NEWS ON CORPORATE WORLD

The Companies (Amendment) Bill, 2006

The Companies (Amendment) Bill, 2006 (the 'Bill') to amend the Companies Act was introduced in the Rajya Sabha on 06.03.2006. The statement of Objects and Reasons for introduction of the Bill reads as under:

1. In context of the rapid developments witnessed in technology, the Ministry of Company Affairs decided to enable the operations carried out by the Ministry and its field offices to be performed more efficiently and effectively through the use of contemporary information technology and computers. It was felt that the earlier efforts at computerisation had not yielded the desired efficiency in operation of the system and an operating system that took into account contemporary technology was necessary. Therefore, it was decided to implement a comprehensive e-governance system and programmed to achieve the above objective.
2. The Ministry of Company Affairs on the recommendations of Department of Information Technology is implementing an e-governance initiative through a project named as 'MCA-21;. This project will provide the public, corporate entities and others an easy and secure on-line access to the corporate information, including filing of documents and public access to the information required to be in the public domain under the statute, at any time and from anywhere. This would also result in efficiency in statutory supervision of corporate process and efficient professional services under the Companies Act, 1956('the Act').
3. The filing and registration of documents is a statutory requirement under the Act. At present, the Act lays down the procedures for riling of various documents in physical form and processes associated therewith. While, the broad enabling framework for such an initiative is available under the Information Technology Act, 2000 read with Companies Act, 1956, enabling provisions would still be required to support certain on-line electronic processes, which have since become available due to technological advancement for various detailed procedural requirements under the Companies act, 1956.
4. It is, therefore, proposed to insert new sections 610B, 610C, 610D, and 610E in the Companies Act, 1956 so as to make provision for electronic filing system and for payment of fees through electronic form under the said Act, which are essential for the successful implementation of the MCA-21 Project. After the proposed amendments to the Companies Act, 1956 have been enacted, the documents in electronic form duly authenticated with digital signatures shall be accepted under the provisions of that Act. The proposed electronic system also provides for multiple modes of payment of statutory fees.
5. The provisions of the Companies Act, 1956 allow an individual to be a director of up to fifteen companies and such companies

Note: This is a new feature being introduced from this issue. Readers' comments, suggestions and contributors for this feature are welcome.

can be located in the jurisdiction in any of the Registrars of Companies. There is a need for individual identity of person(s) intending to be directors of companies to be established. This would also facilitate effective legal action against the directors of such companies under the law, keeping in view the possibility of fraud by companies and the phenomenon of companies that raise funds from the public and vanish thereafter. It is, therefore, proposed to insert new sections 266A, 266A, 266C, 266D, 266E, 266F and 266G in the Companies Act, 1956 so as to, inter alia, provide for allotment of a unique Director Identification Number to any individual, intending to be appointed as director in a company or to any existing director of a company, for the purpose of his identification as such, through electronic or other form and to provide for penalty for any violation in this regard.

Competition (Amendment) Bill, 2006

The Competition Act was enacted in 2002 keeping in view the economic developments that have resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian market be geared to face competition from within the country and outside. The Competition Act, 2002 provided for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to project the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

The Competition Commission of India (CCI) was established on the 14th October 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. the Hon'ble Supreme Court delivered its judgement on the 20th January 2005. While disposing of the Writ Petition, the Hon'ble Supreme Court observed that "if an expert body is to be created as submitted on behalf of the Union of India consistent with what is said to be the international practice, it might be appropriate for the respondents to consider the creation of two separate bodies, one with expertise that is advisory and regulatory and the other adjudicatory. The Hon'ble Supreme Court left open all questions regarding the validity of the Competition Act, 2002 including rule 3 of the Competition Commission of India (Selection of Chairperson and other Members of the Commission) Rules, 2003.

The Competition (Amendment) Bill, 2006, inter alia, seeks to make the following amendments to the Competition Act so as to address various legal issues and to make the CCI fully operational on a sustainable basis, namely:-

(a) to provide that CCI would be an expert body which will function as a market regulator for preventing anti-competitive practices in the country and it would also have advisory and advocacy functions in its role as a regulator;

(b) to omit the provisions relating to adjudication of disputes between two or more parties by the CCI and to provide for investigation through the Director General in case there exist a prima facie case relating to anti competitive agreements or abuse of dominant position under the competition Act, 2002 and conferring power upon the CCI to pass orders on completion of

an inquiry and impose monetary penalties and in doing so the CCI would work as a collegium and its decisions would be based on simple majority;

(c) to provide for establishment of the Competition Appellate Tribunal (CAT) which shall be a three-member quasi-judicial body headed by a person who is or has been a retired Judge of the Supreme Court or the Chief Justice of a High Court and selection of the Chairperson and other Members of CAT to be made by a Selection Committee headed by the Chief Justice of the Supreme Court of India or his nominee, and having Secretaries of Ministries of Company Affairs and Law as its members;

(d) to provide for hearing and imposing of appeals by the CAT against any direction issued or decision made or order passed by the CCI;

(e) to provide for adjudication by CAT of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Computation Act, 2002;

(f) to provide implementation of the orders of the CAT as a decree of a civil court;

(g) to provide for filing of appeal against the orders of the CAT to the Supreme Court.

(h) to confer powers to sectoral regulators to make suo motu reference to CCI on competition issues, in addition to the present provision of making reference, when such request is made by any party in a dispute before it.

The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of CCI, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the CCI is duly constituted. Cases still remaining pending after this two year period, would be transferred to CAT or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

News On Capital Market

Amendments in SEBI (DIP) Guidelines, 2000

(Circular No. CFD/DIL DIP/19/2006/31/3/2006 dated 31-3-2006

In order to make Indian primary market more efficient and transparent, it has been decided to adopt the following policies:

(a) Rationalisation of disclosure requirements for listed companies – A listed company is required to make disclosures under the continuous disclosure requirements of listing agreement and as such, information pertaining to such company is already available in public domain. However, presently, all companies, irrespective of whether they are listed or are approaching the markets for the first time with an initial public offering, are required to make the same disclosures in offer documents / prospectuses. In view of this, it has now been decided to rationalise the disclosure requirements for right issues and public issues by listed companies and to make the benefit of such rationalisation available to those listed companies which are regular in filing periodic returns with Stock Exchanges and have a comprehensive investor grievance mechanism in place to redress investor's complaints satisfactorily.

(b) Abridged letter of offer – Presently, in public issues, applicants receive abridged

prospectus (and not the entire prospectus) along with the application form. However, in case of rights issues, an issue company; is required to dispatch the letter of offer to all the shareholders, along with the application form. In order to bring uniformity in the practice of making available abridged offer documents, it has now been decided to permit an issuer company making a rights issue to dispatch n abridged letter of offer which shall contain disclosures as required to be given in the case of an abridged prospectus. The issuer company shall provide the detailed letter of offer to any shareholder upon request.

(c) Disclosure of issue price – Presently, a listed company making a rights issue or a public or a public issue is required to disclose the issue price or the price band in the draft offer document filed with SEBI, except in the case of a public issue through the Book Building route. It has now been decided to henceforth allow a listed company to fix and disclose the issue price in case of a rights issue any time prior to fixing of the record date, in consultation with the Designated Stock Exchange and in case of a public issue through fixed price route, at any time prior to filing of the prospectus with the Registrar of Companies (RoC). The prospectus filed with RoC shall have one issue price.

(d) Further issue of shares – Presently, a company is prohibited to make further issue of capital after filing a draft offer document with SEBI till the listing of the shares referred to in the offer document. It has now been decided to permit a company to issue further shares, provided dull disclosures in regard to the total capital to be raised from such further issues is given in the draft offer document.

(e) Lock-in Provisions – It is clarified that lock-in period of one year in terms of clause 4.14.1 of SEBI (DIP) Guidelines, 2000 shall be reckoned from the date of allotment of shares issued in a public issue.

(II) Introduction of new Chapter VI-A in the SEBI (DIP) Guidelines 2000 (Issue of Indian Depository Receipts (IDRs) - General Requirements Circular No. CFD/DIL-DIP/20/2006/3/4, dated 3-4-2006, issued by corporation finance department, division of issues and listing, SEBI

1. The Central Government, on February 23, 2004 issued the Companies (issues of Indian Depository Receipts) Rules, 2004 (IDR Rules) under section 605A of the Companies Act, 1956. Under Rule 4(d) of The IDR Rules, SEBI has the power to specify eligibility criteria for IDR issuers in addition to what is contained in the IDR Rules. Under Clause 9 to the Schedule to the IDR Rules, SEBI can specify and information to be include in the prospectus from time to time.
2. Accordingly, for companies desirous of coming out with IDR issues, a new Chapter VIA has been added in the SEBI (DIP) Guidelines, 2000, containing the guidelines to be followed by an IDR issuer for coming out with such issue.
3. The circular is being issued in exercise of person conferred by sections 11(1) and 11A of the Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market. ❐