

## Corpsec Hotline

January 11, 2013

### COMPANIES BILL 2012: GLASS HALF FULL OR HALF EMPTY?

In view of the changes in the national and international economic environment and expansion and growth of the Indian economy, the Central Government seeks to replace the 56 years old Companies Act, 1956 ("**Act**") by a new Companies Act of 2012 which is currently in the form of Companies Bill, 2012 ("**Bill**"). This Bill marks a seminal shift in India's corporate regime and aims at repairing and fine tuning the existing lacunae of the Act by establishing a new benchmark for corporate governance and by introducing new concepts such as One Person Company, independent directors, etc. The Bill has already been passed by the Lok Sabha on December 18, 2012 and now awaits the approval of the Rajya Sabha and the Presidential assent.

Below are a few salient features of the Bill.

- **One Person Company:** Keeping pace with the international developments, the Bill introduces a completely new category of company called 'One Person Company' ("**OPC**") i.e. a company with a single member. The introduction of the concept of OPC may completely change the manner in which traditional and household businesses function, with individuals preferring to structure their business in the form of companies instead of sole proprietorship.
- **Compulsory appointment of one Resident Director:** The Bill provides that at least one director must be a person who has stayed in India for a total period of not less than 182 days in the previous calendar year. Thus Indian companies which had only foreign directors on their board would now be required to appoint at least one resident director.
- **Independent Directors:** Post the famous Satyam fiasco, the Bill has now introduced higher standards of corporate governance for Indian companies by including express provisions pertaining to independent directors alongside provisions which will ensure that the independence of such directors is maintained. In addition the Bill also provides for the duties of a director and imposes greater degree of responsibility on the management of the company.
- **Outbound Mergers:** One of the significant drawbacks of setting up businesses in India was the restriction on outbound merger of an Indian company with a foreign company. The Bill permits such merger of an Indian company with a foreign company of a specified jurisdiction thereby making the Indian corporate environment more suitable and flexible for restructuring of group operations.
- **Class Action Proceedings:** In a noteworthy development, the Bill now introduces the concept of class action suits whereby certain members or depositors could initiate action on behalf of the other members or depositors against the company, its directors, auditors and/or advisors, experts, consultants seeking a wide variety of reliefs including damages.
- **Corporate Social Responsibility:** Keeping in mind the interests of the society wherein the companies operate and with an aim to foster a culture of social responsibility, the Bill incorporates provisions regarding corporate social responsibility ("**CSR**") whereby certain companies may be required to set up CSR Committees and make efforts towards spending certain specified amounts on CSR activities and policy.
- **Insider trading:** A new clause has been introduced with respect to prohibition of insider trading of securities by a Director or a Key Managerial Personnel. Any non-compliance of such provisions could be a criminal offence.

In addition to the above, the Bill also seeks to strike off various provisions of the Act, which have outlived their utility. The Bill introduces a plethora of new concepts such as rotation of auditors, registered valuer etc. which are primarily aimed at alienating the bottlenecks which were present in the Act.

Whilst the Bill is indeed a welcome change, there are a few wrinkles that need to be creased out. It is pertinent to note that the Bill provides wide ranging powers to the Central Government, by allowing it to administer the provisions of the proposed Act by way of rules to be framed by it, which rules are yet to be released. Majority of the clauses of the Bill are subject to rules which are yet to be prescribed. Therefore, the implementation of the provisions of the Bill and their consequent impact remains largely to be tested, only after the Bill is notified as an Act and the related rules have been prescribed. On account of the same, its too early to give a verdict on whether the Bill will take India Inc a step further or backwards towards globalization.

For a detailed analysis of the Bill please [click here](#).

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