



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
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## **HIGHLIGHTS OF THE COMPANIES BILL, 2011**

[ Introduced in Lok Sabha on 14<sup>th</sup> December 2011(Bill no. 121 of 2011)]

- The Bill has 470 clauses and 7 schedules as against 658 Sections and 15 schedules in the existing Companies Act, 1956.
- The entire bill has been divided into 29 chapters.
- Following chapters have been introduced, viz.
  - Registered Valuers (ch.17);
  - Government companies (ch. 23);
  - Companies to furnish information or statistics (ch. 25);
  - Nidhis (ch. 26);
  - National Company Law Tribunal & Appellate Tribunal (ch. 27);
  - Special Courts (ch. 28)
- The Bill empowers Central Government to make rules, etc. through delegated legislation after having detailed consultative process (clause 470 and others).
- The Bill provides for self-regulatory process and stringent compliance regime.

## The salient features of the Bill:

### 1. Classification and Registration

- **Concept of One Person Company (OPC limited)** [Clause 2(62)].
- **Small companies have been defined** (maximum paid-up share capital not exceeding Rs. 50 Lakhs) and have been subjected to a less stringent regulatory framework [Clause 2(85)].
- **Entrenchment Provision** has been proposed in the Bill [clause 5(3)].
- **Conversion of Companies already registered** has been introduced [Clause 18].
- A declaration to the effect that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with. Company Secretaries continue to be recognized for the purpose of giving this declaration [Clause 7(1)(b)].

### 2. E-Governance

E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

### 3. Board and Governance

#### ➤ **Appointment of Key Managerial Personnel [Clause 203(1)]**

Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel, –

- (i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; and
- (ii) Company Secretary.**

Unless the articles of a company provide otherwise, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time [Proviso to Clause 203(1)]

#### **Definition of Key Managerial Personnel [ Clause 2(51)]**

**"Key Managerial Personnel"**, in relation to a company, means –

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the Company Secretary;**
- (iii) the Chief Financial Officer if the Board of Directors appoints him; and

(iv) such other officer as may be prescribed;

- **Every Company Secretary being a KMP shall be appointed by a resolution of the Board** which shall contain the terms and conditions of appointment including the remuneration. If any vacancy in the office of KMP is created, the same shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy [Clause 203 (2) & (4)]
- If a company **does not appoint a Company Secretary**, the penalty proposed is :
  - On company - one lakh rupees which may extend to five lakh rupees.
  - On every director and KMP who is in default - 50,000 rupees and 1,000 rupees per day if contravention continues.
- **Functions of Company Secretary (Clause 205):**

The functions of the **Company Secretary** shall include;

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- (b) to ensure that the company complies with the applicable secretarial standards;
- (c) to discharge such other duties as may be prescribed.

**Explanation. – For the purpose of this section, the expression “Secretarial Standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.**

- Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in previous calendar year [Clause 149(2)].
- **Concept of independent directors**

Introduced for the first time in Company Law: [Clause 149]

- All listed companies are required to appoint independent directors.
- Such other public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
- **At least one-third of the Board of such companies should comprise independent directors.**
- **Nominee director appointed by any institution, or in pursuance of any agreement, or appointed by any Government to represent its shareholding shall not be deemed to be an independent director.**

- Only an independent director can be appointed as alternate director to an independent director [first proviso to Clause 161(2).
- The Independent directors shall abide by a code provided in Schedule IV to the Bill.
- Independent directors shall hold office upto two consecutive terms. One term is upto five consecutive years.
- Eligible for appointment in same company after cooling period of three years.

### ➤ **Participation at board meetings through video/audio visual means**

**Participation of directors at Board Meetings has been permitted through video-conferencing or other audio visual means**, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out [clause 173(2)].

### ➤ **Audit committee**

The **Audit committee** shall consist of a minimum of three directors with **independent directors** forming a majority. Provided that majority of members including its chairperson shall be persons with ability to read and understand the financial statements [Clause 177(2)].

### ➤ **Nomination and Remuneration committee**

Besides the Audit Committee, the **constitution of Nomination and Remuneration Committee has also been made mandatory** in the case of listed companies and such other class or description of companies as may be prescribed [Clause 178(1)].

The Nomination and Remuneration Committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent director [Clause 178(1)].

The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees [Clause 178(3)].

### ➤ **Stakeholders relationship committee**

Where the combined membership of the shareholders, debenture holders, deposit holders and other security holders is more than one thousand at any

time during the financial year, the company shall constitute a **Stakeholders' Relationship Committee**. The Chairman of the Committee shall be a non-executive director [Clause 178(5)].

### ➤ **Resignation of Directors (Clause 168)**

A director may **resign from** his office by giving notice in writing. The Board shall, on receipt of such notice, intimate the Registrar and also place such resignation in the subsequent general meeting of the company [Clause 168(1)].

The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later [Clause 168(2)].

**If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting [Clause 168(3)].**

### ➤ **Duties of directors [Clause 166]**

**For the first time duties of directors have been defined in the Bill. A director of a company shall:**

- act in accordance with the articles of the company.
- act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain under sub-section (7), he shall be liable to pay an amount equal to that gain to the company.
- not assign his office and any assignment so made shall be void.

*Penalty:* If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

## 4. Managerial Remuneration (Clause 197)

- Provisions relating to limits on remuneration provided in the existing Act being included in the Bill. Maximum limit of 11% (of net profits) being retained.
- For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration and in case a company is not able to comply with such Schedule, approval of Central Govt would be necessary.

### **Remuneration payable by companies having profits (Section I of Part II of Schedule V):**

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

### **Remuneration payable by companies having no profit or inadequate profit without Central Government approval (Section II of Part II of Schedule V):**

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below: –

(A)

Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

(B) In case of a managerial person who was not a shareholder, employee or a director of the company at any time during the two years prior to his appointment as a managerial person – 2.5% of the current relevant profit.

Provided that the above limits shall be doubled if the resolution passed by the

shareholders is a special resolution.

➤ **Independent Directors (IDs) not to get Stock options [Clause 197(7)]**

IDs not to get stock option but may get payment of fee and profit linked commission subject to limits specified in the Bill/rules. Central Government to prescribe amount of fees under the rules.

➤ **Certain Insurance Premium not to be treated as part of remuneration [Clause 197 (13)]:**

The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or **Company Secretary** for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, **shall not be treated as part of the remuneration** payable to any such personnel.

## **5. Board Meetings (Clause 173)**

➤ **Notice**

**At least seven days' notice is required to be given for a Board meeting. The notice may be sent by electronic means** to every director at his address registered with the company [Clause 173(3)].

A Board Meeting may be called at **shorter notice** subject to the condition that **at least one independent director**, if any, shall be present at the meeting. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director [1<sup>st</sup> & 2<sup>nd</sup> Proviso to clause 173].

## **6. General Meetings**

➤ **Vote by the electronic means [Clause 108].**

The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

➤ **Report on Annual General Meeting (Clause 121):**

Every listed company shall prepare a **Report on each Annual General Meeting (AGM) including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made thereunder. The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM with such fee as may be prescribed.** If the company fails to file the report before the expiry of the period specified along with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

➤ **One Person Companies (OPC) - Option to hold AGM [Clause 122]:**

One person companies have been given the option to dispense with the requirement of holding an AGM.

## **7. Secretarial Standards Introduced**

➤ For the first time, the **Secretarial Standards has been introduced and provided statutory recognition [refer Clause 118(10) & 205].**

➤ **Clause 118(10) reads as;**

**“Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.”**

➤ **Clause 205 casts duty on the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.**

➤ **It is the beginning of a new era where non financial standards have been given importance and statutory recognition besides Financial Standards.**

## **8. Secretarial Audit (Clause 204)**

➤ In December 2009, the Ministry of Corporate Affairs introduced Voluntary Guidelines on Corporate Governance which inter-alia prescribed Secretarial Audit.

- The Parliamentary Standing Committee in its report recommended to introduced Secretarial Audit.
- Now, for the first time Secretarial Audit as been included in the Bill. The provisions of the clause relating to Secretarial Audit are as follows:
  - Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a **Secretarial Audit Report**, given by a **Company Secretary in Practice**, in such form as may be prescribed.
  - It shall be the duty of the company to give all assistance and facilities to the **Company Secretary in Practice**, for auditing the secretarial and related records of the company.
  - The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the **Company Secretary in Practice** in his report.
  - If a company or any officer of the company or the **Company Secretary in Practice**, contravenes the provisions of this section, the company, every officer of the company or the **Company Secretary in Practice**, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

## 9. Cost Records (Clause 148)

Cost records to be mandated for companies engaged in production of such goods or rendering of such services as may be prescribed. The concept of 'cost auditing standards' being mandated.

## 10. Statutory Auditors (Clause 139)

➤ **The provisions of Rotation of auditors and audit firms are as follows:**

No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint –

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that –

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

## 11. Investor Protection Measures

- **Issue and transfer** of securities and non-payment of dividend by listed companies, has to be administered by SEBI by making regulations.(Clause 24)
- An **act of fraudulent inducement** of persons to invest money is **punishable with imprisonment** for a term which may extend to ten years and with fine which shall not be less than the amount involved in fraud, but which may extend to three times the amount involved (Clause 36 & 447).
- **A suit may be filed by a person who is affected by any misleading statement** or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement (Clause 37).

## 12. Deposits

A company may accept **deposits subject to fulfillment of the following conditions** (Clause 73) :

- i. passing of resolution in a general meeting.
  - ii. issue of circular to members showing the financial position of the company, the credit ratings obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company etc.
  - iii. filing a copy of the circular with the registrar within 30 days before the date of issue of the circular.
  - iv. Providing deposit insurance.
  - v. Certification by the company that it has not defaulted in the repayment of deposits.
  - vi. Provision of security in respect of deposit and interest and creation of charge on company's properties and assets.
  - vii. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in **deposit repayment** reserve account.
- **The penalty for failure to repay deposit** has been made extremely stringent. The depositor may apply to Tribunal for an order directing the company to pay

- the sum due or loss or damage incurred by him as result of non-payment (Clause 73).
- The disclosures to be made in the prospectus to be issued by the company at the time of public issue have been inserted in the main provisions of the Bill and power being given to the Central Government to prescribe additional disclosures by way of rules.
  - Exit option to shareholders in case of dissent to change in object for which public issue was made.

### 13. Annual Return [Clause 92]

- Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding;
  - (i) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - (ii) its shares, debentures and other securities and shareholding pattern;
  - (iii) its indebtedness;
  - (iv) its members and debenture-holders along with changes therein since the close of the previous financial year;;
  - (v) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;
  - (vi) meetings of members or a class thereof, Board and its various committees along with attendance details;
  - (vii) remuneration of directors and key managerial personnel;
  - (viii) penalties imposed on the company, its directors or officers and details of compounding of offences;
  - (ix) **matters related to certification of compliances, disclosures as may be prescribed;**
  - (x) details in respect of shares held by foreign institutional investors; and
  - (xi) such other matters as may be prescribed.

**The prescribed disclosures under the Annual Return shows significant transformation in non financial annual disclosures and reporting by companies as compared to the existing format.**

**Similar to the existing compliance certificate as stipulated under section 383A of Companies Act, 1956 certification of compliances has been prescribed under clause 92(1)(ix).**

- **Annual Return is required to be signed by :**
  - (i) A director and the **Company Secretary**, or where there is no Company Secretary, by a Company Secretary in whole-time practice.

**It means that now in respect of all the companies, whether private or public, listed or unlisted, if no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.**

- (ii) A **Company Secretary** in whole-time practice in respect of:
- (a) a company having such paid-up capital and turnover as may be prescribed, and
  - (b) a company whose shares are listed on a recognized stock exchange.

The **Practicing Company Secretary** has to certify that the annual return states the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

**It means, in case of a listed company, even if the Annual Return is signed by the Company Secretary in employment of the Company, it is further required to be signed by the Company Secretary in Whole time practice. Also, in case of a company having such paid up capital and turnover as may be prescribed and even if the company is not listed, the Annual Return is required to be signed by the Company Secretary in whole time practice in addition to the Company Secretary in employment.**

- (iii) In relation to a One Person Company and Small Company, the annual return is required to be signed by the **Company Secretary**, or where there is no Company Secretary, by one director of the company.

➤ *Certification regarding compliances*

**By signing the return, a Company Secretary certifies that the annual return states the facts correctly and adequately and that the company has complied with all the provisions of the Act. In addition, the adequacy of disclosures made is required to be certified by the Company Secretary in the Annual Return. It is a great opportunity as well as a challenge for the Company Secretaries.**

## **14. Penalty**

- Concept and penal provisions relating to 'officer who is-in-default' being strengthened. Definition of 'promoter' also included in the Bill along with his liability in appropriate cases.
- Provisions in respect of vigil mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behavior, while rewarding employees for their integrity and for providing valuable information to the Management on deviant practices.

- **In case a Company Secretary in whole-time practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**

## **15. Board's Report (Clause 134)**

Board's Report has been made more informative and includes extensive disclosures like -

- (i) extract of annual return
- (ii) number of meetings of Board
- (iii) report of the committee on directors' remuneration
- (iv) a declaration by independent directors wherever they are appointed
- (v) particulars of loans, guarantees, or investments made
- (vi) particulars of contracts or arrangements entered into

Explanation or comments on every qualification, reservation made -

- a) by auditor in his report
  - b) by the Company Secretary in his Secretarial Audit Report**
- (vii) **The details about the policy developed on corporate social responsibility initiatives taken during the year.**

The Boards' Report is to be signed by the Chairman if he is authorized by the Board and where he is not so authorized, it shall be signed by at least two directors, one of whom shall be a managing director, or where there is only one director, by such director (Clause 134).

## **16. Insider Trading of Securities (Clause 195)**

**New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included.**

## **17. Woman Director (Clause 149)**

**At least one woman director being made mandatory in the prescribed class or classes of companies.**

## 18. Corporate Social Responsibility (Clause 135)

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 Corporate Social Responsibility Committee shall formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

The Board of every company referred to in sub-section (1), shall make every endeavor to ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

**If the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.**

## 19. Related Party Transactions

- **Every contract or arrangement entered into with a related party shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement [Clause 188(2)].**
- Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company [Clause 192].
- Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes (Clause 193).
- **Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company (Clause 194).**

## 20. Share capital and debentures

- Equity share capital has now been defined as:
- Equity share capital, with reference to any company limited by shares, means all share capital which is not preference share capital and preference share capital with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
  - payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
  - repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company [clause 43].
- If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or Rs.10 crore whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company [Clause 46(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be punishable under clause 447 [Clause 46(6)]
- Security Premium Account may also be applied for the purchase of its own shares or other securities [Clause 52(2)(e)]
- A company can not issue share at a discount. Any share issued by a company at a discounted price shall be void [Clause (53)]
- A company limited by shares can not issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue. This period of twenty years may, however, be excluded in case of such infrastructural projects as may be prescribed [Clause 55].
- Every company shall deliver Debenture Certificate issued by the company within six months of allotment [Clause 56(4)(d)].

## 21. Inspection, enquiry and investigation

- A new clause has been added to provide that where in connection with inquiry or investigation into the affairs of the company or reference by the Central Government, or on complaint by specified number of members or creditors that the transfer or disposal of funds, properties or assets is likely to take place

which is prejudicial to the interest of the company, then the Tribunal may order for the freezing of such transfer, removal or disposal of assets for a period of three years [Clause 221].

- Another new clause seeks to provide that the provisions of inspection or investigation applicable to Indian companies shall also apply *mutatis-mutandis* to inspection or investigation of foreign companies. (Clause 228).

## **22. Class action suits (Clause 245)**

For the first time provision has been made for class action suits.

It is provided that specified number of members or specified number of depositors may file an application before the Tribunal on behalf of the members and depositors, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or creditors. The order passed by the Tribunal shall be binding on the company and all its members and depositors.

## **23. Serious Fraud Investigation Office (SFIO) (Clause 211)**

Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill. Stringent penalty provided for fraud related offences.

**The Definition of fraud is provided as under (Explanation to Clause 447)**

“**fraud**” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

## **24. Restructuring and Liquidation**

- **The entire rehabilitation and liquidation process has been made time bound (Clause 254).**

- Winding up is to be resorted to only when revival is not feasible.
- **The Tribunal may appoint an interim administrator or a company administrator from the panel of COMPANY SECRETARIES, CAs, CWAs, etc. maintained by the Central Government [Clause 259(1)].**
- The Company Administrator shall prepare a scheme of revival and rehabilitation [Clause 261].
- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company (Clause 258).

#### ➤ **Company Liquidators**

The Tribunal may appoint Provisional Liquidator of the company till the making of a winding up order (Clause 273)

The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of company secretaries chartered accountants, advocates, cost accountants or firms or bodies corporate having such company secretaries, chartered accountants, advocates, cost accountants and such other professionals as may be notified by the Central Government (clause 275).

#### ➤ **Professional assistance to Company Liquidator (Clause 291)**

The Company Liquidator may, with the sanction of the Tribunal, appoint **one or more professionals including Company Secretaries** to assist him in the performance of his duties and functions under the Act.

Any person appointed under this clause shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

### **25. Registered valuers (Clause 247)**

- A new chapter has been inserted in relation to registered valuers.
- **Valuation in respect of any property, stock, shares, debentures, securities, goodwill, net worth or assets of a company shall be valued by a person registered as a valuer (Clause 247).**

### **26. National Company Law Tribunal (Tribunal) (Clause 408)**

Keeping in view the Supreme Court's Judgment, on the 11th May, 2010 on the composition and constitution of the Tribunal certain modification relating to

qualification and experience of the members of the Tribunal have been made. The provisions in respect of Appellate Tribunal, which were proposed to be omitted earlier, have been re-included in the Bill. Accordingly, the appeals from Tribunal shall lie to Appellate Tribunal.

#### **Qualifications of President and Members of Tribunal (Clause 409)**

The constitution of the Tribunal shall widen the scope of services for **Practicing Company Secretaries**. Amongst others, **a Company Secretary in practice is eligible to become a Technical Member of National Company law Tribunal, if he is practicing for at least fifteen years.**

### **27. Compounding of certain offences (Clause 441)**

This clause provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. It clause also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

### **28. Special Courts (Clause 435)**

For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed (Clause 435).

All offences under this Act shall be triable by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned (clause 436)

The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years [Clause 436(2)].

### **29. Adjudication of Penalty (Clause 454)**

The Central government may by an order publish in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudicating penalty under the provisions of this Bill in the manner as may be prescribed.

This would facilitate speedy adjudicating process wherein practicing Company Secretary can contribute by providing their expertise as authorized representative.

### 30. Miscellaneous

- Concept of '**dormant companies**' being introduced. This would allow a company to remain on the Register of Companies with minimal compliance requirements even without carrying on any operations.
- **Mediation and Conciliation Panel:** It is proposed to create and maintain as 'Mediation and Conciliation Panel' for facilitating mediation and conciliation between parties during any proceeding under the purposed Legislation before the Central Government or Tribunal

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*Disclaimer: This document has been prepared on the basis of Companies Bill, 2011 as introduced in the Loksabha on 14<sup>th</sup> December, 2011. The Institute of Companies Secretaries of India does not own the responsibility for any error or omission. The users and readers are advised to cross check with the original bill before acting upon this document.*