupees- or such amount, not exceeding rupees five crores, as may be prescribed; or
- ❖ Having turnover not exceeding rupees two crores or such amount, not exceeding rupees twenty crores, as may be prescribed, as per its last profit and loss account.
- ✚ In case of small company, various relaxations in terms of reporting requirement, board meetings and procedure for mergers/ amalgamations have been introduced.
- ✚ One Person Company means a company which has only one person as a member. It is thus a one shareholder corporate entity, where despite having just one person, legal and financial liability is limited to company alone.
- ✚ Subsidiary company inter alia means a company in which the holding company exercises or controls more than 50 percent of the total share capital either at its Own or together with one or more of its subsidiary companies. Current provisions were restricted to holding of equity shares capital only.
- ✚ The ambit of officer under default has been broadened to include share transfer agents, registrars and merchant bankers to the issue or transfer related to issue of shares, Chief Executive Officer and Chief Financial Officer. Directors who are aware of the default by way of participation in board meeting or receiving the minutes without objecting to the same will also be included in this category even if company has Managing Director, whole Time Director / other Key Managerial Personnel.
- ✚ Specific provision dealing with issue of Bonus shares introduced.

## CORPORATE SOCIAL RESPONSIBILITY

### Meaning:

Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the

quality of life of the workforce and their families as well as of the local community and society at large.

### **Inclusion in Financial Statements:**

- ✚ The Companies Bill 2012 has proposed that the disclosure of the financial statements contain inter alia “the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year” [Clause 136 (6) (o)].
- ✚ Every company having a net worth of Rs. 500 crore or turnover of Rs. 1000 crore, will form a “CSR Committee of The Board”, the board will constitute 3 directors of which 1 has to be an independent director.
- ✚ These companies have to spend minimum 2% of “net profits” (Average of last three years) towards CSR policy. If not spent, board has to give detailed reasons for not spending on CSR in the Director’s Report.

### **Role of Committee:**

- ✚ The main role of the committee is to formulate and recommend to the Board a Corporate Social Responsibility Policy which should indicate the activities to be undertaken by the Company.
- ✚ The Committee has to also recommend the quantum of expenditure to be incurred on these activities. Finally, the Committee has to monitor the Corporate Social Responsibility Policy of the company from time to time.

## **AUDIT & AUDITORS**

According to the provisions of Chapter X of the Bill, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting. (Clause 139)

The Bill provides for compulsory rotation of individual auditors and of audit firm. No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint-

- 1: An individual as auditor for more than one term of five consecutive years; and,
- 2: An audit firm as auditor for more than two terms of five consecutive years. (Clause 139(2)). Also, enabling provisions for members to resolve rotation of audit partners and his team are provided in the Bill.

The bill provides for 5-years tenure for auditors appointed at Annual General Meetings of companies (other than Government Companies/ Government Controlled Companies) instead of annual appointment/ re-appointment.

The concept of automatic reappointment of existing auditor (without passing any resolution) at AGM where no auditor is appointed/ reappointed at AGM is introduced.

Limited Liability Partnerships may be appointed as Auditors (Clause 141)

Auditing Standards to be made mandatory (Clause 143)

If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time as may be prescribed. (Clause 143).

In Other Words, the new Company Bill inflicts three new mega burdens on to the long suffering auditor. First, Sec 143(3) (a) enlarges the role of the auditor by asking him to confirm that he has "sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit". Second, it creates a direct line of communication between the auditor and the central government. It's no more a matter of auditors qualifying balance sheets. If he "has reason to believe that an offense involving fraud is being or has been committed against the company, he shall immediately report the matter to the Central Government" [Sec 143(12)] or risk paying a fine up to Rs 25 lakh for failing to do so [Section 145(15)]. Third and finally, his liabilities for discharging his

role have been substantially enlarged in that Sec 147(2) sends him to jail for a year with another fine of Rs 25 lakh if he has failed to do his job "knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities"

### **Auditor not to render certain services (Clause 144)-**

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company or associate company), namely:-

- 1: accounting and book keeping services;
- 2: internal audit;
- 3: design and implementation of any financial information system;
- 4: actuarial services;
- 5: investment advisory services;
- 6: investment banking services;
- 7: rendering of outsourced financial services;
- 8: management services; and
- 9: any other kind of services as may be prescribed.



## **ACCOUNTS OF COMPANIES**

The Bill permits the maintenance of books of accounts and other books and papers in electronic mode (Second Proviso to Clause 128(1))

Reopening of Accounts on Court's or Tribunal's Order – A company shall not re-open its books of account and not recast its financial statements, unless an order in this regard is made by a court of competent jurisdiction or the Tribunal. The accounts so revised or re-cast shall be final. (Clause 130).

Voluntary Revision of Financial Statements or Board's Report may be made with Tribunal's consent (Clause 131)

## Constitution of National Financial Reporting Authority –

The National Advisory Committee on Accounting Standards (NACAS as introduced by the Companies Bill 2009) has been renamed National Financial Reporting Authority (NFRA) and unlike NACAS it is not merely an advisory body.

The mandate of the NFRA is to:

- 1: make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- 2: monitor and enforce the compliance with accounting and auditing standards recommended by it in such manner as may be prescribed;
- 3: oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and
- 4: Perform such other functions as may be prescribed.

### Additional Disclosure –

The Board of Director's report for every company except for One Person Company, shall have various types of additional information (Clause 134)

The Directors responsibility statement in case of listed company shall also include additional declarations related to internal financial controls and compliance systems (Clause 134(5))

## **DIRECTORS**

### Maximum No. of Directors:

1. Increased from 12 to 15.
2. More than 15 can be appointed by passing special resolution.

### **+ Composition of the Board:**

1. Certain class of companies to have at least 1 women director.
2. Every company to have at least one director who has stayed for at least 182 days in India in previous calendar year.
3. Listed Companies to have at least 1/3rd independent directors.

### **+ Maximum Number of Directorship:**

1. Increased from 15 to 20.
2. Includes alternate directorship.
3. Maximum number of public companies in which person can hold directorship limited to 10 including private companies which are holding or subsidiary companies.
4. Members, by passing special resolution can limit the number of companies in which person can act as director.

### **+ Resignation of Director:**

1. Director to send copy of resignation letter and detailed reasons for resignation to Registrar within 30 days of resignation.
2. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

### **+ Meetings:**

1. First Meeting to be held within 30 days of incorporation.
2. Not more than 120 days to lapse between 2 meetings.
3. Meetings through video conferencing and other audio visuals modes permitted. Also, the recording and storing of the proceedings of such meetings should be carried out.
4. Presence of independent director mandatory in case of meetings called at shorter notice.

## DIVIDEND

- ✚ **Transfer to Reserve:** A Company to transfer voluntarily a portion of its profits to reserve as considered appropriate, before declaration of any dividend.
- ✚ **Declaration of Dividend in case of Insufficient Profit:** In case of inadequacy or absence of profits in any F.Y., the company can declare dividend out of the accumulated profits transferred to reserves in accordance with the rules to be prescribed.
- ✚ **Restriction on Declaration of Dividend /Interim Dividend:** Interim dividend may be declared out of surplus in Profit & Loss account as well as profits of F.Y. in which dividend is sought to be declared.  
In case company has incurred loss up to preceding quarter of the current financial year then interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 Financial Years.  
Failure to comply with provisions of acceptance and repayment of deposits will bar the company to declare any dividend during the period of non compliance.



## SECRETARIAL AUDIT

- ✚ **Appointment:** Company Secretary included within the definition of Key Managerial Personnel. Certain Companies, as may be prescribed, to mandatorily appoint company secretary. Functions of company secretary defined in the bill.
- ✚ **Secretarial Audit:** Listed companies to annex secretarial audit report obtained from a Practicing Company Secretary to the Board's report. Board to respond to qualifications, made by the Secretary, in the Board's report.

- ✚ **Secretarial Standards**: Secretarial Standards introduced and provided statutory recognition for the first time. Company Secretary to ensure that the company complies with the applicable Secretarial Standards.
- ✚ **Certification**: For all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice. This is akin to compliance certificate u/s 383A.

## FILING OF REPORTS & RETURNS

Disclosures required in Board's report have been made more comprehensive. Board's report to include extract of Annual Return, number of board meetings etc.

Annual return to be made up to end of financial year not up to date of AGM. Scope of return enlarged to great extent.

All annual returns as stated above to be certified either by company secretary of the Company or by a Company Secretary in practice.

Annual return to be filed within 30 days of holding of AGM

Every Listed company to file return to ROC regarding changes in shares held by promoters and top 10 shareholders within 15 days of the change.

## NATIONAL COMPANY LAW TRIBUNAL & APPELLATE AUTHORITY

- ✚ The bill provides for constitution of a National Company Law Tribunal and National Company Law Appellate Tribunal consisting of combination of technical and judicial members.
- ✚ It is provided that every proceeding presented before the Tribunal or appeal filed before the Appellate Tribunal shall be disposed of expeditiously as possible and every endeavor shall be made by the Tribunal for the disposal of the proceeding within 3 months. The Tribunal shall continue the proceeding on transferred cases from stage before their transfer.
- ✚ Consolidation/Division of shares involving changes in the voting percentage required approval of Tribunal.

### OTHER KEY PROVISIONS

- ✚ The Bill permits merger of Indian Companies with foreign Companies in specified jurisdictions which proves to be a progressive move and will enable cross border consolidation of global business/assets.
- ✚ The provision of the Postal Ballot shall be applicable to all the companies whether listed or unlisted on all such matters which shall be prescribed by Central Government.



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