NEW CONCEPTS INTRODUCED BY COMPANIES BILL 2012 Compiled by CA Anil Bhusal

New concept 1: One Person Company

As per the new Companies Bill 2012 One person company means a Company which has only one person as a member. A one Person Company is treated as Private Company only,

New concept 2: Independent Directors

• Concept of independent directors has been introduced for the first time in Company Law: [clause 149(5)]

• All listed companies shall have at least one-third of the Board as independent directors.

• Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.

• The independent director has been clearly defined in the Bill.

• Nominee director nominated by any financial institution, or in pursuance of any agreement, or appointed by any government to represent its shareholding shall not be deemed to be an independent director.

• An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

• An Independent director shall not be entitled to any stock option.

• Only an independent director can be appointed as alternate director to an independent director. [clause 161(2)].

New Concept 3: Women Director (Clouse 149)

At least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

New concept 4: Class Action Suits

• For the first time, a provision has been made for class action suits. It is provided that specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.

• Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

• The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. (clause 245)

New concept 5: Treasury Stock

The new bill bans holding 'Treasury Stock', which is often used by companies to increase shareholding or future monetisation after consolidation.

New concept 6: Corporate Social Responsibility

• Companies requiring to constite a CSR committee:
- Networth of Rs.500 crore or more
- Turnover of Rs.1,000 crore or more
- Net profit of Rs.5 crore or more in any financial year

• To spend in every financial year at least 2% of the average net profits of the co during the three immediately preceding financial years

• CSR committee to have:
- Three or more directors
- At least one is to be an independent director

• CSR committee will:
- Formulate CSR policy and recommend to board
- Recommend the amount of expenditure to be incurred
- Monitor CSR policy from time to time

• Schedule VII to the Bill lists out the activities which can be considered

• Company to give preference to local areas and areas around which it operates

New concept 7: Secretarial Audit (Clause 204)

• Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be prescribed.

• It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice, for auditing the secretarial and related records of the company.

• The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in his report.

• If a company or any officer of the company or the Company Secretary in Practice, contravenes the provisions of this section, the company, every officer of the company or the Company Secretary in Practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

New concept 8: Registered Valuer (Clouse 247)

• A new chapter has been inserted in relation to registered valuers.

• Valuation in respect of any property, stock, shares, debentures, securities, goodwill, networth or assets of a company shall be valued by a person registered as a valuer.

• The Central Government shall maintain a register of valuers.

The valuer shall be a person having such qualification and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed.

New concept 9: Cross Border Merger (Clouse 234)

• The Bill has allowed cross border mergers with any foreign company;

• The cross border merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

New concept 10: Associates Company

A company is considered to be an associate company of the other, if the other company has significant influence over such company (not being a subsidiary) or is a joint venture company. Significant influence means control of at least 20 per cent. of total share capital of a company or of business decisions under an agreement.

New concept 11: Rotation of Auditors

• Listed companies and prescribed class of companies cannot have the same auditor

- In case of a firm, after two terms of 5 years each
- In case of an individual, after one term of 5 years

• Such outgoing audit firm cannot become auditor for a period of 5 years
• The prohibition covers firms which have common partners too
• Such rotation will have to be effected by companies covered by this requirement within 3 years of the date of commencement of this law
• In addition, the companies (all and not only those covered above) can decide

- To have audit partner and team rotation at such intervals as may be decided
- To have joint auditors

New concept 12: Dormant Company

Where a company is formed and registered under this Act 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 for obtaining the status of a dormant company.