Corpsec Hotline

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PROPOSED CHANGES TO THE INDIAN COMPANIES ACT, 1956

The Companies (Amendment) Bill, 2003 ("**Bill**") which has been tabled in the Rajya Sabha (the Upper House of the Indian Parliament) today proposes to make far reaching changes to the Indian Companies Act, 1956 ("**Companies Act**"). Some of the salient features of the Bill have been summarized below:

Board of Directors

The Bill proposes to curtail the power of the Board of Directors ("**Board**") under Section 293 of the Companies Act, which empowers the Board to sell, lease or otherwise dispose of the assets of a public company or its subsidiary with the consent of the shareholders of the company. The Bill proposes to restrict this power of the Board to the extent of selling, leasing or disposing of assets equivalent to 10 per cent of the company's total assets or 20 per cent of the subsidiary's total assets in one financial year. The Bill, however, permits a company to create a mortgage or charge on all the assets of its subsidiary in favour of a financial institution or a scheduled bank.

Additionally, the Bill seeks to curtail the powers of the Board under Section 292 of the Companies Act, which allows the Board to delegate its powers without any limitation with respect to various funding and investment decisions of the company. It now sets a cap on the power to invest the funds of the company at 20 per cent of the paid up capital and free reserves of the company in a given financial year.

The Bill also requires the Board to obtain the consent of each of the directors in order to be able to declare dividends from the reserves of the company which shall also be subject to the shareholders' approval in a general meeting.

Voting rights attached to preference shares

The Companies Act currently allows the holders of cumulative preference shares to seek voting rights on all resolutions placed before the board of a company if they have not been paid dividend for two years. Holders of non-cumulative preference shares are entitled to seek voting rights if the dividend remains unpaid for three years.

The Bill provides that in the event of foreign investors in preference shares of Indian companies, they would be entitled to voting rights on par with their holding only if the voting rights so acquired are within the existing sectoral caps for foreign investment in that company. If the foreign equity participation is already at the maximum permissible level in the company, the preference shareholder will not be allowed any voting rights even in the case of non-payment of dividend as mentioned above.

Corporate Governance and Investor Protection

The Bill has defined independent directors as a separate category of directors who would be required to undergo prescribed training, hold stakes below 2 per cent in the company, etc. In case of a company which has a paid up capital and free reserves of over Rs. 50 crore or a turnover of Rs. 50 crore, a majority of the Board is required to be independent. The Bill further seeks, *inter alia*, to put a bar on loans to directors, put restrictions on remuneration and appointment of relatives of directors, bar auditors from providing certain services including internal audit etc., increase the penalties for any offence and under the Bill, provide for appointment of a chief accounts officer, etc.

In order to control any occurrence of vanishing companies, the Bill also provides for mandatory identification of promoter/directors at the time of incorporation.

The Bill appears to be a step in the right direction in terms of strengthening the statutory corporate governance requirements that Indian companies are required to comply with.

Source: The Business Standard and The Economic Times.

Please note that a copy of the Bill has not been made public yet and this update is based on news reports as indicated above. We will be sending a detailed update shortly once we receive a copy of the Bill.

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