THE COMPANIES BILL, 2008*

(*Highlights*)

The Companies Bill, 2008 was introduced by the Government in the Lok Sabha on October 23, 2008. Consequently, the Companies (Amendment) Bill, 2003 introduced in Rajya Sabha on 7th May, 2003 was withdrawn on 21st October, 2008.

The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs on the basis of a **detailed consultative process.** A 'Concept Paper on new Company Law' was issued by the Govenment on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December 2004 which submitted its report to the Government on 31st May 2005.

HIGHLIGHTS OF THE COMPANIES BILL, 2008

- Introduced in Lok Sabha on October 23, 2008.
- The Bill has 426 clauses as against 658 Sections in the existing Companies Act, 1956.
- The entire bill has been divided into 28 chapters.
- Many new chapters have been introduced, viz., Registered Valuers (ch.17) ; Government companies (ch. 22); Companies to furnish information or statistics (ch. 24); Nidhis (ch. 25); National Company Law Tribunal & Appellate Tribunal (ch. 26); Special Courts (ch. 27).
- The Bill is forward looking in its approach which empowers Central Government to make rules, etc. through delegated legislation and after having detailed consultative process (clause 426 and others).

The salient and unique features of the Bill are as under :

The Companies Bill is the result of detailed consultative process adopted by the Government.

Classification and registration

- **Concept of One Person Company (OPC limited)** has been introduced [clause 2(zzk)].
- **Small companies have been defined** (maximum paid-up share capital not exceeding Rs.5 crores) and have been subjected to a less stringent regulatory framework [clause 2(zzzg)].
- Registration process has been faster and compatible with e-governance.
- The memorandum of a company shall be in such form as may be prescribed [clause 5(6)].
- For the first time, **provision for entrenchment** has been proposed in the Bill [clause 6(3)].
- For the first time, provision for **re-registration of companies** already registered, has been introduced [clause 17].
- A declaration in the prescribed form is required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with. Company Secretaries continue to be recognized for the purpose of giving this declaration. (clause 7).

BOARD AND GOVERNANCE

"Key Managerial Personnel (KMP), in relation to a company, means—

(i) the Managing Director, the Chief Executive Officer or the Manager and where there is no Managing Director or Manager, a whole-time director or directors;

(ii) **the Company Secretary**; and

(iii) the Chief Financial Officer;" [clause 2(zza)].

- Every company belonging to such class or description of companies as may be prescribed shall have Whole-Time Key Managerial Personnel. [clause 178 (1)].
- **Every Company Secretary being a KMP shall be appointed by a resolution of the Board** which shall contain the terms and conditions of appointment including the remuneration. If any vacancy in the office of KMP is created, the same shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy. [clause 178 (2) & (4)].
- If a company does not appoint a Company Secretary, the penalty proposed is :

  On company – one lakh rupees

  On every director and KMP who is in default – 25,000 rupees for each such default.
- Every company shall have at least **one director resident in India** [clause 132(2)].
- Concept of **independent directors** has been introduced for the first time in Company Law: [clause 132(5)].
  - All listed companies are required to appoint independent directors.
  - Such other public companies and subsidiaries of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
  - **At least one-third of the Board should comprise of independent directors.**
  - The independent director has been clearly defined in the Bill.

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- **Nominee director appointed by any 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 and stock options as may be approved by the members.
- Only an independent director can be appointed as alternate director to an independent director. [clause 142(2)].

- There is a comprehensive revision of the provisions relating to payment of **managerial remuneration**. **No limits have been laid down on the quantum of remuneration to be paid**. [clause 175].
- **No limit has been prescribed on payment of sitting fees to the directors.** Accordingly, a director who is neither a whole-time director nor a managing director may be paid remuneration in the form of fee for attending meetings of the Board or Committees thereof and as profit related commission with the prior approval of members by special resolution. [clause 176].
- **Participation of directors at Board Meetings has been permitted through video-conferencing or other electronic means**, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out [clause 154(2)].

  The Central Government may however, by notification, specify such matters which shall not be dealt with in the meeting through video-conferencing and such other electronic means as may be prescribed. [clause 154(1)].
- Besides the Audit Committee, the **constitution of Remuneration Committee has also been made mandatory** in the case of listed companies and such other class or description of companies as may be prescribed. [clause 158(1)].

  The **Audit committee** shall consist of a minimum of three directors with **independent directors** forming a majority and at least one director having financial knowledge. [clause 158(2)].

  The Remuneration Committee shall consist of non-executive director(s) with at least one independent director. [clause 158(10)].
- Where the combined membership of the shareholders, debenture holders and other security holders is more than one thousand at any time during the financial year, the company shall constitute a **Stakeholders' Relationship Committee**. The Chairman of the Committee shall be a non-executive director. [clause 158(12)].
- **At least seven days notice is required to be given for a Board meeting. The notice may be sent by electronic means** to every director at his address registered with the company. [clause 154(3)].
- A Board Meeting may be called at **shorter notice** subject to the condition that **at least one independent director**, if any, shall be present at the meeting. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director. [clause 154(3)].
- A director may **resign from** his office by giving notice in writing. The Board shall, on receipt of such notice, intimate the Registrar and also place such resignation in the subsequent general meeting of the company. [clause 149(1)].

  The notice shall become effective 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. [clause 149(2)].
- **If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting** [clause 149(4)].
- **Duties of directors have been specified in the Bill** [clause 147].
- If a person other than retiring director stands for directorship but fails to get appointed, he shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total votes cast. [clause 141(1)].
- The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or **Company Secretary** for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, **shall not be treated as part of the remuneration** payable to any such personnel. [clause 175 (2)].

General Meetings

- To encourage wider participation of shareholders at General Meetings, **the members have been permitted to exercise their vote at meetings by electronic means.** [clause 97].
- Every listed company shall prepare **a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made thereunder. The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM with such fee as may be prescribed. Non-filing of the report has been made a punishable offence**. [clause 109].
- One person companies have been given the option to dispense with the requirement of holding an AGM. [clause 85(1)].

- For the first time, **the concept of Secretarial Standards has been introduced. Every company is required to observe such Secretarial Standards as may be prescribed with respect to General and Board Meetings.** [Clause 107 (10)].

Investor Protection Measures

- **Issue and transfer** of securities and non-payment of dividend by listed companies, has to be administered by SEBI by making regulations. (Clause 22).
- An **act of fraudulent inducement** of persons to invest money is **punishable with imprisonment** for a term which may extend to three years and with fine which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees. (Clause 31).
- **A suit may be filed by a person who is affected by any misleading statement** or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement. (Clause 32).
- A company may accept **deposits subject to fulfillment of the following conditions** (Clause 66) :
  (i) passing of resolution in a general meeting.
  (ii) issue of circular to members including therein a statement showing the financial position of the company, the credit ratings obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
  (iii) filing a copy of the circular along with such statement with the registrar within 30 days before the date of issue of the circular.
  (iv) Providing deposit insurance.
  (v) Certification by the company that it has not defaulted in the repayment of deposits.
  (vi) Provision of security in respect of deposit and interest and creation of charge on company's properties and assets.
  (vii) An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in **deposit repayment** reserve account.
- **The penalty for failure to repay deposit** has been made extremely stringent. Now the default is punishable with fine which shall not be less than **one crore rupees but which may extend to ten crore rupees.** And every officer of the company who is in default, shall be punishable **with imprisonment which may extend to seven years** or with fine which shall not be less than 25 lakhs rupees, but which may extend to two crore rupees, or with both. (Clause 68).
- Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration. (Clause 115).
- Annual Return being a public document is now required to have more disclosures especially on matters relating to certification of compliances, disclosures etc. (Clause 82).

Annual return [clause 82]

Apart from the existing disclosures regarding the registered office, shares, debentures, indebtedness of the company etc., the following additional information is to be given :

(i) principal business activities, particulars of its holding, subsidiary and associate companies;
(ii) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;
(iii) meetings of members or a class thereof, Board and its various committees along with attendance details;
(iv) remuneration of directors and key managerial personnel;
(v) penalties imposed on the company, its directors or officers and details of compounding of offences;
(vi) matters related to certification of compliances, disclosures; and
(vii) such other matters as may be prescribed.

Annual Return is required to be signed by :

(i) A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.

It means that now in respect of all the companies, whether private or public, listed or unlisted, if no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

(ii) a Company Secretary in whole-time practice in respect of :

(a) A company having such paid-up capital and turnover as may be prescribed, and

(b) a company whose shares are listed on a recognized stock exchange.

The Practising Company Secretary has to certify that the annual return states the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

It means, in case of a listed company, even if the Annual Return is signed by the Company Secretary in employment of the Company, it is further required to be signed by the Company Secretary in Whole time practice. Also, in case of a company having such paid up capital and turnover as may be prescribed and even if the company is not listed, the Annual Return is required to be signed by the Company Secretary in whole time practice in addition to the Company Secretary in employment.

(iii) In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

Certification regarding compliances

By signing the return, a Company Secretary certifies that the annual return **states the facts correctly and adequately** and that the company **has complied with all the provisions of the Act**. In addition, the adequacy of **disclosures made are** required to be **certified by** the Company Secretary in the Annual Return. It is a great opportunity as well as a challenge for the Company Secretaries.

Penalty

- **In case a Company Secretary in whole-time practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**

Board's Report has been made more informative and includes extensive disclosures like –

(i) extract of annual return

(ii) report of the committee on directors' remuneration

(iii) a declaration by independent directors wherever they are appointed

(iv) particulars of loans, guarantees, or investments made

(v) particulars of contracts or arrangements entered into

The Boards' Report is to be signed by the Chairman if he is authorized by the Board and where he is not so authorized, it shall be signed by at least two directors, one of whom shall be a managing director, or where there is only one director, by such director (Clause 120).

New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included [clause 173].

Related Party Transactions

- **Every contract or arrangement entered into with a related party, shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement**. [clause 166(2)].
- Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company. [clause 170].
- Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a a memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes (clause 171).
- **Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company**. (clause 172).

Share capital and debentures

- Equity share capital has now been defined as :

  Equity share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which has no limits for participation, either with respect to dividend or with respect to capital, in distribution of profits or otherwise. [clause 37(2)].

  The existing Section 85 of the Companies Act, 1956 defines Equity share capital as share capital which is not preference share capital.
- If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares. Stringent penalties have also been imposed for defaulting officers of the company. [clause 40(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be punishable with fine which shall not be less than rupees three lakh but which may extend to rupees twenty five lakh. [clause40(6)]
- Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 46(2)(e)]
- A company can not issue share at a discount except in case of sweat equity shares. Any share issued by a company at a discounted price shall be void. [Clause(47)]
- A company limited by shares can not issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue. This period of twenty years may, however, be excluded in case of such infrastructural projects as may be prescribed. [Clause 49].
- Every company shall deliver Debenture Certificate issued by the company within six months of allotment. [Clause 50(4)(d)].
- The Tribunal on receiving an application for reduction of share capital, shall give notice to the Central Government and to the SEBI and consider the representations received in this behalf. (Clause 59)

Inspection, enquiry and investigation

- A new clause has been added to provide that where in connection with enquiry or investigation into the affairs of the company or reference by the Central Government, or on complaint by any person that the transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of the company, then the Tribunal may order for the freezing of such transfer, removal or disposal of assets for a period of three years. [clause 191]

- Another new clause added to the Bill seeks to provide that no suit or proceedings shall lie in any court or Tribunal or authority in respect of any action initiated by the Central Government in respect of an investigation, etc. till such investigation report is submitted [clause 194].
- Another new clause seeks to provide that the provisions of inspection or investigation applicable to Indian Companies shall also apply mutatis-mutandis to inspection or investigation of Foreign Companies. (clause 199).

Class action suits

- A provision has been made for class action suits. It is provided that any one or more members or one or more creditors may file an application before the Tribunal on behalf of the members and creditors, 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 creditors. The order passed by the Tribunal shall be binding on the company and all its members and creditors. (clause 216)

Restructuring and Liquidation

- **The entire rehabilitation and liquidation process has been made time bound**.
- Winding up is to be resorted to only when revival is not feasible. (clause 233).
- **The Tribunal may appoint an interim administrator or a company administrator from the panel of COMPANY SECRETARIES, Advocates, CAs, CWAs, etc. maintained by the Central Government.** [clause 234(1)].
- The Company Administrator shall prepare a scheme of revival and rehabilitation. [clause 236(1)].
- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company. (clause 233).
- No civil court shall have jurisdiction in respect of any matter on which Tribunal or Appellate Tribunal is empowered. (clause 243).

Company Liquidators (Clause 250)

The Tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of COMPANY SECRETARIES, Chartered Accountants, Advocates and Cost and Works Accountants.

On an appointment as provisional liquidator or Company Liquidator, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

Professional assistance to Company Liquidator (Clause 266)

The Company Liquidator may, with the sanction of the Tribunal, appoint **one or more professionals including Company Secretaries** to assist him in the performance of his duties and functions under the Act.

Any person appointed under this clause shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

Registered valuers

- 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.** (clause 218).
- The Central Government shall maintain a register of valuers. [clause 219(1)].
- **ACS, CA, CWA or other persons possessing prescribed qualifications may apply to the Central Government to be registered as valuers. No company or body corporate shall be eligible to apply as registered valuers.** [clause 219(2)].
- The Central Government shall be empowered to provide for appointment of a committee of experts to recommend suitable names for the purpose of inclusion in the Register of Valuers. [clause 220(1)].

Qualifications of President and Members of Tribunal (Clause 370)

The constitution of the Tribunal shall widen the scope of services for Practising Company Secretaries. Amongst others, **a Company Secretary in practice is eligible to become a Technical Member of National Company law Tribunal, if he is practising for at least twenty years.**

Special Courts

- For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. (clause 396).
- All offences under this Act shall be triable by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned (clause 397)
- The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years, although it may order for the regular trial. (clause 398).

THE COMPANIES BILL, 2008 (*Highlights*)

HIGHLIGHTS RELATING TO THE PROFESSON OF COMPANY SECRETARIES

Key Managerial Personnel (KMP) [Clause 178 and 2(zza)]

Clause 2 (zza) defines KMP as

"**Key Managerial Personnel**, in relation to a company, means—

(i) the Managing Director, the Chief Executive Officer or the Manager and where there is no Managing Director or Manager, a whole-time director or directors;

(ii) **the Company Secretary**; and

(iii) the Chief Financial Officer;"

- As per clause 178, every company belonging to such class or description of companies as may be prescribed shall have Whole-Time Key Managerial Personnel.
- **Every Company Secretary being a KMP shall be appointed by a resolution of the Board** which shall contain the terms and conditions of appointment including the remuneration. If any vacancy in the office of KMP is created, the same shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
- If a company does not appoint a Company Secretary, the penalty proposed is :

  On company – one lakh rupees

  On every director and KMP who is in default – 25,000 rupees for each such default.

Incorporation of companies (Clause 7)

A declaration in the prescribed form is required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with. Company Secretaries continue to be recognized for the purpose of giving this declaration.

Annual Return (Clause 82)

The scope of Annual Return has been widened. It has been made more detailed and comprehensive. Apart from the existing disclosures regarding the registered office, shares, debentures, indebtedness of the company etc., the following additional information is to be given:

(i) principal business activities, particulars of its holding, subsidiary and associate companies;

(ii) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;

(iii) meetings of members or a class thereof, Board and its various committees along with attendance details;

(iv) remuneration of directors and key managerial personnel;

(v) penalties imposed on the company, its directors or officers and details of compounding of offences;

(vi) matters related to certification of compliances, disclosures; and

(vii) such other matters as may be prescribed.

Annual Return is required to be signed by :

(i) a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.

It means that now in respect of all the companies, whether private or public, listed or unlisted, if no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

(ii) a Company Secretary in whole-time practice in respect of :

(a) a company having such paid-up capital and turnover as may be prescribed, and

(b) a company whose shares are listed on a recognized stock exchange.

The Practising Company Secretary has to certify that the annual return states the facts correctly and adequately and that the Company has complied with **all the provisions of the Act.**

It means, that in case of a listed company, even if the Annual Return is signed by the Company Secretary in employment of the Company, it is further required to be signed by the Company Secretary in Whole time practice. Also, in case of a company having such paid up capital and turnover as may be prescribed even if the company is not listed, the Annual Return is required to be signed by the Company Secretary in whole time practice in addition to the Company Secretary in employment.

(iii) in relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

Certification regarding compliances

By signing the return, a Company Secretary certifies that the annual return **states the facts correctly and adequately** and that the company **has complied with all the provisions of the Act**. In addition, the adequacy of **disclosures made are** required to be **certified by** the Company Secretary in the Annual Return. It is a great opportunity as well as a challenge for the Company Secretaries.

Penalty

- **In case, a Company Secretary in whole-time practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**

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Report on Annual General Meetings

For the first time, the concept of Report on Annual General Meetings has been introduced. Every listed company shall prepare a report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made thereunder. The Report shall be prepared in the manner to be prescribed. A copy of the Report shall be filed with the Registrar within 30 days of the conclusion of the AGM with such fee as may be prescribed. Non-filing of the Report has been made a punishable offence.

One person companies have been given the option to dispense with the requirement of holding an AGM.

Secretarial Standards (Clause 107)

The much awaited recognition to the Secretarial Standards has been given in the Bill. The Companies Bill makes it mandatory for every company to comply with such Secretarial Standards as may be prescribed with respect to General Meetings and Board Meetings. This is a landmark turning point in respect of standardization and harmonization of Secretarial Standards.

ICSI has issued Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2). Secretarial Standards are the policy documents relating to various aspects of secretarial practices in the corporate sector. These Standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

It is heartening to note that many companies are voluntarily adopting the Secretarial Standards in their functioning. The annual reports of several companies released during the last few years include a disclosure with regard to the compliance of the Secretarial Standards.

Insurance for Company Secretaries [Clause 175(2)]

Now as a world wide practice, companies are insuring their officers including Company Secretaries for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company. In such cases, it is provided in the Bill that the premium paid on such insurance shall not be treated as part of the remuneration.

Registered Valuers [Clause 219(2)]

Company Secretaries have been recognized for being appointed as registered valuers along with Chartered Accountants, Costs and Works Accountants and other persons as may be recognized. Wherever valuation is to be made in respect of any property, stocks, shares, debentures, securities or goodwill or net worth of a company or its assets, it shall be done by a person registered as a valuer and appointed by the audit committee or in its absence by the Board of Directors of that company.

It is a challenging assignment since a declaration has to be made at the time of application stipulating to make an impartial and true valuation of any assets which may be required to be valued; make the valuation in accordance with such rules as may be prescribed, and not to undertake valuation of any assets in which the valuer has a direct or indirect interest or becomes so interested at any time during the valuation of the assets. This is emerging and a new area for Company Secretary profession.

Appointment as Interim Administrator (Clause 234)

For the first time **Company Secretaries and other professionals have been recognized for being appointed as Interim Administrator from the panel to be maintained by the Central Government consisting of names of professionals**.

An Interim administrator is appointed by the Tribunal on the receipt of an application for revival and rehabilitation by a company. Interim Administrator has a vital role to play in the process of revival and rehabilitation. He may be directed by the Tribunal to take over the assets or management of the company in the circumstances as prescribed in the sections.

Company Liquidators (Clause 250)

In the process of winding up, the Tribunal appoints a provisional liquidator or the Company Liquidator as the case may be. **Company Secretaries have been recognized to be appointed as such Provisional Liquidator or the Company Liquidator, from a panel to be maintained by the Central Government consisting of the names of professionals**.

On an appointment as Provisional Liquidator or Company Liquidator, such liquidator shall be required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

Professional assistance to Company Liquidator (Clause 266)

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act.

Any person appointed under this clause shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

Qualifications of President and Members of Tribunal (Clause 370)

Constitution of the Tribunal shall widen the scope of services for Practising Company Secretaries. Amongst others, a **Company Secretary in practice is eligible to become a Technical Member of National Company law Tribunal, if he is practising for at least twenty years**.