

CHAPTER - I

OVERVIEW

Introduction

1.1 This report covers the period from 1st April, 2005 to 31st December, 2005. 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 respectively 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.

Comprehensive Revision of the Companies Act, 1956

1.2.1 During the period under report, an exercise for a comprehensive revision of the Companies Act, 1956 was taken up on the basis of a broad based consultative exercise. As a first step in this consultative process, a Concept Paper on Company Law, drawn up in the legislative format, was exposed on 4th August, 2004 for viewing on the electronic media so that all interested may not only express their opinions on the concepts involved but may also suggest formulations on various aspects of Company Law. Comments and suggestions from a large number of organisations, professional bodies and individuals have been received. This consultative process not only allowed ideas, comments and suggestions to flow in from all quarters, but also enabled the Ministry to work out appropriate legislative proposal to meet the requirements of India's growing economy in the years to come.

1.2.2 The Government, therefore, felt it appropriate that expert opinion be sought on the changes necessary in Company Law on account of contemporary national and international economic environment. An Expert Committee was constituted on 2nd

December, 2004 under the Chairmanship of Dr J.J. Irani, Director, Tata Sons to advise the Government on Company Law. The Committee included representatives of statutory professional councils, trade and industry bodies, Government Ministries, regulatory bodies and independent experts. Terms of Reference of the Expert Committee were as follows:-

1. Issues arising from the revision of the Companies Act, 1956.
2. Response received from various stakeholders on the Concept Paper.
3. Bringing about compactness by reducing the size of the Act and removing redundant provisions.
4. Enabling easy and unambiguous interpretation by recasting the provisions of the law.
5. Providing greater flexibility in rule making to enable timely response to ever-evolving business models.
6. Protecting the interest of stakeholders and investors, including small investors.
7. Any other issue related, or incidental, to the above.

1.2.3 The Committee has submitted its report on 31st May, 2005. On the basis of the inputs received through the consultative process and opinions, suggestions made by experts, a comprehensive revision of the Companies Act has been undertaken by the Ministry with a view to introducing suitable legislation in the Parliament.

Competition Commission

1.3 The Competition Commission of India (CCI) 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

1.4 The Ministry of Company Affairs is in the process of implementing MCA21 e-Governance Project. It is a Mission Mode e-Governance project of the Government of India under National e-Governance Plan. 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. 345 crore. It has an implementation cycle of 60 weeks starting with the signing of contract on 1.3.2005 and, thereafter, an operation period of 6 years. TCS-led consortium has been selected as the Build-Own-Operate-Transfer (BOOT) operator. A pilot project is to be launched at Coimbatore on 18th February, 2006 and will be operational at all other locations in phases by 24th April, 2006. It would be possible to achieve speed, transparency and savings for all concerned in terms of time and costs once the project is implemented and becomes operational. 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

1.5.1 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 & addresses with contact numbers placed on website of the Ministry and also published in all leading newspapers;
- On-line Investors Grievances Redressal System introduced and made functional;
- Field officers directed to encourage Non-Government Organisations (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;
- Effective action is being taken against Vanishing Companies by seeking cooperation from the State Governments. Prosecutions have been filed under the Companies Act, against 107 companies and their promoters/directors for misstatement in prospectus/fraudulently inducing persons to invest money/false

statement made in offer documents etc. FIRs have been filed against 100 companies under the Indian Penal Code. Particulars of these Vanishing Companies along with the names and addresses of their promoters/directors have been published in various newspapers to facilitate investors to come forward and lodge their complaints against these companies in order to help the Police Authorities in their investigation and prosecution launched against them.

1.5.2 As a long term initiative, 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.

Investor Education and Protection Fund

1.6.1 In pursuance of sub-section (1) of Section 205C of the Companies Act, 1956, the Central Government/Ministry of Company Affairs established the Investor Education and Protection Fund (IEPF) with effect from, 1st October, 2001 for promotion of investor awareness and protection of interests of investors.

1.6.2 Under IEPF, various programmes on investor education and awareness have been funded and organized through NGOs/Societies/Associations/Institutions etc. Fourteen new NGOs/VOs/Institutions have been registered under IEPF till date during the current financial year.

1.6.3 To make investors aware, the Ministry has been launching campaigns through electronic and print media. Two series of investors education publicity campaign have already been completed, which aimed at educating investors on investing in market instruments, Initial Public Offers (IPOs) and mutual funds. A media campaign was launched in various national as well as regional language newspapers wherein besides the above said educative message, NGOs/VOs involved in Investor Education and Protection activities, especially those with a rural outreach, had been invited to apply for financial assistance/grants under IEPF schemes. Further the organizations, which are keen to carry out the research on the subjects of investor protection/education related issues had also been invited to submit their proposals to the IEPF. Investor Education message was aired on All India Radio through Prasar Bharti to create awareness on the issues concerning investors and about the IEPF.

1.6.4 The website namely, www.watchoutinvestors.com has been created to help the investors to protect themselves from unscrupulous promoters, companies and entities. The website is a national registry of economic defaulters and covers information on convictions by various regulatory authorities. There were 2,72,212

hits, 14,899 registrations, 54,461 defaulters entities and 21,717 defaulter individuals till the month of October 2005 during the current financial year.

1.6.5 Financial assistance has been provided to Midas Touch Investors Association for creating an “Investor Helpline” for a period of three years under Investor Education and Protection Fund (IEPF). Midas Touch shall construct a website for investor awareness, education and also provide a mechanism for redressal of grievances. During current financial year, an amount of Rs. 29,84,000/- has been released to Midas Touch Investor Association for the aforesaid purpose.

1.6.6 Financial assistance has also been provided to Investor Grievance Forum for conducting Investors’ Melas under Investor Education and Protection Fund (IEPF). During the current financial year, an amount of Rs. 11,37,400/- has been released to Investor Grievance Forum for the aforesaid purpose.

1.6.7 Under the capacity-building programme, the “Training of Trainers”, programmes through IICM have been conducted for new organizations, especially those active at the Taluk level, even if such organizations had not been registered with the IEPF.

National Foundation for Corporate Governance

1.7.1 The MCA has set up National Foundation of Corporate Governance (NFCG) as a non-profit Trust to provide a platform for deliberations on issues relating to good corporate governance and to sensitize corporate leaders on the importance of good corporate governance practices, self-regulation and directorial responsibilities. The Ministry has constituted the Governing Council under the Chairmanship of Minister for Company Affairs and has also launched a web site of the Foundation to serve as a vehicle for dissemination of policies for better corporate governance. Meetings of the Board of Trustees are held regularly to regulate the activities of the NFCG.

1.7.2 NFCG had framed an Action Plan for the current year, which includes development of good corporate governance principles on identified themes i.e. (i) corporate governance norms for institutional investors, (ii) corporate governance norms for independent directors and (iii) corporate governance norms for audit. Three core groups have been constituted in this regard. Besides, the NFCG proposes to sponsor orientation programmes for directors through institutes of excellence (viz. Indian Institutes of Management, Ahmedabad, Kolkata, Bangalore and Lucknow; Indian School of Business, Hyderabad; and Administrative Staff College of India, Hyderabad), organize seminars and conferences to propagate the need for following good corporate governance practices.

1.7.3 Future plans of the NFCG include taking up the issue of Corporate Social Responsibility (CSR), encourage corporate governance cooperation in South Asia particularly relating to SAARC countries, dissemination of corporate governance practices for the small and medium corporate.

Serious Fraud Investigation Office (SFIO)

1.8.1 The Government set up the Serious Fraud Investigation Office in 2003. It started functioning from 1st October, 2003. The organization is a multi-disciplinary investigating agency, wherein experts from the banking sector, capital market, company law, forensic audit, taxation, investigation, income tax etc., are posted. In the initial stages, investigations are being carried out under the provisions of sections 235 and 237 of the Companies Act. In the second phase, a separate Act, to provide adequate powers and reach to this organization, is proposed. The Government has decided to set up an expert committee to make suitable recommendations on this matter. This organization has completed more than two years of its functioning. In the current year, 5 cases were handed over to the SFIO for investigation. So far 31 cases in all have been referred to the SFIO for investigation. The SFIO has already submitted investigation reports in the following 9 cases.

Sl. No.	Name of Company
1.	Daewoo Motors India Ltd.
2.	DSQ Software Ltd.
3.	Design Auto Systems Ltd.
4.	Bonaza Biotech Ltd.
5.	Vatsa Corporation Ltd.
6.	Mardia Chemicals Ltd.
7.	Adam Comsof Ltd.
8.	Kolar Biotech Ltd.
9.	Soundcraft Industries. Ltd.

1.8.2 153 cases of prosecution have already been filed in different courts against persons involved in fraudulent activities in the following companies.

Sl. No.	Name of Company	No. of prosecution cases
1.	Daewoo Motors India Ltd.	09 Nos.
2.	Design Auto Systems Ltd.	13 Nos.
3.	Bonaza Biotech Ltd.	17 Nos.
4.	Vatsa Corporation Ltd.	114 Nos.

1.8.3 Prosecution in the fifth case i.e. M/s. Mardia Chemicals Ltd. is going to be filed shortly. The investigation reports of the remaining three cases namely Adam Comsof Ltd., Kolar Biotech Ltd., and Soundcraft Industries Ltd. are under examination of the Government and the sanction of prosecution will be given shortly.

Notifications/Circulars/Press Notes

1.9 The following notifications/circulars/press notes have been issued by the Ministry of Company Affairs during the period April, 2005 to December, 2005: -

A. Notifications.

Sl. No.	Notification Number	Date	Subject
1.	GSR-284(E)	06-05-2005	Authorisation under section 621 of Companies Act, 1956, of Officers from SFIO for purposes of filing and conducting prosecution under the Companies Act, 1956.
2.	GSR-450(E)	01-07-2005	Declaration of Companies as Nidhi Companies Under section 620A of the Companies Act, 1956.
3.	S.O.-900(E)	28-06-2005	Extension of the tenure of National Advisory Committee on Accounting Standards under section 210A of the Companies Act, 1956.
4.	GSR-519(E)	02-08-2005	Amendment of Notification No.GSR-309(E) dated 30.4.2002.
5.	GSR-610(E)	23-09-2005	Amendment of the Companies Regulations, 1956.
6.	GSR-611(E)	23-09-2005	Shifting of Office of Regional Director (Northern Region) from Kanpur to NOIDA (Gautam Budh Nagar).
7.	S.O.-1433(E)	27-09-2005	Extension of tenure of National Advisory Committee on Accounting Standards constituted under sub-section (1) of section 210A of the Companies Act, 1956.
8.	S.O.-1531(E)	25-10-2005	Declaration of M/s Punjab State Industrial Development Corporation Ltd. (PSIDC) as a Public Financial Institution (PFI) under section 4A of the Companies Act, 1956.
9.	GSR 709 (E)	7-12-2005	Amendment of the Cost Accounting Records (Electricity Industry) Rules, 2001.

B. General Circulars

1.	05/2005	10-05-2005	Clarification on Simplified Exit Scheme-2005.
2.	06/2005	14-06-2005	Circulation of Notification No.GSR-284(E) published on 6.5.2005. Authorisation of officers of the SFIO for purposes of filing and conducting prosecution under the Companies Act, 1956.
3.	07/2005	08-07-2005	Circulation of Notification No.GSR-450(E) published on 1.7.2005 regarding declaration of 13 more companies as Nidhi Companies.
4.	08/2005	15-07-2005	Circulation of Notification No.S.O.-900(E) published on 28.6.2005 regarding extension of tenure of National Advisory Committee on Accounting Standards.
5.	09/2005	30-07-2005	Extension of Simplified Exit Scheme-2005 upto 31.8.2005.
6.	10/2005	10-08-2005	Circulation of Notification No.GSR-519(E) published on 2.8.2005 regarding change in Notification No.GSR-309(E) dated 30.4.2002.
7.	11/2005	07-10-2005	Circulation of Notification No.GSR-610(E), GSR 611(E) published on 23.9.2005 and S.O. No.S.O.-1433(E) published on 27.9.2005.
8.	12/2005	17-11-2005	Circulation of Notification No.S.O.-1531(E) published on 25.10.2005 declaring M/s Punjab State Industrial Development Corporation Ltd. (PSIDC) as a Public Financial Institution (PFI) under section 4A of the Companies Act, 1956.

C. Press Notes

1.	03/2005	31-05-2005	Irani Committee on Company Law.
2.	04/2005	30-07-2005	Extension of time-Simplified Exit Scheme-2005
3.	05/2005	02-11-2005	Concept Paper on Limited Liability Partnership Law.

D. Departmental Circular

1.	02/2005	14-06-2005	Simplified Exit Scheme-2005 – Issue of Default Notices.
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Ministry's Web Site

1.10.1 Ministry's new web site (<http://www.mca.gov.in>) is now operational in place of the earlier web site (www.dca.nic.in). 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. The new website also provides all the e-services under the MCA-21 project discussed in para 1.4.

1.10.2 Pursuing its endeavor 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

1.11 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.

OUR STANDARDS

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.”