

**COMPANIES BILL, 2012 – A PARADIGM SHIFT****Dr. Trilochan Sharma**

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**Abstract:** - Change in business practices and structure in the current scenario, need of change was felt by the corporate world. Formation and functioning of companies was a little bit difficult task as per the provisions of the Companies Act 1956, hence it intends to change in companies law. A new bill namely Companies Bill 2012 has been passed and it includes several new provisions regarding incorporation, functioning and governance of the companies. This article is an attempt to highlight and understand the key provisions of Companies Bill 2012.

**Keywords:** Companies Bill, Incorporation, Governance

**Introduction**

With the passing of Companies Bill, 2012 on 8 August 2013 Rajya Sabha has made a history in the world of corporate. Companies Bill, 2012 is a pavement that may replace the Companies Act 1956. New legislation will have more opportunities for the corporate world in the environment of globalization. The new law will resolve many issues related to corporate governance and will focus on shareholder democracy, corporate disclosure and quick decision makings. The provisions of Companies Bill, 2012 will also eliminate several intrusive regulations.

The Bill, already passed by the Lok Sabha on 18th December, 2012, will now go for President's assent. The new law will be called the Companies Act, 2013. Much of the Act will be governed by rules which will be framed by the Corporate Affairs ministry. Through its around 470 Clauses, 29 Chapters and (7v) Schedules.

The new law proposes to make it mandatory for the companies –

1. To maintain the records in electronic form
2. Concept of one person companies
3. To establish fund for corporate social activity
4. Provision for rotation of auditor

Major highlights of Companies Bill, 2012 are as the following -:

**Introduction of new type of Companies**

(i) One person Company: "One Person Company" means a company which has only one person as a member. [Clause 2(62)]

(ii) Associate Company: A company is considered to be an associate company of the other, if the other company has significant influence over such company but which is not a subsidiary company of the company and includes 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. [Clause 2(6)]

Small company: "Small company" means a company, other than a public company,-

(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

(b) 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)].

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 in such manner as may be prescribed for obtaining the status of a dormant company.

**Board of Directors**

(i) Number of Directors: Maximum number of directors in a company has been 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. [Clause 149(1)]

(ii) Women director: At least one woman director shall be on the Board of such class or classes of companies as may be prescribed. [Clause 149(2)]

(iii) 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(3)]

(iv) Independent Director: Concept of independent directors has been introduced for the first time in Company Law. All listed companies shall have at least one-third of the Board as independent directors. [Clause 149(4)]

(v) Duties of Director: Duties of directors have been defined in the Bill for the first time. [Clause 166]

#### **Appointment of Managerial Personnel**

Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:

(i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) Company Secretary; and

(iii) Chief Financial Officer [Clause 203]

#### **Related Party Transactions**

Related party transactions by a company having prescribed paid-up capital or value of transaction exceeding prescribed limits will require prior approval of members by special resolution. The related party who is a member of such a company cannot vote in such special resolution. The Boards' report has to disclose related party transactions along with the justification. [Clause 188]

#### **Financial Statement**

Financial Statement has been defined first time and includes—

(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

Any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv) Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement. [Clause 2(40)]

#### **Corporate Social Responsibility**

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 CSR

Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. 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. [Clause 135]

#### **Rotation of 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. No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or reappoint an individual as auditor for more than one term of five consecutive years; and an audit firm as auditor for more than two terms of five consecutive years.

An individual auditor who has completed his term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term and an audit firm which has completed its term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

#### **Cross Border Amalgamation**

Mergers and amalgamations between companies registered under this Act and companies

Incorporated in the jurisdictions of such countries as may be notified from time to time by the

Central Government are allowed.

#### **Class Action Suits**

For the first time, a provision has been made for class action suits. Class-action suits may be filed by investors in a court of law if they believe that the affairs of the company are being conducted in a manner detrimental to the interest of the company and its shareholders. Enabling such class-actionsuits should, in the long-run, may help to improve the quality of financial reporting as well as the quality of corporate governance among firms. [Clause 245]

#### **Serious Fraud Investigation Office (SFIO)**

The Companies Bill, 2012 has provisions to give SFIO SueMoto powers to arm it with legal and statutory powers to probe corporate misdoings. Given that corporate frauds are becoming increasingly sophisticated with the improvement in technology, SFIO has been demanding more powers, in line with those enjoyed by Income Tax Authorities, Customs Department, Enforcement Directorate, etc. [Clause 211]

#### **Prohibition of Insider Trading**

New clause has been introduced with respect to prohibition of insider trading of securities. The government proposes to tighten the insider trading regulations, prescribing up to five years of jail for key company executives and directors found guilty. [Clause 195]

#### **Definition of Fraud**

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. [Clause 447]

#### **National Tribunal and Appellate Tribunal**

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. [Clause 408 and 410]

#### **Special Court**

The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

#### **Constitution of National Financial Reporting Authority**

The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act. [Clause 132]

All the above provision will be followed by the corporate with the enactment of Companies Bill, 2012 and will replace the Companies Act 1956, after getting assent of the President of India.

#### **Conclusion**

On the basis of analysis of discussed provision it can be concluded that, The Companies Bill 2012 will encourage the entrepreneurs to incorporate and registered new company. The concept of one Man Company may be very successful and accelerate the economic growth of the country.

The new provisions of the Bill will results in effective governance of the corporate world. It will also encourage and improve women participation in corporate world. It will promote corporate social responsibility and will be effective in the prevention of corporate scams and fraudulent activity.

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