

Seminar

on

Government Regulation of Private Enterprise

March 1969

Can Companies Act be Simplified?\*

by

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As it is the Companies Act contains 658 Sections and 12 Schedules running to about 600 pages. In certain circles it is felt that the Act is not going deep enough to plug all loopholes and that a further tightening of the Law is called for. It is also true that since in the bulk the Act has been written over 15 years ago considerable changes have taken place in the organisation of the companies as also in the method of financing companies through the growth of financial intermediaries such as the Life Insurance Corporation, the Unit Trust of India, the Industrial Development Bank, State Financial Corporations etc. On the other hand it is felt that considerable simplification of the Law is called for because the Law is so cumbersome as to defy comprehension on the part of bulk of the companies. Contradictory as it may seem, there is truth in both points of view viz. the need for tightening of the Law as also simplifying the Act. In so far as large public limited companies are concerned there is a need for introducing several new provisions dealing with contemporary malpractices, but in so far as small companies are concerned there is a very good case for simplifying the Law. In the following paragraphs some thoughts in the direction of simplifying the Law in so far as the small companies are concerned are given.

NEED FOR SIMPLIFYING THE LAW IN THE CASE OF  
SMALL COMPANIES:

One important reason why the Companies Act has been enacted is that there is a divorce between the ownership and control in the case of public limited companies and in view of this separation considerable abuses can be

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The object of this short paper is to raise a discussion on the subject matter. Views, if any, contained in the paper are not necessarily held by the writer but are meant for raising the discussion.

practised by the managements to the detriment of the shareholders. Also in the case of companies that have borrowed funds from outsiders, moneys can be so managed as to enrich the managerial class at the cost of the creditors. Apart from these two abuses of power, Companies Act does not, as it is, protect anybody else's interest. In the case of small companies the separation of ownership and control does not exist. Moreover in the case of small companies borrowings are made possible mainly because of the good reputation of the company and the personal knowledge of the lenders of the integrity of the management. Such being the case it is not necessary to say that most of the requirements of the Companies Act are superfluous in their case. Hence small companies viz. companies with a paid up capital (for administrative convenience it may be called as "the authorised capital") can be exempted from all the requirements of the Law except that relating to incorporation filing of the balancesheet and profit and loss account and other important documents such as names of shareholders, statement of charges, annual return etc. At present there are about 29,000 companies as a whole in the country and companies with paid up capital of less than Rs. 1/- lakh may come to about 18,000. If 18,000 of the 29,000 companies can be exempted from most of the requirements of the Act by inserting a new Chapter to the Companies Act, the criticism that Companies Act is complex will lose much of its force. By way of precaution, companies which will come under this exempted category, may be asked to put the word "exempted" within brackets after their name so that shareholders, creditors etc. will know that the company in question has been exempted from the provisions of the Companies Act. This would make them to be very careful in their dealings with such companies. It may be added that in the Act itself a provision can be inserted that 'notwithstanding the fact that a company is having less than Rs. 1 lakh as authorised capital, it can conform to all the requirements of the Act, if it thinks that to be in its interest! This would enable a small company which is planning to expand fast to conform to the requirements of the Act from the beginning itself.

It is true that there are at present many companies at work in the country with an authorised capital of much more than Rs.1 lakh but with the paid-up capital of less than Rs.1 lakh. Such companies, if they would like to get the benefits of exemption, will have to reduce their authorised capital to Rs.1 lakh.

It is possible to argue that Rs.1 Lakh may be too small a figure and that we can even exempt companies upto Rs. 5 lakhs or even say Rs. 10 lakhs.

The above exemption can be watched and so an enabling clause can be added to the amendment stating that the exemption is of a temporary nature and withdrawable after six months' notice.

The above recommendation to exempt small companies from most of the requirements of the Law has been made also from experience. It is seen that for these small companies the main requirement that they care to comply is the stipulation regarding the filing of the returns (which also in some cases are not being done). All the other controls that are administered by the Registrar or by the Government are minor. In any case there is not much public interest in these companies as most of them are family concerns incorporated under the Companies Act either to get the benefit of limitation of liability or to hoodwink the public stating that it is registered under the Companies Act by the Registrar of Companies.

