THE COMPANIES BILL, 2012

The Companies Bill 2012 ('**Bill**') was passed by Lok Sabha on 18th December, 2012. The Bill is yet to be passed by Rajya Sabha and receive the President's assent. The Bill has 470 clauses and 7 schedules as against 658 Sections and 15 schedules of the existing Companies Act, 1956. The Statement of Objects and Reasons of the Bill states that the bill has been introduced in order to cope with the changes in the national and international economic environment and expansion and growth of economy of the country. This article sets out some of the key changes and concepts introduced by the Bill.

Mergers and Acquisitions

A more comprehensive framework has been introduced in Chapter XV for ***'Compromises, amalgamations and arrangements'***. The Bill seeks to make a number of changes that are likely to have an impact on mergers and acquisitions (M&A) transactions involving Indian companies. The Bill proposes merger of Indian companies into companies located in specific foreign jurisdictions (to be notified) and vice versa. Also the protracted procedures required for an M&A have been dispensed with for M&A between two small companies or between a holding company and a wholly owned subsidiary company by allowing them to proceed further without the approval of Court /NCLT subject to certain conditions. In order to simplify the process of convening shareholders and creditors, the Bill has permitted companies to dispense with the meetings if the consent of 90% of the value of the shareholders and the creditors, by way of an affidavit has been obtained.

Directors and Officers

One of the most important changes under the Bill is introduction of concept of ***'Independent Directors'*** statutorily. The concept of independent directors first came in by the way of Kumar Managalam Birla Report on Corporate Governance and Clause 49 of the Listing agreement but under the present Companies Act, 1956 the term 'independent director' is not defined and there is no express mention of duties and liabilities of independent directors and there were situations where the independent directors were held responsible for offences committed by the management of the company of which the independent director was not aware of. In 2009, India witnessed an unprecedented exodus of over 500 independent directors from its corporate boards which were triggered as a consequence of the case of Satyam Computer Services and Nagarjuna Finance which focused the spotlight on the role and responsibilities of India's independent directors.[1] Hence, there was an urgent need for statutory definition on duties and liabilities of independent directors for securing higher standard of corporate governance and protection of shareholders. Independent directors will now play a vital role in the company's functions; any resolution, hence, passed in the absence of an independent director shall be final only on ratification of the resolution by at least one independent director. The Bill also increases the liability of an independent director with respect to his action and omission and now the Audit Committee shall consist of minimum 3 independent directors as well.

The scope of ***"officer who is in default"*** has been broadened to include share transfer agents, registrars and merchant bankers to the issue or transfer related to issue of shares & chief financial officer. The reason behind broadening the scope of the section is to make share transfer agents, registrars and merchant bankers liable for penalties as they play vital role in the day to day functioning of the company.

To ensure women empowerment, provision with respect to mandatory appointment of at least one ***woman director*** in certain prescribed companies has been introduced.

Types of Companies

The concept of a ***'One Person Company'*** has been introduced in order to permit entrepreneurship of a single individual to obtain the benefit of a corporate form of organization. All provisions pertaining to private companies will apply to one person companies.

Small companies have also been introduced under the Bill with a less stringent regulatory framework.

The maximum number of members required for a ***Private Company*** has been increased from 50 members to 200 members.

Corporate Accountability & Responsibility

The Bill has introduced the concept of '***class actions suits***' in order to empower the shareholders and investors to sue a company for any mismanagement or unlawful activity and claim damages. A class action suit allows a group of persons to collectively address a common grievance against a large corporate or even a group of corporates in a court of law. The concept of class action suits emerged in the US and has been a strong tool for investor protection. These suits will be heard by National Company Law Tribunal which is proposed to be set up under the Bill. This provision seems to be a result of the Satyam fraud of Rs. 8,000 crores where the Indian investors are yet to receive compensation whereas thanks to a strong class action framework in US some of the American counterparts who owned American Depository shares have made the company agree to pay over Rs. 625 crore in settlement.

A new corporate responsibility framework has been included under which, any Company doing business of net worth of more than 500 crores or, turnover of more than 1000 crores or, net profit of Rs 5 crores or more then the company has to mandatorily earmark 2% of average net profits for preceding 3 years for CSR activities and schedule VII of Bill specifies the activities which shall constitute the part of such Company's ***Corporate Social Policy***. Also the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year have to be disclosed under the financial statement. This provision has been brought in as a need was felt that the companies owe some responsibility towards development of the society and environment.

Provisions with respect to vigil mechanism (***whistle blowing***) have also been proposed to enable the company to evolve a process to encourage ethical corporate behavior.

The provision for establishment of ***Serious Fraud Investigation Office (SFIO)*** by the Central Government is another significant feature of the Bill, which empowers the Central Government to assign the investigation into the affairs of the said company to the SFIO.

Administration and Governance

The ***Financial Year*** of any Company can now be only from April-March and only certain companies complying with certain conditions can have a different financial year with the approval of Tribunal. Previously under the Companies Act 1956, there was no restriction on the period of financial year.

In order to ensure investor protection, the ***acceptance of deposits from Public*** will now be governed by a more stringent regime and Central Government will have power to specify the Companies in which proxies shall not be allowed in shareholders meeting.

Emphasis has been laid on ***E-Governance*** and maintenance and inspection of documents has been allowed in electronic form including maintaining book of accounts, placing financial statement in the company's website etc.

Strict norms have been introduced under the Companies Bill, 2012 to prohibit ***'insider trading'*** by treating such activities as criminal offences subject to heavy punishment. Additionally, the companies will now have to adhere to additional disclosure norms and ensure mandatory rotation of ***auditors*** and audit firms every 5 years.

The existing statute for regulation of companies in the country, i.e. the Companies Act, 1956 has been under consideration for comprehensive revision for a long time in view of the changing economic and commercial environment nationally as well as internationally. In comparison the Bill aims to bring about a more structured corporate framework. It is a positive step towards globalization and is a successful attempt to meet the changing environment. The provisions of the Bill are progressive keeping in mind the technological and legal developments taking place in the current scenario. The Bill will also put in place stricter corporate governance norms and provide shareholders the ability to be more involved in a company's affairs.