

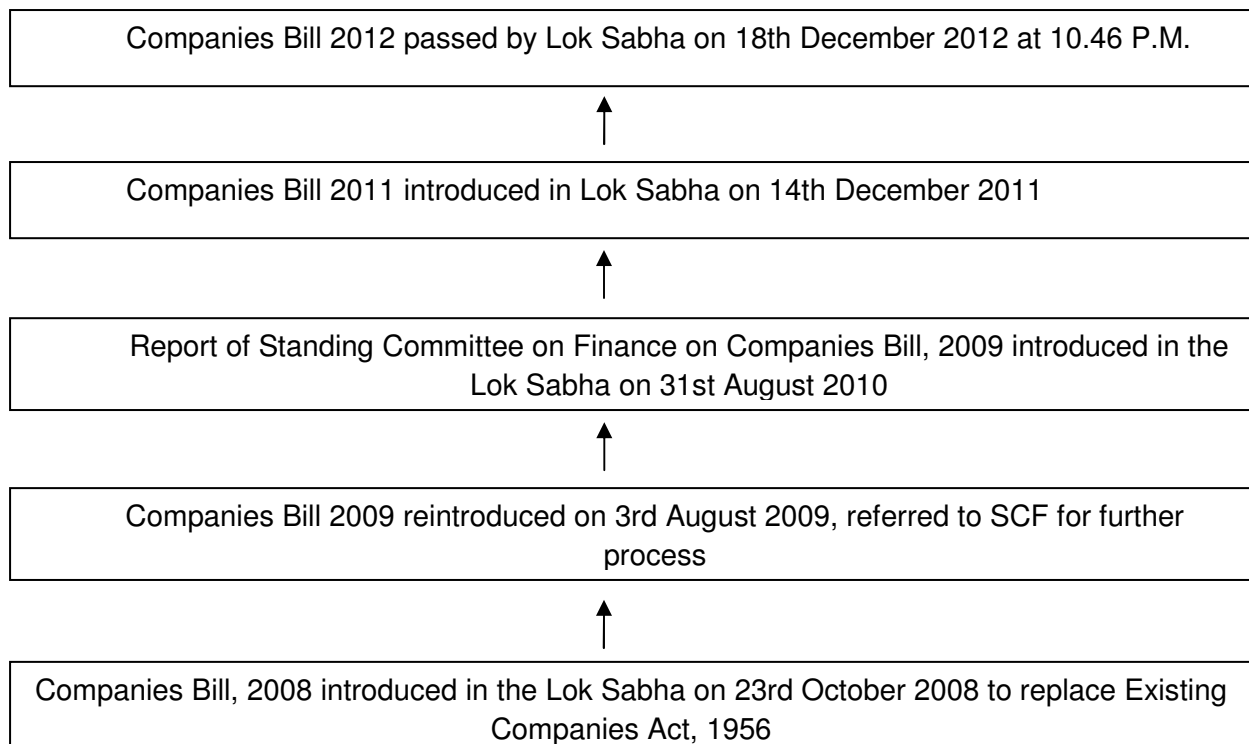
MAJOR HIGHLIGHTS OF COMPANIES BILL 2012

Companies Bill, 2012, after a very long journey and with many stumble blocks, has finally seen the light of day in Lok Sabha. After much speculation and eagerness on the subject, Lok Sabha finally approved the Bill on the night of 18th December, 2012.

As we all know, Companies Bill, 2012 is meant to replace the existing Companies Act of 1956. Companies Act, 1956, one of the most important legislation governing all companies in India is already 56 years old and much deserves the retirement that the bill proposes to give it.

Companies Bill, 2012 is a vibrant initiative, a bill which promises a better tomorrow in the form of increased investor participation and protection, tighter disclosure and fraud containment measures and a greener environment.

PATHWAY TO COMPANIES BILL, 2012



WHAT'S IN STORE FOR PROFESSIONALS

➤ COMPANY SECRETARIES

Appointment - • Certain Companies, as may be prescribed, to mandatorily appoint company secretary. • Company Secretary included within the definition of Key Managerial Personnel. • Functions of company secretary defined.	Secretarial Audit - • All Listed companies to annex secretarial audit report obtained from a Practising Company Secretary to the Board's report. • Board to respond to qualifications, made by the Secretary, in the Board's report.
Secretarial Standards - • Secretarial Standards introduced and provided statutory recognition for the first time. • Company Secretary to ensure that the company complies with the applicable Secretarial Standards.	Certification - • For all the companies (except one person companies and small companies), whether private or public, listed or unlisted, annual return has to be signed either by company secretary in employment or by a company secretary in practice. This is akin to compliance certificate u/s 383A

➤ **COST AUDITORS**

- Cost auditing standards' have been mandated.
- Central Government may direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
- The Central Government after consultation with regulatory body may direct class of companies engaged in production of such goods or providing such services as may be prescribed to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.

➤ **AUDITORS**

Appointment	Encouraging Clauses	Restrictive Clauses
• Listed Companies - Individual Auditor to retire every five years. Ten years in case of firm of Auditors • Other Companies - Auditor to be appointed for a term of 5 years in each appointment. Appointment to be ratified in each AGM.	• Internal audit may be made mandatory for prescribed companies	• Auditors not to render other services like book keeping, accounting etc. directly or indirectly to the company or its holding company or subsidiary company • Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.

KEY CHANGES PROPOSED IN THE COMPANIES BILL 2012

➤ NEW DEFINITIONS INTRODUCED IN SECTION 2

Accounting Standards	Deposit	Postal Ballot
Associate Company	Expert	Promoter
Auditing Standards	Financial Institution	Public Financial Institution
Authorised Capital	Financial Statement	Register of Companies
Books of Accounts	Foreign Company	Related Party
Called up capital	Free Reserves	Remuneration
Charge	Global Depository Receipts	Serious Fraud Investigation Office
Chartered Accountant	Independent Director	Small Company
Chief Executive Officer	Indian Depository Receipt	Subscribed capital
Chief Financial Officer	Interested Director	Sweat Equity Shares
Company Limited By Guarantee	Issued Capital	Turnover
Company Limited by Shares	Key Managerial Personnel	Unlimited Company
Company Liquidator	Notification	Voting Right
Contributory	Official Liquidator	Whole Time Director
Control	One Person Company	
Cost Accountant	Ordinary or Special Resolution	

➤ **DEFINITIONS WHICH HAVE BEEN DISCONTINUED –**

District Court	Option in Securities
Industrial Company	Operating Agency
Industrial Undertaking	Public Holiday
Information memorandum	Share with Differential Rights
Issued generally	Sick Industrial Company
State Level Institution	

➤ **CHANGES IN INCORPORATION RELATED MATTERS**

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
Maximum number of members for private companies	50 (Fifty)	200 (Two Hundred)
One Person Company	Public company to have minimum seven members and private companies to have minimum 2 members	New concept of one person company introduced which can have a single member.

Object Clause of MOA	Object clause bifurcated into – 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.
Registered Office	Companies are required to furnish the details of the Registered office of the company by filing Form 18 at the time of incorporation. Notice of every change of the situation of the registered office, shall be given to the Registrar within thirty days of the change, who shall record the same.	A company shall, on and from the fifteenth day of its incorporation have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. The company is also required to furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in a prescribed manner. Notice of every change of the situation of the registered office, shall be given to the Registrar within fifteen days of the change, who shall record the same.
Commencement of Business	Provision is applicable only to public limited companies	Applicable to all companies having share capital

➤ **CHANGES RELATING TO SHARES AND SHARE CAPITAL**

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
Issue of Shares at a discount	Section 79 permits issue of shares at discount subject to compliance with conditions.	Issue of shares at discount is prohibited except in case of sweat equity shares.
Issue of preference shares for more than 20 years	Section 80 prohibits issue of irredeemable preference shares and preference shares redeemable after 20 years.	Issue of preference shares for period exceeding 20 years is permitted for infrastructure projects.
Issue of shares on private placement, bonus shares and GDRs	No specific provision for issue of shares on private placement, bonus shares and GDRs exist in the present Act.	Specific provision introduced for issue of shares on private placement, bonus shares and GDRs in the Bill.
Consolidation and division of shares	Company permitted to consolidated or sub divide its shares by passing resolution in general meeting	Consolidation and division which results in changes in the voting percentage of shareholders shall require approval of the Tribunal to be effective.
Notice of alteration of share capital	Notice of redemption of preference shares is not required to be filed with ROC.	Company shall file a notice in the prescribed form with the Registrar within a period of thirty days of redemption of redeemable preference shares

➤ **CHANGES RELATING TO BOARD MEETING**

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
First Board Meeting	No specific time stipulated for holding first board meeting.	Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation.
Time Gap between two meetings	At least one meeting to be held in every quarter	Not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board
Length of Notice	No specific length of notice specified	Meeting of the Board shall be called by giving not less than seven days' notice.
Penalty	Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees .	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees .

CHANGES RELATING TO ANNUAL GENERAL MEETING

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
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
Time and Day	Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday .	Every annual general meeting shall be called during business hours, that is, between 9 A.M. and 6 P.M. on any day that is not a National Holiday
Length and Mode of Notice	Private companies can specify the length of notice in their Articles of Association. Written Notice mandatory.	21 days clear notice to be given by all companies. Notice may be given in writing or in electronic form in the manner prescribed.
Consent for Shorter Notice	Consent to be given by all members entitled to vote at the meeting	Consent to be given by not less than 95% of the members entitled to vote at the meeting
Quorum	Private Companies – 2 Members Public Companies – 5 Members	Private Companies – 2 Members Public Companies – 5 members where total number of members do

		not exceed 1000 - 15 members where total number of members exceed 1000 but do not exceed 5000 - 30 members where total number of members exceed 5000
Penalty	Company, and every officer of the company who is in default, shall be punishable with fine which may extend to Fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five Hundred rupees for every day after the first during which such default continues.	Company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.
Statutory Meeting	Every Public limited company to hold statutory meeting after one month but before 6 months from the date of entitlement to commence business and file statutory report with ROC	No similar provision is there in the new bill.

➤ **CHANGES RELATING TO DIRECTORS AND THEIR POWERS**

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
Maximum Number of Directors	12	15 More than 15 can be appointed by passing special resolution
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. Includes Alternate Directorship also. No specific exclusions provided.
Composition of Board	Minimum 2 directors in case of private and 3 in case of public companies. Maximum 12 Directors.	Certain class of companies to have atleast 1 women director. Every company to have atleast one director who has stayed for atleast 182 days in India in previous Calendar year. Listed Companies to have atleast 1/3rd independent directors.
Vacancy of office for not attending board meetings	The office of a director shall become vacant if he absents himself from three consecutive meetings of the Board of	The office of a director shall become vacant in case— he absents himself from all the meetings of the Board of Directors

	directors, or from all meetings of the Board, for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board	held during a period of twelve months with or without seeking leave of absence of the Board
Resignation of Director	No specific provisions contained except that any change in directors to be filed with ROC within 30 days.	Director to send copy of resignation letter and detailed reasons for resignation to Registrar within 30 days of resignation.
Disclosures in Board's report	Section 217 contains disclosure requirements of Board's report.	Additional Disclosures proposed by the bill, namely, Extract of Annual Return, Number of board meetings, CSR initiatives and policy, particulars of loans, guarantees, investments etc.
Directors responsibility statement	Section 217(2AA) prescribes the content of Director's responsibility statements which contains 4 clauses	Additional clauses proposed by the bill in respect of "Internal Financial Controls" and "Systems to ensure compliance with laws".

➤ **CHANGES RELATING TO AUDIT, AUDITORS AND ACCOUNTS**

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
Compulsory Consolidation of Accounts	Consolidation is not mandatory. Balance Sheet of subsidiary to be attached by holding company while filing return to ROC.	Companies having subsidiary company to prepare consolidated financial statements in addition to standalone statements. Subsidiary companies include Associate and Joint Ventures Also.
	Not Mandatory	Compulsory Internal Audit proposed for certain specified class of companies to be notified.
Appointment of First Auditor	Auditor to be appointed within 30 days of incorporation in a Board Meeting.	Auditor to be appointed within 30 days of incorporation in a Board Meeting else within 90 days in an EGM.
Term of Appointment of Auditor	Auditor to be appointed in each AGM.	Listed companies to appoint new auditor every five years (in case of individuals) and ten years (in case of firm of auditors). For other companies, auditor to be appointed for a term of five years in each

		appointment. Appointment to be ratified in each AGM.
Intimation of appointment and resignation.	Company to intimate auditor within 7 days and auditor to intimate ROC within 30 days. No intimation required to be given to ROC.	Company to file intimation of appointment of auditor with Registrar within 15 days of meeting in which appointed. On resignation, auditor to file statement with company and Registrar within 30 days.
Attendance at AGM	Auditor is entitled but not obligated to attend AGM.	Auditors to attend all general meetings unless specifically exempted by the company.
Financial Year and extension	Financial year not to exceed fifteen months. Financial year can end on date other than 31 st March. Financial Year can be extended up to 18 months by ROC.	Financial year to end on 31st March every year for all companies. No provision regarding extension of financial year
Certification	Balance Sheet and Profit & Loss Account to be signed by Manager or Secretary, if any, and by not less than 2 directors one of whom shall be the MD where there is one.	Financial statements can be signed by Chairman alone if so authorised by the Board.

➤ **CHANGES RELATING TO CHARGES AND THEIR REGISTRATION**

Basis for comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2012
Definition	Inclusive definition of charge given in the present Act – “Charge to include mortgage”.	Charge defined as - “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage
Registration of pledge	Pledge of movable property does not require registration with ROC.	Bill proposes to withdraw this exemption.
Registration of all charges	Present Act specifies only 9 types of charges which require registration.	Company to register all charges within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India with ROC within 30 days.

➤ **CHANGES RELATING TO INSPECTION, INQUIRY AND INVESTIGATIONS**

- Statutory status to SFIO proposed.
- SFIO is given wide powers
- Stringent penalty provided for fraud related offences
- SFIO’s report to be treated as report filed by Police Officer.

- SFIO will have power to arrest in certain cases which attract punishment for Fraud and person accused of such offence shall be released on bail subject to conditions as mentioned in the relevant provisions of this bill.
- Protection of employees during investigation by the authority is provided.
- During inquiry and investigation or on request of creditor having due of more than one lakh, the central government may by order direct that transfer, removal or disposal of funds, assets, properties of the company shall not take place during such period not exceeding three years or may put restrictions and conditions as deemed fit.
- Foreign companies are also covered under the chapter.

➤ **CHANGES RELATING TO COMPROMISES AND ARRANGEMENTS**

- Simplified procedure for compromise or arrangement between two or more small companies or between holding and wholly owned subsidiaries introduced.
- Cross-border mergers permitted with any foreign company with prior approval of RBI. Countries and rules to be notified by Central Government. Consideration can be in cash or in Depository receipts or partly in cash and partly in Depository receipts
- Objections to the compromise or arrangement shall be made only by persons holding not less than 10% of shareholding or having outstanding debt amounting to not less than 5% percent of total outstanding debt as per the latest audited financial statement.
- The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.

- Auditor of the company shall confirm that, accounting treatment proposed in scheme of compromise or arrangement is in conformity with Accounting standards prescribed under section 133. The certificate needs to be filed with tribunal.
- Notice of scheme along with documents shall also be sent to SEBI, RBI, IT authorities, Registrar, stock exchanges, official liquidator, Competition commission of India and other sector regulators or authorities which are likely to be affected by the compromise or arrangement and the representation of authorities shall be made within thirty days from the date of receipt of documents, failing which it would be presumed that, they have no representations to make.
- Certificate from company secretary/chartered accountant/cost accountant in practice is required to be filed with Registrar in such form as to whether the scheme is being complied in accordance with the orders of tribunal or not.
- New terminologies “merger by absorption” and “Merger by formation of a new company” introduced.
- In a creditor compromise, report of the auditor that fund requirement after restructuring shall conform to liquidity test based on estimates provided to them by board needs to be provided
- The entire rehabilitation and liquidation process has been made time bound.
- Winding up is to be resorted to only when revival is not feasible.

OTHER MISCELLANEOUS CHANGES

- **Annual Return** - Requirement of compliance certificate done away with and in its place scope of annual return has been enlarged. Annual Return to be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice. The annual return, filed by a listed company or, by a company

having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

- **Key Managerial Personnel** - No company can have both Managing Director and Manager at the same time. Every company belonging to such class or description of companies as may be prescribed, to have managing director, or chief executive officer or manager and in their absence, a whole-time director, company secretary and chief financial officer. Individual limits for remuneration enhanced in the Bill
- **Related Party Transactions** – Scope of related party transactions has been widened and definition of relatives has also been enlarged and replaced with definition of “related party”. Clause 188 of the bill which carries provisions regarding related party transactions, combines existing sections 297 and 314. Central Government Approval has been done away with. Every related party transaction to be disclosed in Board’s report.
- **Secretarial Audit** - Secretarial Audit mandated for all listed companies and certain other class of companies. Board to respond to qualifications contained in Secretarial Audit by means of explanation in Board’s report.
- **Secretarial Standards** - Statutory recognition given to Secretarial Standards.

- **Corporate Social Responsibility** - Followings Companies Shall constitute a CSR Committee:

Net worth of rupees five hundred crore or more, or

Turnover of rupees one thousand crore or more, or

Net profit of rupees five crore or more

Committee to consist of at least three directors out of which at least one should be independent director. Board to ensure that at least 2% of the average net profits of last 3 years is spent by the company on CSR activities every financial year, else reasons for not spending to be specified in the Board's report.

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