

## **Highlights of the Companies Bill, 2012.**

The following are the Highlights of the Companies Bill, 2012, which was recently passed by the Rajya Sabha (Upper House of Parliament) issued by the Institute of Company Secretaries of India (**ICSI**) Detailed analysis by Mallarr Law Associates LLP on this Bill will follow separately.

# Highlights of the Companies Bill

(as passed by the Lok Sabha on 18.12.12 and by the Rajya Sabha on 08.08.13)

- The Bill has 470 clauses as against 658 Sections in the existing Companies Act, 1956.
- The entire bill has been divided into 29 chapters.
- Many new chapters have been introduced, viz., Registered Valuers (ch.17); Government companies (ch. 23); Companies to furnish information or statistics (ch. 25); Nidhis (ch. 26); National Company Law Tribunal & Appellate Tribunal (ch. 27); Special Courts (ch. 28).
- The Bill is forward looking in its approach which empowers the Central Government to make rules, etc. through delegated legislation (clause 469 and others).
- The Companies Bill is the result of detailed consultative process adopted by the Government.

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

## 1. DEFINITIONS

- New definitions are introduced in the Bill, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc.
- Definition of private company changed - the limit on maximum number of members increased from 50 to 200.
- Private company which is a subsidiary of a public company shall be deemed to be a public company.
- Listed company - A company which has any of its securities listed on any recognised stock exchange.
- Associate 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.
- 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.
- "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
- "foreign company" means any company or body corporate incorporated outside India which,-  
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

- (b) conducts any business activity in India in any other manner.
- "Key Managerial Personnel (KMP), in relation to a company, means-
  - (i) the Chief Executive Officer or the Managing Director or the Manager,
  - (ii) the Company Secretary;
  - (iii) the whole-time director;
  - (iv) the Chief Financial Officer; and
  - (v) such other officer as may be prescribed
- "officer who is in default", means any of the following officers of a company, namely:-
  - (i) whole-time director;
  - (ii) key managerial personnel;
  - (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  - (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  - (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
  - (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
  - (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.
- Bill defines the term 'promoter' to mean a person -
  - (a) who has been named as such in a prospectus or is identified by the company in the annual return, or
  - (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
  - (c) in accordance with whose advice, directions or instructions the Board of Directors is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

- Subsidiary company in relation to any other company (that is holding company), means a company in which the holding company -
  - Controls the composition of the Board of Directors; or
  - Exercises or controls more than one half of the total share capital (instead of equity share capital as prescribed under the 1956 Act) either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

- Small company has been defined as a company other than a public company having a paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [clause 2(85)].
- The number of persons in any association or partnership not to exceed such number of persons as may be prescribed (not exceeding one hundred). The restriction not to apply to an association or partnership, constituted by professionals who are governed by special Acts. (clause 464)

## 2. CLASSIFICATION & REGISTRATION

- Concept of One Person Company (OPC limited) introduced [Clause 2(62)].
- Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework [Clause 2(85)].
- Provision for Conversion of Companies already registered has been introduced [Clause 18].
- Registration process has been made faster and compatible with e-governance.
- For the first time, articles may contain provisions for entrenchment [clause 5(3)].
- A declaration, in the prescribed form, 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, will be required to signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company. (clause 7)

### Registered office

- A company shall, on and from the 15th day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner.
- Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.
- Notice of change, verified in the manner prescribed, shall be given to the Registrar, within 15 days of the change, who shall record the same.

### Commencement of business

- A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
  - every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
  - Paid-up capital is not less than Rs. five lakhs in the case of public company and one lakh in case of a private company.
  - the company has filed with the Registrar the verification of its registered office.

### 3. PROSPECTUS AND ALLOTMENT OF SECURITIES

- This chapter is divided into two parts. Part I relates to 'Public offer' and Part II relates to 'Private Placement'
- "Public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.'
- The term 'private placement' has been defined to bring clarity. "Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.
- Detailed disclosures are provided in the Bill itself. It includes disclosures about sources of promoter's contribution.
- In case of variation in the terms of contract referred to in the prospectus or objects for which the prospectus was issued, the dissenting shareholders shall be given exit opportunity by promoters or controlling shareholders.

#### Punishment for fraudulently inducing persons to invest money (clause 36)

- Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for punishment for fraud. This provision is proposed to help in curbing a major source of corporate delinquency.

### 4. SHARE CAPITAL AND DEBENTURES

- 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 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or rupees 10 crores, whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company. [clause 46(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be liable under section 447 i.e. provisions for punishment for fraud.[clause56(7)] \_ Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 52(2)(e)]
- Except as provided in section 54 (Issue of sweat equity shares), a company shall not issue shares at a discount [Clause(53)]
- A company limited by shares cannot 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.
- A company may issue preference shares for a period exceeding twenty years for infrastructural projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Clause 55].
- Every company shall deliver debenture certificate within six months of allotment. [Clause 56(4)(d)].
- Reduction of share capital to be made subject to confirmation by the Tribunal. The Tribunal on receiving an application for reduction of share capital, shall give

notice to the Central Government, Registrar and to the SEBI and consider the representations received in this behalf. (Clause 66)

## 5. E-GOVERNANCE

E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

## 6. BOARD AND GOVERNANCE

Number of directors

- Minimum : Public company -3 Private -2 , OPC-1.
- Maximum : limit increased to 15 from 12 .  
More directors can be added by passing of special resolution without getting the approval of Central Government as earlier required.

Woman director

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

Resident Director

Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [clause 149(2)].

Appointment of Key Managerial Personnel [Clause 203(1)]

- Every company belonging to such class or classes of companies as may be prescribed shall have the whole-time key managerial personnel.
- Unless the articles of a company provide otherwise or the company does not carry multiple businesses, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time [Proviso to Clause 203(1)]  
Provided that nothing contained above shall apply to such class of companies engaged in multiple businesses and which has appointed one or more chief executive officers for each such business as may be notified by the Central Government.
- Every Company Secretary being a whole-time KMP shall be appointed by a resolution of the Board which shall contain the terms and conditions of appointment including the remuneration.
- If the office of any whole-time KMP is vacated, 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 203 (2) & (4)].
- If a company does not appoint a Key Managerial Personnel, the penalty proposed is :  
On company - one lakh rupees which may extend to five lakh rupees.  
On every director and KMP who is in default - 50,000 rupees and 1,000 rupees per day if contravention continues.

#### 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)].

#### Person other than retiring director

- If a person other than retiring director stands for directorship but fails to get appointed, he or the member intending to propose him as a director, as the case may be, shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total valid votes [clause 160(1)].

#### Resignation of director

- 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 168(1)]. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar.
- 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 168(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 168(3)].

#### Participation of directors through video-conferencing

- 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 173(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 173(2)]

#### Notice of Board Meeting

- 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 173(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 173(3)].

#### Duties of directors (clause 166)

For the first time, duties of directors have been defined in the Bill. A director of a company shall :

- act in accordance with the articles of the company.
- act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- not assign his office and any assignment so made shall be void.

#### Penalty

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

#### Board Committees

- Besides the Audit Committee, the constitution of Nomination and Remuneration Committee has also been made mandatory in the case of listed companies and such other class or classes of companies as may be prescribed. [clause 178(1)].
- The Audit committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members including its Chairperson shall be persons with ability to read and understand the financial statement. [clause 177(2)].
- The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees [Clause 178(3)].
- The Nomination and Remuneration Committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent directors. [clause 178(1)].
- Where the combined membership of the shareholders, debenture holders, deposit holders and any other security holders is more than one thousand at any time during the financial year, the company shall constitute a Stakeholders Relationship Committee. [clause 178(5)].



#### Managerial Remuneration [clause 197]

- Provisions relating to limits on remuneration provided in the existing Act being included in the Bill. Maximum limit of 11% (of net profits) being retained.
- For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration (Schedule V) and in case a company is not able to comply with Schedule V, approval of Central Government would be necessary.

#### Certain Insurance Premium not to be treated as part of the remuneration

- 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 197 (13)]

## 7. DISCLOSURES

#### Annual return [clause 92]

- Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding;
  - (i) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - (ii) its shares, debentures and other securities and shareholding pattern;
  - (iii) its indebtedness;
  - (iv) its members and debenture-holders along with changes therein since the close of the previous financial year;
  - (v) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;
  - (vi) meetings of members or a class thereof, Board and its various committees along with attendance details;
  - (vii) remuneration of directors and key managerial personnel;
  - (viii) penalties imposed on the company, its directors or officers and details of compounding of offences;
  - (ix) matters related to certification of compliances, disclosures as may be prescribed;
  - (x) details in respect of shares held by foreign institutional investors; and
  - (xi) such other matters as may be prescribed.

The prescribed disclosures under the Annual Return shows significant transformation in non financial annual disclosures and reporting by companies as compared to the existing format.

Similar to the existing compliance certificate as stipulated under section 383A of Companies Act, 1956 certification of compliances has been prescribed under clause 92(1)(ix).

- 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 (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 i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

- (ii) in addition to the above, 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 that the annual return discloses 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 and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.

- (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.

#### Penalty

In case a Company Secretary in 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.

#### Changes in shareholding of promoters and top ten shareholders

- A return to be filed with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders (to ensure audit trail of ownership) by a listed company.

#### Board's report (Clause 134)

- Board's Report has been made more informative and includes extensive disclosures like -
  - (i) extract of annual return in the prescribed form;
  - (ii) company's policy on director's appointment and remuneration including the criteria for determining qualifications, positive attributes, independence of a director etc. ;
  - (iii) a statement of declaration by independent directors;
  - (iv) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report;
  - (v) particulars of loans, guarantees, or investments made;
  - (vi) particulars of contracts or arrangements entered into;
  - (vii) the conservation of energy, technology absorption, foreign exchange earnings and outgo in the prescribed manner;
  - (viii) statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

- (ix) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year in case of listed companies and other prescribed class of companies, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of committees and individual directors.
- The Directors' Responsibility Statement shall also include the statement that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- The Boards' Report is to be signed by the Chairperson of the company 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 by the director where there is one director. (Clause 134).

#### 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 188(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 192].
- 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 the 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 193).

#### 8. CORPORATE SOCIAL RESPONSIBILITY (CLAUSE 135)

- Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.
- The Board of every company shall ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.
- Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to 'comply or explain'.

- The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

#### 9. DEPOSITS (CLAUSE 173)

- A company may, subject to the passing of a resolution in general meeting and subject to the prescribed rules, accept deposits from its members subject to fulfillment of the following specified conditions:
  - 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. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.
- A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to compliance of rules as may be prescribed by Central Government in consultation by Reserve Bank of India. (Clause 76).
- The penalty for failure to repay deposit has been made extremely stringent. Where a company fails to repay the deposit and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to liability under section 447 i.e. punishment for fraud), be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors (Clause 75).  
Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration. (Clause 127)

#### 10. INVESTMENT COMPANIES (CLAUSE 186)

- A company can make investment through not more than two layers of investment companies, unless otherwise prescribed.
- This shall not affect
  - a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
  - a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
- The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.

## 11. COMPANY SECRETARY

### Functions of Company Secretary (clause 205)

- The functions of the company secretary shall include -
  - to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
  - to ensure that the company complies with the applicable secretarial standards;
  - to discharge such other duties as may be prescribed.

### 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.

### Secretarial Standards Introduced [Clause 118(10) & 205]

- For the first time, the Secretarial Standards has been introduced and provided statutory recognition
- Clause 118(10) reads as:  
"Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."
- Clause 205 casts duty on the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.
- It is the beginning of a new era where non financial standards have been given importance and statutory recognition besides Financial Standards.

## 12. GENERAL MEETINGS

- To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [clause 108].
- One person companies have been given the option to dispense with the requirement of holding an AGM. [clause 96(1)].

### Report on annual general meeting [clause 121]

- 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 there under.

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. Non-filing of the report has been made a punishable offence.

### 13. AUDITORS

- A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of sixth annual general meeting.
- However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.
- No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint-
  - (a) an individual as auditor for more than one term of five consecutive years; and
  - (b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that-

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term:

- 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.
- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (clause 141)
- Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:
  - Accounting and book-keeping service
  - Internal audit
  - Design and implementation of any financial information system
  - Actuarial services
  - Investment advisory services
  - Investment banking services
  - Rendering of outsourced financial services
  - Management services
  - Other prescribed services

Internal Audit

- Prescribed class of companies shall be required to appoint an internal auditor to conduct internal audit of the functions and activities of the company. (clause 138)

Cost Audit (clause 148)

- 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.
- If the Central Government is of the opinion, that it is necessary to do so, it 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.
- 'cost auditing standards' have been mandated.

#### 14. FINANCIAL STATEMENT (CLAUSE 2(40))

- For the first time, the term 'financial statement' has been defined to include:-
  - (i) a balance sheet as at the end of the financial year;
  - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
  - (iii) cash flow statement for the financial year;
  - (iv) a statement of changes in equity, if applicable; and
  - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to subclause (iv):
- the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

#### Signing of financial statement (Clause 134)

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of directors before they are signed on behalf of the Board at least by the Chairperson of the company authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

#### 15. NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (CLAUSE 132)

- The Central Government may be notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
  - (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
  - (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
  - (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and
  - (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
  - (a) have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

- Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
- (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.
- (c) where professional or other misconduct is proved, have the power to make order for-
- (A) imposing penalty of -
- (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
- (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;
- (B) debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.
- Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted by the Central Government.

## 16. INVESTOR PROTECTION MEASURES

- Issue and transfer of securities and non-payment of dividend by listed companies, shall be administered by SEBI by making regulations.(Clause24)
- An act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than three times the amount involved in fraud.(Clause 36)
- 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 37).

### 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)

### Serious Fraud Investigation Office (clause 211)

Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the



punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill.

Stringent penalty provided for fraud related offences.

Fraud defined (Clause 447)

- The term "Fraud" has for the first time been defined in the Bill. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years

Prohibition of insider trading

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 195].

Prohibition on Forward dealings

Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company. (clause 194).

## 17. 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 specified number of members or creditors or any other person having a reasonable 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 221]
- 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 228).

## 18. 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 258).
- The Tribunal may appoint an interim administrator or a company administrator from the panel of Company Secretaries, CAs, CWAs, etc. maintained by the Central Government. [clause 259(1)].
- The Company Administrator shall prepare a scheme of revival and rehabilitation. [clause 261(1)].
- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company. (clause 258).
- No civil court shall have jurisdiction in respect of any matter on which Tribunal or Appellate Tribunal is empowered. (clause 268).

## 19. COMPANY LIQUIDATORS (CLAUSE 275)

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 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 291)

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.

#### 20. COMPOUNDING OF CERTAIN OFFENCES (CLAUSE 441)

This clause provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. It clause also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

#### 21. NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (CLAUSE 408 AND 410)

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.

#### 22. 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 435).
- 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 436)
- 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 436).

#### 23. MEDIATION AND CONCILIATION PANEL (CLAUSE 442)

- The Central government shall maintain a panel of experts to be called Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

#### 24. CROSS - BORDER MERGERS (CLAUSE 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.

#### 25. REGISTERED VALUERS (CLAUSE 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.

#### 26. POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT (CLAUSE 462)

- The Central Government may in the public interest, by notification direct that any provisions of this Act:
  1. shall not apply to such class or classes of companies; or
  2. shall apply to class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.
- The notification in draft to be laid in both the Houses of Parliament for a period of 30 days.
- Houses may disapprove or modify.

#### 27. ADJUDICATION OF PENALTY (CLAUSE 454)

The Central government may by an order publish in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudicating penalty under the provisions of this Bill in the manner as may be prescribed.

#### **Disclaimer:**

This document has been prepared on the basis of Companies Bill, 2012 as passed by the Lok Sabha on 18<sup>th</sup> December, 2012 and as passed by the Rajya Sabha on 08 August , 2013. The Institute of Company Secretaries of India does not own the responsibility of any error or omission. The users and readers are advised to cross check with the original Bill before acting upon this document.