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India

Companies Bill 2012 Awaiting Approval Contains Employment-Related Provisions

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In December 2012, the lower house of the Indian parliament (the Lok Sabha) passed the Companies Bill, 2012 (Bill).[1] The Bill seeks to replace the 56 years old Companies Act, 1956 (Act) and awaits the approval of the Rajya Sabha and the Presidential assent. The Bill is divided into 29 Chapters with 470 Clauses and 7 Schedules as against 658 sections and 15 schedules under the current Act. From an employment perspective, the following inclusions to and deviations from the Act are noteworthy:

1. *Officer in default*: The definition of the phrase '*officer in default*' has been expanded to include the following categories of individuals:
    - Any person who, under the immediate authority of the board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; or
    - Every director, in respect of a contravention of any of the provisions of the Bill, who is aware of such contravention by virtue of the receipt by him of any proceedings of the board or participation in such proceedings without objecting to the same.
2. *Managing Director:* Important changes which have been proposed by the Bill in relation to a managing director of a company are summarized below:
    - Minimum age limit for appointment of any person as a managing director has been revised to 21 years (instead of 25 years under the Act).
    - While the maximum term of managing director/manager has been fixed for five years at a time, it has been provided that re-appointment shall not be made earlier than one year before the expiry of his term, whereas under the Act, re-appointment shall not be made before the expiry of two years.
    - As per the Bill, a person cannot be appointed as managing director/manager if he has been convicted by a court of an offence and sentenced to imprisonment for more than six months. Under the Act, such a restriction from appointment is only in cases where the conviction for offence involves moral turpitude, and no imprisonment period has been prescribed.
    - The Bill requires a private company to have at least one managerial person.
    - Unlike under the Act, Central Government approval is not required for the payment of any remuneration to any director (including managing director) for services rendered in any other capacity provided such services are of a professional nature and when the nomination and

remuneration committee or the board of directors is of the opinion that the person possesses necessary qualifications.
    - As per the Bill, an insurance premium taken by the company on behalf of its officers (including managing director) for indemnity for any liability arising out of a negligent act, default, misfeasance, breach of duty or breach of trust for which they may be guilty, shall not be considered as remuneration to the director or officer.
    - The Bill permits a managing director to receive remuneration or a commission from the holding or the subsidiary company, subject to requisite disclosures by the company in its board report.
3. *Key Managerial Personnel*: The Act does not contain any references to Key Managerial Personnel (KMP). However, certain prescribed companies will be required to appoint KMPs i.e. (i) a chief executive officer or managing director or manager and in their absence a whole time director, (ii) company secretary; and (iii) a chief financial officer.
4. *Managerial Remuneration:* With respect to companies with no profits or inadequate profits, remuneration shall be payable in accordance with new Schedule of Remuneration annexed to the Bill, and in case a company is not able to comply with such Schedule, approval of the Central Government would be necessary. Individual limits for remuneration have been enhanced in the Bill vis-à-vis the existing limits under the Act.
5. *Nomination and Remuneration Committee:* The Bill provides for the constitution of a Nomination and Remuneration Committee in case of listed companies. The committee shall be responsible to formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to the remuneration for the directors, key managerial personnel and other employees. The committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent directors.
6. *Insider trading*: The Bill introduces a new clause prohibiting insider trading of securities of a company by directors and key managerial personnel. Any non-compliance of such provisions could result in a criminal offence.

[1] http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2012.pdf.

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