COMPANIES BILL 2008: RELAXING THE COMPLEXITIES

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Introduction

The long awaited far sighted Companies Bill, 2008, was presented before the Parliament on the 23rd of October 2008. The Government constituted an Expert Committee in 2004 under the leadership of Mr. J.J.Irani with an objective to reform the legal framework as existing in India and to make the legal provisions hassle free from the existing complexities,. After thorough and continuous research, keeping in mind the global requirements of the competitive market and industry, the Bill was presented before the Parliament on 23rd October 2008.

The Bill seeks to propose some significant changes under the existing Companies Act with an attempt to relax the existing provisions and ease out the ambiguities.

Focus of the Article

The New Companies Bill, 2008 is a guide towards a developed, organized and systematic legal framework. At the very outset, it is very crucial to have the foreknowledge by prior reconnaissance of these new provisions and be vigilant in understanding the comparisons between the new provisions and the existing framework so that one can advise the correct perspective to the clients

The focus of this article is to bring out the comparison between some provisions proposed in the New Companies Bill, 2008 and the corresponding existing Companies Act, 1956. These are summarized as follows: -

S. No.	New Proposed Provision	Existing Provision
1	Any listed company having a combined of more than 1,000 • Debenture holders • Shareholders • Other security holders is required to establish a Stakeholders Relationship Committee.	No requirement to form such Committee.
2	An investor's claim for dividend after a period of 7 years is not to be extinguished.	Under the current system of Company Law, any dividend not claimed after a period of 7 years from the Investor's Education and Protection Fund extinguishes.
3	The Bill has proposed a requirement for the consent of all the related party transactions by the public companies.	Transactions with parties related through a common director require approval from the Board.
4	The concept of Arm's Length Pricing is proposed to be introduced.	No concept of Arm's Length Pricing under the existing Companies Act.
5	The Bill has introduced the concept of "Registered Valuers" for all valuations regarding property, shares, stocks etc.	This concept of Registered Valuers does not exist under the existing laws.
6	The Bill has introduced the concept of "One Man Company" and "Small Company" which shall be incorporated as a non public company and have only one member and a minimum of only one director.	The concept of one Man Company does not exist at present.
7	Pursuant to steep increase in the business activities in the country, the limit as mentioned in the next tab is proposed to be increased.	As per section 11 of the Companies Act, 1956, no company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any any business activities. (20 persons in case of banking business.)
8	The provisions regulating minimum paid up capital requirements u/s existing 3 of the Companies Act, 1956, are proposed to be withdrawn.	As per section 3 of the Companies Act, 1956, a private company needs to have a minimum paid up capital of Rs 1 lakh and a public company needs to have a minimum paid up capital of Rs 5 lakhs.
9	The Companies Bill, 2008 permits infrastructure companies to issue preference shares which are redeemable after the expiry of 20 years from the	As per section 80 of the Companies Act, 1956, a company limited by shares cannot issue preference shares which are irredeemable

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	date of issue.	or are redeemable after the expiry of 20 years from the date of issue.
10	The new Companies Bill, 2008 prohibits the issue of shares at a discount except in the case of sweat equity shares.	Section 79 of the Companies Act, 1956 permits the company to issue shares at a discount provided that certain conditions are satisfied.
11	The Bill makes it discretionary on the part of the company to transfer the profits to reserve before the declaration of dividend as it may deem fit.	As per the existing legal provisions, the company has to comply with the Companies (Transfer of Profits to Reserves) Rules, 1975 with respect to transfer of profits to reserves before the declaration of dividend. Accordingly, a company cannot transfer more than 10% of the profits to reserves unless it satisfies certain prescribed conditions.
12	Such condition of 95% is proposed to be done away with. Consequently, depreciation is required to be provided at the rates prescribed and where no rates have been prescribed, then at the rates approved by the Central Government.	Section 205 of the companies Act, 1956, provides for 95% of the cost of the asset to be provided as depreciation over the useful life of the asset.
13	The Bill proposes a minimum of 7 days notice prior to a Board Meeting. However, to transact some urgent business, a shorter notice can be accepted.	There is no provision under the existing Companies Act, 1956 which provides a time period for the issuance of notice of a Board Meeting prior to such meeting.
14	The time limit between 2 board meetings has been prescribed as 120 days. Further, the bill permits participation in the board meetings through Video Conferencing also which doesn't exist under the existing legal framework.	Under the existing legal provisions, section 285 of the Companies Act, 1956 specifies that a board meeting shall be held once in every 3 months and at least 4 such meetings shall be held in every year. Thus, it can be implied that a maximum of 6 months can elapse between 2 board meetings..
15	Voting through Postal Ballot has been proposed to be made applicable to all the companies.	Postal Ballot is permitted only to the Listed Companies.
16	Every contract or arrangement entered into with the Related Parties is required to be disclosed in the Director's Report along with a justification of entering into such transaction.	No such requirement under the existing law.
17	The Key Managerial Personnel have been prohibited to indulge in forward dealings in the securities of the company.	No such requirement under the existing law.
18	Further, every company is required to have at least one director who is ordinarily resident in India, i,e, resides in India for at least 182 days in the calendar year.	No such requirement under the existing law.
19	The bill proposes to introduce legal provisions providing for the resignation of directors.	No such requirement under the existing law.
20	The Bill proposes to withdraw the provisions relating to taking approval from the Central Government in cases of appointment of Managerial Personnel.	Section 269 of the Companies Act, 1956 requires the company to take approval from the Central Government in some cases relating to appointment of Managerial Personnel.
21	The Bill proposes to introduce a provision that a director shall be required to vacate his office if he has not attended all the Board Meetings for a continuous period of 12 months, with or without obtaining leave.	Section 283 of the Companies act, 1956 specifies that a director shall be required to vacate his office if he has not attended 3 consecutive board meetings or all the board meetings for a continuous period of 3 months without obtaining leave.
22	All the companies are mandatorily required to adopt year ending 31 March for the preparation of financial statements.	Under the existing provisions, companies are provided a flexibility to choose any year end for the preparation of financial statements.
23	Preparation and submission of Consolidated Financial Statements has been introduced in the Bill.	Under the existing section 212 of the companies Act, 1956, there is no requirement to prepare and present consolidated financial statements. Rather, the only requirement is to attach the

		financial statements of the subsidiary to the financial statements of the holding.
24	The financial statements are required to be signed by: - • a Chairman or • by at least 2 directors, one of whom shall be Managing Director or Chief Executive Officer.	Under the existing section 215 of the Companies Act, 1956, the financial statements are required to be signed by: - • a Manager or Secretary, and • by at least 2 directors, one of whom shall be Managing Director, where there is one.
25	The Board of Directors are not required to give explanations regarding reservations, qualifications or adverse remarks contained in the Auditor's Report	Under the existing section 217(3) of the Companies Act, 1956, Board shall also be bound to give the fullest information and explanations in its report on every reservation, qualification or adverse remark contained in the auditors' report.
26	The Bill proposes a requirement of a special resolution to appoint a new auditor in place of the existing auditor.	Under the existing section 225 of the companies Act, 1956, if a company has to appoint a new auditor in place of the existing auditor, then, only an ordinary resolution is required along with a special notice.
27	The requirements of section 224A have been proposed to be done away with.	Section 224A of the existing Companies Act, 1956 requires a special resolution for the appointment of auditors in case 25% or more the subscribed share capital is held by specified institutions.
28	The company is required to intimate the auditor of his appointment in the company as well as intimate the Registrar of such appointment within 15 days	Under the existing section 224 of the Companies Act, 1956, the company is required to intimate the auditor so appointed within 7 days and further, the auditor so appointed is required to intimate the Registrar within 30 days of the receipt of communication from the company.
29	The Bill imposes a duty on the auditors of the company to attend the General Meetings of the company.	The existing company law framework gives a right to the auditors to attend the general meetings as against the duty imposed under the Proposed Bill.
30	The requirements of section 227(1A) relating to inquiry by the auditors on certain matters have been done away with.	The existing section 227(1A) of the Companies Act, 1956, requires the auditors to enquire on certain specified matters.
31	The Bill proposes certain additional restrictions on the appointment of the auditors, e.g.: - persons having business relationships with the company cannot be appointed as the auditors of the company.	The existing section 226 of the Companies act, 1956 provides certain restrictions/ disqualifications on the appointment of the auditors.
32	The Bill proposes the formation of special courts across the country for the speedy trial of offences committed under the Act.	Under the existing company law framework, there is no provision relating to the formation of such special courts.

Conclusion

I firmly emphasize that it is of utmost importance for us to remain vigilant about the proposed provisions in the New Companies Bill, 2008 and to understand them thoroughly. As can be witnessed from the aforementioned comparison, the Companies Bill, 2008 has a far reaching impact on the Indian corporate entities. The Bill proposes some significant provisions which are of national importance and certainly relax the existing legal framework in India.

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