



Monthly Newsletter

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From The Secretary's Desk

The Year 2012 was a mixture of hopes and despair. The Indian economy grew at less than 5.4% during the first three quarters of the year (January to September), down from over 7.9% during the corresponding period in 2011. The Index of Industrial Production stayed very low for the major part of the year, and grew by a meager 0.36% on the average during the year. The WPI-based inflation rate fell down to about 7.5% on the average compared to the 9.5% level seen during the previous two years.

Current account deficit remained above 4% all through the year and rose to the highest ever level of 5.4% of GDP in the September quarter. This caused a huge imbalance in the dollar-rupee exchange rates during the year despite a record-level of portfolio investment inflow of about US \$ 25 billion.

The corporate sector responded well to the definite cue from the Government about its reform instincts. The Sensex gained about 13% during the year breaching the 19,000 mark in October, 2012 after a hiatus of about 14 months and the capital market has remained buoyant with strong FII inflows. I do hope it would gain momentum with further reforms on the anvil.

Recognizing the global economic scenario and the sluggishness in the Indian manufacturing sector, Planning Commission has moderated the GDP growth target for the Twelfth Five Year Plan (2012-2017) to an annual average growth rate of 8 per cent. This growth target is to be achieved with the support of an estimated Gross Fixed Capital Formation (GFCF) of 34% of GDP at current prices, including 13.5% of GDP to be contributed by the Private Corporate Sector.

Companies Bill, 2012, to which the Lok Sabha has given its seal of approval, seeks to address the emerging challenges in the global environment, while bringing in progressive and futuristic industry-friendly provisions, and ensuring investor democracy. It would enable flexibility, transparency and definitiveness in corporate governance.

In the light of the experiences gained in the actual working of the Competition Commission of India and to meet the evolving needs in the field of competition, the Government has introduced an Amendment Bill in the Lok Sabha in December 2012.

I am happy to note that MCA21 has successfully completed its first phase, with TCS as the service provider. It has become a benchmark e-governance project of the Government of India. The Project is now due for a transition to its Phase-II (MCA21 v2) with Infosys as the service provider, covering the period from January, 2013 to July, 2021. The Ministry has

successfully integrated the Registry of Limited Liability Partnership with the MCA21 project, and now seeks to integrate the functioning of the Official Liquidators also into it. We expect utmost cooperation from all the stakeholders to take the project to its next higher level.

The Ministry has issued several notifications for simplifying the procedures under the Companies Act, 1956, including clarifications on definitions, operations and reporting. I expect that the regulatory exercises would reach the next level of competence and ease with the help of XBRL reporting, which has seen a great leap forward, both in terms of development of taxonomy and actual filing, during the year.

I look forward for the ushering in of a new era in corporate governance and a very fruitful and prosperous new year for the corporate sector.



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Companies Bill, 2012: The Lok Sabha on 18.12.2012 passed the Companies Bill, 2011 and changed its name to “Companies Bill, 2012”. In view of various reformatory and contemporary provisions proposed in the Companies Bill, 2012, together with omission of existing unwanted and obsolete compliance requirements, the companies in the country will find it easier and cheaper to comply with the requirements of the law. It is expected that the Rajya Sabha would consider the Bill in the ensuing Budget session of the Parliament.

Competition Bill: The Competition (Amendment) Bill, 2012 was introduced in the Lok Sabha on 10.12.2012. It has been referred to the Standing Committee on Finance by the Hon'ble Speaker. The Hon'ble Committee is expected to submit its report on the Bill to the House in the Budget Session. The Bill has been devised to meet the present day needs in the field of competition, in the light of the experiences gained in the working of the Competition Commission of India in the past few years. Several conceptual/ definitional issues have been clarified and procedural aspects are simplified in the Bill. The Bill also seeks to empower the Central Government to lay down different thresholds for any class or classes of enterprises for the purpose of examining acquisitions, mergers and amalgamations by the Commission.

Transition management of MCA-21: The MCA-21 Project of the Ministry, launched in February 2006, integrates both regulation and service delivery functions under the Companies Act, 1956, including incorporation of company and statutory filing by each registered company. MCA-21 also provides public access to corporate information online through a secure interactive portal. The Phase-I of the MCA-21 e-Governance project with TCS as the service provider completes its tenure on 16.01.2013. After a detailed bidding, INFOSYS has been selected as the service provider for the next cycle of MCA-21 (to be known as MCA21 v2) covering the eight-and-half year from January, 2013 to July, 2021. The Project Management Unit has arranged for an elaborate exercise of transfer of knowledge from TCS to Infosys over the past three months to smoothen the process of transition. The second cycle of the project will extend e-governance to its Official Liquidator offices, connect attached offices like SFIO and CLB, etc. New services like SMS and mobile enabled interfaces will be provided for improved service delivery.

Features of MCA21v2

Infrastructure:

- Replacement of existing desktops, printers, & scanners
- Replacement of UPS with higher backup
- Replacement of end-of-life & out-of-support servers and associated infrastructure
- Upgrade Network Connectivity of Registrar of Companies, Regional Directorates and Headquarters to 2, 4 and 8 Mbps
- Support ISO 27001 Audit of Data Center (DC) and Disaster Recovery Center (DRC) - For ensuring higher Security Standards

Enhanced User Experience:

- Redesign of the portal to provide an enhanced look and feel to the end users
- Improved dashboards for front office and back office users
- Advanced search services
- Collaboration tools like Bulletin Board, Discussion Forums etc.
- SMS and mobile enabled interfaces
- Business analytics solution to support user-defined customizable reports and enhanced technical scrutiny

Additional Functionalities:

- OL E-Governance with E-auction and integrated accounting
- To Enable Value Added Service (VAS) Providers
- Additional Offices like ROC Sikkim
- Establishment Functions of CLB and SFIO
- Business Process Re-engineering to simplify the forms and processes - continuous process
- Flexible and configurable application to handle the changes to rules, processes with a quick turnaround

Investor Education and Protection Related Activities:

Investments, deposits and dividends etc. of investors, which have remained unpaid/unclaimed with the companies for more than seven years are to be transferred to the Investor Education and Protection Fund (IEPF). Details of such unpaid and unclaimed amounts of investors, are to be uploaded by the companies on the new website (<http://www.iepf.gov.in>). This website would enable the investors to search and locate the relevant information of such amounts during the seven year period so that they may claim the amount before the same is transferred to the IEPF. As many as 900 companies uploaded such details in December 2012, taking the total number companies that have uploaded their details on the website to 6099.

Investor Awareness Programmes: Investor Awareness Programmes are being conducted in partnership with the three Professional Institutes i.e. Institute of Chartered Accountants of India, Institute of Company Secretaries of India, and Institute of Cost Accountants of India. During the month of December, 2012, 174 such programmes were conducted.

IICA Signed MoU with NLSIU: A Memorandum of Understanding (MoU) was signed on 28.12.2012 by the

Indian Institute of Corporate Affairs (IICA) with the National Law School of India University (NLSIU). The primary objective of the MoU is to establish a long term collaborative academic activities between the two national institutions in the areas of competition policy and law, economic regulation and corporate social responsibility etc. IICA and NLSIU would undertake cutting edge research and roll out innovative courses so as to meet the contemporary knowledge needs and skill needs of stakeholders. Prof. R Venkata Rao, Vice Chancellor, NLSIU, Dr. Bhaskar Chatterjee, Director General & CEO, IICA and Shri Dhanendra Kumar, Principal Adviser, IICA participated in the event.

Notifications and Circulars: The Ministry of Corporate Affairs has issued a series of Notifications and Circulars concerning administration of the Companies Act, 1956 in the month of December, 2012 (for further details, visit our website: <http://mca.gov.in>). These Notifications and Circulars broadly relate to —

I. Notifications:

- (i) In pursuance of the policy decision announced vide General Circular No. 36/2012 dated 06.11.2012 regarding appointment of cost auditors, the Government has amended Annexure 'A' to Form 23C. Through this form, change of Cost Auditors for reasons of death, resignation, rotational policy and other reasons need to be properly intimated in the MCA21 System by enclosing requisite documents, within prescribed time limits (See G.S.R. 906 (E) dated 19.12.2012, with effect from 23.12.2012).
- (ii) The Government has amended Annexure 'A' to Form 18, dealing with information to be provided to the MCA21 system about situation or change of situation of registered office. (vide F.No.5/80/2012 CL-V dated 24.12.2012, with effect from 25.12.2012).
- (iii) The Government has amended Annexure 'A' to Form DIN-4 to provide for additional compliance requirements for online generation of DIN. Documents such as proof of ownership etc. of the premises of the registered office and proof of

identity of the person etc. are required to be filed in support of the application. (vide F.No.5/80/2012 CL-V dated 24.12.2012, with effect from 25.12.2012).

- (iv) The Government has substituted a part of the declaration/certification in Form DIN-1 to provide for additional compliance requirements for online generation of DIN. The certifying professional is required, in the e-form, (a) to verify the identity of the person seeking to register himself as a Director/ Designated Partner, and (b) to attest that the documents filed online in support of the Application were seen by him in original. (vide F.No. 5/80/2012 CL-V dated 24.12.2012, with effect from 25.12.2012).
- (v) The Government has delegated its powers of moving the Company Law Board for removal of Directors and Managerial persons in respect of Banking Companies falling within the purview of the Banking Regulation Act, 1949 on complaints of misconduct to the Reserve Bank of India under Sections 388B, 388C and 388E of the Companies Act, 1956. (vide F.No. 17/231/2012- CL-V dated 21.12.2012, with effect from 21.12.2012).
- (vi) The *MCX Stock Exchange Limited* has been recognized by the Central Government as a Stock Exchange (vide F.No. 3/2/2012-CL-V dated 21.12.2012, with effect from 21.12.2012).

II. General Circulars:

- (i) The time limit to file the financial statements in the XBRL mode (without any additional fee/penalty) has been extended up to 15.01.2013, or within 30 days from the due date of AGM of the company, whichever is later. This has been issued in continuation of General Circulars No. 16/2012 dated 06.07.2012 and No. 34/2012 dated 25.10.2012 (See General Circulars No. 39/2012 dated 12.12.2012 and No. 41/2012 dated 18.12.2012).
- (ii) Companies or Limited Liability Partnerships (LLPs) with the objective to carry on professions of Chartered Accountant, Company Secretary, Cost



Accountant, Architect etc. are required to obtain a 'No Objection Certificate' (NOC) from the concerned regulator/ council. NOC is required both at the time of incorporation as well as at the time of change of name of an existing LLP. In case of new LLPs and conversion into LLP, the NOC is to be obtained at the time of at the time of incorporation. In case of change of name of an existing LLP, the NOC is required at the time of making application for name approval. The difference is due to the fact that in the latter case, it is a Straight Through Process (STP) using Form 5. (See General Circular No. 40/2012 dated 17.12.2012).

(iii) Rectification of mistakes in Form 1, Form 1A and Form 44 A was permitted in respect of companies incorporated after 2009, by Filing Form 68 accompanied by prescribed fees. This facility has been extended to companies incorporated before 2009 and those who could not avail this facility earlier. (See General Circular No. 42/2012 dated 21.12.2012 with effect from 23.12.2012).

(iv) It is mandatory for all cost auditors and the concerned companies to file their Cost Audit Reports and Compliance Reports for the year 2011-12 onwards only in the XBRL mode. This directive applies to the overdue reports relating to any previous year(s) also. The time limit to file such Reports in XBRL mode has been extended up to 31.01.2013, or within 180 days of the close of the company's financial year, whichever is later, without any penalty. This has been issued in continuation of General Circulars No. 8/2012 dated 10.05.2012 [as amended on 29.06.2012] and No. 18/2012 dated 26.07.2012 (See General Circular No. 43/2012 dated 26.12.2012).

Events at Competition Commission of India:

1. Dr. Geeta Gouri, Member, CCI participated in a roundtable on 'Impact of Cartels on Poor' at constitution club of India, New Delhi on 05.12.2012. Dr. Gauri attended a International Conference on "Reviving Growth" held in New Delhi on December 14-15, 2012. She delivered a lecture on "Linking Game Theory to Competition" on 21.12.2012 at Institute of Public Enterprises (IPE), Hyderabad and also addressed a faculty of IPE on "Competition Policy" on December 26-27, 2012.
2. Shri R. Prasad, Member, CCI participated in a decision on "Power and Jurisdiction of CCI vis-à-vis other regulatory bodies" organized by Madras Chambers of Commerce and Industry at Chennai on 19.12.2012. Shri

Prasad also delivered a lecture on "Competition Act/ Law" at a workshop organized by Indian Chambers of Commerce and Industry, Coimbatore, Tamil Nadu on 26.12.2012.

3. Mr. Bruno Lasserre, President- Autorite de la Concurrence (French Competition Authority) visited CCI for a meeting on 18.12.2012. The meeting was chaired by Shri Ashok Chawla, Chairperson CCI and members of the Commission and other senior officers participated in the meeting.
4. Fifth lecture under "Distinguished Visitor Knowledge Sharing Series" was delivered by Prof. Arvind Panagaiya, Professor, and Columbia University on "India's Tryst with Destiny" on 13.12.2012.
5. Shri R N Sahay, Adviser (Eco) participated in conference on 'Making Integrity Work in Business' organized by Transparency International India at Mumbai on 19.12.2012.
6. Ms. Payal Malik, Adviser (Eco) attended a 3 day International Conference on "Macroeconomic issues and Challenges in India" held in New Delhi during December 19-21, 2012.
7. An interactive meeting on "Competition Law & Trade Association" was organized by CCI on 17.12.2012 at New Delhi with the representatives of various National Level Trade Association.
8. Workshop on Leadership & Team Building was organized for officers and experts of CCI during December 14-16, 2012.
9. A workshop on 'Audit of Procurement Transactions & Competition Law' was organized by CCI for CAG Officers at CAG Seminar Hall, New Delhi on 07.12.2012.
10. A seminar on "Use of Econometric Tools for Merger Analysis: Case Studies from the UK and EU" was organized on 11.12.2012. The main speaker in the seminar was Dr. Josef Molanar, Economic adviser, EU, DG-Competition, Chief Economist Team, Brussels.



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.