Companies Bill 2012
The Dawn of a New Era

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COMPANIES BILL .....A VIBRANT INITIATIVE

The entire corporate India woke up to the morning of 19th December 2012 with a fresh breeze, new hopes and exciting challenges. With just two days left for the much hyped Armageddon of 21st December 2012 when the world was supposed to end as per a famous prediction, the Lok Sabha passed the much awaited Companies Bill, 2012 which marks the dawn of a new era, an era of progressive thinking, greater investor democracy and higher corporate growth with higher responsibility.

The Companies Bill, 2012 is all set to replace the 55 Year old Companies Act of 1956 which has been the single most important legislation for all incorporated companies in India and bread and butter for many professionals.

In this write up we have made a modest attempt to bring out the major and key changes to be introduced by the Companies Bill of 2012.

ROAD MAP TO COMPANIES BILL, 2012

2008

- Companies Bill, 2008 was introduced on 23rd October 2008 in the Lok Sabha to Replace Existing Companies Act, 1956

2009

- Companies Bill 2009 was reintroduced on 3rd August 2009 in the Lok Sabha to replace Existing Companies Act, 1956 with modifications and the same was referred to SCF for further process

2010

- Report of Standing Committe on finance on companies bill,2009 was introduced in the lok sabha on 31st August 2010

2011

- Companies Bill 2011 introduced in Lok Sabha on 14th December 2011

2012

- **Companies Bill 2012 passed by Lok Sabha on 18th December 2012 at 10.46 P.M.**

AUDITORS

Appointment

- 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.

Favourable Clauses

- Internal audit may be made mandatory for prescribed companies
- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies

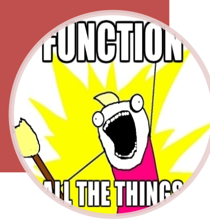
Restrictive Clauses

- 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 .

COMPANY SECRETARIES

- Company Secretary included within the definition of Key Managerial Personnel.
- Certain Companies , as may be prescribed, to mandatorily appoint company secretary
- Functions of company secretary defined in the bill.

Appointment



- 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 Audit

- Secretarial Standards introduced and provided statutory recognition for the first time.
- Company Secretary to ensure that the company complies with the applicable Secretarial Standards.

Secretarial Standards

- For all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice. This is akin to complaince certificate u/s 383A

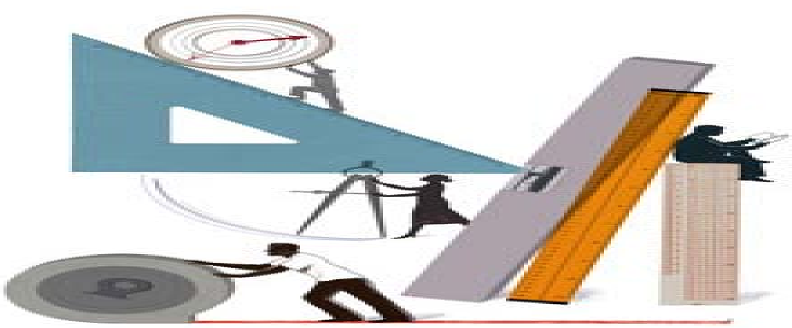
Certification

COST AUDITORS

Cost auditing standards' have been mandated.

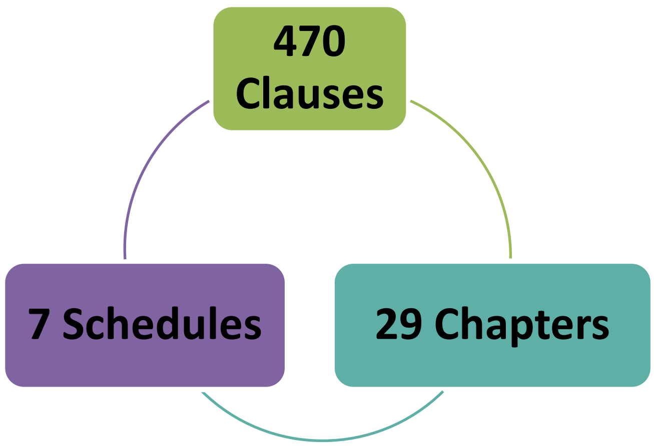
Central Government may direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

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.



UNDERSTANDING THE DYNAMICS OF COMPANIES BILL 2012

SCHEME OF THE BILL



A Very substantial part of the Act will be in the form of rules which will be prescribed separately.

SOME NEW DEFINITIONS

- **THE BILL PRESCRIBES 33 NEW DEFINITIONS.**
- **SOME OF THE MAJOR NEW DEFINITIONS ARE**

Private company 2(68):

Except **One Person Company** private company limits number of members to two hundred.

One Person Company 2(62):

Can be incorporated only as a private company. Word **"One Person Company"** should be mentioned below the name of the company.

SMALL COMPANY: 2(85)

It cannot be a public Company, Holding or Subsidiary, Company registered under section 8 or body corporate governed any special act. Paid-Up capital does not exceed **₹50,00,000.**

DORMANT COMPANY: 455

A Company formed and registered under the act for a future project (or) to hold an asset or intellectual property and has no accounting transaction can be called as **"DORMANT COMPANY"**

INACTIVE COMPANY:

When a company does not carry on any business, has not made any accounting transactions and has not filed returns with the ROC for the last two years will come under the category of **"INACTIVE COMPANY"**

INCORPORATION OF COMPANIES

No requirement as to bifurcation of the objects clause into main, ancillary and other objects. Company cannot provide for other object clause.

Any company having share capital shall not commence business or borrow money unless it has filed 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 of Companies.

Registered Office Address not mandatory at the time of incorporation. All changes in registered office to be communicated to ROC within 15 days.

SHARE ALLOTMENT AND CAPITAL

- **The Bill governs the issue of all types of securities, not only shares and debentures.**

- **Contents of prospectus have been made more detailed.**
- **Public Companies can make issue only through public issue/private placement/rights issue/bonus issue.**
- **Return of allotment to be filed for issuance of all types of securities**
- **Companies cannot issue shares at discount other than as sweat equity.**
- **Apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the 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.**

MAINTENANCE OF ACCOUNTS

Maintenance of Accounts in electronic form permitted.

Financials statements to include Balance Sheet, Profit & Loss and Cash Flow Statement.

No provision regarding extension of financial year. Financial year to end on 31st March every year for all companies.

Consoliation made mandatory for companies having subsidiaries, associates and Joint Ventures.

Financial statements can be signed by Chairman alone if so authorised by the Board.

FILING OF REPORTS AND RETURNS

Disclosures required in Board's report have been made more comprehensive. Board's report to include extract of annual return, number of board meetings etc

Annual return to be made up to end of financial year not up to date of AGM. Scope of return enlarged to great extent.

All annual returns as stated above to be certified either by company secretary of the Company or by a Company Secretary in practice.

Annual return to be filed within 30 days of holding of AGM

Every Listed company to file return to ROC regarding changes in shares held by promoters and top 10 shareholders within 15 days of the change.

ANNUAL GENERAL MEETING

- Business hours for holding AGM specified as 9.00 A.m. to 6.00 P.M. Word public holiday is replaced with National Holiday.

- First AGM to be held within 9 months of closure of first financial year and subsequent AGM within 6 months. Option to hold first AGM within 18 months of incorporation or 9 months of Closure of financial year whichever is earlier, removed.

- Quorum for general body meetings of public companies will depend upon the number of shareholders.

- Notice in electronic form permitted.

- Secretarial Standards issued by ICSI to be observed

AUDIT AND AUDITORS

- 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.

- Members may pass resolution to make mandatory rotation of auditor partner and his team every year or requiring audit by more than one auditor.

- Members by an ordinary resolution can specify the number of companies beyond which the auditor or audit firm shall not become auditor.

- First auditor to be appointed by the Board within 30 days of incorporation, otherwise by Members in an EGM within 90 days of incorporation.

- 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.

- Auditors to attend all general meetings unless specifically exempted by the company.

DIRECTORS – APPOINTMENT, QUALIFICATIONS AND MEETINGS

Maximum Number of Directors

- Increased from 12 to 15
- More than 15 can be appointed by passing special resolution

Composition of the Board

- 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 calender year
- Listed Companies to have atleast 1/3rd independent directors.

Maximum Number of Directorship

- Increased from 15 to 20
- Includes alternate directorship.
- Maximum number of public companies in which person can hold directorship limited to 10 including private companies which are holding or subsidiary companies.
- Members, by passing special resolution can limit the number of companies in which person can act as director

Resignation of Director

- Director to send copy of resignation letter and detailed reasons for resignation to Registrar within 30 days of resignation.
- The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later

Meetings

- First Meeting to be held within 30 days of incorporation
- Not more than 120 days to lapse between 2 meetings
- Meetings through video conferencing and other audio visuas modes permitted.
- Presence of independent director mandatory in case of meetings called at shorter notice.

KEY MANAGERIAL PERSONNEL AND THEIR REMUNERATION

- No company can have both Managing Director and Manager at the same time.
- Provisions relating to limits on remuneration provided in the existing Act remain in the Bill. Maximum limit of 11% (of net profits) being retained.
- 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.

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.
- Functions of Company Secretary prescribed.

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.

INVESTOR PROTECTION AND FRAUD CONTAINEMENT MEASURES

- **SEBI to make regulations and administer Issue and transfer of securities and non-payment of dividend by listed companies.**
- **New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included**
- **Provision introduced for class action suits**
- **The term "Fraud" defined for the first time.**
- **Statutory status to SFIO has been proposed. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud.**

ARRANGEMENTS, LIQUIDATIONS AND RECONSTRUCTIONS

- **Cross-border mergers permitted with any foreign company. Countries to be notified by Central Government.**
- **The entire rehabilitation and liquidation process has been made time bound.**
- **Winding up is to be resorted to only when revival is not feasible.**
- **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.**
- **Tribunal shall order for winding up of the company if revival scheme is not approved by the creditors.**