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» Company Law to go for a Revamp

The much awaited new Companies Bill 2008 (the "Bill") got Cabinet's nod on August 29, 2008 . The existing Companies Act, 1956 is a six decades old legislation having plethora of central government involvement and control. The Bill is substantially based on the recommendations made by the Irani Committee, constituted under the Chairmanship of Dr. J.J. Irani on December 2, 2004 and is a way forward to the regime of self regulation and shareholders' democracy. The Bill will be introduced to the winter session of Parliament this year and if passed will have far reaching implications. The Bill propose to ensure effective regulation of the Indian corporate sector by improve investor protection, corporate governance and the application of the successful e-Governance initiatives of the Ministry of Corporate Affairs (MCA " 21).

Amongst other things, the Companies Bill 2008 proposes to bar issuance of shares at a discount to shareholders, recognizes the CEO, CFO as well as CS the "key managerial personnel" and makes them liable for corporate action and defaults.

Proposed changes:

- Section 12 of the Act which currently requires minimum number of persons being 7 and 2 for public and private companies respectively, is proposed to be amended with provision of facilitating incorporation of Single Person Company to address the issue of simpler compliance regime for smaller companies.
- Section 11 of the Act, which currently denies the registration of any company, association or partnership consisting of more than ten persons in case of banking business and twenty for any other business, is proposed to be relaxed enabling partnership firms and banking companies to have maximum of 100 partners. This is likely to promote setting up of firms with high expertise and domain specialization.
- The Bill recognizes "insider trading" by the company directors and other Key Managerial Personnel as an offence with criminal liability, thus augmenting the current Section 15G and Section 24 of the SEBI Act, 1992 which specifies penalty for insider trading in the form of either fine or imprisonment or both.
- The Bill also does away with the issue of shares with differential voting rights, which are currently provided for in Section 86 of the Act, wherein the Department of Company Affairs has promulgated the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.
- The Bill calls for a refurbish of Section 390 to 396 (Chapter V) which deal with compromise, arrangements and reconstruction including mergers and acquisitions requiring approval of jurisdictional High Court. The Bill proposes to have a single forum for approval of mergers and acquisitions, along with concept of deemed approval in certain situations. However it has to be

seen that how far these efforts will be effective as with the constitution and composition of the Competition Watchdog i.e. Competition Commission of India (CCI), which has its own approval process for clearance of mergers and acquisitions, it may pose some regulatory hurdles for the proposed single window clearing system;

- The Bill proposes to ensure speedy process of corporate dispute resolution by providing for constitution of the Special Courts to deal with the offences under the Act, rather than the Courts defined under current Section 2(11), Company Law Board and other regulatory authorities. It also proposes to setup single forum i.e. National Company Law Tribunal with appeal authority being National Company Law Appellate Tribunal to deal with the winding up and insolvency issues of the companies;
- The Bill also proposes to drop provisions like Section 211 in the existing Act that requires companies to do segment reporting and proposes to have mandatory consolidation of financial statements of the parent company and the subsidiaries. Currently this requirement is limited to listed companies only;
- The Bill seeks to amend the current Section 205C, which prescribes for limitation of period upto 7 years to claim dividend. Now shareholders may claim their dividend even after the expiry of 7 years. The Bill guarantees effective administration and utilization of Investor Education and Protection Fund (IEPF) to be constituted and administered by the Central Government;
- The Bill also proposes to substitute the Rehabilitation and Revival Fund as envisaged in the Companies (Second Amendment) Act, 2002 with the Insolvency Fund enabling provisions to draw money in a situation of insolvency. This is likely to reduce the time period involved in rehabilitation, winding up and liquidation of India Inc.
- The Bill provides for substantial reduction in the powers of the Central Government given under the existing Section 58A and Deposit Rules 2001 viz a viz restricting the access to such deposits only as per the permissions granted through Special Acts.
- The Bill proposes to liberalize mechanism for payment of managerial remuneration as provided under Section 198, 269, 309, 310, 311 and Schedule XIII of the existing Act by way of annulling the government's role in the appointment of managing directors and whole time directors and substituting it with shareholders' commercial wisdom.
- As per the definition of a Director under Sec. 2(13) of the existing Act, there is no provision regarding the nationality of the director. The Bill proposes to make it mandatory for the Companies to have atleast one director resident in India most likely to ensure one person's accountability in India for any corporate action or defaults.
- The Bill provides for the appointment of atleast 33% independent directors on Board in line with the provision of listing agreement but contrary to the existing Companies Act, which specifies only minimum directors i.e. 2 in case of private company and 3 in case of public company. This proposal is likely to bring more transparency in corporate governance and corporate social responsibility however may prove to be a necessary evil for corporate, where public interest is not substantially interested.
- The Bill provides for the recognition of both accounting and auditing standards. The Bill also proposes to remove Section 79 of the Act, which allows companies to issue shares at discount thereby preventing promoters from accumulating shares/stake in the Companies at discounted price.
- The Bill proposes for incorporation of the new company in future with no minimum paid up share capital requirement. The Bill also recommends valuation of non cash consideration through an independent valuer with respect to allotment of shares for consideration other than cash. The Bill facilitates convening of board meeting via video conferencing and recognizes votes cast through emails and allow the books of accounts in electronic forms as a legal document. This will certainly improve the manner of administration and functioning of the Companies in terms of quorum, physical presence of directors etc. Also, electronic documentation will facilitate storage of data for long period to achieve paper less environment.
- The Bill puts forward identification of Company and officers in default as separate entities for

imposing penalties with effective regime on inspections and investigations of companies laying down the maximum as well as minimum quantum of penalty for each offence with suitable deterrence provisions in case of repeated offences.

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