SUMMARY

After much delay and deliberations, the Companies Bill, 2012 ("Bill") which seeks to revise and modify the existing company law, in consonance with changes in national and international economic environment, has been passed by the Lok Sabha i.e. the lower house of the Indian Parliament, on Tuesday, December 18, 2012. The Bill still needs to be presented at Rajya Sabha i.e., the upper house for its approval and thereafter to the President for his assent. In the view of changes in the national and international economic environment, expansion and growth of economy of our country and on the consultation with J.J.Irani Committee the replacement of the 55 years old act was sought.

BACKGROUND

The Companies Act 1956 was enacted on the recommendations of the Bhaba Committee set up in 1950 with the object to consolidate the existing corporate laws and to provide a new basis for corporate operation in independent India. With enactment of this legislation in 1956, the Companies Act 1913 was repealed. The Companies Act, 1956, has since provided the legal framework for corporate entities in India.

The need for streamlining this Act was felt from time to time as the corporate sector grew in pace with the Indian economy, with as many as 24 amendments taking place since 1956. Major amendments to the Act were made through Companies (Amendment) Act, 1988 after considering the Recommendations of the Sachar Committee, and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act 2002, consequent to the report of the Eradi Committee.

The J.J Irani Committee was constituted on 2nd December, 2004 under the chairmanship of Dr. J J Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956.

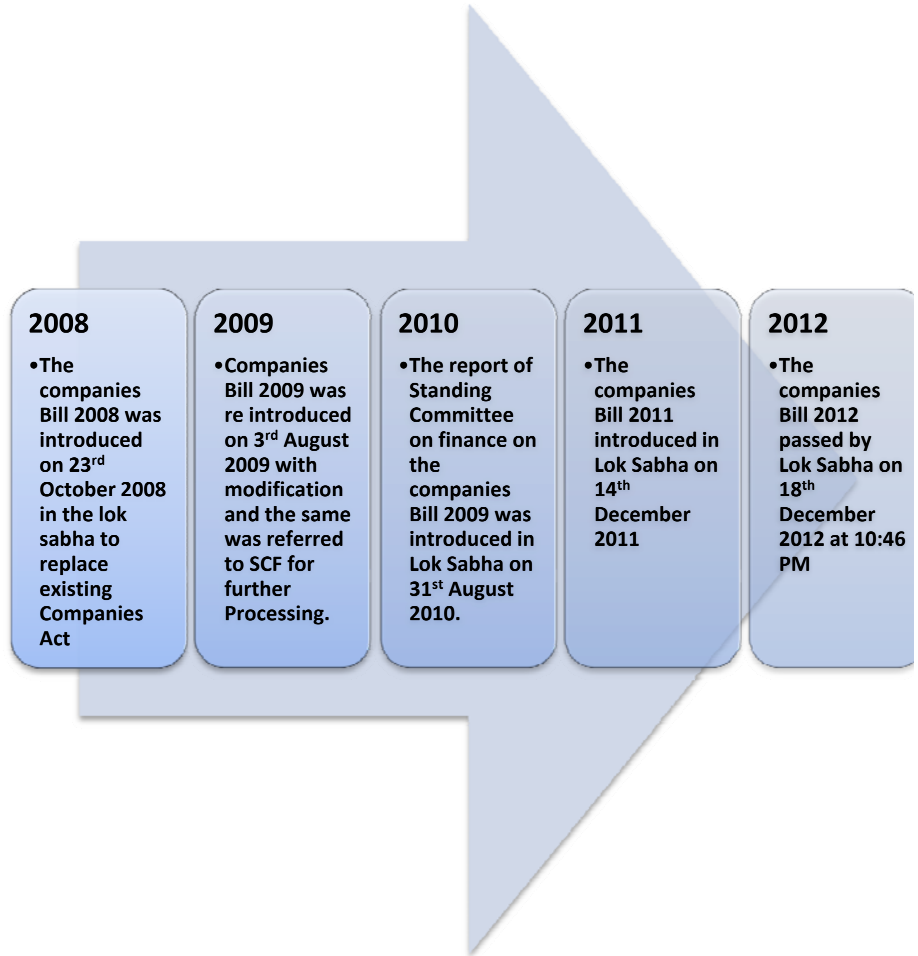
ADAPTATION TO CHANGING CIRCUMSTANCES

The existing Companies Act, 1956 is a voluminous document with 781 sections. It also contains provisions that cover aspects which are essentially procedural in nature. In certain areas, it prescribes quantitative limits which are now irrelevant on account of changes that have taken place over a period of time. This format has also resulted in the law becoming very rigid since any change requires an amendment of the law through the parliamentary process. Therefore, the law has failed to take into account the changes in the national and international economic
Scenario speedily. As a result, in some quarters, it is being regarded as outdated.

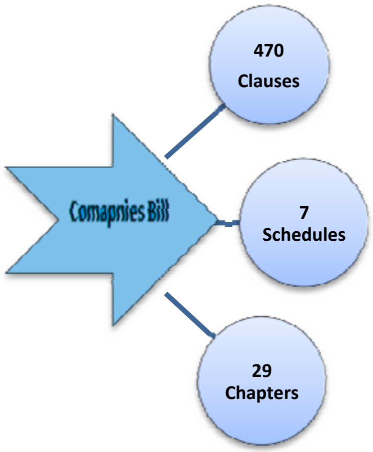
SOME QUICK BITES

- Financial Year (1st April to 31st March)
- Number Of Members (from 50 to 200)
- Concept of One Person Company
- Concept of Dormant Company
- Ambit of "Officer in default" widened
- Merger of Indian Co. with Foreign Co. and vice-versa
- At least one woman director on the Board of such class or classes of companies as may be prescribed.
- Provisions of Postal Ballot made applicable on all companies
- Introduction to (CSR) Corporate Social Responsibility
- All types of securities to be governed by the Bill.
- Compulsorily rotation for Individual auditors every 5 years and audit firm every 10 years in listed companies & certain other classes of companies, as may be prescribed.
- A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.
- No permission of central government required to give a loan to a director.

ROAD MAP TO COMPANIES BILL 2012



SCHEME OF THE BILL



MAJOR CHAPTERWISE HIGHLIGHT

1. Preliminary

- Substantial part of Bill to be in the form of Rules.
- Limit of members in Pvt. Company increased to 200
- Share transfer agents, registrars and merchant bankers to the issue or transfer & CFO, brought under the ambit of Officer in default.
- No Extension of financial year.(F.Y April –March only)
- 33 New definitions introduced.

2. Incorporation

- Incorporation of One Person Company permitted.
- Private Company which is a subsidiary of a public company shall be regarded as Public company.
- As part of incorporation process, the subscribers shall be required to provide affidavit stating that they are not convicted of any offence in connection with promotion, formation and management of company.
- No Bifurcation of objects between main, ancillary and others in Memorandum of Association.

3. Prospectus & Allotment of Shares

- Public company can issue securities only through public offer or private placement or by way of bonus or right issue..
- More comprehensive content of prospectus.
- Provides for provisions relating to offer of sale by existing shareholders.
- QIB is out of the preview of private placement.
- Exit opportunity to shareholders in case of variation of contract terms of Prospectus.

4. Share Capital & Debenture

- Company cannot issue shares at a discount *save and except* in case of Sweat Equity Shares.
- Scope relating to transfer & transmission widened to include all types of securities.
- Provision relating to further issue of share capital including preference issue & bonus issue are also made applicable to private companies.

- Any consolidation and division of share capital by companies which results in change in the voting percentage of shareholders, shall require the prior approval of the NCLT(National Company Law Tribunal).
- Minimum gap between two Buy-backs of securities shall be one year irrespective of whether the same is approved by board of directors or by shareholders.

5. Acceptance of Deposit by Companies

- NBFC's accepting deposits shall be governed by the RBI and is out of the preview of Acceptance & deposits.
- Companies can accept deposit only from its members after the approval of shareholders.(under Companies Act 1956, no approval was required)
- Separate provisions for public companies accepting deposits from non-members

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6. Registration of Charge

- All types of charges would be required to be registered.
- Specific list of cases requiring registration has been dispensed with.

7. Management & Administration

- E-Governance introduced for various company processes including maintenance and inspection of company's statutory records.
- Secretarial Audit is made mandatory for all listed companies and prescribed classes.
- Secretarial standard with respect to the meetings of board and shareholders issued by ICSI granted statutory recognition.
- Companies are prohibited from making investment through more than 2 layers of investment companies.
- First Annual General Meeting shall be held within a period of 9 months from closure of its fist financial year instead of 18 months from the date of incorporation ,as provided in Companies Act 1956.
- Provision of Postal ballot shall be applicable on all companies whether listed or not.
- Variable Quorum in Public companies based upon number of members.

8. Declaration & Payment of Dividend

- Shareholders/Claimants are entitled to claim dividends transferred to Investor Education & protection Fund.
- Transfer of prescribed sum to reserves before declaration of any dividend has been left at the discretionary of the company.
- Any non compliance with the provisions relating to acceptance and repayment of deposit, shall bar the company to declare any dividend during the period of such non compliance.
- Average dividend rate (last 3 years) to be considered if there is loss in any quarter ended before the date of declaration.

9. Accounts of companies

- Bill recognizes the fact that books of accounts may be kept in electronic form also.
- Bill provides for provision for re-opening & re-casting of accounts of the company.
- Introduction of Corporate Social Responsibility
- 2%of average net profit of 3 preceding financial years to be spent annually towards CSR policy

- Placing of consolidated Financial Statement of all Subsidiaries, Associates and Joint Venture in the AGM.

10. Audit & Auditors

- Appointment of auditor for minimum 5 years.
- Mandatory rotation of auditors every 5 years, in listed companies.
- Ratification of appointment of auditors by members at every AGM has been made mandatory.
- Shareholders are at liberty to decide by passing resolution that audit partner and the audit team be rotated every year.
- Bill provides for certain new disqualification for Auditors
- A company's auditor shall not provide, directly or indirectly, the specified services to the company, its holding and subsidiary company.

11. Appointment & Qualification of Directors

- Provision of women and resident director on the Board of Directors.
- Specific provisions for Independent Director.
- Provision for limiting the liability of Independent and non executive Director.
- New Disqualification for the Directors has been added.
- Maximum limit of directors in a company has been increased to 15 from 12 as provided in the Company's Act 1956.
- Maximum number of directorship of individual in public companies has been brought down to 10 from 15.

12. Meeting of Board & its powers

- Listed companies and such other companies as may be prescribed shall have an Audit Committee.
- Stakeholders Relationship Committee to be formed in case the no. of shareholders reaches 1000.
- The limit of political contribution has been increased from 5% to 7.5% of the average net profits of the company during the three immediately preceding financial years.
- The requirement of permission of central government for giving loan to Directors has been dispensed with.
- The provision related to Inter-Corporate Loan & Investment(section 372A of companies Act 1956) has been extended to include loan to any person.
- Companies are prohibited from making investment through more than 2 layers of investment companies.

13. Appointment & Remuneration of Managerial Personnel

- Provision relating to appointment & remuneration of managerial personnel has been made applicable on private companies also.
- Approval of CG required in case of appointment incompatible with schedules.
- Payment of remuneration in excess of the specified limits , without CG approval.
- Mandatory secretarial audit for prescribed companies.

14. Inspection, Inquiry & Investigation

- KMP, Auditors and CS in practice under the preview of search and Seizure.
- No Provision for inspection and investigation by SEBI
- Provision for inspection of related company affairs.
- Investigation once initiated, shall neither be stopped nor be suspended even in case winding up is approved by shareholders.
- During investigation , if any person mutilates, destroy, makes false entry or provides false information , shall be punished with imprisonment of not less than 6 months but may extend to 10 years and shall also liable for fine.

15. Compromise , arrangement & amalgamations

- Bill prohibits creation of Treasury Stock/trust Shares.
- Provision for cross border amalgamations
- Separate provision for merger & amalgamation between two small companies and holding company with a wholly owned subsidiary .
- No compromise or arrangement shall be sanctioned by the tribunal unless a certificate by the company's auditor has been filed with the tribunal.

16. Prevention of Oppression & Mismanagement

- An application for oppression or mismanagement shall be filed to National Company Law Tribunal instead of Company Law Board .
- Introduction of Class Action , for preserving the right of Members and Depositors

17. Registered Valuer

- Appointment of registered valuer for carrying out the valuation of Company's property.
- Mandatory valuation by registered valuer is required in certain cases.

18. Removal of name of company from Register of Companies

- Conditions for removal of name from register of companies has been changed.
- Power has been provided to the registrar for restoration of name of company on filing an application to the tribunal.

19. Revival & Rehabilitation of Sick Companies

- Complete rationalization of revival & rehabilitation of sick companies.
- Any company can be declared as Sick , not only industrial company.
- Criteria of Erosion of 50% of the net worth for being sick have been dispensed with.

20. Special Courts

- Central Government may, for the purpose of providing speedy trial of offences, by notification establish as many Special Courts as necessary.

21. Miscellaneous

- Offences punishable with fine are only compoundable under the bill.
- Other Punishable offences will be compoundable with the permission of special court.
- Specific provisions related to any act of fraud has been notified.
- Provision for dormant status of company.

BRAIN WAVE

One Person Company

Passage of the Companies Bill in Parliament paved the way for a new concept of ‘One Person’ company’ (OPC). Under the Companies Act, 1956, at least two people are required to form a company. The new concept will provide an opportunity to Indian entrepreneurs to enter the corporate world without even adding a family member to the venture, which they, at times, do just for the sake of a second name.

An OPC can be formed by subscribing the name of a person to the memorandum and complying with the requirements of the Act in respect of registration. As regards the name of an OPC, new Bill provides that the words “one person company” shall be mentioned in brackets below the name of such a company, wherever its name is printed, affixed or engraved.

Dormant Company

A company formed for a future project or hold an asset or intellectual property and has no significant accounting transaction such a company or an inactive company can apply to the registrar for the status of dormant company. The registrar on consideration of the application shall allow the status of dormant company to the applicant and issue such certificate as may be prescribed to that effect. The registrar shall maintain the register of dormant company in the form as may be prescribed.

The dormant company shall have a minimum number of directors , files such documents and pay such annual fees as may be prescribed to the registrar to retain its dormant status in the register. The registrar will strike off the name of that company form the register of dormant company when it fails to comply with the requirement of this section.

Corporate Social Responsibility(CSR)

This is a new initiative of Ministry of Corporate Affairs to ask corporate to contribute towards society. It is a paradigm shift in this area since earlier there was an only voluntary guideline for CSR and now there is a mandatory provision for CSR by some prescribed companies which is expected to cover a huge number of companies in India.

One of the important factor to consider that there is no penalty prescribed for non contribution to CSR, even if fall in prescribed conditions.

Companies that have a turnover of over Rs 1,000 crore; or have a net worth of Rs 500 crore; or that have recorded a net profit of Rs 5 crore, would be covered under the regime of CSR. These companies are expected to spend 2 per cent of their profit in preceding three financial years towards CSR.

The bill says, they're "expected" to…meaning it is not compulsory to spend money. BUT, the same bill provides that:

- Board of directors will be responsible for seeing that company spends money for CSR.
- It is compulsory to send report on the CSR-spending to the Corporate Affairs Minister.
- If company is not spending money for CSR, it'll have to explain why they are not doing so.
- Companies that do not report will face a penal
- ty ranging from Rs 50,000 to Rs 25 lakh or even imprisonment of up to three years

The requirement of reporting failure would motivate companies to undertake these activities. If done properly, such activities may have significant positive impact in the local areas.

----------------------------------THE END----------------------------------