

**Bill No. XI of 2009**

THE COMPANIES (AMENDMENT) BILL, 2009

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*further to amend the Companies Act, 1956*

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Companies (Amendment) Act, 2009.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

5 **2.** In Section 2 of the Companies Act, 1956 hereinafter referred to as the principal Act, after clause (19AA) the following clause shall be inserted, namely,—

Amendment of  
section 2.

19AAA. “Independent Director” means an Independent Director as defined in section 255A.

10 **3.** After section 255 of the principal Act, the following section shall be inserted, namely,—

Insertion of  
new section  
255A.

255A. “Independent Director”, in relation to a company, means a non-executive director of the company, other than a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) who, neither himself nor any of his relatives—

(i) has or had any pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or its promoters, or directors amounting to ten per cent or more of its gross turnover or total income during the two immediately preceding financial years or during the current financial year;

(ii) holds or has held any senior management position, position of a key managerial personnel or is or had been employee of the company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(iii) is or has been an employee or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company,

or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(iv) holds together with his relatives two per cent or more of the total voting power of the company; or

(v) is a Chief Executive or director, by whatever name called, of any non-profit organization that receives twenty-five per cent or more of its income from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or

(c) who possesses such other qualifications as may be prescribed.

*Explanation*—For the purposes of this section, "nominee director" means a director nominated by any institution in pursuance of the provisions of any law for the time being in force, or of any agreement or appointed by any Government, to represent its shareholding.

4. After section 312 of the Principal Act, the following section shall be inserted namely,—

Insertion of new section 312A.

Protection to Independent Directors from criminal liability.

312A. (i) Notwithstanding anything to the contrary contained in this act or in any other Law for the time being in force, any Independent Director on the Board of Directors of a Public Limited Company shall not be liable or punishable for any act or omission by the Company or any officer of the Company which constitutes a breach or violation of any of the provisions of this Act or any other law for the time being in force.

(ii) No arrest warrant shall be issued against an Independent Director without authorization by a judge of the rank of the District Judge, who shall give to the Independent Director an opportunity of being heard before issuing such authorization.

**Provided that** the aforesaid provisions in this Section shall not apply if such Independent Director was directly involved in or responsible for such breach or violation or such breach or violation had been committed with this knowledge or consent or he was guilty of gross or wilful negligence or fraud in relation thereto.

## STATEMENT OF OBJECTS AND REASONS

In view of recent developments in Corporate Sector the role of independent Directors has assumed importance.

It is also observed that non executive independent Directors are often harassed for the wrong doings of the full time Executive Directors who are hands on with the day to day administration of the Companies. It has therefore become necessary to immediately make the provisions in the existing Companies Act to effectively protect the interest of the community of independent Directors in the larger interest of healthy growth of Corporate Governance in the corporate Sector. In the absence of such provisions it will be very difficult for the Corporate Sector to attract eminent persons with professional knowledge and unquestionable integrity to be independent Directors on their Board.

In view of this it has been considered necessary to amend the Companies Act, 1956 by inserting a definition of independent Director at appropriate places in the Companies Act, 1956 and by inserting a new Section providing protection to independent Directors in respect of any act or omissions by the Company or any of its officers which constitutes a breach or violation of any of the provisions of the Companies Act or any other law.

Hence this Bill.

Y. P. TRIVEDI

RAJYA SABHA

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further to amend the Companies Act, 1956.

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*(Shri Y.P. Trivedi, M.P.)*