

# Standing Committee Report Summary

## The Companies Bill, 2009

- The Standing Committee on Finance submitted its 21<sup>st</sup> Report on 'The Companies Bill, 2009' on August 31, 2010. The Chairperson was Shri Yashwant Sinha.
- The Bill seeks to replace the Companies Act, 1956. According to the Report, the Bill proposes to change the existing legal regime in a number of ways. Some of the main changes are: (a) changing the basic principles for all aspects of corporate governance of corporate entities; (b) creating a speedy incorporation process, with detailed disclosures at the time of incorporation; (c) statutory recognition of audit committees and other bodies within corporations; (d) restriction on the ability of companies to raise deposits from the public except if permitted under special laws; (e) legal recognition of accounting and auditing standards; (f) revised framework for regulation of insolvency, liquidation and winding up.
- The Committee gave detailed clause-by-clause recommendations and also gave recommendations in a thematic manner on the broader issues covered by the Bill. The Committee's recommendations on the broader issues are summarised below.

### Corporate Governance

- The Committee had suggested that substantive matters covered in various corporate governance guidelines should be contained in the Bill. These include: (a) separation of offices of Chairman and Chief Executive Officer, (b) limiting the number of companies in which an individual may become director, (c) attributes for independent directors, (d) appointment of auditors.
- The Ministry agreed to include these guidelines appropriately in the Bill. The Committee recommended that other substantive matters in the guidelines and the Listing Agreement prescribed by SEBI for listed companies should be included in the Bill. The guidelines should remain voluntary for unlisted companies.

### Delegated Legislation

- The Committee noted that the Bill provided excessive scope for delegated legislation. Several substantive provisions were left for rule-making, the Ministry was asked to reconsider provisions made for excessive delegated legislation.
- The Ministry changed some of the provisions to include the substantive provisions in the Bill itself. These

include: (a) the definition of small companies, (b) manner of subscribing names to the Memorandum of Association, (c) format of Memorandum of Association to be prescribed in the Schedule, (d) manner of conducting Extraordinary General Meetings, (e) documents to be filed with the Registrar of Companies.

- The Committee however stated that simple procedural aspects requiring flexibility should continue to remain in the domain of delegated legislation.

### Independent Directors

- The Committee recommended that provisions relating to independent Directors in the Bill should be distinguished from other directors. There should be a clear expression of their (a) mode of appointment, (b) qualifications, (c) extent of independence from management, (d) roles, responsibilities, and liabilities.
- The liabilities of independent Directors should also be limited to enable them to act freely and objectively.
- The Committee also recommended that the appointment process of independent Directors should be made independent of the company's management. This should be done by constituting a panel to be maintained by the Ministry of Corporate Affairs, out of which companies can choose their requirement of independent directors.

### Regulatory Overlaps

- The RBI and SEBI suggested that certain provisions in the Companies Act, 1956 which prevented regulatory overlaps were not present in the Bill. The Committee stated that the while minimum benchmarks need to be provided in the Bill, sectoral regulators like SEBI should be allowed to exercise their designated jurisdiction.
- The Bill should clearly state that the Companies Bill will prevail only if the special law is silent.

### Auditors

- The Bill sought to enhance the role of the existing National Advisory Committee on Accounting Standards (NACAS). The Ministry accepted the Committee's suggestions and suggested that additional regulatory powers should be given to the body to enforce compliance with standards and for monitoring bodies involved in setting standards.
- The Committee acknowledged the Ministry's acceptance of its suggestions and also recommended that the NACAS should be given the mandate of both (a) overseeing

auditing and accounting standards, and (b) monitoring the quality of audit undertaken across the corporate sector.

### **Investor Protection**

In response to the Committee's concerns for ensuring protection of investors and minority shareholders, the Ministry stated that it had introduced certain provisions in the Bill. It also made certain suggestions to the Committee for protection of minority shareholders and small investors. The Committee accepted the proposals. The main provisions and suggestions are given below:

#### ***New provisions:***

- a. Enhanced disclosure requirements at the time of incorporation.
- b. Shareholder's associations/ groups enabled to take legal action in case of any fraudulent action by the company.
- c. Directors of a company which has defaulted in payment of interest to depositors to be disqualified for future appointment as directors.

#### ***Suggestions on protection of minority shareholders/small investors:***

- a. Source of promoter's contribution to be disclosed in the Prospectus.
- b. Stricter rules for bigger and solvent companies on acceptance of deposits from the public.
- c. Return to be filed with Registrar in case of promoters/ top ten shareholders stake changing beyond a limit.

### **Corporate Social responsibility**

The Committee agreed to the Ministry's proposal to bring Corporate Social Responsibility in the Bill itself. The Committee also recommended that there should be separate disclosures required to be made by Companies in their Annual Report indicating company policy as well as specific steps taken.

### **One Person Companies, Private Companies, Limited Liability Partnerships**

- The Committee observed that the Bill contains a number of references to different forms of companies, but the exemption regime applicable to them is not precise or explicit.

- The Committee asked the Ministry to clearly mention the exemption regime applicable to each of the different forms of companies in the Bill. This would also help to distinguish these forms of companies from each other.
- The Limited Liability Partnership Act and the Bill should also be synchronised.

### **Corporate Delinquency**

- The Committee recommended that the government include the suggestions it made to the Committee on the issue. These included: (a) Subsidiary companies not to have further subsidiaries, (b) source of the promoter's contribution should be included in the prospectus, (c) Main objects for raising public offer should be mentioned on the first page of the prospectus, (d) tenure of independent director should be provided in law, (e) the office of the Chairman and the Managing Director/ CEO should be separated.
- The Committee emphasised that the procedural defaults should be viewed in a different perspective from fraudulent practices.

### **Shareholder democracy**

- The Committee recommended that the system of proxy voting should be discontinued.
- It also stated that the quorum for company meetings should be higher than the proposed five members, and should be increased to a reasonable percentage.

### **Foreign companies**

- The Bill requires foreign companies having a place of business in India and with Indian shareholding to comply with certain provisions in the proposed Bill. The Committee observed that the Bill does not clearly explain the applicability of the Bill to foreign companies incorporated outside India with a place of business in India.
- The Committee recommended that all such foreign companies with or without any shareholding in India should be brought within the ambit of the chapter dealing with foreign companies.

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