

## Discussions on Companies (Amendment) Act 2000

GOVT. OF ASSAM

DEPARTMENT OF PUBLIC ENTERPRISES

RECORD NOTE OF DISCUSSIONS ON COMPANIES

(AMENDMENT) ACT 2000, HELD ON 3<sup>rd</sup> SEPTEMBER 2002

The Company Secretaries of Assam Industrial Development Corporation Ltd, Assam Tea Corporation Ltd. & Assam Petrochemicals Ltd and Sri C. K. Dowerah, Company Secretary in practice attended the meeting taken by Sri P. K. Chowdhary, Commissioner & Secretary, Department of Public Enterprise on 3<sup>rd</sup> September 2002. Sri A. K. Das, Adviser (P), Department of Public Enterprise also attended the meeting.

The Companies Act 1956 has undergone amendments vide Companies (Amendment) Bill 2000, after it was passed by the Lok-Sabha on 27.11.2000 & by the Rajya-Sabha on 30.11.2000 and assented by the President of India on 13.12.2000. Some of the salient points of amendments were discussed.

### 1. Changes in definition of Company (Section 3)

The Amendment Act has amended the existing definition making private Companies to fulfill the following additional requirements.

- A private Company shall have a minimum paid-up capital of Rs. 1 Lakh or such higher paid-up capital as may be prescribed (existing companies with less than Rs. 1 Lakh as paid-up capital will have to raise it within 2 years from commencement of the Amendment Act)
- A private Company shall by its Article of Association prohibit any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

The Amendment Act has amended the existing definition of public company too:

- Public Companies should have a minimum paid-up capital of Rs. 5 Lakh or such higher paid-up capital as may be prescribed
- A private company, which is a subsidiary of a public company, is a public company

The Companies in which the paid-up capital are below the prescribed limits will have

to raise the same accordingly.

2. **Appointment of Directors - disqualification/ maximum number of companies in which one can be appointed as Director at a time. (Section 274/252)**

The Amendment Act adds that a person shall not be capable of being appointed as Director of a Company for a period of 5 years

- If such a person is already a Director of a Public company that has not filed the annual accounts and returns for 3 continuous financial years commencing on or after 1.4.1999.
- If such a person is already a Director of a public company which has failed to repay its deposit or interest thereon on due date or redeem its debenture on due date or pay dividend and such failure continues for 1 year or more.

The number of Companies in which a person can be appointed as Director is reduced from 20 to 15.

The Department of Company Affairs, Ministry of Finance & Company Affairs of Govt. of India has responded to the request of the State Govt. vide letter no. 2/5/2001-CLV dated 16.8.2002 that the proposal of exempting Govt. companies from the provision of section 274(1)(g) of Companies Act 1956 was under process. However, as per clarification issued by Ministry of Law, Justice & Company Affairs, Department of Company Affairs vide 2/5/2001-CLV General circular no 8/2002 dated 22.3.2002, the Govt. decided to exempt Govt. companies from the applicability of provisions of section 274(1)(g) of the Companies Act 1956

3. **Requirement of "Directors' Responsibility Statement" (Section 217)**

One additional Directors' Responsibility statement will have to be annexed to every balance sheet laid in the AGM certifying that

- Applicable accounting standards were followed, with explanation in cases of material departure
- The Directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable & prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit & loss of the company for that period
- The Directors took care for maintenance of accounting records in accordance with provisions of the Companies Act

- The Directors prepared the annual accounts on a going concern basis

It was decided that the Company Secretaries present in the meeting would make the 23 accounting standards available to the Commissioner & Secretary, Department of Public Enterprises for information & necessary actions.

In this connection, the problems leading to huge arrear in finalization of accounts of most of the Govt. companies viz. non-availability of internally audited accounts in some cases, delay in statutory audit etc. were discussed. It was suggested that in order to make all concerned aware of the immediate need of clearing arrears in accounts, working-out possibilities of simplification of procedure for shortening the process time and also to impart knowledge of the relevant provisions of the Companies (Amendment) Act 2000, a seminar could be arranged. It was therefore decided that Commissioner & Secretary, Department of Public Enterprises may have a discussion with Sri Debashish Mitra (Chairman, Institute of Chartered Accountants of India (EIRC) C/O Guwahati branch, Ambari , Guwahati 781 001) in this regard.

4. Constitution of "Audit Committee"- Chairperson of Audit Committee to attend AGM (Section 292-A)

It would be mandatory for every public company having paid-up capital of not less than Rs. 5 Crore, to constitute "Audit Committee" consisting of Directors, which should discuss auditors periodically, review financial statements before submission to the Board of Directors and also to ensure compliance of internal control systems. The elected Chairman of the Committee shall attend the AGM to provide clarifications.

It could be examined as to whether constitution of Audit Committee could be done in cases of all the Govt. companies, including private Govt. companies, though not mandatory, to ensure the Board of Directors of appropriate internal control systems.

5. Services of Company Secretaries - Secretarial Certificates (Section 383-A)

Every Company having paid-up capital of Rs. 10 Lakh or more, but less than Rs. 50 Lakh (Raised to Rs. 2 Crore w.e.f 11.6.2002), which is not required to employ a whole-time qualified Company Secretary, shall file with the ROC, a certificate from practicing Company Secretary as to whether provisions of the amended Act have been complied and such certificate shall be attached with Directors' report to the share-holders.

The Govt. companies will have to ensure compliance of the provisions as regards appointment of Company Secretaries / Secretarial certificates. It was decided to write to

the Secretary, Institute of Company Secretaries of India (ICSI House, 22 Indraprastha Area, Lodi Road, New-Delhi 110 003) requesting the names & addresses of locally available practicing Company Secretaries for the purpose of Secretarial Certificates. Till this is available, the Companies could avail the services of locally available practicing Company Secretaries known to the Companies / State Govt.

**6. Depreciation method (Section 350)**

The amended section 350 provides that the depreciation on assets shall be same as shown in books of accounts, to facilitate liberalized adequate compensation to best managerial personnel

This provides a tool for better management of a company.

**7. Appointment & remuneration of auditors of Govt. companies (Section 619/224)**

In place of appointment or re-appointment of auditors of Govt. companies by the Central Govt. on the advice of C & AG, the amendment Act provides that such appointment shall be done by the C & AG from 13.12.2000. Where the C & AG appoints an auditor for a Govt. company under section 619, his remuneration shall be fixed by the Company in General Meeting or in such manner as the company in General meeting may determine.

These will overcome some delays in appointment of statutory auditors and disputes on audit fees. The C & AG may be requested to appoint Statutory Auditors locally available and preferably the same auditor for a period of at least 3 continuous years at a time, if not for the entire period of pendency.

( P. K. Chowdhary )

Commissioner & Secretary

Department of Public Enterprises

Memo No. PE (D) 4/2001/ 67-A Dated Dispur the October 2002

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2. The Company Secretary

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2. The Company Secretary

Assam Tea Corporation Ltd

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2. The Company Secretary

Assam Petrochemicals Ltd

Ambari, GUWAHATI 781 001

By order etc.

Sd/-

Commissioner & Secretary

Department of Public Enterprises