



Monthly Newsletter

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From The Secretary's Desk

The Indian economy has also started feeling the impact of global uncertainty besetting economies across national boundaries. The continued weakening of the Rupee vis-à-vis US dollar since August 2011 has proved detrimental to fund flows that would have resulted following the softening in international

commodity prices. It is apprehended that the situation will remain a cause for concern till the Eurozone crisis gets sorted out. Meanwhile the system at home has geared itself to face the challenge through a slew of policy measures in a number of sectors.

In a major policy decision, Government of India has allowed Qualified Foreign Investors (QFIs) to directly invest in Indian equity market. The aim is to widen the class of investors, attract more foreign funds, reduce market volatility and deepen the Indian capital market. A New Manufacturing Policy has been notified to give a big push to the manufacturing sector.

The Companies Bill 2011 has been introduced in the Lok Sabha on 14.12.2011. It, *inter-alia*, proposes significant changes to the existing provisions on myriad aspects of corporate governance. The provisions in the Bill are progressive, conducive to the global business environment, and futuristic, duly envisaging the technological and legal developments. The new Bill promises investor democracy; addresses the public concern over corporate accountability and responsibility; and simultaneously introduces some industry friendly provisions.

This Ministry is engaged in formulation of a National Competition Policy. The aim is to put in place a framework of activities and initiatives to give a fillip to competition in all spheres beyond the legislative framework of the Competition Act.

With the release of credit rating update for India, on 21.12.2011, by Moody's Investors Service, the country's rating on long-term government bonds denominated in domestic currency has been upgraded. Further, long-term country ceiling on the foreign currency bank deposits has also been upgraded. The upgradations have been from Ba1 to Baa3 (from speculative to investment grade). Short-term government bonds denominated in domestic currency have been upgraded from NP to P-3 (from speculative to investment grade). The development testifies to our strong fundamentals, enhanced resilience to global shocks and improved international competitiveness.

By shaping real-time policy responses, reform systems, improved regulatory framework of our institutions, we can make the most of the opportunities coming our way in the form of strong drivers of our economy and the demographic dynamics. The Corporate sector, in particular, needs to de-link business sentiments from global cues. We look forward to the corporate sector gears itself to positive action in a time of some adversity, which is what entrepreneurial resilience is all about.

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Companies Bill, 2011 : The Companies Bill, 2011 was introduced in the Lok Sabha on 14.12.2011, withdrawing the Companies Bill, 2009. The Bill proposes significant changes to the existing corporate law. A detailed section on the salient features of this Bill is presented in a separate Box in this Newsletter.

MCA 21 integrated with Trade Mark Authority: As an added facility under MCA 21, integration with Trade Mark Authority has been established during the month. The added feature facilitates professional / public to cross verify Company's name before applying for ROC approval.

Improvements in the Implementation of Extensible Business Reporting Language (XBRL): XBRL reporting format has been introduced for filing of financial statements [Balance Sheet and Profit & Loss Account] of select class of companies from FY 2010-11. Over 21,500 companies have filed financial statements in XBRL format so far, compared to 12,500 companies in November 2011. As an exercise in facilitation, XBRL training was held on 02-03 December, 2011 at CCGRT, ICSI, Mumbai.

Circulars and Notifications on Simplification in Administrative Procedures continues: The Ministry, in its sustained efforts to simplify the administrative procedures has issued a series of Notifications and Circulars. These relate to –

(1) Notifications:

- a) The Central Government has, vide two separate notifications, amended the Schedule XIV to the Companies Act 1956 by introducing 10% depreciation for Rigs on Written Down Value method and 3.34% depreciation on Straight Line Method and the Unlisted Public Companies [Preferential Allotment] Rules, 2003 [see GSR(E) dated 14.12.2011].
- b) Two notifications amending the Companies [Accounting Standards] Rules, 2006 to amend the Accounting Standard (AS) 11 on "The effects of Changes in Foreign Exchange Rates" extending the deadline up to 31.03.2020 and also to add a new Para 46A in the AS 11 on the demand of stakeholders. The amendments were necessitated on account of the wide fluctuations in the Exchange value of the Rupee (see G.S.R. dated 29.12.2011).

- c) The Central Government has amended the cost accounting records rules vide six notifications issued on 07.12.2011. The Rules require the maintenance of cost records and books of account with specified particulars and the filing of a Compliance Report and other documents with the Central Government in electronic mode. The brief particulars of the amended rules are provided in the table (Right) :

2. Circulars:

- a) The time for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details has been extended up to 29.02.2012 (see General Circular No. 70 of 2011 dated 15.12.2011).
- b) The Company Law Settlement Scheme, introduced vide General Circulars No. 59 of 2011 dated 05.08.2011 and No. 60 of 2011 dated 10.08.2011 has been extended up to 15.01.2012 only with a stipulation that it will not be extended any further (see General Circular No. 71 of 2011 dated 15.12.2011).
- c) The provision of video conferencing facility for shareholders meeting for all listed companies from the financial year 2012-13 was made mandatory (see General Circular No. 35 of 2011 dated 06.06.2011). In a partial modification, it has been decided to make video conferencing facility for shareholders optional for the year 2011-12 and subsequent years also (see General Circular No. 72 of 2011 dated 27.12.2011).

National Competition Policy: The Ministry of Corporate Affairs is actively working on the formulation of a National Competition Policy with a view to achieve highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living for citizens, protect economic rights for just, equitable, inclusive and



Sl. No.	GSR No. dated 07.12.2011	Rules superseded	New Rules
1.	869(E)	Cost Accounting Records (Telecommunications) Rules, 2002	Cost Accounting Records (Telecommunication Industry) Rules, 2011
2.	870(E)	Cost Accounting Records (Petroleum Industry) Rules, 2002	Cost Accounting Records (Petroleum Industry) Rules, 2011
3.	871(E)	Cost Accounting Records (Electricity Industry) Rules, 2001	Cost Accounting Records (Electricity Industry) Rules, 2011
4.	872(E)	Cost Accounting Records (Sugar) amended Rules, 1997 and Cost Accounting Records (Industrial Alcohol) Rules, 1997	Cost Accounting Records (Sugar Industry) Rules, 2011
5.	873(E)	Cost Accounting Records (Fertilizers) Rules, 1993	Cost Accounting Records (Fertilizer Industry) Rules, 2011
6.	874(E)	Cost Accounting Records (Bulk Drugs) Rules, 1974 and Cost Accounting Records (Formulations) Rules, 1988	Cost Accounting Records (Pharmaceutical Industry) Rules, 2011

sustainable economic and social development, promote economic democracy and support good governance by restricting rent seeking practices. A Committee, set up to draft such a policy has since given its report and two national level consultations have been held and comments have also been invited from various stakeholders, including the State Governments. Amendments to the Competition Act, 2002 are also being considered to fine tune it.

MOU with Russia for Promotion of Competition Policy: During the recent visit of Hon'ble Prime Minister to Russia (15-17.12.2011), a Memorandum of Understanding was signed between the Competition Commission of India and the Federal Antimonopoly Service (Russian Federation) to promote cooperation in the field of Competition Policy.

Early Warning System Revisited and Revised : The Ministry of Corporate Affairs introduced an "Early Warning System" (EWS) in 2009 based on certain financial and non-financial parameters. The EWS has been revised and now comprises of a three-stage filtering mechanisms, *inter alia*, considering related party transactions, abnormal rise or fall in profitability, having large unsecured loans, audit

report, changes in accounting period, levels of stakes of promoters or relatives, disqualification of directors and non-filing of balance sheets and annual reports, with a view to prevent/ pre-empt cases of corporate frauds and to safeguard public interest.

Investor Awareness Programmes: A total of 266 Investor Awareness Programmes have been conducted through the Professional Institutes in various cities of the country during the month of December, 2011. So far, 806 such Programmes have been conducted through the Professional Institutes in different parts of the country during the year.



Dormant Companies: Companies which have not filed their Annual Returns and Balance Sheets for the last three consecutive years or more are identified as 'dormant companies'. There were 1,74,400 dormant companies as on 31.03.2011, while the figure reduced to 1,56,474 in the first week of December, 2011.

India Corporate and Investor Meet: The Ministry has decided to combine India Investor Meet (IIM) and India Corporate Week (ICW) into a single event namely, "India Corporate and Investor Meet". The Meet will be organized during 06.02.2012 – 11.02.2012 in association with business and trade chambers at the Kolkata, Chennai, Mumbai, Bangalore and Delhi.

Adjudication by Competition Commission of India (CCI): The Competition Commission of India, which has been established with the objective to eliminate practice having adverse effect on competition, promote and sustain competition, protect the interest of consumers and ensure freedom of trade carried in the markets of India, has received 6 new cases under Section 19 of the Competition Act for alleged violation of Section 3 & 4 during December 2011. With this, the total no of cases filed up to December 2011 stands to 234 out of which 146 cases have finally been decided. Under Sections 5 & 6 of the Act, 20 cases have been received, of which 15 have already been disposed of.

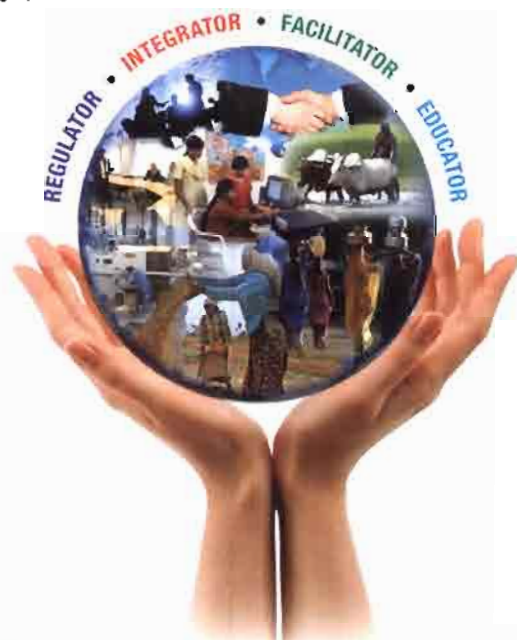
Workshops, Seminars and Conferences of the Competition Commission of India: Mr. John Davies, Head of Competition Division, Directorate for Financial and Enterprises Affairs of the OECD delivered a lecture on "The OECD's strategic projects on Competition" on 20th December 2011. Members and Officers of the CCI attended various workshops, Seminars and Conferences on various topics, viz., "Competition Enforcement Challenges and Consumer Welfare in Developing Countries" organized by Competition Commission of Pakistan



(CCP) at Islamabad, Pakistan; on "Abuse of Dominance Fundamentals" organized by OECD-Korea Policy Centre during December 7-9, 2011 at Busan, Korea; on "Procurement in PSE and Labour Management" organized by ONGC at New Delhi on 27th December 2011; on "Mergers & Acquisitions – Changing Dimension of Corporate Restructuring" organized by ASSOCHAM on 19th December 2011 at New Delhi; on "Introduction to Competition Law" organised by the Institute of Chartered Accountants of India, at Gurgaon on December 10, 2011.

ICWAI signs MOU with CISI, UK : The Institute of Cost and Works Accountants of India (ICWAI) has signed a memorandum of understanding with the Chartered Institute for Securities and Investment (CISI), UK paving the way for long term cooperation in the field of management accounting, risk management, Assets Servicing, global securities operations and investment in both countries. It has also been agreed to share developments in the areas of common interest at international level and to conduct seminars and conferences on contemporary areas such as IFRS, business valuations etc.

ICSI Foundation Day Celebrations : Shri R. P. N. Singh Minister of State for Corporate Affairs, while delivering the ICSI FOUNDATION DAY Lecture on 09.12.2011, commended the Institute for its conscious efforts in formulating its Vision Document after extensive research and conducting market survey among its stakeholders to know their perception about the profession and their expectations from the professionals. The theme of the event was "Game Changer for Corporate India : 2020".



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SALIENT FEATURES OF THE COMPANIES BILL, 2011

- Thirty-three new terms, including "Associate Company", "Small Company", "Employee Stock Option", "Promoter", "Related Party", "Turnover", "Chief Executive Officer", "Chief Financial Officer", "Global Depository Receipt", have been defined in the Bill.

- Financial Year of any Company can only be First day of April to Thirty-first day of March. A different financial year is permitted only in respect of certain companies complying with certain conditions, and only with the approval of Tribunal.

- The maximum number of members in respect of a Private Company has been increased to 200, from the existing ceiling of 50.

- The term "Officer Under Default" has been expanded to include Share Transfer Agents, Registrars and Merchant Bankers to the Issue or Transfer Related to Issue of Shares and Chief Financial Officer.

- The concept of One Person Company (formed as a private limited company) has been introduced.

- In the Memorandum of Association of Company, only objects for which company is incorporated along with matters considered necessary for its furtherance need be mentioned.

- Commencement of business by public/private Company will be considered only after filing of (a) Declaration by director in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them, and (b) Confirmation that the company has filed a verification of its registered office, with the Registrar.

- A public company can only issue securities by following the provisions related to public offer or Private Placement or by way of bonus or right issue, while a Private company may issue securities only through private placement.

- Power of SEBI extended to include the provisions related to Share Capital in respect of listed companies and companies desirous of getting listed. Provisions regarding Prospectus, variation of terms of contract mentioned in the prospectus and Shelf prospectus have been made more detailed and investor-friendly.

- Preferential shares redeemable after twenty years can be issued for infrastructure projects. Preferential shareholders cannot vote unless their dividend is overdue for two years.

- Further issue of share/capital is permitted subject to certain conditions. Elaborate provisions regarding Bonus shares, reduction in capital and buyback have been made.

- Acceptance of deposits by companies (non-NBFC) from persons other than shareholders is permitted under certain conditions, but the Tribunal will not have suo motu powers to direct repayment of the principal or interest.

- Every Annual Return shall contain the additional information like particulars of its holding, subsidiary and associate companies; matters related to certification of compliances, disclosures for remuneration of directors and key managerial personnel etc.

- In case of Companies with prescribed paid up capital and turnover, certification of annual return by practicing company secretary has been made mandatory.

- First Annual General Meeting of the Company shall be held within the period of 9 months from closure of its first financial year (instead of 18 months from the date of the Incorporation, as provided in the Companies Act 1956).

- Detailed provisions regarding eligibility for demand of poll by the members in the general meeting, postal ballot and electronic voting have been made.

- Every Listed Public Company must prepare a report on each annual general meeting including the confirmation that meeting was convened, held and conducted as per the law.

- Board of Directors empowered to declare interim dividend out of profits of the corresponding year, and not exceeding average of three preceding years if it has suffered loss up to the previous quarter.

- Unpaid and unclaimed dividends will be transferred to Investor Education Protection Fund; funds from IEPF can be utilized to serve court decrees in respect of disgorgement.

- Along with financial statement (including Balance Sheet, Profit and Loss Account, and cash flow statement), consolidated financial statement of all subsidiaries and company will be prepared and shall also be laid before the Annual General Meeting. Conduct of internal audit of certain companies has also been provided for.

- The role of National Financial Reporting Authority (earlier National Advisory Committee on Accounting Standards) is to advise on matters related to auditing standard in addition to accounting standards. Central Government may prescribe the standards of accounting.

- Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five 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 committee shall recommend the policy for CSR to the Board.

- Companies have to appoint an individual or a firm as its auditor for the period spanning over every six AGMs; individual auditors have to be changed every five years, while firms have to be changed every ten years. A transition period of three years has been provided for existing companies. Auditors have to also comply with auditing standards.

SALIENT FEATURES OF THE COMPANIES BILL, 2011

- Any offence involving fraud, if noticed by the Auditor, has to be immediately reported to the Central Government. Similar obligations laid on cost accountants for cost audit and company secretary in practice for secretarial audit. Auditors prohibited for rendering a specified set of services; contravention by Auditors invites serious civil and criminal liabilities. Circumstances under which Central Government can direct Cost Audit have been redefined, and it is not mandatory before appointment of Cost Auditors.
- Provisions for representation for women in Board of Directors, residency requirements on at least one director, number of independent directors to be appointed and their qualifications have been made; maximum number of directors has been fixed at 15 (up from 12 earlier), with a provision to increase this ceiling by special resolution.
- No person can be director on the board of more than 20 companies (or, 10 public companies). Disclosure of interest by every director has been made mandatory. Proposal to remove director can emanate from members holding a prescribed amount of shares/voting power.
- Various Committees such as Audit Committee (Vigil Mechanism), Nomination and Remuneration Committee, and Stakeholders Relationship Committee have been provided for.
- Ceiling on Political contributions raised to 7.5% (up from 5% earlier). Inter-corporate loans and investment are regulated; forward dealings in securities of company by director and key managerial personnel and insider trading are prohibited.
- Provision related to appointment of Managing Director/Whole Time Director/ Manager shall also apply to private company.
- The functions of the Company Secretary have been elaborately laid down. It also provides for provision related to secretarial audit in certain prescribed companies.
- Registrar/Inspector have powers of search and seizure, after obtaining permission of special court. They can access the premises of Key Managerial Personnel, Auditors and Company Secretary in practice, and Registrar will have powers of civil court in such matters.
- The Serious Fraud Investigation Office (SFIO) gets a statutory status and can investigate such complaints. The investigation can go even into the question of ownership of the related company. Foreign companies are explicitly covered under this office.
- The Tribunal can debar the company in respect of transfer, removal or disposal of funds, assets, properties of the company in certain circumstances.
- In case inspector reports that undue advantage has been derived by Director, Key Managerial Personnel and other officer due to fraud, then Central Government can apply to the Tribunal seeking disgorgement of such property and for fixing of liability.
- Affidavit of creditors having 90% or more outstanding debt accepting an arrangement/compromise is sufficient to dispense with meeting of creditors; an objection can be raised only by creditors having at least 5% outstanding dues.
- A certificate of the Auditor that the accounting treatment is as under the accounting standards is necessary before sanction of the arrangement/compromise by the Tribunal.
- Specific provisions in respect of mergers, amalgamations, cross-border amalgamations, and purchase of minority shares in concert with the acquirer have been made.
- Applications against Oppression and Mismanagement lie to National Company Law Tribunal (instead of Company Law Board). Class action by Members/Depositors (except banks) has been provided for.
- The manner of declaring a company sick and process of its revival and rehabilitation has been rationalized. Criteria of erosion of 50% of the net worth for declaring the company as sick has been dispensed with; creditors representing 50% or more of the debt of the company can, if even after 30 days of service of demand notice their debt remains unpaid, can apply to the Tribunal for declaration as sick company. Even the company, after its failure to comply with the demand notice can also apply.
- New definition of Nidhi Company has been prescribed.
- The National Company Law Tribunal will comprise of a President, who is or has been a Judge of a High Court for at least five years; Judicial members have to be an advocate of ten years standing, or a District Judge for five years or a High Court Judge; and technical members have to be experts of at least fifteen years' standing with rich and varied experience in related fields.
- The National Company Law Appellate Tribunal will comprise of a Chairperson, who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court; Judicial members have to be a High Court Judge or a Member of the NCLT for five years; and technical members have to be experts of at least twenty-five years' standing with rich and varied experience in related fields.
- An appeal from the Orders of the National Company Law Tribunal lies to the National Company Law Appellate Tribunal; and a further appeal is allowed to the Supreme Court.
- The Tribunal and the Appellate Tribunal have been given powers of civil courts; contempt and execution of their orders, and can call the magistrate in their aid.
- Central Government will appoint a panel of experts to be called as A Mediation and Conciliation Panel, to which cases pending before the Central Government, or the Tribunal or the Appellate Tribunal can be referred for mediation either suo motu or by application of either party.