

THE INDIAN LAW INSTITUTE, NEW DELHI

Seminar

on

Government Regulation of Private Enterprise

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CONTROL OF COMPANIES UNDER  
COMPANIES ACT, 1956

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The Central Government has provided for control in various sections of the Companies Act and other Acts, licensing rules and procedure and requiring approval of different departments of the Government in other matters for controlling Private Enterprise with a view that the the administration of Private Enterprise may ultimately contribute to better administration in such a way so as to achieve the objects of Government Plan for developing Private Enterprise in the economic needs of the country as well as for effecting a Social Control to develop a sense of responsibility among the management to introduce a socialistic pattern in our country.

The type of such controls is no doubt necessary, over the mismanagement in private sector in the Schedule industry or for any public or national interest, to develop and regulate certain industries, to maintain production, and quality control, and for unjustifiable rise in prices and to regulate the distribution of products or articles in National interest and also for exports for balance of trade or to earn foreign exchange.

We find that the Government Control and regulations have not so far achieved the expected results in the centralised planning, therefore, has failed to achieve the objectives.

Instead of providing for controls under one Act or the other, and in one form or other by different ministries or by one department or the other, at every state of administration, it is desirable that certain statutory control be provided by appropriate

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sections in the Companies Act, so that unnecessary procedure, waste of time and delay may be avoided by integrating administration for Company Law and other enactments.

No country has placed so many restrictions on private sector on Managerial personnel as in India, where the form, number, remuneration and appointment is controlled and also requires the approval of the Central Government with procedural forms and rules, and certain matters which are normally decided by Companies all over the world require approval of our Government.

Different countries have different forms of management and we in India, where the capital is very shy and education is meagre and the sense of national responsibility has been practically wiped off during the last 20 years and when we want to develop a socialistic pattern of society, the form of management that is required to be selected should be based on talent and technological skill available, as well as the type of people on whom the Government has to depend and the controls should be such as to cultivate a sense of responsibility with patriotic spirit to win the confidence of people.

The unreasonable restrictions and unnecessary procedure does not produce any result but simply delays the matter and which has failed to provide incentive to the management, should be dropped and proper and effective control both direct and indirect should be introduced in such a way so that there may be an incentive for launching an enterprise and for developing trade, commerce and exports without much interference from the Government by frequent amendments, regulations and notifications which at times not only hamper the progress but also the object of achievement.

At present the controls are exercised by:-

- (1) Central Government.
- (2) Court.
- (3) Company Law Board.
- (4) Regional Directors.
- (5) Registrar of Companies.
- (6) Different Ministries.
- (7) Shareholders.

While these controls may be necessary but to make the same effective and to secure the co-operation of management without hindering the progress of Industry some sort of basic provisions in the Act with suitable regulations should be so fixed with co-ordination of the different departments so as to allow the Management the industry free to operate within the broad limits laid down.

The Controls may be effected in the following ways:-

- (1) The internal control:- Internal control may be effected by:-
  - (a) Compulsory internal audit.
  - (b) Compulsory maintenance of cost and stock records.
  - (c) By having with the Management a responsible statutory officer viz. Company Secretary whose position should be made a little independent of the Board so that the provisions of law may be administered in their true spirit in practice.
- (2) Improved form of Directors' Report and accounts to give more information than what has been given at present to shareholders to enable them to understand the reasons for success or failure of business or delay in progress.
- (3) External controls:- The Government controls for sanction should be reduced to minimum by providing the limitations under the law in respect of
  - (1) Managerial remuneration including perquisites
  - (2) Period of Appointment
  - (3) Usual termsdepending upon certain factors like paid up capital etc. and Government sanction should be provided for any increase in the limits laid down.
- (4) Audit:- The powers of the Auditors should be enlarged to enable them to perform their duties, have proper check over cost, stock and other expenses not relating to the business according to the merchantile practice followed in similar business.

- (5) Shareholders:- The powers of shareholders should also be increased to have more detailed and quarterly information about the working.
- (6) The quarterly statement by the Chairman of every public Company should be made compulsory to acquaint the shareholders about the progress or pitfalls as it may improve the accountability and moral of management in a dignified code of discipline with due respect to shareholders to win their confidence.
- (7) Statutory Audit:- In case of public companies provision should be made for appointment of two joint auditors to expedite the audit etc., and only four accounting years should be permitted to end on March 31st, June 30th, September 30th and December 31st for comparison of results.

The control should not be irksome and involve elaborate procedural formalities and unnecessary cost and delay without any object.

Unreasonable restrictive controls must be eliminated and procedure must be reduced to minimum. It is high time for Central Government to review various controls and regulations in the light of Technological changes, trade conditions and increased cost of living and labour unrest.

The absence of proper co-ordination between the different departments of Government for effecting control for development of industry takes lot of valuable time for development of new industry and to go from one department to the other were in order to avoid responsibility by a single officer, decision is delayed and red tapism has developed to such an extent that sometimes the delays disappoint industrialists and it also happens that after having secured the sanction of 3 departments the last and the fourth one may not approve of the project either due to subsequent change in policy of government or otherwise with the result that all efforts not only fail but the industry has to be dropped and investment becomes unproductive. It may also affect the statewide planning for development of industries.

The results of the present control is as follows:-

- (1) It has promoted mal-practice.
- (2) It has killed public incentive.
- (3) It has affected free enterprise.
- (4) It has developed redtapism in Government departments as no single officer can take decision.

Some Suggestions:-

- (1) Guide lines or creteria or limits should be fixed by amending the following sections to allow freedom to management to deal with such matters and to provide for Governments sanction only in case of variation.  
  
Sections 198, 211(4), 259, 268, 269, 295, 301 and 360, 309, 310, 311, 316, 370, 372, 386.
- (2) Limits should be placed on borrowings by private companies.
- (3) Provisions for filing various "Returns" should be revised to see whether they serve any useful purpose.
- (4) The Company Law Board should be abolished and more powers should be delegated to Regional Directors.
- (5) Power of court should be reviwed and those of administrative nature may be transferred to executive.
- (6) The work relating to stock Exchanges Division and Capital Issue Control Act may be transferred to the Department of Company-Affairs.
- (7) To provide a broad outline for the following matters.
  - (a) Managerial appointment, remuneration and removal.
  - (b) Appointment of Sole Selling agents, with remuneration and terms of appointment.
  - (c) Loans and Investments.
  - (d) Inspection and Investigation.
  - (e) Cost audit and special audit.
- (8) The number of directorships of public companies should be held by a director should be reduced to Ten.
- (9) Managing Directors should not hold more than two directorships of public companies or private companies.
- (10) The language of law should not be ambiguous to have different interpretations but should be very clear to understand.
- (11) The multiple labour laws should be integrated into one Act.

