

PRESS RELEASE

Sub: **The Companies Bill, 2008**

The Ministry of Corporate Affairs took up a comprehensive revision of the Companies Act, 1956 (the Act) in 2004 keeping in view that not only had the number of companies in India expanded from about 30,000 in 1956 to nearly 7 lakhs, Indian companies were also mobilizing resources at a scale unimaginable even a decade ago, continuously entering into and bringing new activities into the fold of the Indian economy. In doing so, they were emerging internationally as efficient providers of a wide range of goods and services while increasing employment opportunities at home. At the same time, the increasing number of options and avenues for international business, trade and capital flows had imposed a requirement not only for harnessing entrepreneurial and economic resources efficiently but also to be competitive in attracting investment for growth. These developments necessitated modernization of the regulatory structure for the corporate sector in a comprehensive manner.

2. Earlier, a Bill called Companies (Amendment) Bill, 2003 had been introduced by M/o Corporate Affairs (MCA) (then Department of Company Affairs) in the Rajya Sabha on 7.5.2003. Later on, a large number of changes were found to be necessary in the Bill. A decision was, therefore, taken to carry out a comprehensive review of the Companies Act, 1956 and to introduce a new Companies Bill for the consideration of the Parliament.

3. The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs on the basis of a detailed consultative process. A 'Concept Paper on new Company Law' was placed on the website of the Ministry on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December 2004 to advise on new Companies Bill. The Committee submitted its report to the Government on 31st May 2005. Detailed consultations were also taken up with various Ministries, Departments and Government Regulators. The Bill was thereafter drafted in consultation with the Legislative Department of the Central Government.

4. The Companies Bill, 2008 seeks to enable the corporate sector in India to operate in a regulatory environment of best international practices that fosters entrepreneurship, investment and growth and provides for :-

(i) The basic principles for all aspects of **internal** governance of corporate entities and a framework for their regulation, irrespective of their area of operation, from incorporation to liquidation and winding up, in a **single, comprehensive, legal framework** administered by the Central Government. In doing so, the Bill also harmonizes the Company law framework with the imperative of specialized sectoral regulation

(ii) Articulation of **shareholders democracy with protection of the rights of minority stakeholders, responsible self-regulation with disclosures and accountability, substitution of government control over internal corporate processes and decisions by shareholder control**. It also provides for shares with differential voting rights to be done away with and valuation of non-cash considerations for allotment of shares through independent valuers.

(iii) Easy transition of companies operating under the Companies Act, 1956, to the new framework as also from one type of company to another.

(iv) A **new entity in the form of One-Person Company (OPC)** while empowering Government to provide a simpler compliance regime for small companies. Retains the concept of Producer Companies, while providing a more stringent regime for not-for-profit companies to check misuse. No restriction proposed on the number of subsidiary companies that a company may have, subject to disclosure in respect of their relationship and transactions/dealings between them.

(v) Application of the successful e-Governance initiative of the Ministry of Corporate Affairs (MCA-21) to all the processes involved in meeting compliance obligations. Company processes, also to be enabled to be carried out through electronic mode. The proposed e-Governance regime is intended to provide for ease of operation for filing and access to corporate data over the internet to all stakeholders, on round the clock basis.

(vi) Speedy incorporation process, with detailed declarations/disclosures about the promoters, directors etc. at the time of incorporation itself. Every company director would be required to acquire a unique Directors identification number.

(vii) Facilitates joint ventures and **relaxes restrictions limiting the number of partners** in entities such as partnership firms, banking companies etc. to a maximum 100 with no ceiling as to professions regulated by Special Acts.

(viii) Duties and liabilities of the directors and for every company to have at least one director resident in India. The Bill also provides for independent directors to be appointed on the Boards of such companies as may be prescribed, along with attributes determining independence. The requirement to appoint independent directors, where applicable, is a minimum of 33% of the total number of directors.

(ix) Statutory recognition to audit, remuneration and stakeholders grievances committees of the Board and recognizes the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary as Key Managerial Personnel (KMP).

(x) Companies not to be allowed to raise deposits from the public except on the basis of permission available to them through other Special Acts. The Bill recognizes insider trading by company directors/KMPs as an offence with criminal liability.

(xi) **Recognition of both accounting and auditing standards.** The role, rights and duties of the auditors defined as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding companies is proposed to be made mandatory.

(xii) **A single forum for approval of mergers and acquisitions,** along with concept of deemed approval in certain situations.

(xiii) **A separate framework for enabling fair valuations** in companies for various purposes. Appointment of valuers is proposed to be made by audit committees.

(xiv) Claim of an investor over a dividend or a security not claimed for more than a period of seven years not being extinguished, and Investor Education and Protection Fund (IEPF) to be administered by a statutory Authority.

(xv) Shareholders Associations/Group of Shareholders to be enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and '**Class Action Suits**'.

(xvi) A **revised framework for regulation of insolvency,** including rehabilitation, winding up and liquidation of companies with the process to be completed **in a time bound manner.** Incorporates international best practices based on the models

suggested by the United Nations Commission on International Trade Law (UNCITRAL).

(xvii) Consolidation of fora for dealing with rehabilitation of companies, their liquidation and winding up in the single forum of National Company Law Tribunal with appeal to National Company Law Appellate Tribunal. The nature of the Rehabilitation and Revival Fund proposed in the Companies (Second Amendment) Act, 2002 to be replaced by Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency.

(xviii) A **more effective regime for inspections and investigations** of companies while laying down the maximum as well as **minimum quantum of penalty for each offence with suitable deterrence for repeat offences**. Company is identified as a separate entity for imposition of monetary penalties from the officers in default. In case of fraudulent activities/actions, provisions for recovery and disgorgement have been included.

(xix) Levy of additional fee in a non-discretionary manner for procedural offences, such as late filing of statutory documents, to be enabled through rules. Defaults of procedural nature to be penalized by levy of monetary penalties by the Registrars of Companies. The appeals against such orders of Registrars of Companies to lie with suitably designated higher authorities.

(xx) **Special Courts** to deal with offences under the Bill. Company matters such as mergers and amalgamations, reduction of capital, insolvency including rehabilitation, liquidations and winding up are proposed to be addressed by the National Company Law Tribunal/ National Company Law Appellate Tribunal.

* * * * *