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The Companies Bill 2012

The Companies Bill, 2012 has been recently passed by the Rajya Sabha on 8th August 2013 and awaits assent from the President of India before it becomes a full-fledged law governing companies. This Bill shall be replacing the Companies Act, 1956 that has been governing the law relating to companies and associations. This Bill after its formal notification shall be placing India's corporate practices and law governing companies in line with the prevalent norms and standards across the world. This article aims to briefly describe some of the salient features of the Companies Bill, 2012.

Highlights of Companies Bill 2012

The Companies Bill, 2012 comprises of 470 clauses divided under 29 chapters and introduces new concepts and terms in respect of law relating to Companies. Some of the salient features of the Bill are:

Concept of Company:

- New concepts in relation to company have been introduced. The Bill provides for one-person company, small company, new provision for private company, associate and dormant company.
- The Bill under Clause 2 (62) introduces the new concept of one-person company that was unknown under the previous Companies Act, 1956. One-person company or OPC means a company which has only one person as member. This Company is generally a private company with minimum share capital of 1 lakhs rupees. The Bill proposes that OPC shall have perpetual succession.
- The bill also provides for small company and defines it as a company other than public company having paid up share capital of which does not exceed fifty lakhs rupees or such higher amount as may be prescribed not exceeding Rs 5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees.
- The Bill also proposes maximum membership to private company and proposes that maximum of 200 persons can join as members of the private company.
- The Bill also provides for Associate Company and states that a company is an associate company of the other company if the other company has significant influence over such company which means that other company has control of at least 20 per cent of total share capital of company. This associate company should not be a subsidiary or Joint Venture Company.
- The Bill provides for dormant company and provides that company which is formed and registered under the Act for future project or to hold an asset or intellectual property and has no significant accounting transaction or is an inactive company may apply to Registrar of Companies for obtaining status of Dormant Company.

- The Bill further provides that private company which is subsidiary of a public company is deemed to be public company.

Composition:

- The Bill proposes that every company shall have at least one director who is resident in India for one hundred and eighty two days and a company may have maximum of 15 persons as directors of a Company. The previous Companies Act prescribed maximum of 12 persons that could be appointed as Directors of a Company. The Bill also provides that this number of directors can be increased by a Company by the passing of the Special Resolution.
- The Bill also provides for appointment of independent Directors in listed Companies. Listed companies are those companies that are listed on the Stock exchange where shares and bonds of the company are traded. The Bill provides that all the listed companies should appoint Independent Directors and the Board of Directors of these companies should comprise of at least one-third of persons appointed as Independent Directors. The Bill however does not propose any requirements for the appointment of the same but provides that they can be appointed only for consecutive 5 year term. The bill also places restriction on independent directors and provides that they cannot continue to hold the post of Independent Directorship for more than 20 companies at the same time.
- The Bill also introduces new concept of Key Managerial Personnel (KMP) that includes Chief Executive Officer/Managerial Director, Company Secretary, whole time Director, Chief Financial Officer or any other officer as may be prescribed. KMP are appointed for certain classes of company a prescribed.
- The Bill also proposes these KMP cannot be appointed for the Chairperson and MD/ CEO post simultaneously unless the Articles of Association to the company expressly provide for the same and in cases where the company is not engaged in multiple businesses.
- The Bill also proposes that in certain classified companies, at least one woman director should be on Board. The Bill also proposes that in some listed companies, individual auditors shall be appointed for every 5 years and auditing firms for 10 years term whose appointment shall be ratified by the Board of Directors in the Annual meeting annually.

Securities:

- The Bill has defined and used “securities” as the term to define various financial instruments of company. The Bill states securities to include shares, debentures etc.
- The Bill also defines private placement and provides that private placement shall be carried out as prescribed by the government providing terms, forms and manner of private placement. The Bill proposes that invitation to securities through private placement cannot be made to more than 50 persons in a financial year or as prescribed by the government.

Corporate Social responsibility (CSR)

The Bill has proposed mandatory Corporate Social Responsibility (CSR) activities to be adopted by Companies having net worth of 500 crores rupees, or having turnover of Rs 1000 crore or having net profit of more than 5 crores rupees in a financial year. The Bill proposes that such Companies should constitute Committee consisting of at least one minimum Independent Director who shall be participating in the formulation of a policy on CSR. The Bill proposes that 2 per cent of the net profits of 3 preceding financial years shall be spent on the areas formulated by policy on CSR. The areas could be the local areas where the company works or some welfare scheme.

The Bill also proposes that company is bound to inform in it Board Reports the reasons for not spending money under CSR in case the companies fail to do so.

Obligation on the Auditors:

The Bill has already proposed restriction on the auditor's appointment and has also proposed that auditors can be reappointed only after the expiry of 5 years from date of their last appointment. The Bill also places obligation on the Auditors where it proposes that auditor shall not be providing non-auditing services to the Company where it is holding auditing services and shall also be bound to report to the Central Government in case there are substantial doubts in regard to any fraud that being conducted or conducted by company officers or employees.

Dissolution of Company Law Board:

The Bill proposes that Company law Board shall be dissolved and a National Company Law Tribunal and a National Company Law Appellate Tribunal shall be constituted consisting of both judicial members and technical members to deal with the matters relating to company affairs. The Bill proposes that all disputes pending before the Company Law Board or the District Court or High Court shall stand transferred to the National Company Law Tribunal and appeals from this tribunal shall be made to the Appellate Tribunal respectively.

The Bill proposes that appeal from the National Company Law Appellate tribunal shall lie to the Supreme Court of India and all the matters shall be expeditiously disposed of within 3 months from the date of commencement of proceedings.

The Bill also proposes that any change in voting right as result of division of shares would require prior approval from the National Company Law Tribunal.