



Company Bill 2013: A Modern & Growth Oriented Company Law

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ABSTRACT

The Companies Bill, which will replace the nearly 57-year-old Companies Act, was passed by Rajya Sabha by voice vote. Lok Sabha had given its assent in December last year. It is a brand new, modern, growth oriented and futuristic Company Law passed by Rajya Sabha on 8th August 2013. The new law is a progressive and forward looking which promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors, protection of interest of investors particularly small and minority investors, better shareholder democracy, facilitation of corporate social responsibility (CSR) and stricter enforcement processes. It presents a paradigm shift in the way every stakeholder in a corporation has to think, act and perform. This transports India into the big league as far as corporate democracy is concerned. The Act also contains various provisions for the protections of small investors – introduction of class action suits in one obvious example. The Act is designed to balance the stakeholders' interest, viz, promoters, shareholders and public at large.

Keywords : Companies Act 1956, MCA, CSR, Independent Directors

INTRODUCTION

When the existing company law - The Companies Act, 1956 was passed, Bill Gates was a few months old. Many of our own corporate leaders were toddlers. Sachin Pilot, the corporate Affairs minister, was not even born. It is a relic of an era bygone. The law, though amended 25 times, is perceived to be not in sync with the new corporate world. Hence, the new bill. It was first introduced as Companies bill 2009 in Loksabha on August 3, 2009. It was referred to standing committee on finance a month later. It came back to the house as Companies Bill 2011. But was referred to the standing committee again.

Corporate affairs minister Sachin Pilot said, in an interview to CNBC-TV18, that the new Companies Act allows ease in opening companies and clarified that CSR was not a cess. The law has been rewritten extensively with several new provisions for investor protection, better corporate governance and corporate social responsibility etc. It defines a number of new terms that have come into vogue in recent times.

"The focus of the bill is to enhance transparency and ensure fewer regulations, self-reporting and disclosure...It will outline the positivity in the economy," said Pilot, who has aggressively sought the support of lawmakers and other stakeholders for the bill since becoming Corporate Affairs Minister in October 2012.

The Bill was passed by the Lok Sabha more than seven months ago. Since then, its passage in the upper house has been delayed by disruptions in Parliament. It has been almost three years since the submission of first report on the Companies Bill by the Parliamentary Standing Committee on Finance. Pilot said that 96 per cent of the recommendations made by the Parliamentary Committee have been accepted and the Ministry would try to incorporate further suggestions by various stakeholders while formulating the final rules. Among others, the new Bill provides about three dozen new definitions, including terms such as frauds, promoters, turnover, related parties (to promoters), small companies, associate companies and employee stock options. It provides for a uniform financial year (April-March) for all companies, while the concept of one-person company has been introduced

for the benefit of small entrepreneurs. Besides, the new Bill proposes strong checks against fraudulent money-collection activities through issuance of various securities.

The Bill requires auditors to be changed every five years to avoid collusion with the management, while rules would be tightened for appointment of independent directors. To safeguard the interests of small investors, the Bill proposes approval by two-thirds of the public shareholders for deals that involve promoters and related entities. It has a provision for setting up special courts for speedy trials and stronger steps for transparent corporate governance practices and curbing corporate misdoings. The law also provides for "faster winding up" of firms as also for speedier clearances to businesses. Participating in the Rajya Sabha debate, Congress leader Mani Shankar Aiyar asked Pilot to guard against bogus business entities.

The new bill, which now needs the President's nod to become law, makes it mandatory for companies to spend on social welfare, empowers investors against frauds committed by promoters, encourages companies to have women directors, and seeks to bring in greater transparency in corporate governance matters such as executive salaries and the role of auditors. The passage of the bill, which is spread across nearly 30 sections and over 300 pages, was widely welcomed by stakeholders, including industry bodies, political leaders and consultants.

The Bill prescribes 33 new definitions. Some of these are:

- Associate Company
- Small Company
- Employee Stock Option
- Promoter
- Related Party
- Turnover
- Chief Executive Officer
- Chief Financial Officer
- Global Depository Receipt

The bill provides for class action suit, which is key weapon for individual shareholders to take collective action against errant

companies. Better disclosure requirements in financial statements and disclosure of interests of directors etc. It has also streamlined procedures relating to disclosure of transactions with parties related to directors, promoters etc.

It provides for prohibition on forward dealings in securities of company by key managerial personnel, insider trading rules and restriction on non-cash transactions involving directors.

It provides for new concepts such as a single person company. Cap on number of persons in a private company raised to 200. E-voting has been recognized.

It is inevitable that a company which is facing pressure would come under further pressure but that is subject to at some stage banks pass this on or slowdown saying there is no liquidity. So if the yields continue to remain high for more than few weeks, there will be more stress in the system

THE COMPANIES ACT, 1956

The Companies Act 1956 is an Act of the Parliament of India, enacted in 1956, which enabled companies to be formed by registration, and set out the responsibilities of companies, their directors and secretaries. The Companies Act 1956 is administered by the Government of India through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) handles incorporation of new companies and the administration of running companies. Since its commencement, it has been amended many times, in which amendment of 1988, 1990, 1996, 2000 and 2011 are notable. Notwithstanding anything contained in the Act every company, international or indigenous will work under the provisions of the Act. This Act is general in nature and not subrogative. So if a special Legislation applies on a Company, then the Company has to, in addition to Companies Act, must comply the special Legislation. For example, all banking Companies in India has to comply Banking Regulation Act 1949, in addition to the Companies Act 1956. The Act is 658 sections long. It contains provisions about Companies, directors of the companies, memorandum and articles of associations, etc. This act states and discusses every single provision requires or may need to govern a company. 1956. Apart from the act, one must be thorough with the rules, regulations, notifications, circulars etc issued by central govt from time to time.

HIGHLIGHTS OF THE NEW COMPANY BILL 2013:

- 1) Incorporation of a One Person Company has been permitted.
- 2) Numbers of permissible members in private company has been raised to 200 as against existing limit of 50 members.
- 3) Listed companies shall have at least 1/3rd of the total number of directors as Independent Directors and the Central Government may prescribe the minimum number of Independent Directors for any class of public companies.
- 4) Nominee director cannot be regarded as Independent Director.
- 5) Maximum term of ID has been restricted to five years at once subject to a maximum of two such terms.
- 6) Appointment of at least one woman director on the board of prescribed classes of companies has been made mandatory.
- 7) Appointment of at least one director resident in India, i.e. a director who has stayed in India for at least 182 days in the previous calendar year, is made mandatory for all companies.
- 8) Maximum number of directors has been increased from twelve (12) to fifteen (15) directors. Further no Central Government approval is required to increase the maxi-

mum no. of directors beyond fifteen(15). Shareholders of companies may do so by passing a special resolution.

- 9) A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.
- 10) No listed companies shall appoint-
 - a. an individual as auditor for more than one term of five consecutive years, and
 - b. an audit firm as auditor for more than two terms of five consecutive years
- 11) Shareholders are at liberty to decide by passing resolution that audit partner and the audit team, be rotated every year
- 12) CSR has been made mandatory for a company having net worth of Rs. 500 crore or more, or turnover of Rs.1,000 crore or more or net profit of Rs. 5 crore or more during any financial year.
- 13) Such company is required to constitute a Corporate Social Responsibility Committee of the board(CSRC) which shall consist of three or more directors, out of which at least one director shall be an independent director.
- 14) Such company shall spend, in every financial year, at least 2 % of the average net profits of the company made during three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy (CSRP).
- 15) The provision for establishment of Serious Fraud Investigation Office (SFIO) by the Central Government is another significant feature of the bill.
- 16) SFIO is empowered to arrest in respect of certain offence involving fraud.
- 17) Changes have also been made to the grounds for winding up a company.
- 18) Some other features of the bill include-
 - i. Financial year will be uniform for all companies i.e. April-March.
 - ii. Restriction on buyback of shares within one year from the last buy back.
 - iii. Voting through electronic means.
 - iv. Capping director's remuneration at 5% of the net profits of the company.
 - v. The concept of Dormant Company has been introduced.
 - vi. Special courts for speedy trials.

CONCLUSION:

The new law is a progressive and forward looking which promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors, protection of interest of investors particularly small and minority investors, better shareholder democracy, facilitation of corporate social responsibility (CSR) and stricter enforcement processes. It presents a paradigm shift in the way every stakeholder in a corporation has to think, act and perform. This transports India into the big league as far as corporate democracy is concerned. India has transcended into the frontline space in corporate legislation and would pave the way for increase in investment propositions. The Act also contains various provisions for the protections of small investors – introduction of class action suits in one obvious example.

Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

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