

## MINISTRY OF COMPANY AFFAIRS

### BACKGROUND PAPER ON THE POLICY ISSUES AND LATEST DEVELOPMENTS

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## **OVERVIEW**

"Ministry of Company Affairs", earlier known as Department of Company Affairs under Ministry of Finance, was designated as a separate Ministry vide Cabinet Secretariat Notification No.DOC.CD-160/2004 dated 27.05.2004 to function under Minister of State with Independent Charge. The Ministry is primarily concerned with the administration of the Companies Act, 1956, other allied Acts and rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law. The Ministry is also responsible for administering the Competition Act, 2002 which will eventually replace the Monopolies and Restrictive Trade Practices Act, 1969 under which the Monopolies and Restrictive Trade Practices Commission (MRTPC) is functioning. Besides, it exercises supervision over the three professional bodies, namely, Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and the Institute of Cost and Works Accountants of India (ICWAI) which are constituted under three separate Acts of the Parliament for proper and orderly growth of professions of Chartered Accountants, Company Secretaries and Cost Accountants in the country. The Ministry also has the responsibility of carrying out the functions of the Central Government relating to the administration of the Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and Societies Registration Act, 1980. Ministry's Website <http://dca.nic.in> contains useful information on organisation of the Ministry, publications, circulars, Notifications, citizen's charter, Annual Report, monthly corporate growth, Parliament questions and replies, Reports submitted by various Committees set up by the Ministry etc.

## **VISION OF THE MINISTRY**

Freedom with accountability is the motto of the Ministry. Self- regulation within broad contours of law and public policy, enabling companies in India to be competitive in today's globalised environment, is its aim. Effectively protecting interests of investors as promised in National Common Minimum Programme (NCMP) is high on its agenda. Promoting good corporate governance amongst the companies and bringing in institutional reforms in terms of decentralization, simplification, transparency, accountability & e-governance are some of the prime concerns with which the Ministry is moving ahead in its endeavours to provide the best possible environment in which the corporate culture in the country can be promoted.

## **MAJOR INITIATIVES**

Comprehensive review of the Companies Act, 1956 so as to enable the re-codification of Company Law, review of the changes to the legislations governing the professions of Chartered Accountants, Company Secretaries and Cost and Works Accountants and revision of Accounting Standards, application of Information Technology for dissemination of information and provision of better services to the investing public and the Companies and special emphasis on the measures to protect the interest of investors are some of the more important initiatives taken by the Ministry during last about 15 months.

### ➤ **COMPREHENSIVE REVISION OF THE COMPANIES ACT, 1956**

The Government have undertaken an exercise to revise the Companies Act, 1956 to enable a compact law that would be able to address the changes taking place in the national economy as well as in the international scenario, enable adoption of internationally accepted best practices and provide adequate flexibility for timely evolution of new arrangements to address the changing requirements of the corporate sector and make our companies globally competitive.

With a view to enabling a wide based consultation on various Company Law issues requiring revision in the current context, the Ministry of Company Affairs had published a 'Concept Paper on Company Law' on its website on 4<sup>th</sup> August 2004. On 2<sup>nd</sup> December 2004, the Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani to advise it on various company law issues.

The Expert Committee comprised of experts drawn from trade and industry associations, professional bodies and institutes, chambers of commerce, leading senior advocates and auditors. Representatives of Government Departments, regulatory bodies and other organizations were included as Special Invitees. The Committee deliberated on various issues on Company Law requiring a review on the basis of comments and suggestions received in response to the Concept Paper, opinions expressed by experts, professional bodies etc. and submitted its report on 31<sup>st</sup> May 2005.

The recommendations of Committee are being examined in the Ministry and proposals are being formulated for the revision of the Companies Act, 1956. This process needs to be thorough so that comprehensive revision may be made rather than piecemeal reengineering of the existing Act. Once the proposals are finalized and necessary approvals obtained, the Ministry would finalize a new Companies Bill in consultation with Legislative Department, for introduction in Parliament. It is the endeavour of the Ministry to complete the process at the earliest.

➤ **REFORMS RELATING TO PROFESSIONAL INSTITUTES - ICAI, ICSI AND ICWAI**

In the present economic scenario, where companies are required to conduct their operations in the interest of a wide range of stakeholders, it is necessary that corporate affairs are carried out in a credible, fair and lawful manner. In this context, professionals such as the chartered accountants, cost accountants and company secretaries, providing a range of services to corporate entities have a major role to play. It is very important that such professionals discharge their responsibilities with due diligence and are accountable for their work. Further, it is essential to make the professions competitive so that they are able to meet the competition from global players in the international market.

Towards this end, three Amendment Bills had been introduced in the Rajya Sabha on 23.12.2003 to amend the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980, and after an examination by the Parliamentary Standing Committee on Finance, need for modifications to the amendment Bills was felt. In order to address these issues, the Government has re-examined the proposed changes in the relevant Acts governing the respective professional bodies and proposals, incorporating the required changes, for introduction in the Parliament are under active consideration of the Government. Some of the major changes being considered in the amendment bill are:

- A new structure to ensure expeditious administration of the disciplinary functions of the Institutes, including an Appellate Authority to hear appeals against the decisions of disciplinary bodies.

- A Quality Review Board, with representation from stakeholders, to review the quality of services provided by the professionals and make recommendations on improving the same.
- Permission to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.
- Revamping the provisions to enable transparency in financial affairs of the Councils such as budgeting and auditing.

➤ **MCA21 e-GOVERNANCE PROJECT**

The Ministry of Company Affairs is implementing an e-Governance Project, namely “MCA21 eGovernance Project”. Companies are required to file a number of documents with the Registrar of Companies (ROC) in compliance of the statutory provisions of the Act. Beginning with about 30,000 companies at work in 1956, the number of companies registered has now reached 6.83 lakhs as on 31<sup>st</sup> March 2005 and a large number of new companies are being incorporated every year. In order to provide prompt and efficient services to these companies, the MCA envisaged transferring the business processes of the office of the ROC to the e-governance mode. The Project envisages electronic filing of these documents by an interactive and paperless process through the Internet. The project also includes interlinking of all the offices of the ROCs and the Ministry. The project has been designed to virtually eliminate the physical interface between the companies and the ROC.

The focus of the MCA21 program is on bringing about a fine balance between trade facilitation on one hand and enforcement requirements on the other. Adopting international best practices, the goals of the project have been set to improve the service standards to all the stakeholders as follows:

- Business: enabled to register a company and file statutory documents quickly and easily, and in a manner that is convenient
- Public: to get easy access to relevant records and get quicker redressal of their grievances
- Professionals: enabled to offer efficient services to their client companies
- Financial Institutions: enabled to procure relevant information quickly

- MCA: to ensure proactive & effective compliance of relevant laws and corporate governance
- Employees: enabled to deliver best services to the companies

### **Project overview**

The MCA21 Project implementation commenced with the signing of contract agreement with the selected operator M/s Tata Consultancy Services Ltd. on 1<sup>st</sup> March 2005. The Project has an implementation cycle of 60 weeks and thereafter an operation period of 6 years. The MCA21 Project has been approved with an overall cost of Rs. 345 crore.

### **Salient Features of the Project**

The following are the salient features of the MCA21 Project:-

- Introduction of anywhere, anytime secure electronic filing for MCA transactions
- Adaptation of all statutory forms for electronic filing
- Use of Digital Signatures to ensure the security of electronic forms and documents in conformance with the Information Technology Act, 2000
- Electronic payment of all statutory charges & access to the services from Internet connection
- Back office of the Ministry to use best-in-class information technology solution that will include electronic workflows and sophisticated document storage and retrieval systems, with significant paper reduction
- 53 Physical Front Offices that will be located nationwide to facilitate electronic filing of documents
- Nearly 6 crore pages of legacy corporate documents to be digitized for electronic access through Internet
- Easy reporting of complaints by investors through MCA portal for easy and speed Redressal
- High bandwidth nationwide connectivity across all offices of MCA and facility to allow access to multiple users at the same time,
- Disaster Recovery mechanisms with a facility to restart operations within 12 hours in the event of a natural or man-made disaster
- Possibility of collecting stamp duty electronically.

### **Project Implementation Status**

- Scanning and Digitisation of permanent records, annual returns and Balance Sheets across all locations is under progress
- Development of software and testing thereof already underway
- Non-IT infrastructure under progress

The project is progressing satisfactorily, with certain external dependencies, and it is expected that the deadlines provided in the project would be achieved as per schedule.

### ➤ **PROTECTION OF INTERESTS OF INVESTORS - A PROMISE IN NCMP**

The Ministry has adopted a responsive and action-oriented approach towards investor protection. Dedicated investor protection cells have been opened and made functional at three levels. An on-line Investors Grievances Redressal System has been developed and made fully operational. A dedicated website, <http://www.watchoutinvestors.com>, which is a national registry of defaulters, has also been launched. Investor Education & Protection Fund (IEPF) under the Companies Act, 1956 has been activated and reputed NGOs are contributing by taking up various programmes aimed at educating the investors. The investor protection measures are going to be strengthened in the proposed new company law.

### **Crusade Against Vanishing Companies**

In May 2004, the number of vanishing companies stood at 229. Due to concerted efforts of the Ministry, 114 companies and their defaulting officers have been traced and action initiated against them. The number of vanishing companies now stands at 115. FIRs have been filed in over a 100 cases, and support of NGOs in the field of investor protection has been enlisted. Advertisements have been issued in the media listing out the defaulters. The Ministry has also addressed State Governments seeking their cooperation in tracing out the defaulters. This crusade will continue in the coming months.

➤ **CONCEPT PAPER ON ‘LIMITED LIABILITY PARTNERSHIP LAW’**

In view of the increasing role of services sector in the national economy, the wide range of disciplines in which such services can be offered and the growing number of professionals, a need has been recognised for a new corporate form, which will enable professional expertise to organise and provide a range of services to the corporate sector in a comprehensive and efficient manner. This need has also been recognised for small businesses which may require a framework that provides flexibility and is more suited to requirements of service, knowledge and technology based enterprises, without imposing on them detailed legal and procedural requirements intended for large widely held companies.

In the background of the global economic trends which enable investment and services to flow across borders, the growing role of service & knowledge based enterprises and emerging international competition, it is felt necessary to enable Indian entities also to have the requisite choice in corporate organisation to compete internationally on level playing field.

Keeping the above trends in view, it is also felt desirable to initiate a wide based consultative process that will allow ideas, comments and suggestions to flow in from all quarters on the proposals for a Limited Liability Partnership (LLP) Law. As a first step in such consultative process, the Ministry has placed a Concept Paper on LLP Law in the legislative model, along with explanatory notes on chapters, for viewing on the electronic media (on the website of the Ministry of Company Affairs at <http://dca.nic.in>) so that all interested may not only express their opinions on the concepts involved but also suggest formulations, by December 31, 2005, for the consideration of the Ministry on various aspects of LLP Law. The following are some of the features of the Concept Paper:-

- LLP is proposed as a body corporate as a separate legal entity under a new law. Indian Partnership Act will not be applicable to LLPs.
- Any individual or body corporate may be a partner in LLP.
- LLPs can be formed to carry out any trade, profession and occupation.
- Liability of partners shall be limited except in case of fraud;

- Registration of LLP shall be with the Registrar of Companies
- Contents of LLP Agreement, as may be prescribed, to be filed with ROC.
- Conversion of firm, private company and unlisted public company into LLP allowed
- 2 minimum partners of LLP and no limit on maximum number of partners
- Appointment of a manager must in all LLPs. Manager to be accountable for regulatory and legal compliances
- Annual “Declaration of Solvency” to be filed by manager with the ROC
- Annual Accounts to be maintained and preserved by LLP for such period as may be specified in rules.
- ROC empowered to strike off defunct LLPs
- Electronic filing of returns by LLPs would be allowed;
- Enabling provisions made for extension of Company Law to LLPs

## **OTHER IMPORTANT INITIATIVES**

### ➤ **INSOLVENCY REFORMS**

One of the major problem areas relating to corporate functioning in the country has been the slow liquidation process. Today, it takes nearly 15 to 20 years for a company to be liquidated. In this process, the value of the assets is significantly reduced.

The amendments under the Companies Act in 2003 aimed at streamlining and speeding up the liquidation process, envisaged the setting-up of National Company Law Tribunal as a single forum to deal with all company litigations and matters pertaining to sick companies and liquidation proceedings. The powers currently vested in the BIFR, CLB and high courts are proposed to be vested in the NCLT, and an outer limit of two years for completion of liquidation proceedings has been proposed. However, the validity of the amendments has been challenged before the courts. It is expected that the court's judgment will be pronounced soon on the issues leading to early resolution of the disputes.

Notwithstanding the above, the Ministry has taken several steps to speed up the liquidation process and improve upon the recovery rate within the existing legal framework. This issue is also being appropriately addressed in the new company law for which the exercise is on.

➤ **AMENDMENTS TO COMPETITION ACT, 2002**

The Competition Act was passed by both the Houses of Parliament in the Winter Session of 2002 with the objective of preventing anti-competitive practices, promoting and sustaining competition, protecting the interests of the consumers and ensuring freedom of trade. The objectives were sought to be achieved through a new regulatory body, the Competition Commission of India (CCI). However, some of the provisions of the Act and the Selection Rules framed therein were challenged in Madras High Court and Supreme Court. During the hearing before the Supreme Court, Government filed an additional affidavit proposing certain amendments in the Act to meet the concerns raised in the Writ Petitions. Consequently, the Supreme Court closed the Writ Petition declining to pronounce on the matters argued before it, leaving open all questions regarding the validity of the enactment to be decided after the amendment of the Act. Accordingly, amendments to the Competition Act are under examination of the Government. These are expected to be introduced shortly with appropriate approvals.

➤ **NATIONAL FOUNDATION FOR CORPORATE GOVERNANCE (NFCG)**

With a view to improve the standards in corporate governance, the Ministry of Company Affairs, after consultations with Industry Associations and professional institutes, has set up a National Foundation for Corporate Governance (NFCG) as a not-for-profit trust on 1<sup>st</sup> October 2003 with the Ministry, Confederation of Indian Industry, Institute of Company Secretaries of India and Institute of Chartered Accountants of India as participating trustees. The NFCG has a three-tier structure for its management, viz. the Governing Council, the Board of Trustees and the Executive Directorate. The Minister of Company Affairs heads the Governing Council. Shri Narayana Murthy is the Vice Chairman.

The main objectives of NFCG are to provide a platform to deliberate issues relating to good corporate governance and to sensitize corporate leaders on the importance of good

corporate governance, self-regulation and directional responsibilities; to facilitate exchange of experiences and ideas among corporate leaders, policy makers, regulators, law enforcing agencies and non-government organizations; to provide research and training, capacity building, standard setting, rating, recognition and related support in the field of corporate governance; to prepare a code of best practices for corporate governance and to provide advice, consultancy and technical and managerial support to the beneficiaries of the Trust's programme. Various activities have been undertaken under the National Foundation for Corporate Governance which can be seen on its website <http://www.nfcgindia.org>.

➤ **SIMPLIFIED EXIT SCHEME – 2005**

The Ministry of Company Affairs, Government of India had launched a Simplified Exit Scheme – 2005 (SES-2005) which offered an easy exit route for companies which were either not functional since inception or had ceased to be functional and liked to discontinue the business. The Scheme was in operation from 01<sup>st</sup> February 2005 to 31<sup>st</sup> July 2005. The scheme was extended for one month till 31<sup>st</sup> August 2005. Companies were required to file an application along with an affidavit, indemnity bond and a simple un-audited financial statement. A total of 26,000 companies (approx) have opted to avail of exit under this scheme. Instructions have also been issued to all the field functionaries of this Ministry to ensure time-bound processing of the applications received under the scheme. The Government is also examining measures to ensure strict implementation of statutory provisions against companies that are not filing their statutory returns regularly.

➤ **EXPERT GROUP FOR STREAMLINING THE PROSECUTION MECHANISM UNDER COMPANIES ACT, 1956 (VAISH COMMITTEE)**

The Ministry constituted an Expert Group on 4<sup>th</sup> May 2005 under the Chairmanship of Shri O.P. Vaish, Senior Advocate, to examine issues relating to streamlining the prosecution mechanism under the Companies Act, 1956. The Terms of Reference of the Expert Group were as under:-

- i) Identification of broad categories of offences for which cases filed for violations of Companies Act, 1956 are pending and the period thereof;

- ii) The reasons for excessive pendency where relevant;
- iii) Review of the steps taken in the past to expedite disposal of these cases, their outcome and the constraints;
- iv) Identifying ways and means through which disposal of these cases could be expedited;
- v) Ways and means for expeditious disposal of cases of purely technical nature and workable mechanism to enable this in a definite time frame

The Group has submitted its report on 19<sup>th</sup> October 2005 to the Ministry. The recommendations of the Expert Group are under examination.

➤ **STRENGTHENING AND ACTIVATING ENFORCEMENT MACHINERY INCLUDING SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)**

Freedom always comes with responsibility. The enforcement mechanism consisting of scrutiny, inspection and investigation are very important tools through which the Ministry keeps a vigil on the defaulters and violators and brings them to book. Strengthening this mechanism, 210 inspections and 23 investigations were ordered during the year 2004-05 as against 46 inspections and 9 investigations ordered during 2003-04. The SFIO has been functioning well and out of 30 cases referred to it so far, 6 have already been completed. Other cases are still under investigation.

Scrutiny, inspection and investigation mechanism is being further strengthened to see that defaulters are punished at the earliest. The process will get a boost once the MCA 21 e-governance project gets fully operational.

➤ **INFRASTRUCTURAL REFORMS**

In order to deliver the best services to the corporate world and other stake holders and to effectively administer the regulatory mechanism the following measures, among others, are high on agenda of the Ministry for the year 2005-06:

- Modernisation of office buildings, purchase/construction of new office premises at the places wherever required.
- Cadre restructuring of the Indian Company Law Service (ICLS), which mans the core administrative machinery of the Ministry.