

CABINET APPROVES AMENDMENTS TO THE COMPANIES BILL, 2011

PRESS RELEASE, DATED 4-10-2012

The Union Cabinet today approved the proposal to make official amendments to the Companies Bill, 2011.

The Companies Bill, 2011, on its enactment, would allow the country to have a modern legislation for growth and regulation of corporate sector in India. The existing statute for regulation of companies in the country, viz. the Companies Act, 1956 had been under consideration for quite long for comprehensive revision in view of the changing economic and commercial environment nationally as well as internationally. In view of various reformatory and contemporary provisions proposed in the Companies Bill, 2011 together with omission of existing unwanted and obsolete compliance requirements, the companies in the country would be able to comply with the requirements of the proposed Companies Act in a better and more effective manner.

The Salient features of amendments approved by the Cabinet are as follows:

1. The words 'make every endeavour to' omitted from Clause 135(5). Such clause is also amended to provide that the company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities, The approach to 'implement or cite reasons for non implementation' retained. (Amendment of Clause 135).
2. To help in curbing a major source of corporate delinquency, Clause 36 (c) amended, to also include punishment for falsely inducing a person to enter into any agreement with bank or financial institution, with a view to obtaining credit facilities. (Amendment in Clause 36).
3. Provisions relating to audit of Government Companies by Comptroller and Auditor General of India (C&AG) modified to enable C&AG to perform such audit more effectively. (Amendment in Clauses 143(5) and (6)).
4. Clause 186 amended to provide that the rate of interest on inter corporate loans will be the prevailing rate of interest on dated Government Securities. (Amendment in Clause 186).
5. Provisions relating to restrictions on non audit services modified to provide that such restrictions shall not apply to associate companies and further to provide for transitional period for complying with such provisions. (Amendment in Clause 144).
6. Provisions relating to separation of office of Chairman and Managing Director (MD) modified to allow, in certain cases, a class of companies having multiple business and separate divisional MDs to appoint same person as 'chairman as well as MD. (Amendment in Clause 203).
7. Provisions relating to extent of criminal liability of auditors particularly in case of partners of an audit firm reviewed to bring clarity. Further, to ensure that the liability in respect of damages paid by auditor, as per the order of the Court, (in case of conviction under Clause 147) is promptly used for payment to affected parties including tax authorities, Central Government has been empowered to

specify any statutory body/authority for such purpose. (Amendments in Clause 147 and 245).

8. The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (Amendment in Clause 141(3) (g)).
9. Appointment of auditors for five years shall be subject to ratification by members at every Annual General Meeting (Amendment of Clause 139(1)).
10. Provisions relating to voluntary rotation of auditing partner (in case of an audit firm) modified to provide that members may rotate the partner 'at such interval as may be resolved by members' in stead of 'every year' proposed in the clause earlier. (Amendment in Clause 139(3)).
11. 'Whole-time director' has been included in the definition of the term 'key managerial personnel' (Amendment of Clause 2(51)).
12. The term 'private placement' has been defined to bring clarity. (Amendment in Clause 42).
13. Approval of the Tribunal shall be required for consolidation and division of share capital only if the voting percentage of shareholders changes consequent on such consolidation (Amendment of Clause 61(1) (b)).
14. Clarification included in the Bill to provide that 'Independent Directors' shall be excluded for the purpose of computing 'one third of retiring Directors'. This would bring harmonisation between provisions of Clause 149(12) and rotational norms provided in clause 152. (Amendment in Clause 152).
15. Provisions in respect of removal of difficulty modified to provide that the power to remove difficulties may be exercised by the Central Government upto 'five years' (after enactment of the legislation) in stead of earlier upto 'three years'. This is considered necessary to avoid serious hardship and dislocation since many provisions of the Bill involve transition from pre-existing arrangements to new systems. (Amendment in Clause 470).

Background:

- (i) The Companies Bill, 2011 was introduced in the Lok Sabha on 14th December, 2011 and was considered by the Parliamentary Standing Committee on Finance which submitted its report to the Honourable Speaker, Lok Sabha on 26th June, 2012. The report was laid in Parliament on 13th August 2012. Keeping in view the recommendations made by such Committee it was decided to make certain modifications in the Companies Bill, 2011 through official amendments.
- (ii) In view of the developments taking place nationally as well as internationally, and with the intent to modernize the structure for corporate regulation in India and also to promote the development of the Indian corporate sector through enlightened regulation and good corporate governance practices, a decision has been taken to revise the existing Companies Act, 1956 comprehensively. Various stakeholders viz Industry Chambers, Professional Institutes, Government Departments, Legal Experts and Professionals etc. were consulted in the process and accordingly, the Companies Bill 2009 was introduced in the Lok Sabha on 3rd August, 2009 which

was referred to Parliamentary Standing Committee on Finance for examination and report, which submitted its report to the Parliament on 31st August, 2010.

- (iii) Keeping in view the recommendations made by the Standing Committee and consultation with various Ministries/Departments etc. a revised Companies Bill, 2011 was prepared which was approved by the Cabinet on 24th November, 2011. The revised Bill was introduced in the Lok Sabha on 14th December, 2011. On introduction of the Companies Bill, 2011, the Companies Bill, 2009 was withdrawn.
- (iv) The Companies Bill, 2011 was referred to the Parliamentary Standing Committee on Finance for examination and report. The Committee examined the Bill and presented its report/ recommendations to the Speaker, Lok Sabha on 26th June, 2012. The report was laid in the Parliament on 13th August, 2012. Keeping in view the recommendations made by the Committee and the inter-ministerial consultation held with concerned Ministries/Departments, it has been decided to make official amendments to the Companies Bill, 2011.