

TWENTY-FIRST REPORT  
STANDING COMMITTEE ON FINANCE  
(2009-2010)

(FIFTEENTH LOK SABHA)

THE COMPANIES BILL, 2009  
(MINISTRY OF CORPORATE AFFAIRS)

Volume I—REPORT

*Presented to Lok Sabha on 31 August, 2010  
Laid in Rajya Sabha on 31 August, 2010*



LOK SABHA SECRETARIAT  
NEW DELHI

*August, 2010/Bhadra, 1932 (Saka)*

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\*Printed separately in Volume II.

**COMPOSITION OF STANDING COMMITTEE  
ON FINANCE—2009-2010**

Shri Yashwant Sinha – *Chairman*

MEMBERS

*Lok Sabha*

2. Dr. Baliram (Lalganj)
3. Shri Sudip Bandyopadhyay
4. Shri C.M. Chang
5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Gurudas Dasgupta
8. Shri Khagen Das
9. Shri Nishikant Dubey
10. Smt. Jayaprada
11. Shri Bhartruhari Mahtab
12. Shri Mangani Lal Mandal
13. Shri Rayapati Sambasiva Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Y.S. Jagan Mohan Reddy
16. Shri N. Dharam Singh
17. Shri Sarvey Sathyanarayana
18. Shri Manicka Tagore
19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Shri G.M. Siddeshwara\*

*Rajya Sabha*

22. Shri Raashid Alvi
23. Dr. K.V.P. Ramachandra Rao

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\* Nominated to this Committee w.e.f. 09.03.2010 vice Shri Gopinath Munde, MP

24. Vacant\*\*
25. Shri S.S. Ahluwalia
26. Shri Moinul Hassan
27. Shri Mahendra Mohan
28. Vacant\*\*\*
29. Dr. Mahendra Prasad
30. Shri Y.P. Trivedi
31. Shri Rajeev Chandrasekhar

SECRETARIAT

- |                                 |   |                            |
|---------------------------------|---|----------------------------|
| 1. Shri A.K. Singh              | — | <i>Joint Secretary</i>     |
| 2. Shri T.G. Chandrasekhar      | — | <i>Additional Director</i> |
| 3. Shri Ramkumar Suryanarayanan | — | <i>Deputy Secretary</i>    |

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\*\* Shri Vijay Jawaharlal Darda, MP retired on 4 July, 2010

\*\*\* Shri S. Anbalagan, MP retired on 29 June, 2010

## INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Twenty-first Report on the Companies Bill, 2009.

2. The Companies Bill, 2009, introduced in Lok Sabha on 3 August, 2009 was referred to the Committee on 9 September, 2009 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took briefing/oral evidence of the representatives of Ministry of Corporate Affairs at their sittings held on 29 September, 2009, 20 October 2009, 11 November, 2009, 15 June, 2010 and 7 July, 2010.

4. The Committee at their sitting held on 21 January, 2010 heard the views of the representatives of Federation of Indian Chamber of Commerce and Industries (FICCI) and Confederation of Indian Industries (CII). At the sitting held on 24 May, 2010 Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost and Works Accountants of India (ICWAI) presented their views before the Committee. On 31 May, 2010, the Committee heard the views of the representatives of Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI). The Committee also heard the views of Dr. Ashok Haldia—Former Secretary, ICAI & Member, Appellate Tribunal set up for ICAI, ICSI and ICWAI, Shri M. R. Umerji—Chief Advisor Legal, Indian Banks Association, Shri Pradip N. Kapadia—Vigil Juris, Advocate, Solicitors and Notary, Shri LVV Iyer, Corporate Lawyer, Shri Virendra Jain—President, Midas Touch Investors Association at the sitting held on 15 June, 2010.

5. The Committee considered and adopted this report at their sitting held on 26 August, 2010.

6. The Committee wish to express their appreciation to the officials of the Ministry of Corporate Affairs concerned with the Bill for their co-operation and all the organizations and experts for their valuable suggestions on the Bill. The Committee would also thank Dr J. J. Irani (Chairman, Expert Committee on Company Law 2005) for appearing before the Committee and putting forward his views on the Bill.

7. For facility of reference, observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;  
26 August, 2010  
04 Bhadra 1932 (Saka)

**YASHWANT SINHA,**  
Chairman,  
Standing Committee on Finance.





# REPORT

## PART-I

### (i) INTRODUCTION

The Companies Bill, 2009, which has been referred to the Standing Committee on Finance of Parliament for detailed examination and report seeks to codify a new law to regulate companies and other corporate entities in the country and at the same time repeal the Companies Act, 1956. The Bill comprises of 28 Chapters including 426 Clauses. Before discussing the Companies Bill, it may be pertinent to have a brief overview of the existing Companies Act, 1956 which it seeks to replace.

#### **The Companies Act, 1956**

2. The Companies Act, 1956 was enacted with the object to amend and consolidate the law relating to companies and certain other associations following the recommendations of the Company Law Committee, known as the Bhaba Committee, set up in 1950. Simultaneously, Companies Act, 1913, then in force was repealed. In our country, the Companies Act, 1956 primarily regulate the range of activities from formation to liquidation and winding up of Companies. Regulation of corporate governance, structure and obligations of companies towards their stakeholders, investigation and enforcement and company process such as mergers/ amalgamations/arrangements/reconstructions etc. constitute the main focus of the Act. The Companies Act thus enables a statutory platform for essential corporate Governance requirements essential for functioning of the Companies with transparency and accountability, recognizing and protecting the interests of various stakeholders.

#### **Need for change**

3. The Central Government has stated that many changes have taken place in the national and international economic environment after the enactment of the existing Act which have happened particularly during the last two to three decades. The resultant expansion and growth of the Indian economy have increased the options and avenues for more international business opportunities and investment. In the light of this background, modernization of corporate regulation governing setting up and running of enterprises, structures for sharing risk and reward, governance and accountability to the investors and other stakeholders and structural changes in the law commensurate with global standards have become critical for the maintenance and enhancement of a vibrant corporate sector and business environment.

4. The Indian economy is now more diverse, complex and dynamic. In this milieu, the corporate form of organization has increasingly emerged as the preferred vehicle for economic and commercial activity, with large scale mobilization of resources from the public. The number of companies has expanded from about 30,000 in 1956 to more than 8 lakh. Companies are

now entering into and bringing new activities into the fold of the Indian economy, exporting a wide range of goods and services and providing employment opportunities to a diverse range of professions and trades. Many Indian companies have become global and expanded their operations beyond Indian borders with a spate of mergers and acquisitions abroad. Thus, the corporate form has not only contributed significantly to the growth of the national economy, but has helped Indian entrepreneurs to carve out a place for themselves in the world economy as well. In the backdrop of these developments, a need was felt to help sustain this growth by putting in place a legal framework that would enable the Indian corporate sector to operate in an environment of best international practices in a globally competitive manner, while fostering a positive environment for investment and growth.

### **Objectives of Comprehensive Review**

5. Government had received inputs from various committees and expert bodies from time-to-time in the past, suggesting legislative measures to meet the emerging requirements. Keeping all aspects in view, it was decided that the issues concerning company law in India could be best addressed through a comprehensive review and revision of the existing Companies Act, 1956. It was decided to take up such a review keeping in view the following:-

- (a) to revise and modify the Companies Act, 1956 in consonance with the changes in the national and international economy.
- (b) to bring about compactness by deleting the provisions that had become redundant over time and by regrouping the scattered provisions relating to specific subjects;
- (c) to re-write various provisions of the Act to enable easy interpretation; and
- (d) to delink the procedural aspects from the substantive law and provide greater flexibility in rule making to enable adaptation to the changing economic and technical environment.

### **Guiding principles behind review of the existing Act**

- To enable a compact statute, amenable to easy understanding and interpretation;
- To encourage setting up of businesses while enabling measures to protect the interests of stakeholders/investors, including small investors;
- To provide a framework for responsible and accountable self-regulation obviating the need for a regime based on Govt. approvals;
- To provide for more effective and speedy winding up process based on international practices;
- To strengthen enforcement powers and enhance penalties for offences; and
- To segregate substantive law from the procedures which are proposed to be prescribed as rules.

### **Amendments to Companies Act, 1956**

6. Revisions have been made from time to time in the Companies Act, 1956 to address requirements of the times. There have been as many as 25 amendments made so far. Following

significant enactments were made in this regard:

- (i) Companies (Amendment) Act, 1988
- (ii) Companies (Amendment) Act, 1999
- (iii) Companies (Amendment) Act, 2000
- (iv) Companies (Amendment) Act, 2001
- (v) Companies (Amendment) Act, 2002
- (vi) Companies (Second Amendment) Act, 2002
- (vii) Companies (Amendment) Act, 2006

### **Irani Committee**

7. The Ministry placed a Concept Paper on its website on 4th August, 2004 and thereafter set up, on 2nd December, 2004, an Expert Committee under chairmanship of Dr. J.J. Irani, Director, Tata Sons Ltd. to examine suggestions received on the Concept Paper. This Committee included representatives from various industry and trade bodies/associations, statutory professional bodies, experts and representatives from regulatory bodies such as Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and concerned Ministries/ Departments.

8. In view of recommendations made by Irani Committee and other inputs available with the Ministry, a draft Bill was prepared in consultation with various stakeholders including concerned Ministries/Departments and accordingly, a new Companies Bill, 2008 was introduced on 23rd October, 2008 in the Lok Sabha and the Companies (Amendment) Bill, 2003, pending in the Rajya Sabha, was withdrawn on the same day. Due to dissolution of 14th Lok Sabha, the Companies Bill, 2008 lapsed. The Government then introduced the Companies Bill, 2009 in the Lok Sabha on 3rd August, 2009.

### **Structure of Companies Act and the proposed Bill**

9. Structure of the existing Companies Act and the proposed Companies Bill, 2009 is as under:

A. Present Act comprises of

- (i) 13 parts
- (ii) 750 sections (including Sections inserted through amendments in the Act from time to time)
- (iii) 15 Schedules

B. The Companies Bill, 2009 comprises of

- (i) 28 Chapters
- (ii) 426 Clauses
- (iii) No Schedule

## The Companies Bill, 2009

10. The Companies Bill, 2009, as referred to the Standing Committee on Finance *inter alia*, provides for the following:—

- (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 to be administered by the Central Government. In doing so, the Bill also seeks to harmonise the Company Law framework with the sectoral regulations;
- (ii) easy transition of companies operating under the Companies Act, 1956, to the new legal framework as also from one type of company to another, freedom with regard to the numbers and layers of subsidiary companies that a company may have, subject to disclosures in respect of their relationship and transactions or dealings between them;
- (iii) a new entity in the form of One Person Company (OPC), empowering the Government to provide for a simpler compliance regime for OPC and small companies and retention of the concept of Producer Companies, while providing a more stringent regime for companies with charitable objects to check misuse;
- (iv) application of the successful e-Governance initiative of the Ministry of Corporate Affairs (MCA) to all the processes involved in meeting compliance obligations. Company processes may also be carried out through electronic mode;
- (v) speedy incorporation process, with detailed declarations and disclosures about the promoters, directors, etc., at the time of incorporation. Every company director would be required to acquire a unique Director Identification Number;
- (vi) relaxation of restriction limiting the number of persons in associations or partnerships etc., to a maximum of one hundred, with no ceiling as to associations or partnerships formed by professionals regulated by special Acts;
- (vii) duties and liabilities of the directors and 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;
- (viii) statutory recognition to audit committee, remuneration committee and stakeholders relationship committee of the Board and the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary to be as Key Managerial Personnel (KMP);
- (ix) 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 prohibits insider trading by Company Directors or Key Managerial Personnel and declares it as an offence with criminal liability;
- (x) recognition of both accounting and auditing standards. The role, rights and duties of the auditors have been defined so 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;





























































































































































































































































































































































































































































































































































































































































