

Companies Bill 2011

(Passed in Lok Sabha on 18th Dec 2012 at 10:46 PM)

The Lok Sabha today passed the much awaited Companies Bill 2011. The Bill is all set to replace the 55 year old Act.

The promulgation of the new Act is a step towards globalization and is a successful attempt to meet the changing environment and is progressive and futuristic duly envisaging the technological and legal developments.

The new law surely promises investor democracy and addresses the public concern over corporate accountability and responsibility and alongside introduces some industry friendly provisions.

To provide you with in depth insight on the various issues relating to Companies Bill, we will be starting a classroom series very soon

The top 50 key highlights of the new Companies Bill is summarized herein below:

The Companies Bill, 2011, is organized as 29 chapters, 470 sections and 7 scheduled. A substantial part of the law will be in form of Rules, to be prescribed separately. It has introduced 33 new definitions. Here's a look at some of its key highlights.

INCORPORATION & CAPITAL RAISING

- ✚ A private company can have a maximum of 200 members, up from 50 in the Companies Act, 1956.
- ✚ The concept of One Person Company introduced. It will be a private limited company.
- ✚ Concept of dormant companies introduced. It can be formed for a future project or to hold an asset or intellectual property.
- ✚ All companies to follow uniform financial year, running from April to March. Exceptions to be made only for certain companies with the approval of NCLT.
- ✚ All types of securities to be governed by the Bill.
- ✚ The Prospectus has to be more detailed.
- ✚ Money raised through a prospectus cannot be used for dealing in equity shares of another company. If a company changes terms of the prospectus or objects for which money is raised, it shall provide dissenting shareholders an exit opportunity.
- ✚ 'Private placement' defined, with detailed provisions for such placement.
- ✚ 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 the approval of shareholders by way of Special Resolution.
- ✚ NBFCs not covered by the provisions relating to acceptance of deposits. They will be governed by Reserve Bank of India Rules.

- ✚ Companies can accept deposits only from its members, that too after obtaining shareholders approval. Acceptance of deposit also subject to compliance with certain conditions.
- ✚ Public companies can accept deposit from public on complying certain conditions like credit rating.

MANAGEMENT & ADMINISTRATION

- ✚ Listed companies required to file a return in a prescribed form with the Registrar regarding any change in the number of shares held by promoters and top 10 shareholders of such company, within 15 days of such change.
- ✚ Postal Ballot to be applicable to all the companies, whether listed or unlisted.
- ✚ Interim dividend in a current financial cannot exceed the average rate of dividend of the preceding three years if a company has incurred loss up to the end of the quarter immediately preceding the declaration of such dividend.
- ✚ Financial statements include Balance Sheet, Profit & Loss Account and cash flow statements.
- ✚ Provisions for re-opening or re-casting of the books of accounts of a company provided.
- ✚ The National Advisory Committee on Accounting Standards renamed as The National Financial Reporting Authority.
- ✚ The authority to advice on Auditing Standards and Accounting Standards.

AUDITORS & FINANCIAL STATEMENTS

- ✚ Every company is required at its first annual general meeting (AGM) to appoint an individual or a firm as an auditor. The auditor shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting. The appointment of the auditor is to be ratified at every AGM.
- ✚ Individual auditors are to be compulsorily rotated every 5 years and audit firm every 10 years in listed companies & certain other classes of companies, as may be prescribed.
- ✚ Auditors have to comply with Auditing Standards.
- ✚ A company's auditor shall not provide, directly or indirectly, the specified services to the company, its holding and subsidiary company.
- ✚ A 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 Bill 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, the company or its directors or officers, then such partner or partners of the firm shall also be punishable in the manner provided in clause 447.

DIRECTORS

- ✚ Prescribed class or classes of companies are required to appoint at least one woman director.
- ✚ At least one director should be a person who has stayed in India for a total period of not less than 182 days in the previous calendar year.
- ✚ At least one-third of the total number of directors of a listed public company should be independent directors. Existing companies to get a transition period of one year to comply.
- ✚ Liability of independent directors and non-executive directors not being promoter or key managerial personnel to be limited.
- ✚ A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.

GOVERNANCE

- ✚ Companies with more than 1,000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year to constitute a Stakeholders Relationship Committee, with a non-executive director as a chairperson and such other members as may be decided by the board.
- ✚ No permission of central government required to give a loan to a director.
- ✚ The provisions on inter-corporate loans and investment (372A of Companies Act 1956) extended to include loan and investment to any person.
- ✚ A company cannot, unless otherwise prescribed, make investment through more than 2 layers of investment companies.
- ✚ No central government approval required for entering into any related party transactions.
- ✚ No central government approval required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary.
- ✚ Prohibition on forward dealings in securities of company by any director or key managerial personnel.
- ✚ Prohibiting insider trading in the company.
- ✚ 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 clause 133.
- ✚ Creation of treasury stock/trust shares is prohibited.
- ✚ Every listed company or such class or classes of companies, as may be prescribed, to establish a vigil mechanism.
- ✚ The Bill makes 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.

MISCELLANEOUS

- ✚ The Bill provides provisions related to Corporate Social Responsibility (CSR).
- ✚ The Bill provides for class action suit by specified number of members or depositors against the company except the banking company, which is prevalent in developed countries.
- ✚ The Bill provides for specific provisions related to any act of fraud.
- ✚ The process for declaring a company sick and its revival and rehabilitation has been rationalized.
- ✚ The National Company Law Appellate Tribunal shall now consist of a combination of technical and judicial members not exceeding 11, instead of 2 as provided in the Companies Act 1956.
- ✚ The Central Government may establish as many special courts as may be necessary to provide speedy trial of offences.
- ✚ The Central Government may establish a mediation and conciliation panel.
- ✚ The Bill makes 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.
- ✚ Where any valuation is required to be made of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the Act, it shall be valued by a registered valuer.