
CHAPTER – 1

OVERVIEW

Introduction

1.1 “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. Brief description of the allied Acts being administered by the Ministry have been given in Chapter V.

Recent Initiatives

1.2 A Comprehensive review of the Companies Act, 1956 so as to enable the recodification 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 activities taken up by the Ministry during the year.

Comprehensive Revision of the Companies Act, 1956

1.2.1 Following the recommendations of the Company Law Committee known as the Bhaba Committee set up in 1950, the Companies Act, 1956, was enacted with the object to amend and consolidate the law relating to companies and certain other associations by repealing the Companies Act, 1913. While the Companies Act, 1956, has been amended as many as 24 times since 1956, major amendments to the Act were made after considering the recommendations of the Sachar Committee by enacting the Companies Amendment Act, 1988, and by the Companies Amendment Act, 2002, consequent to the Report of the High Powered Eradi Committee.

1.2.2 The Ministry introduced the Companies (Amendment) Bill, 2003 in the

Rajya Sabha on 07.05.2003, to enable further changes in the Companies Act 1956 to take into account changes in the Indian economy. Many views and suggestions were received from various quarters on the proposed changes. The Ministry examined the concerns expressed and the suggestions made by the industry associations, organizations and professionals and decided that a comprehensive review of the Companies Act was necessary to enable a simplified compact Law that would be able to address the changes in the national and international scenario, enable adoption of internationally accepted best practices while providing flexibility for evolution of new arrangements as warranted. A decision was taken by the Government for preparation of a Concept Paper on Company Law, which would consolidate the existing provisions of the law keeping in view the above objectives. The following broad approach was adopted while drafting the Concept Paper:-

- (i) To bring the Corporate Law in consonance with the changes that have occurred in national and international economic environment
- (ii) To delete the provisions now considered redundant and to regroup the relevant provisions relating to specific subjects
- (iii) To condense, simplify and rationalize the provisions of company law
- (iv) To delink the procedural aspects from the substantive law
- (v) To provide a conceptual overview of the revised Company Law to stakeholders

The Concept Paper was placed on the website

of the Ministry on 4th August 2004, to enable a wide dissemination of the concepts included and a broad based consultation with stakeholders. The Concept Paper contained XXV Chapters organised as follows:

- 1) Chapter I-VII deal with formation of company and other organizational matters ;
- 2) Chapter VIII-IX deal with Accounts and Audit ;
- 3) Chapter X-XII deal with management of the company ;
- 4) Chapter XIII contains powers of Central Government to carry out inspection and investigation of companies ;
- 5) Chapter XIV-XV relates to reorganization of companies by merger, amalgamation, etc.;
- 6) Chapter XVI-XVIII deal with winding up companies ;
- 7) Chapter XIX deals with other registerable entities ;
- 8) Chapter XX deals with Producer Companies, a separate class of companies;
- 9) Chapter XXI to XXV deal with foreign companies, constitution of the Offices of the Registrar of Companies, offences and penalties and other miscellaneous provisions.

1.2.3 The aim of this Concept Paper was to enable critical examination of the provisions contained in it by various stakeholders such as the Chambers of Commerce and Industry,

business organisations, professional bodies, academicians and persons connected with the corporate sector, directly or indirectly. The Ministry invited suggestions/comments for improvement of the Concept Paper. Since the Concept Paper was placed on the website of the Ministry on 4th August, 2004, Ministry has received several suggestions/comments from various organisations/institutions/Chambers of Commerce and Industry, professional institutes, individual experts etc. These suggestions/comments are under examination of this Ministry.

1.2.4 The Ministry of Company Affairs also set up an Expert Committee vide order dated December 2, 2004 under the chairmanship of Dr J.J.Irani and with Members of the Committee drawn from representatives of ICSI, ICAI, ICWAI, CII, FICCI, ASSOCHAM, Banks, Financial Institutions and legal experts, to examine various aspects of the Concept Paper in light of the response received from various stake holders and advise the Ministry in addressing the various issues in the Concept Paper. The proceedings of the Committee are presently continuing.

Review of the Acts Governing Professional Institutes:

Legislative proposals

1.3 Keeping in view, inter-alia, the experience gained in administration of affairs of the statutory bodies concerned with accountancy and company law, and to address issues relating to regulation of the technical professions, three Acts governing the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India and the Institute of Cost and Works Accountants of India, namely, the Chartered Accountants Act, 1949,

the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 were reviewed and are proposed to be amended through the following amendment Bills introduced in the Rajya Sabha on 23.12.2003 :

- i. The Chartered Accountants (Amendment) Bill, 2003
- ii. The Cost and Works Accountants (Amendment) Bill, 2003
- iii. The Company Secretaries (Amendment) Bill, 2003

During the year, the Parliamentary Standing Committee on Finance held its hearings on various provisions of the above mentioned Bills. The Report of the Standing Committee was placed before the Parliament on 25.02.2005

Competition Act, 2002

1.4 The Competition Commission of India was established on 14th October, 2003 under the Competition Act, 2002. There were legal challenges on certain aspects of the Competition Act. The Supreme Court of India has pronounced its judgement on 20.01.2005. Certain amendments to the Competition Act are at present under examination.

MCA21 e-Governance Project

1.5 The Ministry of Company Affairs has launched an e-governance project namely MCA21 e-Governance Project on 9th February 2005. The project envisages easy and secure online access to all the services being provided by the Ministry of Company Affairs, including registration and filing of documents throughout the country for all the corporates and others

at any time and in a manner that best suits them. The programme is outcome-based and focussed on improving the quality of services to various stakeholders concerned with the corporate sector in the country. The cost of the Project is estimated at Rs. 341 crore and it has an implementation cycle of 60 weeks and, thereafter, an operation period of 6 years. TCS-led consortium has been selected as the operator. It would be possible to achieve speed, transparency and savings for all concerned in terms of time and costs once the project becomes functional. The wealth of database created in the process would be available for the use of the Corporate Sector, Research Institutes, Regulators, the general public etc.

Special Measures to Protect Interests of Investors

1.6.1 Protection of interest of investors is a commitment of the Government in the National Common Minimum Programme (NCMP). Highlights of recent initiatives taken by the Ministry in this regard are:

- Investor complaints to be acknowledged within 48 hours & to be attended to on highest priority- Progress to be monitored closely
- Investor Protection Cells opened and made functional not only at the level of the Ministry but also at Regional Directors and Registrars of Companies levels and Nodal Officers appointed and their names & address with contact numbers placed on website of the Ministry- also published in all leading news papers
- On-line Investors Grievances Redressal System introduced and made functional

- Field officers directed to encourage NGOs at the local level to take up investor protection programmes
- Investor Education & Protection Fund (IEPF) under the Companies Act, 1956 activated and reputed NGOs are contributing by taking up various programmes aimed at educating the investors
- Expert Committee constituted to advise on preparation of a strategy paper for safeguarding interests of depositors/ investors- Further action being taken
- Effective action being ensured against **vanishing companies** by seeking better cooperation from the State Governments. FIRs filed in 90 cases under IPC; Prosecutions launched under Companies Act in 111 cases for misstatement in prospectus/fraudulently inducing persons to invest money/false statement made in offer documents etc; Prosecutions also launched under Companies Act in 99 cases for technical defaults; special counsels being engaged in appropriate cases to speed up the cases in the courts; ensuring that the action against the vanishing companies does not stop merely because they start filing returns and documents etc but to see that they are punished for the violations of law and investors' interest is protected effectively. Particulars of even those companies which have resurfaced given on the web-site of the Ministry; action being monitored closely
- As part of long term initiatives, comprehensive review of the existing

Companies Act has been taken-up with a view to bring the law in tune with changing business models and national and global economic scenario. Special emphasis has been laid on the measures to protect interests of investors. Further action in this regard is in progress

Investor Education and Protection Fund

1.6.2 With a view to protect the interests of the investors, the Investor Education and Protection Fund (IEPF) has been established in Ministry of Company Affairs with effect from 1.10.2001. The amounts which remained unpaid for a period of seven years from the date they have become due are credited to the Fund. The Fund is utilized for promotion of investor's awareness, education and protection of the interests of the investors. A Committee established in accordance with the Investor Education and Protection Fund (awareness and protection of investors) Rules, 2001, under the Chairmanship of Secretary Ministry of Company Affairs, administers the Fund.

1.6.3 Fifteen NGOs/Voluntary societies/associations, working in the field of investor's education have been registered under the IEPF and financial assistance has been granted to NGOs/Voluntary societies/associations for various activities and programmes on investors awareness and education. Spots on issues related to the investor's education and awareness were telecast on Doordarshan and private channels. Panel discussions on investor related issues were telecast over Doordarshan in Hindi and English and also on regional channels in vernacular languages. A website namely, www.watchoutinvestors.com has

been created with financial assistance from IEPF to help the investors protect themselves from unscrupulous promoters, companies and entities. The website aims to become the national registry of economic defaulters and would cover information on convictions by various regulatory bodies. Organisations who are willing to take up Class Action Suits on behalf of investors can also apply for financial assistance under the IEPF. Research projects on unclaimed dividends and Indian household investors have also been funded. Programmes for training of trainers' are being funded to help NGOs/VOs in the field of investor education.

1.6.4 As per the information received from the Registrars of Companies located all over India, an amount of Rs. 352,24,81,085/- has been credited by the companies to the Fund upto 31.12.2004. The amount deposited by the companies under this Head goes to the Consolidated Fund of India. A budgetary allocation is made by the Parliament each year to run the IEPF activities.

National Foundation for Corporate Governance (NFCG)

1.7.1 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 01.10.2003 with the Ministry, Confederation of Indian Industry (CII), Institute of Company Secretaries of India and Institute of Chartered Accountants of India as participating trustees.

1.7.2 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.

1.7.3 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. The first meeting of the Governing Council was held on 28th July, 2004.

1.7.4 The following activities have been undertaken under the National Foundation for Corporate Governance:

- (i) A website on NFCG (www.nfcgindia.org) has been launched.
- (ii) The "Criteria for Selection of National Centres of Corporate Governance and Accreditation Policy" of NFCG has been finalised.
- (iii) Six premier national level Institutes have been selected as National Centres for Corporate Governance (NCCG). The institutes are: IIM(Ahmedabad), IIM (Bangalore), IIM(Kolkata), IIM(Lucknow),

ASCI(Hyderabad) and ISB(Hyderabad). The IIM(Bangalore) and IIM(Kolkata) have already set up Centres for Corporate Governance. IIM(Lucknow) has obtained in-principle approval. The matter is being followed up with the rest of the Institutes.

- (iv) A workshop on Trends in Corporate Governance in India was organised on 18th October 2004 in New Delhi.

Serious Fraud Investigation Office

1.8.1 Government set up the Serious Fraud Investigation Office (SFIO) in the year 2003, as a multi-disciplinary investigation organisation entrusted to carry out investigation of serious corporate frauds. This organisation started functioning from 1st October 2003. The organization has been provided with necessary investigating and support staff and other infrastructure and includes experts from the fields of Finance, Company Law, Capital Market, Law, Information Technology, Forensic auditing, Taxation and Investigation on its staff. The headquarters of SFIO are located at New Delhi. The regional office of SFIO at Mumbai has been made operational with effect from 25.10.2004.

1.8.2 At present, SFIO is carrying out investigations referred to it by the Central Government under Sections 235 and 237 of the Companies Act. Officials drawn from the SFIO are designated as Inspectors under the Act. On the basis of investigations, where violation of various legal provisions and misfeasance is established, designated officials of SFIO are authorised to pursue prosecution and other action under the Companies Act 1956.

1.8.3 During the current year, investigation

into the affairs of 20 companies has been referred to this organization by the Central Government under the Companies Act 1956. Investigation against these companies is under progress. These are in addition to six cases referred to SFIO earlier.

Simplified Exit Scheme

1.9 In order to provide an easy exit route to small, non-functioning or defunct companies, this Ministry introduced a Simplified Exit Scheme (SES) on 25.3.2003, simplifying the procedures to be adopted by companies as well as ROCs in striking off the names of defunct companies, with in-built safeguard to ensure that unscrupulous promoters/directors/managers do not escape their liabilities. The scheme was in operation till 31.3.2004. Around 25,000 companies availed of this scheme. Taking lessons from the said scheme, a revised and improved **Simplified Exit Scheme-2005** was launched on February 1, 2005 for a duration of six months.

The Companies (Auditor's Report) Order, 2003 (CARO)

1.10.1 The audit of accounts of all companies is mandatory under the Companies Act, 1956. Provisions of Section 227(4A) of the Companies Act empower Ministry of Company Affairs to direct, by general or special order, that, in the case of certain class or description of companies, the auditor's report shall also include a statement on such matters as may be specified therein.

1.10.2 Pursuant to the above provisions, this Ministry had issued the Manufacturing and Other Companies(Auditor Report) Order (MAOCARO) in 1988. Since then,

requirement of more disclosures were felt. Keeping the above requirement in view, a reporting system under the Companies (Auditor's Report) Order, 2003 (CARO) was notified under this Section on 12.6.2003. This was further modified on 25th November, 2004. Under this order, the auditor is required to comment on various important aspects such as (a) whether securities have been created in respect of debentures issued (b) whether the management has disclosed on the end use of money raised by public issues and the same has been verified, and (c) whether any fraud on or by the company has been noticed or reported during the year; if so, the nature and the amount involved is to be indicated.

Ministry's web site

1.11.1 Ministry's Web site (<http://www.dca.nic.in>) is operational for over past six years. It contains useful information on organisation of the Ministry, publications, circulars, Notifications, citizen's charter, Annual Report, monthly corporate growth, Parliament questions and replies and Reports submitted by various Committees set up by the Ministry.

1.11.2 Pursuing its endeavour to promote dissemination of corporate information available with the offices of ROCs, search facilities have been made available in respect of the following :

- (i) Company Directory
- (ii) Names Approved for registration
- (iii) ROC fee computation
- (iv) ROC forms

Citizen's Charter of the Ministry

OUR STANDARDS

1.12 The Citizen's Charter of the Ministry of Company Affairs is available on Ministry's website. The commitments, expectations and standards stated in the Charter are given below:

Citizen's Charter

"OUR COMMITMENT

WE SHALL CARRY OUT OUR TASKS WITH

integrity and judiciousness
courtesy and understanding,
objectivity and transparency
promptness and efficiency

OUR EXPECTATIONS

We expect the corporate sector to be prompt and reasonable in fulfilling their duties and legal obligations and be true and honest in furnishing information to us.

WE SHALL

- Acknowledge applications, returns and all communications within 7 days of their receipt.
- Resolve expeditiously complaints regarding delay in issue of allotment letters & share/debenture certificates, refund of application money, delay in transfer of shares & non payment of dividends/interest on shares/debentures/fixed deposits etc. in close co-ordination with agencies.
- Ensure that all applications submitted to the Ministry of Company Affairs, Regional Directors and Registrar of Companies, are processed within the time frame,
- Be courteous, prompt, effective & provide time bound services.
- All services shall be provided without charge or demanding any money other than remuneration prescribed by law."