

Standing Committee Report Summary

The Companies (Amendment) Bill, 2016

- The Standing Committee on Finance (Chair: Mr Veerappa Moily) submitted its report on the Companies (Amendment) Bill, 2016 on December 7, 2016. The Bill was introduced in Lok Sabha on March 16, 2016. It seeks to amend the Companies Act, 2013, which regulates the incorporation, management, functioning and winding up of companies.
- **Objects clause:** Currently, the Act requires that the memorandum of association of a company to state the objects behind incorporating a company. The Bill removes this requirement, and only requires companies to state that it will engage in lawful activities or businesses. The Committee was of the opinion that the proposed amendment which allows companies to have such an unrestricted objects clause should be reconsidered as it may lead to the creation of bogus entities. Further, specifying the objects clause at the time of incorporation is not a complex issue as the creation of company should be for a specific business activity to attract investors. The Committee recommended that the status quo should be restored.
- **Compliance requirements:** The Act has various compliance requirements for companies such as minimum number of members in the Board. These requirements vary based on whether the company is public or private. The Committee noted that these compliance requirements are difficult to follow and should be simplified for both public and private companies. Further, the Committee noted that the compliance requirements may be determined based on the business volume of the company, instead of the nature of the company (public vs. private).
- **Managerial remuneration:** The Act requires if remuneration of management of a company exceeds prescribed limits, it requires the approval of the central government. The Bill seeks to omit this requirement. The Committee recommends the proposed amendment. However, the Committee noted that the government should bear some element of control. This should be done by the government retaining the right to seek necessary information of managerial remuneration of listed companies and companies operating with public funds.
- **Loans from directors:** Currently there are restrictions on loans that can be provided to a company by its director or their relatives. The restrictions are based on factors such as net worth of the companies. The Committee noted that loans from directors are major source of funding for Micro Small and Medium Enterprises (MSMEs). Restriction on these loans are restraining the finances and growth of MSMEs. The Committee noted that restriction on loans from directors should be reduced to promote growth of MSMEs.
- **Filing of annual returns:** Under the Act, companies are required to prepare annual returns which discloses details of: (i) indebtedness, (ii) promoters, directors, (iii) remuneration of directors, among other details. The Bill requires all companies to publish their annual return on the company's website. The Committee noted that these disclosure requirements for small companies should be simplified.
- **Filing of financial statement:** Currently, every company is required to file a copy of the financial statement with the Registrar, consisting of details regarding balance sheets, cash flow and profit and loss statements, etc. Further, companies are required to attach accounts of subsidiaries which are incorporated in foreign countries. The Bill requires that if the accounts of such subsidiaries are not required to be audited under the local law, companies need to make a special declaration stating that. However, this requirement applies only for public listed companies. The Committee recommended that such requirement should hold to all public companies.
- **Definition of relatives:** Under the Act, a person or his relative who is indebted to a company, or holding security in a company, is not eligible to become an auditor to the company. To provide further clarity to this provision, the Bill defines the word 'relative'. Under the Bill, a relative is: (i) spouse, (ii) parent, sibling, children, (iii) financially dependent on the person, or (iv) the one who consults the person in taking decisions in relation to his investments. The Committee noted that the last criteria should be removed as it is too broad and may lead to mis-interpretation.
- **Harmonization between SEBI and the Act:** The Committee noted that certain provisions of the Act have differences with Securities and Exchange Board's (SEBI) regulations. Such differences have led to practical difficulties in following compliance requirements. Examples include differences in provisions related to independent directors and related party transactions. The Committee noted that such provisions should be harmonized with SEBI's regulations to avoid confusion.

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