

STUDENTS' ECONOMIC FORUM

*To kindle interest in economic affairs...
To empower the student community...*



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Theme 262

NEW COMPANIES BILL: HIGHLIGHTS

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Theme No. 262 : NEW COMPANIES BILL: HIGHLIGHTS

A well informed customer will make the policy makers as well as organisations which produce goods and services more responsive to the customer needs. This will also result in healthy competition among organisations and improve the quality of goods and services produced. The “SIB Students’ Economic Forum” is designed to kindle interest in economic affairs in the minds of our younger generation. We highlight one theme in every monthly meeting of the “Forum. This month, we discuss the major highlights in the Companies Bill, passed by the Lok Sabha on December 18, 2012, which would replace the 56-year-old Companies Act, 1956. The Bill seeks for consolidation and amendment of the laws relating to the companies. The major objective is to improve corporate governance and to further strengthen regulations in the corporate arena. The bill has been recently passed by Rajya Sabha and now needs President’s approval so that it can turn into the Companies Act 2013. The new legislation, divided into 29 chapters, 470 clauses and 7 schedules, would replace the Companies Act 1956.

What is the concept of One Person Company?

The bill introduces the concept of One Person Company. As per Clause 2(62), a One Person Company is defined as a company which has only one person as a member.

What are the major points on private placement in the bill?

The number of permissible members in a private company has been raised to 200 from 50. The provisions for offer or invitation for subscription of securities on private placement basis have been revised to ensure more transparency and accountability. Clause 42 lays down that an offer or invitation of securities through private placement may be made in the form and manner prescribed subject to compliance with the following conditions prescribed:

1. The offer or invitation in a financial year shall be made to such number of persons, excluding qualified institutional buyers, and on such conditions (including the maximum amount to be raised) as may be prescribed;
2. The value of such offer or invitation shall be with an investment size of such amount as may be prescribed; and
3. The company shall not issue any prospectus for such offer or invitation and such offer or invitation shall be made through a private placement offer letter.

What are the new clauses on share capital?

- ♦ Clause 58(2) of the Bill provides that the securities of a public company shall be freely transferable subject to the provisions that any contract or arrangement between two or more persons shall be enforceable as contract.
- ♦ By virtue of clause 53, companies are prohibited from issuing shares at discount

except in case of issue of sweat equity shares.

- ◆ Clause 66 deals with reduction of share capital with approval of National Company Law Tribunal (NCLT). Further, in case of listed companies, NCLT will give notice of every application made to it for reduction of share capital to the Central Government, Registrar, SEBI and Creditors of the company for taking into consideration any representation on the proposed reduction.

What are the new norms on constitution of the Board of Directors?

- ◆ Every company shall have a Board of Directors with a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors.
- ◆ Introduction of a certain class of companies (to be specified by the Govt) where at least 1 woman director to be there on the Board.
- ◆ 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.
- ◆ A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.
- ◆ Duties of the directors towards a company are prescribed in the Bill under clause 166.

How does the bill introduce the concept of independent Director?

- ◆ The Bill has introduced the concept of Independent director and is defined in Clause 2(47). Clause 149 lays down that 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.
- ◆ The company and independent director are required to abide by the provisions specified in Schedule IV.
- ◆ The clause seeks to provide that an independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in Board meeting and profit related commission as approved by the members. The clause further provides for the provisions of rotation of an independent director.
- ◆ An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re- appointment on passing of a special resolution by the company.

What does the bill say about the committee of Board of Directors and auditors?

Committee of Board of Directors

- ◆ The Board of Directors is required to constitute an Audit Committee (Clause 177), Nomination and Remuneration Committee [Clause 178 (a)] and Stakeholders Relationship Committee [Clause 178 (5)].

- ◆ These committees shall have Independent Directors/Non-Executive Directors to bring more independence in the functioning of the Board and for protection of interests of minority shareholders.

Auditors

- ◆ The Bill provides for mandatory rotation of auditors every five years.
- ◆ Clause 139 (2) prescribes that no listed company shall (a) appoint 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.
- ◆ Clause 139 (3) empowers members of the company to decide by resolution that the auditing partner and his team (of an audit firm appointed by the company) shall be rotated every year or that audit shall be conducted by more than one auditor.

What are the new requirements on Corporate Social Responsibility?

- ◆ By virtue of Clause 135, the most debated concept of corporate social responsibility (CSR) has been introduced.
- ◆ Accordingly, every company having net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more or a net profit of Rs.5 crore or more during any financial year is required to constitute a Corporate Social Responsibility Committee.
- ◆ The Corporate Social Responsibility Committee will formulate a Corporate Social Responsibility Policy.
- ◆ Such a company is required to spend at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.
- ◆ If the company fails to spend such amount the Board shall give in its report the reasons for the same making it a binding obligation on the Board.

What does the bill mention about the Serious Fraud Investigation Office (SFIO)?

- ◆ The provision for establishment of Serious Fraud Investigation Office (SFIO) by the Central Government is another significant feature of the Bill.
- ◆ Clause 212 empowers the Central Government to assign the investigation into the affairs of the said company to the SFIO.

What are the new terms on Amalgamation and Arrangements?

- ◆ A more comprehensive framework has been built in through Chapter XV for compromises, amalgamations and arrangements.
- ◆ Merger of Indian companies with foreign companies incorporated in certain notified countries has now been permitted. Changes have also been made to the grounds for winding up a company.

How does the bill introduce the concept of Registered Valuers?

- ◆ The bill provides: Where any valuation is required to be made of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a Valuer in such manner, on such terms and conditions as may be prescribed and

appointed by the audit committee or in its absence by the Board of Directors of that company.

How does the bill describe Class Action Suits?

- ♦ The concept of Class Action Suits has been introduced through Clause 245.
- ♦ The said clause empowers the shareholders or depositors or any class of them to file an application before NCLT if they are of the opinion that the management or conduct of the affairs of the company is in a manner prejudicial to the interests of the company or its members or depositors.
- ♦ The clause also provides the number of such members or depositors required to file such suit.

What is the clause introduced with regard to use of IPO money?

- ♦ The new bill says that if a company has unutilised money from an IPO and changes the objects for which the money was raised, it has to provide the exit opportunity for dissenting shareholders.
- ♦ The exit should be at a price specified by SEBI

What is the provision made in the bill for representation of minority stakeholders?

- ♦ One of the major highlights of the bill is the provision for representation of the minority stakeholders. It mandates that minority investors should have at least one representative on the board.

What are the directions about insider trading?

- ♦ The compliance officer has to monitor the acts of insider trading in the company.
- ♦ The bill prohibits the directors from trading in shares both in the cash and futures market.
- ♦ Insider trading would lead to punishment with a cash fine, imprisonment or both.

What is the new definition of a sick company?

- ♦ The bill provides that companies unable to pay over half their debt will be declared sick.

What are the other features of the Bill?

- ♦ Financial year will be made uniform for all companies (April to March).
- ♦ Restriction has been imposed on buyback of shares within one year from the last buy back.
- ♦ The directors can participate in a meeting through video conferencing or any other audio visual medium.
- ♦ Voting is allowed through electronic channels.
- ♦ The director's remuneration has been capped at 5% of the net profits of the company.
- ♦ The Concept of Dormant Company has been introduced.
- ♦ National Company Law Tribunal and National Company Law Appellate will be established.
- ♦ The bill envisages establishment of Special Courts for speedy trials.



COMPARISON	COMPANIES ACT 1956	NEW COMPANIES BILL
Max: No of members for private company	50 (Fifty)	200 (Two Hundred)
Min: No of members Max: No of Directors	Public Co - 7 & Private Co - 2 12	No change. New concept of One Person Co. 15 (more than 15 by passing special resolution at EGM)
Certification of Financial Statements	By Manager or Secretary, if any and by not less than 2 directors one of whom shall be the MD where there is one.	Chairman alone can sign if so authorized by the Board.
Financial Year and Extension	Financial year not to exceed 15 months (can be extended up to 18 months by ROC) and can end on date other than 31st March.	Financial year to end on 31st March every year for all companies. No explicit provision regarding extension of financial year is given
Maximum Number of Directorship	15 (Excludes private companies, unlimited companies, alternate directorship and directorship in non-profit associations)	20 (Out of which not more than 10 can be public companies and includes Alternate Directorship also)
Corporate Social Responsibility	No provisions for CSR Initiatives	CSR Committee of the Board is compulsory for companies:
Quorum of General Meeting	Private – 2 Members; Public – 5 Members	Private – 2 Members Public – 5 members if total no. of members < 1000- 15 members if total no. of members > 1000 but < 5000- 30 members if total no. of members > 5000
Composition of Board	Public Company - 3 Private Company – 2	Public Company - 3 Private Company - 2 Every company to have at least one director who has stayed for at least 182 days in India in previous Calendar year. Listed Companies to have at least 1/3rd independent directors. Certain class of companies to have at least one woman director.
Maximum Tenure of Auditors	No Specific Provisions	For listed companies and other prescribed companies: - individual auditors to be rotated after 5 years - audit firm after every 10 years
Object Clause of MOA	Object clause consists of Main Objects, Incidental or Ancillary Objects and Other Objects.	MOA to contain the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
Maximum time for holding first AGM	18 months from incorporation or 9 months from closure of accounts, whichever is earlier	9 Months from closure of Accounts
Mode of Notice for holding AGM	Written Notice mandatory	In writing or in electronic form.
Statutory Meeting	For Public company- mandatory to hold after 1 month but before 6 months from the date of entitlement to commence business	No provision
Cross Border Mergers	No Specific Provisions	Merger of Indian Companies with foreign companies permitted and rules to be notified by Central Government

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