

Companies Bill 2011- Major Highlights

The major highlights of the new Companies Bill is summarized herein below:

Chapter I- Preliminary

- A very substantial part of the Bill will be in form of rules , which will be prescribed separately
- The Government of India , has the power to notify different provision of the Act at different point of time.
- The Bill prescribes 33 new definitions.
- Some of the major new definitions introduced are
 - o Associate Company
 - o Small Company
 - o Employee Stock Option
 - o Promoter
 - o Related Party
 - o Turnover
 - o Chief Executive Officer
 - o Chief Financial Officer
 - o Global Depository Receipt
- The Financial Year of any Company can be only from April-March and only certain companies complying with certain conditions can have a different financial year with the approval of Tribunal. Under the Companies Act 1956, there was no restriction on the period of financial year.
- The maximum number of members, which a Private Company can have, is increased from 50, as provided in the Companies Act 1956, to 200
- The scope of officer under default has been broadened. The share transfer agents, registrars and merchant bankers to the issue or transfer related to issue of shares & Chief Financial Officer are also brought under its ambit. Directors who are aware of the default by way of participation in board meeting or receiving the minutes without objecting to the same will also be included in this category even if company has Managing Director /Whole Time Director / other Key Managerial Personnels.

Chapter II- Incorporation of Company and Matters Incidental Thereto

- The concept of One Person Company has been introduced and the said company will be formed as a private limited company. This concept has been introduced for the first time.
- In the Memorandum of Association of the Company, there is no requirement as to bifurcation of the objects clause into main, ancillary and other objects. Only objects for which company is incorporated along with matters considered necessary for its furtherance shall be mentioned. The Company cannot provide for other object clause.
- Articles of Association of the Company may contain provision with respect to entrenchment whereby the specified provisions of the article can be altered only if the more restrictive conditions or procedures as compared to those applicable in case of special resolution have been met with.
- For commencement of business by public/private Company, following needs to be filed with the registrar of companies
 - declaration by director in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them, and
 - Confirmation that the company has filed a verification of its registered office, with the Registrar.
- Company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects unless a special resolution is passed by the company and other requirements of advertisement and exit opportunity to dissenting shareholders is complied with, there was no such requirement under the Companies Act 1956

Chapter III- Prospectus and Allotment of Securities

- The Bill governs the issue of all types of securities now, under the Companies Act 1956, only shares and debentures were covered.
- The Bill provides that a public company can only issue securities by following the provisions related to public offer or Private Placement or by way of bonus or right issue .
- A Private company may issue securities only through private placement by

complying with the provisions of Part II of Chapter III.

- The Power of SEBI to administer the sections of the Companies Act related to listed company and company, which is intending to get itself listed, has been extended to include the provisions related to Share Capital , which were not provided in the Companies Act 1956..
- The content to be prescribed in the Prospectus has now been made more detailed.
- A company which has varied the terms of contract referred to in prospectus or objects for which it is issued shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company and shall also provide an exit opportunity to the dissenting shareholders, the said requirement was not there under the Companies Act 1956.
- The Bill provides provisions with respect to offer of sale by existing shareholders.
- The companies who can file shelf prospectus will be prescribed by SEBI. Under the Companies Act 1956, only Public Financial Institution, Public Sector Banks and Scheduled Bank can issue Shelf Prospectus
- Now any person (including group or association) who is affected by any misleading statement or inclusion or omission of any matter in the prospectus can file any suit or take any action under clause 35 or 36 providing for civil liability for misstatement in prospectus and Punishment for fraudulently inducing persons to invest money.
- A person shall also be liable for impersonation, in case he makes multiple applications in different name or in different combination of surnames for acquiring or subscribing the securities of the company.
- In addition to shares, return of allotment is required to be filed for all types of securities.
- Companies may now issue Global Depository Receipt by passing the special resolution and subject to such conditions as may be prescribed.
- The number of persons to which company may make an offer or invitation of securities to a section of the public otherwise than through issue of a prospectus, by way of private placement basis and maximum investment size in such case, shall be prescribed by way of rules, under the Companies Act 1956 the maximum number of persons prescribed was 50.

- QIB shall not be covered under the provisions related to Private Placement
- If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons under clause (a), whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions provided in this regard by SEBI.
- Any company making any offer or invitation of securities under private placement has to allot the securities within 60 days of receipt of application money.

Chapter IV- Share Capital and Debentures

- The conditions under which the preference shareholders can vote on every resolution placed before meeting of shareholders has been changed. Now preference shareholders can only exercise such voting rights when dividends payable in respect of a class of preference shares are in arrears for a period of 2 years or more.
- Company cannot issue shares at discount other than as sweat equity, no provision has been provided for any approval.
- As opposed to Companies Act, 1956, under the new Bill, a company may issue preference shares redeemable after 20 years for such infrastructure projects as may be specified subject to redemption of specified % of preference shares on annual basis at the option of the preference shareholder. The term Infrastructure projects has been defined for the purpose of this section as the infrastructure projects specified in Schedule VI.
- The scope of section related to transfer and transmission of securities has been widened and this section now deals with all types of securities.
- The provisions of clause related to further issue of capital will now be applicable to all type of Companies.
- Apart from existing shareholders, if the company having share capital at any time proposes to increase its subscribed capital by issue of further shares, such shares may also be offered to employees by way of ESOP subject to approval of shareholders by way of special resolution.
- The provisions relating to further issue of shares shall now be applicable to

companies whenever it plans to increase the subscribed paid up capital. Prescribed time period of only after 2 years from the date of allotment or 1 year from the allotment of shares for first time in company under the Companies Act 1956 has been discontinued.

- The Companies Act 1956 provides for issue of Bonus Shares but the new Bill provides more detailed provisions to deal with the issue of Bonus Shares.
- No reduction of capital will be allowed if the company is in arrears for payment of deposits, accepted either before or after the commencement of this Act, there was no such condition under the Companies Act 1956.
- As opposed to Companies Act 1956, under the new Bill, a company can make buyback even if it had at any time defaulted in repayment of deposit or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank, provided that such default must have been remedied and a period of 3 years must have lapsed after such default ceased to subsist
- As per the new Bill, Debenture trustee is required to be appointed only when the company issues prospectus or make an offer or invitation to the public or to its members exceeding five hundred for subscription of its debentures.

Chapter V- Acceptance of Deposit by Companies

- NBFCs are not covered by the provisions relating to acceptance of deposits and they will be governed under rules issued by Reserve Bank of India.
- Company cannot accept deposit from persons other than its members and approval of shareholders will be required for the acceptance of the same. Such deposit can only be accepted subject to complying with necessary conditions.
- The Bill also prescribes the manner in which public companies can take deposits from person other than its members.
- There is no provision for suo-moto action by the tribunal for directions to repay the deposits or interest thereon in case of default in such repayments, though such provision exist under the Companies Act 1956.

Chapter VI- Registration of Charges

- Specific list of cases in which it was necessary to register the charge, as provided under the Companies Act 1956 has been dispensed with. Now all types of charge would be required to be registered.

Chapter VII- Management and Administration

- Every Annual Return shall contain the additional information like particulars of its holding, subsidiary and associate companies; Matters related to certification of compliances, disclosures for remuneration of directors and key managerial personnel etc
- In case of Companies with prescribed paid up capital and turnover, certification of annual return by practicing company secretary has been made mandatory
- The Annual Return shall carry information upto the date of closure of financial year and not Annual General Meeting.
- Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.
- First Annual General Meeting of the Company shall be held within the period of 9 months from closure of its first financial year instead of 18 months from the date of the Incorporation, as provided in the Companies Act 1956.
- The quorum for public company will now depend upon the number of members of the Company. A fixed quorum of 5 persons was prescribed under the Companies Act, 1956.
- The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by electronic means.
- The eligibility for demand of poll by the members in the general meeting has been changed
- The provisions of the Postal Ballot shall be applicable to all the Companies whether listed or unlisted.

- The eligibility for making requisition for circulation of resolution has been modified.
- The resolution requiring special notice has to be moved by such number of members holding not less than one per cent of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid-up, which was not the required under the Companies Act 1956
- Every Company have to follow the Secretarial Standards while making the minutes of board and general meeting.
- Every Listed Public Company is required to prepare a report in the manner as may be prescribed on each annual general meeting including the confirmation that meeting was convened, held and conducted as per the Act and the rules made thereunder.

Chapter VIII- Declaration and Payment of Dividend

- The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account and out of profits of the financial year in which such interim dividend is sought to be declared.
- A company cannot declare interim dividend at a rate higher than the average dividends declared by the company during the immediately preceding three financial years, where it has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend.
- Instead of transferring a fixed % of profits to reserve before declaring dividend every year , company can on their discretion transfer such % of profit to the reserve before declaring dividend as it deem necessary and moreover such transfer is also not mandatory.
- The Bill provides that all shares in respect of which unpaid or unclaimed dividend has been transferred to Investor Education Protection Fund shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.
- Funds in IEPF can be utilized for distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due

to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement.

Chapter IX- Accounts of Companies

- The Bill now recognizes the fact that books of accounts may be kept in electronic form also.
- The term Balance Sheet & Profit & Loss Account, has been defined collectively as financial statement under the Bill and cash flow statement also forms part of the same
- Along with financial statement, consolidated financial statement of all subsidiaries and company will be prepared and shall also be laid before the Annual General Meeting. Subsidiary shall for the purpose of this requirement include associate company and joint venture
- The Bill does not prescribe whether financial year can be extended or not.
- The requirement of attaching the balance sheet, profit & loss account, report of board of directors , auditor report , statement of the holding company's interest in the subsidiary and others reports as was required by section 212 of the Companies Act 1956 has been dispensed with.
- The Bill provides for provisions relating to re-opening or re-casting of book of accounts of the Company.
- The name of National Advisory Committee on Accounting Standards has been changed to National Financial Reporting Authority.
- The role of authority is to advise on matters related to auditing standard in addition to accounting standards.
- The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- The Director's report for every company except for One Person Company, shall provide for various types of additional information like number of meetings of the Board, Company's policy on directors' appointment and remuneration; explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Company Secretary in his secretarial audit report, particulars of loans, guarantees or investments

etc

- The Directors responsibility statement shall include additional statement related to compliance of all applicable laws and in case of listed companies it shall also include statement related to internal finance control
- The Bill now provides provisions related to Corporate Social Responsibility (CSR).
- Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The committee shall recommend the policy for CSR to the Board.
- The Board of every company to ensure that the company spends, in every financial year, 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 and in case of failure to do , shall report the necessary reasons for not spending the same in their Board's report.
- The benefit given to Private Companies to file their balance sheet & profit and loss account separately has been withdrawn.
- The Bill provides for conduct of internal audit of certain companies.

Chapter X- Audit and Auditors

- Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
- The Bill provides provision for compulsory rotation of individual auditors in every 5 years and of audit firm in every 10 years in listed companies & certain other class of companies, as may be prescribed.
- A transition period of 3 years from the commencement of this Act has been prescribed for the Company existing on or before the commencement of this Act to comply with the provision of the rotation of auditor.
- The Bill also provides that a Company can resolve for rotation of auditing

partner and his team within an auditor.

- The Bill provides for certain new disqualifications for the Auditors
- The Bill provides that Auditor shall also comply with auditing standards. The Central Government will prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority
- A duty has been casted on the auditor , to immediately report to the central government, any offence involving fraud which is being or has been committed against the company by officers or employees of the company , which he believe to be committed during the course of performance of his duties as an auditor.
- Now the duties, which have been casted on auditor under section 143, shall apply mutatis mutandis to both cost accountants for cost audit and company secretary in practice for secretarial audit.
- Auditor of the company shall not provide directly or indirectly the specified services to the company, its holding company , subsidiary and associate company
- In case the auditor contravenions the provisions related to his powers & duties, services that he cannot render and signing and reading of auditor's report at the general meeting, than in addition to punishment provided in the section, he shall be required to refund the remuneration received by him from the company and shall be liable to pay the damages to the company or to any person for the loss arising out of misleading or incorrect information.
- The Bill specifically provides that partner or partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force. If It is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, partner or partners of the firm shall also be punishable in the manner provided in section 447.
- Now, instead of company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, the central government can only direct cost audit to be conducted in such class of companies engaged in the production of such goods or providing such services , which have the prescribed networth or turnover and who has been

directed to include the particulars relating to the utilization of material or labour or to other items of cost as may be prescribed in their books of account .

- No approval is required of central government for the appointment of cost auditor to conduct the cost audit.

Chapter XI- Appointment and Qualification of Directors

- In prescribed class or classes of companies, there should be atleast 1 woman director.
- Out of all the Directors, atleast one director shall be a person 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. Companies existing as on date of commencement of this Act have been provided a transition period of 1 year for the compliance of this provision.
- Central Government will prescribe the number of independent directors in case of class or classes of public company .
- The Bill provides provision for limiting the liability of Independent Director and non executive director not being promoter or key managerial personnel.
- The Schedule to the Bill provides the following in respect of an Independent Director
 - o Professional Conduct
 - o Role & Functions
 - o Duties
 - o Manner of Appointment
 - o Removal & Resignation etc
- The maximum limit of directors in the Company has been increased to 15 from the 12, as provided in the Companies Act 1956, with a power to add more directors upon passing of Special Resolution.
- The Bill provides for certain new disqualification for the Directors.
- A person cannot become directors in more than 20 companies instead of 15 as provided under the Companies Act 1956 and out of this 20, he cannot be director of more than 10 public Companies.

- A transitional period of 1 year is provided to persons acting as director to comply with the requirement of maximum number of directorship and they have to intimate their choice to each of company where they wish to continue as director and also to the Registrar.
- The Bill prescribes the duties of the directors towards the Company.
- Directors are also required to mandatorily forward their resignation along with detailed reason for resignation also to the Registrar within 30 days of resignation in prescribed manner.
- The notice for removal of director can only be given by prescribed number of members or members holding prescribed number of shares or voting power.

Chapter XII- Meeting of Board and its Powers

- The Bill provides that Director can participate in the Board meeting through video conferencing or other audio visual mode as may be prescribed
- A notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means.
- Atleast 4 meeting should be held each year. There is no requirement of holding the meeting every quarter; the only requirement is that not more than 120 days shall elapse between two consecutive meetings.
- Every Listed Company and such other company as may be prescribed shall form Audit Committee.
- Composition of Audit Committee has been changed. It shall now comprise of minimum 3 directors with majority of the Independent Directors and majority of members of committee shall be person with ability to read and understand financial statement.
- The Bill prescribes for establishment of vigil mechanism in the prescribed manner by every listed company or such class or classes of companies, as may be prescribed.
- Every listed company and prescribed class or classes of companies, shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors.
- Every company which consists of more than one thousand shareholders,

debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

- The Bill provides certain new matters, which are required to be transacted by Board of Directors at their meeting only.
- Certain powers which earlier can be exercised by board with the approval of general meeting by way of ordinary resolution, shall now to be passed by special resolution.
- The limits for political contribution by company have been changed. Now instead of 5% as provided in the Companies Act 1956, contribution shall not exceed 7.5% of the average net profits of the Company during the three immediately preceding financial years.
- Disclosure of interest by every director has been made mandatory and not discretionary, as was there in the Companies Act 1956. The disclosure shall be made at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made.
- In case of private company also, an interested director cannot vote or take part in the discussion relating to any matter in which he is interested.
- The requirement of permission of central government for giving loan to Director as required in the Companies Act 1956 has been dispensed with.
- The provisions related to inter-corporate loans and investment has been extended to include loan and investment to any person also.
- While considering the limits for making investment , providing loan, providing guarantee or security , the amount for which investment has been made or loan, guarantee or security already provided, will not be considered, as opposed to what was provided in the Companies Act 1956.
- No stock broker, sub-broker, share transfer agent, banker to issue, registrar to an issue, merchant banker, underwriter, portfolio manager, investment advisor or any intermediary associate with capital market shall take inter corporate loans and deposits exceeding the limits which will be prescribed.
- A company shall unless otherwise prescribed, cannot make investment through more than two layers of investment companies subject to certain exemptions

- Apart from the existing transactions, certain new related party transactions are also provided for which approval of Board will be required:
- No approval of central government is required for entering into any related party transactions.
- No approval of central government is required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary
- A company shall not enter into any arrangement by which a director of the company or of its holding company or any person connected with him can acquire assets for the consideration other than cash from the company & vice versa without the approval of company in general meeting
- The Bill provided provision related to prohibition on forward dealings in securities of company by director and key managerial personnel.
- The Bill now provides the provisions for prohibiting insider trading in the company.

Chapter XIII- Appointment and Remuneration of Managerial Personnel

- Provision related to appointment of Managing Director/Whole Time Director/Manager shall also apply to private company.
- The appointment of Managing Director/Whole Time Director /Manager shall be approved by general meeting by special resolution instead of ordinary resolution and if appointment is not in accordance with schedule V (Schedule XIII in the Companies Act 1956), than approval of CG is also required.
- Where a company is required to re-state its financial statement due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager who, during the period for which the financial statements are required to be re-stated, the remuneration received (including stock option) arisen due to such statement or non-compliance in excess of what would have been paid to the managing director, whole-time director or manager under such re-stated financial statements.
- Every company belonging to such class or description of companies as may be prescribed shall have Managing Director, or Chief Executive Officer or

Manager and in their absence, a whole-time director and Company Secretary:

- The Bill provides for provision related to secretarial audit in certain prescribed companies.
- The Bill prescribes the functions of the Company Secretary.
- The Schedule to the Bill provides the conditions under which company can pay remuneration to its managerial personnel in excess of the limits prescribed therein, without the Government approval.

Chapter XIV- Inspection, Inquiry and Investigation

- In case of inspection or inquiry under this Bill, now the Registrar shall possess powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of certain specified matters.
- Now the powers of Registrar /Inspector to search and seizure under this Bill , has been extended to the places of Key Managerial Personnel, Auditors and Company Secretary in practice.
- For search or seizure of documents, Registrar need to take permission of special court instead of magistrate of first class or presidency magistrate as provided under the old law.
- The Central Government will establish Serious Fraud Investigation Office (SFIO) for investigation of frauds relating to a company. Till the time SFIO is not established, SFIO set up by Central Government to be used for the purpose of this section.
- The Central Government may under the prescribed situation may refer any matter for investigation into affairs of the Company , to SFIO.
- There is no provision for inspection or investigation by SEBI.
- As per the new Bill, No company shall during the pendency of investigation, inquiry or inspection under the provision of Chapter XVI of suspends, punishes or changes the terms of employment to the disadvantage of any employee, without the approval of the Tribunal.
- Now, the affairs of related company may be also be investigated while the inspector is making an investigation as to the ownership of the company. The said provisions was not prevalent under the Companies Act, 1956.

- As per the new Bill, the Tribunal by order direct that a transfer, removal or disposal of funds, assets, properties of the company shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit, where it appears to the it , on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1)of section 244 or a creditor having Rs 1 Lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest.
- Where pursuant to transfer of shares under the Companies Act 1956, the Tribunal is of the opinion that such change is prejudicial to the public interest,then its power to put restrictions on exercise of voting rights in respect of such shares or not effect the resolution for change in composition of Board of Directors has been dispensed with
- The power of Tribunal to restrict the effecting of any resolution for change in composition of Board of Directors , which in its opinion will like to effect a transfer of shares in the company and such change will be prejudicial to the interest of the Company , has been dispensed with
- If the inspector reports of fraud being undertaken in the company or any undue advantage derived by Director, Key Managerial Personnel and other officer due to such fraud in form of any asset , property or cash or in any manner , the Central Government is empowered to file an application to the Tribunal for appropriate orders of disgorgement of such assets, property or cash and for holding of such director, key managerial personnel, officer or other person liable personally without any limitation of liability
- An investigation under the Bill shall not be stopped and neither by suspended or cancelled even in case where any other proceeding for winding up other than voluntary winding up is pending before the tribunal
- The Companies Act 1956 prescribes for applicability of provisions related to inspection and investigation on the Foreign Company under the chapter related to Foreign Company but under the new Bill ,the said provision is specifically provided for in the chapter related to inspection and investigation

- As per the new Bill, in during the process of the Investigation, Inquiry or inspection if any person

a) destroy, mutilates or falsifies or conceals or tamper or unauthorized removes or is a party to destruction, mutilation or falsification or concealment or tampering or unauthorized removal or any document relating to the property, assets or affairs of the Company or body corporate or

b) makes or is a party to the making of any false entry in the document concerning the company or body corporate or

c) provides any false information which he knows to be false

then he shall be liable to punishment for fraud which may range from imprisonment for a term which may not be less than 6 months but may extend upto 10 years and shall also be liable to fine which shall not be less than the amount involved in fraud but which may extent upto 3 times of the amount of fraud.

Chapter XV- Compromise, Arrangement and Amalgamations

- Only persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement, shall be eligible to raise any opposition to an arrangement or compromise.
- The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.
- Any provision of buyback in any compromise or arrangement shall be in compliance with the provisions of the Buyback.
- Any takeover offer of listed company under compromise or arrangement shall comply with SEBI guidelines.
- The Bill now provides that in case of merger of listed company in unlisted company, the tribunal can order that unlisted company i.e. Transferee Company shall continue to be unlisted.
- No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards

prescribed under section 133.

- The concept of treasury stock/Trust Shares has been abolished.
- Separate provisions have been provided for the merger or amalgamation between two small companies or between a holding company and a wholly owned subsidiary company.
- The Bill provides provision for cross border amalgamations between Indian Companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government
- The Bill provides specific provision for purchase of minority shares in case an acquirer or person acting in concert with the acquirer become holder of 90% or more of the issued capital of the company, either directly or by virtue of any amalgamation , share exchange, conversion of securities or any other reason.

Chapter XVI- Prevention of Oppression and Mismanagement

- An application for oppression or mismanagement shall be filed to National Company Law Tribunal instead of Company Law Board.
- Provisions for relief related to oppression and mismanagement has been combined under one provision, as opposed to the old law.
- The Bill provides for class action by specified number of Members or Depositors against the company except the banking company, which is prevalent in developed countries.

Chapter XVII- Registered Valuer

- 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.

Chapter XVIII- Removal of Name of Companies from Registrar of Companies

- The conditions under which registrar can remove the name of the company from its record has been changed.

Chapter XIX- Revival and Rehabilitation of Sick Companies

- The manner of declaring a company sick and process of its revival and rehabilitation has been completely rationalized.
- Any company and not only industrial company can be declared as sick company.
- Secured creditors representing 50% or more of the debt of the company and whose debt the company has failed to pay within 30 days of service notice, can apply to tribunal for declaring the company as sick or the company who fails to repay the debt of secured creditor representing 50% or more of debt, may also apply to tribunal for declaring itself sick.
- The criteria of erosion of 50% of the networth for declaring the company as sick has been dispensed with.
- Where the financial assets of the sick company had been acquired by any securitization company or reconstruction company under sub-section (1) of section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any application for revival or rehabilitation shall not be made without the consent of securitisation company or reconstruction company, which has acquired such assets.

Chapter XXIV- Registration Offices and Fees

- Any document or returns required to be filed under this Bill, if not filed within prescribed time, has to be filed within period of 270 days on payment of such additional fees as may be prescribed.

Chapter XXVI- Nidhis

- New definition of Nidhi Company has been prescribed.

Chapter XXVII- National Company Law Tribunal and Appellate Tribunal

- The person to be appointed as president of the Tribunal shall be the judge of the high court for atleast 5 years, as opposed to the Companies Act 1956, where no term has been prescribed for high court judge to be appointed as

President, the only condition was that person should be qualified for being a Judge of High Court.

- The eligibility for becoming a judicial member or technical member has changed
- National Company Law Appellate Tribunal shall now consist of combination of technical and judicial members not exceeding 11 instead of 2 as provided in the Companies Act 1956.
- Not only past judge of supreme court or chief justice of high court as provided in the Companies Act 1956 , a person who is the present judge of supreme court or chief justice of high court can also be appointed as chairman of National Company Law Appellate Tribunal
- The President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India instead of the selection committee as provided in the Companies Act 1956.
- The Bill provides that every proceeding presented before the Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavor shall be made by the Tribunal for the disposal of the proceeding within 3 months from the date of commencement of the proceeding before the Tribunal.
- On the date of the constitution of the Tribunal
 - o All matters, proceedings or cases pending before the Board of Company Law Administration (hereinafter in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act
 - o All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings either de novo or from the stage before their transfer:

Chapter XXVIII- Special Courts

- The Central Government may, for the purpose of providing speedy trial of offences under this Bill, by notification, establish as many special courts as may be necessary.

Chapter XXIX- Miscellaneous

- Only offences punishable with fines are compoundable under the Bill.
- The Bill provides for provision for establishment of to mediation and conciliation panel by Central Government .
- The Bill provides for specific provisions related to any act of fraud.
- “Fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.
- Where a company is formed and registered under this Bill for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- A dormant company will have such minimum number of directors and have to file such documents and pay such fess, as may be ,prescribed, to retain its dormant company status.
- The maximum number upto which a person can carry on business for profitable purpose by way of association or partnership will be prescribed by rules but the number will not exceed 100 instead of 12 as provided in the Companies Act 1956.
- The Government by rules will prescribe the section, which will not be applicable to Private Company & One Person Company.
- The Bill provides that Producer Companies shall continue to govern by Chapter IXA of the Companies Act 1956 until the enactment of Special Act for Producer Companies.

