

## Corpsec Hotline

February 27, 2003

### THE COMPANIES (SECOND AMENDMENT) ACT, 2002

The introduction of the Companies Amendment Act, 2002 (the "Act") has brought about significant and far-reaching changes to the Indian Companies Act, 1956 with a specific focus on the creation of a separate body for the adjudication of company law matters, administrative issues as well as rehabilitation of sick industrial companies.

The Act has come into effect from January 13, 2003. Some of the important changes made by the Act are as follows:

1. The Act seeks to abolish the Company Law Board ("CLB") and distribute the powers of the CLB between the National Company Law Tribunal (the "Tribunal") and the Central Government. The Tribunal will have a two-fold role: it will be the sole judicial body for company law matters as well as assume certain administrative powers. These administrative powers will be transferred to the Tribunal from the CLB. This move promises to efficiently expedite proceedings under the Companies Act with the help of the Tribunal.
2. The powers of the CLB relating to regulation of acceptance public deposits, complaints regarding refusal to transfer/transmit securities, oppression and mismanagement, etc are to be exercised by the Tribunal.
3. The powers of the CLB relating to the change of registered office from one State to another, compelling inspection of register/documents when refused by a company, debenture trustees / register of charges, composition of offenses, etc. have been transferred to the Central Government.
4. The powers of the High Court relating to the reduction of capital, amalgamation reconstruction and winding up of companies have been transferred to the Tribunal.
5. New provisions relating to sick industries have been introduced by the Act. The definition of a "sick industrial company" includes industrial companies whose accumulated losses in any financial year equal to fifty per cent, or more of its average net worth during four years immediately preceding such financial year; or a company which has failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by its creditor(s). The company itself is required to submit a scheme for its revival/rehabilitation, along with a certificate from a Chartered Accountant giving reasons as to why it became sick, while making the reference to the Tribunal.
6. The Act seeks to levy cess on all companies which shall be not less than 0.005% but not more than 0.1% on the value of turnover or its annual gross receipts, whichever is higher. The cess will be transferred to 'Rehabilitation and Revival Fund' with sanction of Parliament. The fund will be utilized for making interim payments to workmen, protection of assets of sick company and revival and rehabilitation of sick company.
7. The minimum amount for which a creditor can file a winding up petition has been raised from Rs.500 to Rs.100,000 by the Act.

These changes would expedite the time taken for adjudication of company law matters as well as enable creditors to effectively initiate the speedy rehabilitation of a sick company and improve overall efficiency in administrative matters.

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