

21

**STANDING COMMITTEE ON FINANCE
(2009-2010)**

FIFTEENTH LOK SABHA

(MINISTRY OF CORPORATE AFFAIRS)

THE COMPANIES BILL, 2009

TWENTY- FIRST REPORT



सत्यमेव जयते

**LOK SABHA SECRETARIAT
New Delhi**

August, 2010/Bhadra, 1932(Saka)

91

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Presented to Lok Sabha on 31 August, 2010

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CONTENTS

	<u>Page Nos.</u>
(i) COMPOSITION OF THE COMMITTEE	(iii)
(ii) INTRODUCTION	(v)
REPORT	
<i>PART I</i>	
(I) INTRODUCTION	1
(II) OVERVIEW OF COMMITTEE'S EXAMINATION OF THE COMPANIES BILL, 2009	9
<i>PART II</i>	
CLAUSE-BY-CLAUSE EXAMINATION	
1. CHAPTER I- PRELIMINARY	48
2. CHAPTER II - INCORPORATION OF COMPANIES	89
3. CHAPTER III - PROSPECTUS AND ALLOTMENT OF SECURITIES	102
4. CHAPTER IV - SHARE CAPITAL AND DEBENTURES	114
5. CHAPTER V - ACCEPTANCE OF DEPOSITS BY COMPANIES	128
6. CHAPTER VI - REGISTRATION OF CHARGES	134
7. CHAPTER VII - MANAGEMENT AND ADMINISTRATION	138
8. CHAPTER VIII - DECLARATION AND PAYMENT OF DIVIDEND	152
9. CHAPTER IX - ACCOUNTS OF COMPANIES	163
10. CHAPTER X - AUDIT AND AUDITORS	188
11. CHAPTER XI - APPOINTMENT AND QUALIFICATIONS OF DIRECTORS	214
12. CHAPTER XII - MEETINGS OF BOARD AND ITS POWERS	248
13. CHAPTER XIII - APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL	280
14. CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION	292
15. CHAPTER XV - COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS	306
16. CHAPTER XVI - PREVENTION OF OPPRESSION AND MISMANAGEMENT	318
17. CHAPTER XVII - REGISTERED VALUERS	327
18. CHAPTER XVIII - REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER	334
19. CHAPTER XIX - REVIVAL AND REHABILITATION OF SICK COMPANIES	337
20. CHAPTER XX - WINDING UP	344
21. CHAPTER XXI - COMPANIES INCORPORATED OUTSIDE INDIA	364
22. CHAPTER XXV – NIDHIS	369
23. CHAPTER XXVI - NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL	373
24. CHAPTER XXVIII – MISCELLANEOUS	381

13. The Committee held nine sittings in the course of examination of the Bill, which included briefing /oral evidence of the Ministry of Corporate Affairs and the oral hearings of the representatives of different stakeholders like FICCI, CII, ICAI, ICSI, ICWAI, RBI and SEBI, as also some experts on the subject. Detailed questionnaires were sent to the Ministry seeking clarifications on the concerns/queries raised by Members during these hearings. The Ministry of Corporate Affairs furnished their replies/comments to the questionnaires sent to them at different points of time in a phased manner. The examination of the Companies Bill, 2009 was thus very detailed and comprehensive, spanning about eight months.

14. The Ministry of Corporate Affairs accepted the suggestions made by the Committee in about 500 cases and even suggested revised formulations/alternate clauses in about 125 cases (details of clauses/sub-clauses accepted for modification including alternate formulations have been indicated in annexures to the report). It resulted in large area of acceptance by the Government, with the number of issues involving different points of view reduced to the minimum. The Committee's extensive deliberations and interventions on the Bill would thus engender amendments / modifications and fresh inclusions requiring recasting of several clauses and matters covered in the Bill.

GUIDING PRINCIPLES

- Establishing a comprehensive and vibrant legal framework to cover the entire gamut of corporate functioning that will stand the vagaries of time.
- Greater clarity and lucidity recommended in the formulation of clauses and sub-clauses; restoration of existing provisions recommended if they are found less ambiguous and more inclusive.
- Reduction in delegated legislation; substantive matters and important issues to be included in the statute itself.
- Need for sturdy systems, enhanced transparency and comprehensive disclosures - based regime emphasized; as companies grow, become bigger and globalise with the number and range of stakeholders increasing by volumes, necessitating proper checks and balances.

- Self-regulation through internal mechanism / procedures, to be underpinned on strong systems and procedures; Central Government to step in only when mis-governance takes place
- Technical or procedural mistakes or delays to be considered in broader perspective, while dealing with fraudulent conduct/practices severely and decisively; deterrent provisions including imprisonment prescribed to pre-empt fraudulent conduct / practices; bonafide managerial conduct/decisions to be protected.
- In the light of recent experiences in corporate mis-governance, process of audit and functioning of auditors to be made more independent and effective; stringent joint and individual liability prescribed; setting up of oversight body to set standards and supervise quality of audit recommended.
- Role of Independent Directors to be distinguished from other Directors in terms of appointment, duties and liabilities; maintenance of a panel recommended for their appointment; independence criteria to be clearly delineated; the institution to be allowed time to evolve.
- Committees of Board to be strengthened; their terms of reference to be clearly defined.
- Effective regulation stressed, wherein benchmarks may be provided in the main statute, while the sectoral regulator may regulate by way of detailed guidelines as per evolving circumstances. Certain aspects presently included only in regulator's guidelines to be brought in as part of company law.
- Existing jurisdiction of regulators like SEBI, RBI not to be disturbed.
- Investigation under Company law to rest with Central Government and not with any sectoral regulator.
- Capacity building of Government agencies to scrutinize documents and detect non-compliance. - Strengthen enforcement and investigation mechanism, particularly Registrar of Companies (ROCs) for better monitoring of compliance in coordination with SEBI.
- Investor friendly measures with adequate protection and quick relief for small investors stressed upon; recognized Investors Association to be allowed to file class section suits and also complaints on behalf of shareholders; revival of company deposits as a source of safe and secure investment for the public recommended.
- Statutory status for Serious Frauds Investigation Office (SFIO) proposed with a view to investigating corporate frauds; definition of 'fraud' brought in the Bill.
- Different aspects of corporate governance to be brought in the main statute rather than be left to guidelines; corporate governance expected to become integral to corporate functioning and governance structures of companies.

- Introduction of Corporate Social Responsibility (CSR) as a concept in the Bill, requiring bigger companies to make disclosures about their CSR policies and activities thereunder.
- Emphasis on canons of corporate democracy – the system of proxies to be discontinued and higher quorum suggested for company meetings.

BROADER ISSUES

15. Before discussing the various points raised by the Committee and their specific observations / recommendations clause by clause (Part-II), the Committee's examination of certain broader issues may be dealt with in brief as follows :-

(A) Corporate Governance :-

16. During their discussions on the Bill, the Committee have been stressing on Corporate Governance norms and its statutory recognition. The Corporate Governance Voluntary Guidelines 2009 were issued by the Central Government (Ministry of Corporate Affairs) in December, 2009 for voluntary adoption by the Companies. Pursuant to the Committee's suggestion that the substantive matters covered in these guidelines may be appropriately included in the Bill itself, the Ministry while agreeing to this suggestion in principle, has proposed that the following matters may be included in the Bill :-

- (i) Separation of Offices of Chairman & Chief Executive Officer
- (ii) Nomination Committee to consider proposals for searching, evaluating, and recommending appropriate Independent Directors and Non-Executive and Executive Directors
- (iii) Number of Companies in which an Individual may become a Director
- (iv) Attributes for Independent Directors
All Independent Directors to provide a detailed Certificate of Independence.
- (v) Tenure for Independent Director
- (vi) Independent Directors expected to act as 'whistle blower.'
- (vii) Remuneration Committee to determine, recommend and monitor principles, criteria and the basis of remuneration policy of the company
- (viii) Risk Management

payment or delayed payment by the company. The Committee feel that the instrument of public deposits as a source of capital for companies should not be discouraged in law, while deterrent provisions should be brought against defaulting companies.

(I) Corporate Social Responsibility (CSR) :

49. In response to the Committee's overwhelming concerns on the extent of Corporate Social Responsibility (CSR) being undertaken by corporates and the need for a comprehensive CSR policy, the Ministry of Corporate Affairs have agreed that the Bill may now include provisions to mandate that every company having [(net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more)] or [a net profit of Rs. 5 crore or more during a year] shall be required to formulate a CSR Policy to ensure that every year at least 2% of its average net profits during the three immediately preceding financial years shall be spent on CSR activities as may be approved and specified by the company. The directors shall be required to make suitable disclosures in this regard in their report to members.

50. In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/ reasons in their report to the members.

51. **While welcoming the Ministry's acceptance of the Committee's suggestion to bring Corporate Social Responsibility (CSR) in the statute itself, the Committee feel that separate disclosures required to be made by Companies in their Annual Report by way of CSR statement indicating the company policy as well as the specific steps taken thereunder will be a sufficient check on non-compliance.**

of an oversight mechanism that some Government officer will look into it, then no, we have not conceived of that idea. We have not put up that type of idea there."

9.45 He further added :-

"This is the first time and historically it may be the first time in the world – is that we are putting the Corporate social responsibility which the Chairman directed to us. We are putting it in the law itself that every company beyond the certain limit should have a corporate social responsibility policy. This is something we cannot mandate beyond that, but we are making a provision in the law itself."

9.46 On this issue, the Ministry in their post evidence replies submitted as follows :-

- (i) The Ministry has examined the matter in detail in view of discussions taken place before Hon'ble Committee on 15th June, 2010.*
- (ii) It is felt that the Bill may include provisions to mandate that every company having [(net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more)] or [a net profit of Rs. 5 crore or more during a year] shall be required to formulate a CSR policy to ensure that every year at least 2% of its average net profits during the three immediately preceding financial years shall be spent on CSR activities as may be approved and specified by the company. The directors shall be required to make suitable disclosures in this regard in their report to members.*
- (iii) In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/reasons in their report to the members.*

9.47 The Committee would like the Ministry to modify the sub-clause 120(3) incorporating details about Directors' responsibility statement comprising of disclosures about material related party transactions and corporate social responsibility policy along the lines suggested above. In this regard, the Committee would however like to point out that all the details of material related party transactions in respect of both a Director and Key Managerial Personnel (KMP) of the company should also be required to be disclosed under clause 120(3). The Committee have already made their observation on corporate social responsibility and its inclusion in the statute itself in Part – I of the report (Overview).