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**STANDING COMMITTEE
ON FINANCE
(2004-2005)**

FOURTEENTH LOK SABHA

MINISTRY OF COMPANY AFFAIRS

**DEMANDS FOR GRANTS
(2005-2006)**

TWENTIETH REPORT



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**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2005 / Chaitra, 1927 (Saka)

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(2004-2005)

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DEMANDS FOR GRANTS
(2005-2006)

Presented to Lok Sabha on 20.4.2005

Laid in Rajya Sabha on 20.4.2005



LOK SABHA SECRETARIAT
NEW DELHI

April, 2005/Chaitra, 1927 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON
FINANCE—2004-2005

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Shyama Charan Gupta
6. Shri Gurudas Kamat
7. Shri A. Krishnaswamy
8. Shri Bir Singh Mahato
9. Dr. Rajesh Kumar Mishra
10. Shri Madhusudan Mistry
11. Shri Rupchand Pal
12. Shri Danve Raosaheb Patil
13. Shri Shrinivas D. Patil
14. Shri K.S. Rao
15. Shri Jyotiraditya Madhavrao Scindia
16. Shri Lakshman Seth
17. Shri G.M. Siddeshwara
18. Shri Ajit Singh
19. Shri M.A. Kharabela Swain
20. Shri Vijoy Krishna
21. Shri Magunta Sreenivasulu Reddy

Rajya Sabha

22. Shri Murli Deora
23. Shri R.P. Goenka
24. Shri Jairam Ramesh
25. Shri M. Venkaiah Naidu
26. Shri Yashwant Sinha

(iv)

27. Shri Chittabrata Majumdar
28. Shri S.P.M. Syed Khan
29. Shri Amar Singh
30. Shri C. Ramachandraiah
31. Shri Mangani Lal Mandal

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Shri P.D.T. Achary | — | <i>Secretary</i> |
| 2. Dr. (Smt.) P.K. Sandhu | — | <i>Joint Secretary</i> |
| 3. Shri R.K. Jain | — | <i>Deputy Secretary</i> |
| 4. Shri T.G. Chandrasekhar | — | <i>Under Secretary</i> |

INTRODUCTION

I, the Chairman of the Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf, present this Twentieth Report on Demands for Grants (2005-2006) of the Ministry of Company Affairs.

2. The Demands for Grants of the Ministry of Company Affairs were laid on the Table of the House on 18 March, 2005. Under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha, the Standing Committee on Finance are required to consider the Demands for Grants of the Ministries/Departments under their jurisdiction and make Reports on the same to both the Houses of Parliament.

3. The Committee took oral evidence of the representatives of the Ministry of Company Affairs at their sitting held on 31 March, 2005 in connection with examination of the Demands for Grants.

4. The Committee at their sitting held on 7 April, 2005 expressed their views on the subjects/topics that could be covered in the Report. The Committee considered and adopted the draft Report at their sitting held on 12 April, 2005.

5. The Committee wish to express their thanks to the officers of the Ministry of Company Affairs for the co-operation extended by them in furnishing written replies and for placing their considered views and perceptions before the Committee.

6. For facility of reference, the observations/recommendations of the Committee have been printed in thick type.

NEW DELHI;
19 April, 2005

29 Chaitra, 1927 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

REPORT

INTRODUCTORY

The Ministry of Company Affairs, earlier known as Department of Company Affairs under the Ministry of Finance, was designated as a separate Ministry *vide* Cabinet Secretariat Notification No. DOC.CD-160/2004 dated 27.05.2004 to function under Minister of State with Independent Charge. The Ministry is primarily concerned with the administration of the Companies Act, 1956, other allied Acts and rules & regulations framed thereunder mainly for regulating the functioning of the corporate sector in accordance with law. The Ministry is also responsible for administering the Competition Act, 2002 which will eventually replace the Monopolies and Restrictive Trade Practices Act, 1969 under which the Monopolies and Restrictive Trade Practices Commission (MRTPC) is functioning. Besides, it exercises supervision over the three professional bodies, namely, Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost and Works Accountants of India (ICWAI) which are constituted under three separate Acts of the Parliament for proper and orderly growth of professions of Chartered Accountants, Company Secretaries and Cost Accountants in the country. The Ministry also has the responsibility of carrying out the functions of the Central Government relating to the administration of the Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and Societies Registration Act, 1980.

2. The overall Demands for Grants pertaining to the Ministry of Company Affairs is as follows:

Voted

Demand No. 17 – Ministry of Company Affairs 116.27 crore

3. The Detailed Demands for Grants of the Ministry of Company Affairs were laid in Parliament on 18.03.2005.

4. In the present Report, the Committee have examined following issues:—

- (i) Demand No. 17—Discrepancies in the Demands for Grants
- (ii) Demand No. 17—Office expenses-SFIO

- (iii) Serious Fraud Investigation Office (SFIO)
- (iv) Competition Commission of India (CCI)
- (v) Investor Education and Protection Fund (IEPF)
- (vi) Vanishing Companies
- (vii) Inspection of Companies
- (viii) Filing of statutory returns by the companies

Discrepancies in the Demands for Grants

Demand No. 17

Ministry of Company Affairs

Major Head: 3451

Detailed Head: 05.03.12

Foreign Travel Expenses

(Rs. in thousands)

Year	Budget Estimates		Revised Estimates		Actuals	
	Plan	Non-Plan	Plan	Non-Plan	Plan	Non-Plan
2001-2002	-	8,00	-	8,00	-	4,73
2002-2003	-	8,00	-	28,00	-	22,30
2003-2004	-	8,00	-	24,00	-	22,02/ 16,48
2004-2005	-	29,00	-	20,00	-	-
2005-2006	-	29,00			-	-

5. The actual expenditure under non-plan head during the year 2003-04 was shown as Rs. 22,02,000 and it was reflected in the Demands for Grants for the year 2004-05 presented to the House. But this amount was shown as Rs. 16,48,000 when shown in Demands for Grants for 2005-06. When questioned to state the reasons thereof, the Ministry have in their written reply stated as below:—

“It is proposed to firm-up a system of reconciliation with the Principal Accounts Office at regular intervals so that such type of inconsistencies do not occur in future.”

6. The Committee note with serious concern that certain discrepancies have crept in the figures supplied in Demands for Grants for the years 2004-2005 and 2005-2006. The explanation given by the Ministry that such inconsistencies would be avoided in future through the system of reconciliation with the Principal Accounts Office at regular intervals do not convince the Committee. This reconciliation exercise should have been completed well in advance of supplying figures in Parliamentary papers. They are of the view that the Government should take utmost care while furnishing the figures before Parliament. They expect that such discrepancies will not occur in future.

Office Expenses – SFIO

Demand No. 17

Ministry of Company Affairs

Major Head : 3475

Minor Head: 800

Detailed Head: 57.00.13

(Rs. in thousands)

Year	Budget Estimates		Revised Estimates		Actuals	
	Plan	Non-Plan	Plan	Non-Plan	Plan	Non-Plan
2002-2003	0	0	0	0	0	0
2003-2004	0	2000	0	15300	0	12616
2004-2005	0	16000	0	16000	-	-
2005-2006	0	11800	-	-	-	-

7. The Ministry have in a written reply explained the connotation of this Head as:—

“This Head pertains to the ‘Office Expenses’ in respect of the establishment of Serious Frauds Investigation Office (SFIO). In terms of Delegation of Financial Powers Rules, Office Expenses include all contingent expenses for running an office”.

8. When asked why realistic estimates could not be made which commensurate with the actual requirement, the Ministry have furnished the following reply:—

“The estimate under this head is based on the regular/requisite office contingencies. The expenditure out of the budget grant of Rs. 125.00 lakh for the financial year 2003-2004 had been fully utilized. Since proper accommodation for the regional office, Mumbai could not be located, the projected expenditure for the financial year 2004-2005 could not be utilized fully. As a result, the savings in the budget grant for the year 2004-2005 was surrendered”.

9. During the oral evidence, when asked whether the present Budget is adequate for the quantum of serious frauds that are occurring, the representative of the Ministry has submitted as under:—

“As I said, we are a small organisation. We have already set up the basic infrastructure for the Head Office here. That expenditure is not to be made again. We have to open a Mumbai Office for which we have made adequate provision. Whatever provision we have kept this year is adequate. In fact, in the current year, that is 2004-05, we are surrendering some money. So, we are not short of money”.

10. The Committee are concerned to note that budgetary allocations were made by the Ministry with a casual approach due to which it had allowed a large sum of Rs 1.6 crore allocated at BE stage which was retained even at RE stage, to be surrendered. When the accommodation was not available, the Ministry should have changed the allocations at RE stage but it did not do so and allowed the allocations to be surrendered. The Committee recommend the Government to come out with realistic Budgetary estimates so that there is minimum gap between BE, RE and Actuals.

SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)

11. Government has set up the Serious Fraud Investigation Office (SFIO) in the year 2003, as a multi-disciplinary investigation organization entrusted to carry out investigation of serious corporate frauds. This organization started functioning from 1st October, 2003. The organization has been provided with necessary investigating and support staff and other infrastructure and includes experts from the fields of Finance, Company Law, Capital Market, Law, Information Technology, Forensic auditing, Taxation and Investigation on its staff. The headquarters of SFIO are located at New Delhi. The regional office of SFIO at Mumbai has been made operational with effect from 25.10.2004.

12. In response to a specific query about the details of the cases referred to SFIO, the Ministry have in a written reply stated as under:

“List of cases handed over to SFIO & their present position is as under:

Sl.No.	Name of the Company	Date of order of investigation	Date of submission of investigation Report	Date of order of acceptance of report	Date of issue of authorization filling of prosecution	Date of filing of prosecution	Present status/ Remarks
1	2	3	4	5	6	7	8
1.	M/s Daewoo Motors India Ltd.	14.10.2003	16.2.2004	29.11.2004	18.1.2005	21 Prosecutions under Companies Act filed on 17.02.2005	Cases under IPC to be filed. Authorisation Notification by the Ministry is being issued in consultation with the Department of Legal Affairs.
2.	M/s DSQ Software Ltd	23.10.2003	-	-	-	-	Investigation order was stayed by the Chennai High Court on 20.11.04. Stay is still in operation. However, an appeal against the stay order has been filed on 2.3.05 before the bench of Chennai High Court.

1	2	3	4	5	6	7	8
3.	M/s Design Auto Systems Ltd.	16.12.2003	19.01.2005	-	-	-	Investigation report in the case is presently under examination of the Ministry.
4.	M/s Bonanza Biotech Ltd	16.12.2003	20.01.2005	-	-	-	-do -
5.	M/s Ispat Industries Ltd	13.02.2004	-	-	-	-	The order of investigation was quashed by the Hon. Calcutta High Court on 5.10.2004 on the ground that the ROC had not followed all the procedural requirements under Section 234 of the Act. However, freedom was given to the Ministry to get the case re-examined by the ROC, if felt necessary. A fresh report has been submitted by the ROC which is under examination.
6.	M/s Vatsa Corporation Ltd.	23.03.2004	21.09.2004	24.1.2005	17.02.05	55 prosecution cases under Companies Act have been filed against the Company and its officers from 5th to 15th March, 2005	Cases under IPC to be filed. Authorisation Notification by the Ministry is being issued in consultation with the Department of Legal Affairs.

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1	2	3	4	5	6	7	8
7.	Ketan Parekh Group	20.10.2004					<p>The investigation in Ketan Parekh Group of companies was stayed by Company Law Board on 9.11.04 and the stay was vacated on 25.11.04. However, on a petition filed by this group, the Mumbai High Court has ordered status-quo. Investigation of these cases, therefore, is stayed at present. Final hearing has taken place on 4.3.2005. Judgement is reserved.</p>
	1. Triumph International Finance India Ltd.						
	2. N H Securities Ltd						
	3. KNP Securities Pvt. Ltd						
	4. N V Parekh Securities Pvt Ltd.						
	5. Panther Finsap and Management Services Ltd.						
	6. Panther Investrade Ltd.						
	7. Panther Industrial Products Ltd.						
	8. Saimangal Investrade Ltd.						
	9. Classic Credit Ltd.						
	10. Classic Shares & Stock Broking Services Ltd.						
	11. Luminant Investrade Pvt. Ltd.						

1	2	3	4	5	6	7	8
	12. Goldfish Computers Pvt. Ltd.						
	13. Triumph Securities Pvt Ltd.						
	14. Nakshatra Software Pvt. Ltd.						
	15. Chitrakoot Computers Pvt.Ltd						
	16. Manmandir Estate Development Pvt. Ltd.						
8.	M/s Mardia Chemicals Ltd.	14.02.2005					Investigation in progress.
9.	1. M/s Adam Comsof Limited. 2. M/s Soundcraft Industries Limited. 3. M/s Kolar Biotech Limited.	28.02.2005					Investigation in progress.

13. When asked specifically about the progress in DSQ Software Ltd., the Ministry have furnished as under:—

“M/s DSQ Software Ltd. had obtained stay against the investigation order dated 23rd October 2003 from Hon’ble High Court of Madras. After receipt of intimation of stay, MCA filed its objections and the company filed its rejoinder and the case was listed on 2nd July 2004. Thereafter, the case did not come up in the cause list. The stay vacation petition was heard on 31st January 2005 and the Hon’ble High Court made the stay absolute. The Writ Appeal has been filed before Hon’ble High Court of Madras within the time on 2nd March, 2005. There is no delay in filing the appeal in this case.

Cases relating to Ketan Parekh Group are pending before the Hon’ble High Court of Mumbai. Final hearing has taken place on 4th March 2005. The Hon’ble High Court has reserved its judgment”.

14. Supplementing the written reply furnished to the Committee, the Secretary of the Ministry of Company Affairs have during oral evidence stated as under:—

“With the setting up of the Serious Fraud Investigation Office, a step was taken to significantly upgrade the capacity of the Government to investigate complex matters associated with corporate fraud. The SFIO has been constituted, staffed and is already functioning. Since its constitution in 2003, a number of cases (24) have already been referred to the SFIO. The reports have also been received in many cases. These are being processed for prosecution. Investigation is under process in other cases. Orders of prosecution have also been issued in some cases where investigation is complete. The SFIO comprises a team of officers with multidisciplinary schemes and having background in law, finance, securities transactions, chartered accountancy, company law, etc. Through application of the expertise of such personnel it becomes feasible to examine and properly analyse situations where fraudulent behaviour may have taken place. However, SFIO is a new organisation. New ground is continuously been broken while handling issues thrown up in the operation of the SFIO. Some of these issues are related to the application of the existing laws and require detailed consultations with legal experts and Ministry of Law. All these efforts are being done so as to strengthen the

framework for the operation of the SFIO. From time to time, the actions of the Government and SFIO are also been challenged in the courts. In some cases, courts also gave stay orders. These are contested and in some cases the stay orders were vacated and the investigation work carried on. The details are already submitted as a part of the written submission. At the same time, investigation activity is also carried out through appointment of private firms as inspectors. Reports have been received in two such cases where investigation was ordered.”

15. When asked why SFIO took up cases only after the JPC Report came after the 2001 scam, the representative of the Ministry of Company Affairs has during the oral evidence stated as under:—

“As a matter of fact, the creation of a multi-disciplinary agency, which will be able to deal with complex cases of corporate fraud was one of the recommendations of the JPC. The creation of the SFIO was in pursuance of the concerns expressed by the JPC, and the follow-up action that was taken on it”.

16. Outlining the major activities undertaken by SFIO, the representative of the Ministry has *inter-alia* in his reply stated as under:—

“The action of the SFIO is intended to achieve two or three objectives. Firstly, it is intended to unravel the complexity of the corporate fraud. It is a fact that corporate functioning is a very complex issue, and has a number of disciplines involved in it. It is extremely difficult to fully understand or comprehend the nature of fraud that has taken place. These things become evident only after an expert goes into it in detail. Therefore, this is one of those areas, where certain situations that might not appear to the mind to be a case of fraud would be unravelled by an expert body, and it would be established to be a case of fraud. In doing so, the SFIO would be carrying out the role of a guiding force for all the enforcement and investigating machinery in the Government. It is not only there for the Company Affairs, but also for other agencies like the Directorate of Enforcement, etc. In many cases, the Report of the SFIO is being provided to these agencies, and they examine it.

The second area where the SFIO contributes or is expected to contribute is in establishing the practice both in the administrative, and the legal fields. It is because once these cases are taken up, the corporates often go to the courts. The protection of the court

is available to every citizen, and it cannot be denied. Now, many of these issues have appeared for the first time, and these have been brought to the notice of the courts. The courts have examined the pros and cons of the same, and they have given some ruling. Accordingly, the law and the practice are getting laid down in these cases. This is a path breaking activity, which we hope will continue for some time to come. New areas also surface because when some fraud takes place, it is not only a case of violation of the Companies Act, but there might be violation of other Acts also taking place. It is relatively a simpler matter to prosecute or to authorise the sanction of prosecution under the Companies Act and this is being done with the investigation reports that are available, but it requires a little more time. For example, establishment of procedures to undertake proper prosecution under other Acts; proper filing of the complaints; etc. are issues that are getting resolved. Therefore, the SFIO in addition to unraveling the corporate fraud is also laying down the practice for the same.

The third area where the SFIO contributes is in terms of the deterrent effect. Actually, at the time of the constitution of the SFIO, it was not intended that all kinds of cases of fraud would be referred to the SFIO. The SFIO was intended to be a specialised agency, where frauds of a large nature; involving a large number of people; and a wider public interest, namely, an amount of Rs. 50 crore *plus* was involved. This was done in order to ensure that the SFIO could go into the issue of frauds of such nature in detail. It was thought that with relatively a fewer numbers of cases they would be able to lay down the principles and guidelines, and also have the deterrent effect in terms of the corporate sector as a whole.

This brings me to the second part of the question, namely a situation where a large number of companies are not filing returns, and there is a possibility that there might be some element of fraud taking place or not taking place. How is it possible for a small organisation of the nature of the SFIO to deal with so many situations like this? The correct perspective would be that it would not be reasonable to expect the SFIO to deal with all of them. The efforts of the SFIO will have to be supported by other agencies”.

17. When asked why despite such significant role being played by SFIO, the allocation for it is comparatively less, the representative of

Ministry of Company Affairs have during the oral evidence stated as under:—

“Actually, this concern is an extremely important one. We really expect that in the future the extent; the scope; the volume; and the type of activities undertaken by the SFIO would definitely increase. In the years ahead, it would also require expertise, newer methods of investigation, newer techniques, etc., and for all these requirements additional funds would be required. In the years to come this requirement of funds will definitely increase.

In the present context, given the fact that it is a newer organisation, it was felt that this was the appropriate requirement for the current year to meet the establishment and other expenses of the SFIO”.

18. When asked about the adequacy of funds for SFIO to cover all serious frauds, the representative have *inter-alia* during the oral evidence stated as under:—

“...Over the last two years, the references which have been made to the Serious Fraud Investigation Office (SFIO) have been increasing. Starting from an initial of just five or six references, now they have gone up to over 24 references. I think, today, it stands at 26, and the Director would be able to clarify it further. Therefore, the work is increasing, but given the complexity, it increases a little gradually. In the years to come, it is natural that the complexity and the scope will increase. This is the first issue. The second issue is that all cases of fraud are not intended to be referred to the SFIO. This is a very valid concern, otherwise the whole effectiveness of the organisation would be diluted. They cannot go into minor and other cases of wrongdoing or something like that. They have to go into substantive issues where a wrongdoing has taken place so that a clear-cut signal is established for the corporate sector”.

19. On a specific query whether any efforts have been made by the Ministry to overcome the constraints stated above, the representative of the Ministry stated as follows:—

“...Now, all these cases have been very-very complex, as my colleague had said just now. It is very difficult to unravel the kind of frauds which are committed by extremely highly professional and competent people. Since this kind of investigation is taking place for the first time, we are an executive body without any statutory support, we have to work within the given framework

of a company law: everything is being determined as to how the prosecution will be filed. Under the Companies Law, it is easy to file because the Government can file prosecutions based on our recommendations, but when it comes to filing prosecutions, where the substantive criminal law has been violated, for example, the Indian Penal Code, the procedure is being set as to who will file the case.... We hope to file the prosecution under the Indian Penal Code shortly because that issue has to be resolved between the Ministry of Law and ourselves, and that system will be put in place. Emanating from this is the challenge to the very order of investigation issued by the Government. Almost everybody has gone to the court and they succeeded in obtaining some kind of interim stay, final stay, and so on. But in two or three cases, we have won the case right up to the Supreme Court, and those investigations have been completed. There was a mention about DSQ. In the DSQ case, well, the stay was granted, but the Government has gone on an appeal and the case was last heard yesterday. Hopefully, by next weekend, we will have an order or a final hearing. This is also the case with the 2001 scam involving Ketan Parekh and others. There also, the final hearing has taken place and the judgment is reserved. It is about three weeks since the case was last heard. Now, as far as the budget is concerned, our requirement was very small”.

20. When asked whether SFIO is empowered to take up *suo moto* cases, the representative of the Ministry have said:—

“I missed out a point on the Cabinet decision, when I mentioned that. They had said that in the first phase, our organisation will work under the Companies Act, and in the second phase, there will be proper legislative changes on the lines of UK Serious Fraud Office. That second stage has not yet started because we are in operation only for five months, and that is being looked into. Whatever cases are referred to us, the Ministry looks into that. There is a preliminary kind of inquiry under section 234 of the Companies Act and that inquiry is submitted to the Ministry. If it is found that it is a matter of serious fraud, then it is referred to us; and if it is some other matter, it can be referred to any other Inspector”.

He has further stated:—

“If I may clarify, the Companies Act provides for investigation under two provisions. Under one provision, under 235, the Central

Government may order investigation into the affairs of a company or under 237, investigation may be ordered on the basis of the orders of the Company Law Board, which is a quasi-judicial forum. They can also go into whatever is proceeding and ask for an investigation. The Companies Act, 1956, and this may also be a part answer to the concern which you have raised, provides a specific procedure before an investigation may be ordered.

As I have mentioned, if it is by the judicial forum, then they are supposed to have applied their mind and come to a conclusion that investigation is required, and they order. Where it is a case of Central Government, the procedure is prescribed in the Act itself. That follows the procedure laid down in Section 234 which requires the Registrar of Companies to enter into a preliminary exercise of fact-finding, arrive at a *prima facie* conclusion, make a report to the Government. If the Government is then satisfied that this has an implication of fraud in it, then it is correctly referred to the Serious Fraud Office.

Actually, the legal provision is that the Government appoints an investigator drawn from the Serious Fraud Office. The point is Government can appoint an investigator to go into it. Prior to the setting up of the Serious Fraud Office, this provision was also there and the Government were making appointments of investigators who were sometimes not fully conversant with all the kinds of implications which are involved. Once the JPC went into this issue and they felt this is a very complex area, they said, 'You should have a proper multi-disciplinary organisation who can then do the job of an inspector. Therefore, in complex cases, this is where that 50 crore was prescribed, these cases are then referred by appointing an inspector drawn from the SFIO. The Director of SFIO is asked to make his recommendation as to which of the persons, given the nature of the case, are the appropriate persons, and they are made the inspectors. The point here is *suo motu* powers versus the procedure. At the present stage, this is the legal procedure which we are mandatorily required to follow.

Where there is any lacuna in following this procedure, the matter is justiciable because it is laid down in the Act itself. In some cases which were agitated before the High Court, this issue also came up. In one case, the concerned court made the order that full procedure had not been followed up and, therefore, this cannot be taken up. You are at liberty to do it if you wish and that is

fair. So, therefore, this exercise in the current time is a bit long-drawn and it requires full compliance with the provisions of the Act. Whether this is an appropriate process, whether it is resulting in serious fraud which may affect a large number of people to be quickly dealt with or not, is an issue which will have to be dealt with through the amendments of the Act itself. This is because, till the time this provision is there, we have to follow it.

The other issue that came is about having a statutory basis for the serious frauds itself. As has been clarified, there the thinking is that let there be some experience. That is because a number of relevant legal issues probably both the SFIO and the Ministry have not fully gone into. New legal issues come up all the time. Therefore, at the appropriate time, once some experience about some investigations, the follow up of those investigations, orders of the courts on the prosecutions filed under those investigations, are available, the question of providing statutory basis to the SFIO so that it can in that case in a manner similar to some other countries, be able to take up investigation in various ways including *suo moto* will come up”.

21. The Committee note that SFIO which was intended to be a specialized agency, investigating cases of frauds involving large sum of money in excess of Rs. 50 crore and the interests of large section of the people is currently looking into 26 cases. They have been informed that within a period of two years, since SFIO came into being this number has increased from initial five or six references to 26 at present. They are given to understand that SFIO has to work within the ambit of the Companies Act, the procedures are long drawn and it has no powers similar to the ones like institutions enjoyed in other countries. The Committee were however, informed that since this organization is very new, the Government will after gaining some experience further deliberate on improving the efficacy of this institution including conferring it with statutory status. Given the important nature of the functions which the SFIO is supposed to discharge, the Committee desire that suitable measures be taken to further strengthen it.

COMPETITION COMMISSION OF INDIA

22. The Competition Act, 2002 was notified on 14th January, 2003 to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in

markets, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto.

23. The Competition Commission of India was established on 14th October, 2003 under the Competition Act, 2002. There was legal challenges on certain aspects of the Competition Act. The Supreme Court of India has pronounced its judgement on 20.01.2005. Certain amendments to the Competition Act are at present under examination.

24. The Competition Act, 2002 provides for repeal of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 on the date to be appointed by the Central Government and on repeal of the MRTP Act, 1969 the MRTP Commission shall stand dissolved.

25. As regards the present status of the Competition Commission of India, the Ministry of Company Affairs have in their written reply stated as follows:—

“The Competition Commission of India (CCI) was established *vide* notification dated the 14th October, 2003. Shri Dipak Chatterjee and Shri Vinod K. Dhall were approved for appointment as Chairperson and Member respectively from the dates they assumed office. Shri Dhall assumed office on 17th October, 2003. Shri Dipak Chatterjee has not joined so far as Chairperson, CCI. While the action was in hand for making the CCI fully functional, certain Writ Petitions were filed in the Madras High Court and in the Supreme Court. Writ Petitions filed before the Madras High Court have also been transferred to the Supreme Court. Before Shri Chatterjee could assume office, the Supreme Court in its order dated 31st October, 2003, stayed the judicial functioning of the Commission.

While disposing of the Writ Petition, the Supreme Court, in its Judgement dated 20.01.2005 on the Writ Petition filed by Shri Brahm Dutt challenging certain provisions of the Competition Act, 2002, has left open all questions regarding the validity of the enactment to be decided once amendments necessary to ensure consistency with constitutional provisions are made or attempted. An exercise has been initiated to review the enactment in light of the Supreme Court Judgement”.

26. Supplementing the written reply, the Secretary of the Ministry of Company Affairs has during the oral evidence stated as follows:—

“The other thing was about the Competition Commission of India. As you know, in the country, we have so many regulators, but the need for a main economic regulator at the head of the entire spectrum of the economy was very much felt and this legislation had its genesis in this need. However, the exercise was being taken for the first time and in consultation with the Law Ministry. Despite that, there was a legal challenge and for the last one and a half years, we have not been able to activate it though we have set it up. It is only carrying on advocacy functions. They hold a lot of seminars and try to do whatever they could do. It is only a small office of six people and is not really on the ground, but the need is paramount in the country and we need to put it through very soon.

Now, after this judgement was received from the Supreme Court, the Ministry geared itself to do a very delicate act of reconciling the problems which had been raised and the issues which had been raised by the Supreme Court, essentially of separation of powers, how we are going to ensure that the doctrine of separation of powers can be carried through in this legislation. Sir, as you know, all regulators have to regulate and also carry out adjudicatory functions. It is something which we have known in this country. Even MRTPC has both these functions to perform. That is what has been envisaged in this Act. Nevertheless, with all respect to our Judiciary, they raised this question. They said that this legislation defaults in this aspect and the functioning of the Adjudicatory Wing and the Regulatory Wing should be separated very clearly. They have recommended it and they have left it to the Executive”.

27. When asked specifically about whether Supreme Court wanted that no bureaucrat should head CCI, the Secretary, Ministry of Company Affairs has further stated as under:—

“Yes, then our Cabinet had to take a view. They laid down certain provisions whereby essential qualifications for the post would be very general. They also stated that it should not be a judge. It was a Cabinet resolution. They did not want a judge. They came to a kind of a head-on the whole issue with the Judiciary saying that it should be headed by a judicial person and the Executive saying that it should be headed by a generalist. That is the issue.

But from the point of view of the Government, it was felt that it should be a professional person, without regard to whatever will be his calling. The Cabinet considered this and we filed an affidavit in the court accordingly, as the Cabinet had desired”.

28. On their future course of action, the Secretary has *inter-alia* in her replies stated as below:—

“Sir, we would like to share with you that after the judgement, we had to undertake a lot of exercise to see that we kept in mind the sentiments of the Supreme Court as well as try to have a workable body called the future CCI. In this, we are now preparing the amendments. We propose that we will have an appellate body which will consider cases which will come to it as appeal from the CCI, but they may also have some original jurisdiction in which, for instance, cases which are punishable with imprisonment and others and also cases where compensation is to be given, may also come to it. This might take out the edge of the problem that is being seen by the Supreme Court. This exercise, a delicate one, have been completed and we hope to bring it to the Cabinet within a week or ten days. Then, we hope that we will introduce this legislation in the Monsoon Session since there is a need for it.”

29. In this context, it is worthwhile to note the observations of the Hon’ble Supreme Court of India in **Brahm Dutt versus Union of India**:

“We may observe that if an expert body is to be created as submitted on behalf of the Union of India consistent with what is said to be the international practice, it might be appropriate for the respondents to consider the creation of two separate bodies, one with expertise that is advisory and regulatory and other adjudicatory. This followed up by an appellate body as contemplated by the proposed amendment, can go long way in meeting the challenge sought to be raised in this Writ Petition based on the doctrine of separation of powers recognized by the Constitution.”

30. **The Committee take note that the Competition Act, 2002 which was to replace the Monopolies and Restrictive Trade Practices Act, 1959 could not be made operational because of legal challenges in the Supreme Court of India. They have been informed that the Apex Court has given its judgement on 20.01.2005 with some observations in regard to issue of separation of powers. The representatives of the Ministry have stated that the amended Bill on**

the lines of suggestions made by Supreme Court, would be tabled in the Monsoon Session, 2005. The Committee are of the view that this progressive legislation has already been delayed on account of legal tangles which could have been avoided, had the Ministry taken this aspect into account before its passing by both the Houses of Parliament. There should not be further delay in bringing conformity amendments. They expect that the Government would come forward with necessary legislation in the Monsoon Session, 2005 and get it enacted within the same session.

INVESTOR EDUCATION AND PROTECTION FUND (IEPF)

31. With a view to protect the interests of the investors, the Investor Education and Protection Fund (IEPF) has been established in Ministry of Company Affairs with effect from 1.10.2001. The amounts which remained unpaid for a period of seven years from the date they have become due are credited to the Fund. The Fund is utilized for promotion of investor's awareness, education and protection of the interests of the investors.

32. The Ministry have in their Annual Report furnished as under:—

“As per the information received from the Registrars of Companies located all over India, an amount of Rs. 352,24,81,085/- has been credited by the companies to the Fund upto 31.12.2004. The amount deposited by the companies under this Head goes to the Consolidated Fund of India. A budgetary allocation is made by the Parliament each year to run the IEPF activities.”

33. When asked about the source of amount credited to the fund, the Ministry have in a written reply furnished:—

“As per Section 205-C of the Companies Act, such of the amounts as mentioned under clauses (a) to (d) below as have remained unclaimed and unpaid for a period of 7 years from the date they became due for payment and those mentioned at clauses (e) to (g) below constitute the sources of amount credited to the IEPF :

- (a) amounts in the unpaid dividend accounts of companies;
- (b) the application moneys received by companies for allotment of any sureties and dues for refund;
- (c) matured deposits with companies;

- (d) matured debentures with companies;
- (e) the interest accrued on the amounts referred to in clauses (a) to (d)
- (f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and
- (g) the interest or other income received out of the investments made from the Fund.”

34. In response to a specific query about the activities and programmes undertaken as per the Investor Education and Protection Fund in all the five areas listed under the IEPF Rules, 2001, the Ministry have furnished the following written reply:—

“Activities and programmes undertaken in the areas listed under IEPF Rules, 2001 are as under:

Sr. No.	Name of the Activity under IEPF Rules	Activities undertaken
1	2	3
1.	Education Programmes through Media	<ul style="list-style-type: none"> i) 15 panel discussions were organized over five regional Kendras of Doordarshan. ii) three educational spots were also periodically broadcast over Doordarshan Kendras.
2.	Organizing Seminars and Symposia	Financial assistance under IEPF has been provided to eight NGOs/VOs for conducting seminars/programmes (approx.35 seminars).
3.	Proposals for registration of voluntary associations or Institutions or other organizations engaged in Investor Education and Protection activities.	Five organizations, working in this field, have been registered.
4.	Proposals for projects for Investors' Education and Protection including research activities and proposals for financing such projects.	<ul style="list-style-type: none"> (a) Indian Institute of Capital Markets (IICM) - Study on unclaimed dividends etc. (b) Society for Capital Market Research and Development - Research on Household Investors.

1	2	3
		(c) IEPF project by the Prime Investors' Protection Association and League (PIPAL) for the website "watchoutinvestors.com".
5.	Coordinating with institutions engaged in Investor Education, awareness and protection activities;	Financial assistance has been provided to Indian Institute of Capital Market (IICM) for conducting (a) Interactive workshop with NGOs/VOs; and (b) Training of Trainers Programme.

35. Asked whether the Ministry have noticed any discrepancy in the original accounts, original bills and the utilization certificates etc. submitted by the NGOs/Associations to the IEPF Committee/Ministry, the Ministry in their written reply furnished to the Committee have stated as below:—

"This Ministry has appointed the Indian Institute of Capital Markets (IICM) as the agency to carry out pre-scrutiny and post-scrutiny of all proposals received for financial assistance under the IEPF. Certain discrepancies are observed in case of some organizations at the time of post-sanction scrutiny by the IICM. However, such discrepancies are attended to meticulously and the amounts due for refund from the organizations have already been effected."

36. In response to a query on the number of NGOs funded by IEPF which are operating in the rural areas, the Ministry have in a written reply stated as follows:—

"Rural investors are required to be protected. In this connection, the Committee on IEPF has decided that efforts may be made to identify the investor organizations/ associations active in the rural and semi urban areas to encourage them to spread the outreach of Investor Education and Protection Fund programmes. The Indian Institute of Capital Markets have also been requested to do the needful in this regard. Some of the NGOs/ VOs which have been registered with the IEPF and financed and which have been active in the rural/ semi-urban areas are as under:

- (a) Consumer Unity and Trust Society, Jaipur;
- (b) Tamil Nadu Investors Association, Chennai;
- (c) Kolhapur Investors Association, Kolhapur."

37. When asked about the activities which are taken up by IEPF with reference to the fund credited to it, the representative of the Ministry of Company Affairs have during the oral evidence stated as follows:—

“As far as Investor Education and Protection Fund programme is concerned, there is absolutely no doubt about what Hon. Members have said that the activities which are taken up with reference to the size of the fund are inadequate. The amount which has been collected comes from four streams – as per Section 205(c) – share application money, debentures, unpaid dividends and unclaimed deposits and the interest accrued on all these four, which have remained unpaid for a period of more than seven years gets credited to the fund.

I do not think that this rate of accretion to the fund will continue because the bulk of it has come and a statement is asked for, from each of the companies in their filings that compliance has been done as far as the requirement of 205(C) is concerned. But it will certainly keep flowing. One of the research studies that was sponsored under this was also to assess as to what is the size of the fund which could probably be available with these companies. The findings of the study have to be taken with a pinch of salt. The report shows that the total corpus under these four heads is about Rs. 434.61 Crore. But the sample size is on the basis of a survey of 100 companies which I find is rather small and it could probably only indicative.

Sir, coming to the core issue, as far utilization of this fund is concerned, we have come to this view that we need to expand our activity and take up the financial literacy programme in a real big way. We propose to take on board a professional agency to advise us on this apart from financing the NGOs, voluntary organizations, conducting workshops, seminars, panel discussion, investors' clinics and some of the things which are being taken up under the financial literacy programmes through the TV. We could organize or sponsor some kind of a Quiz programme on NDTV or CNBC on a weekly basis on financial literacy. We could take on investors' clinic and we could go in for picking up some schools and colleges as pilots to start financial literacy classes. These kind of activities are proposed to be broad based. We are preparing a proposal for the Finance Ministry saying that funds could be considered to be kept as an interest bearing deposit and if we do not touch the corpus, then the interest should flow back to us in the form of every year's Budget for taking up these activities.”

38. When asked whether an unbiased scrutiny is expected of IICM as it itself is a recipient of funds from IEPF, the Ministry have in their post evidence written reply stated as follows:—

“The Indian Institute of Capital Market (IICM) had initially submitted a proposal for its registration under IEPF, which was rejected by the Sub-Committee on IEPF. As such, IICM has not been provided any financial assistance under IEPF for any proposal submitted by them.

However, the Committee on IEPF, which consists of representatives of various Ministries and eminent professionals, approved a grant of Rs. 5.00 lakh to IICM for conducting a study on the unclaimed and unpaid dividend/amounts lying with the various companies on behalf of Ministry of Company Affairs. Under the Capacity building programme, IICM was requested to take up “Training for Trainers Programme” as a measure of capacity building for various NGOs/VOs and the expenditure incurred by the IICM on organizing these programmes has been re-imbursed to them under the IEPF.

IICM is a reputed institution promoted by the UTI in the field of Capital Markets. As such, there are no reasons to doubt the scrutiny done by the IICM especially when a detailed scrutiny report is furnished in each case.”

39. The Committee take note of the fact that Investor Education and Protection Fund (IEPF) has to its credit a whopping sum of about Rs. 352 crore upto 31.12.2004 and about Rs. 100 crores is added every year to the fund. This huge amount comes mainly from four sources, namely, share application money, debentures, unpaid dividends and unclaimed deposits. They are given to understand that this amount is credited to the Consolidated Fund of India and a budgetary allocation is made by the Parliament every year to run the activities under IEPF. In this way the Ministry contributes more funds to the Consolidated Fund of India than getting from it. They are dismayed to note that such huge amount of money deposited by the companies is not being utilized for the object under which it has been constituted. They have been informed by the Secretary, Ministry of Company Affairs that the Ministry is making a proposal saying that funds could be considered to be kept as an interest bearing deposit which should flow back to them in the form of each years' budget for taking up these activities. The Committee are

in total agreement with this proposal and want that Government should clear this proposal as and when received.

40. As far as utilization of the fund is concerned, a lot more needs to be done. As per Ministry's own admission before the Committee, the activities under IEPF need to be expanded by taking up the Financial Literacy Programme in a big way. They have been informed that a professional agency is being proposed to be taken on the board of IEPF to advise them apart from financing the NGOs and Voluntary organizations, conducting workshops, seminars, panel discussions and investors' clinics etc. The Committee recommend to the Government that no effort should be spared to take up this task in a big way and the proposal to engage professional agency may be expedited so as to bring about professional approach to this ambitious programme.

41. The Committee are deeply concerned to note that the activities under IEPF have little penetration in rural areas. They are of the view that the rural investor is gullible and hence needs more protection but going by the registration of NGO's and Voluntary Organisations for this purpose, they find that only three agencies have been registered so far with IEPF. The Committee find that unless more and more NGO's and Voluntary Organisations are engaged and encouraged by the Government to take up this job, the entire exercise under IEPF will be rendered futile. They, therefore, recommend that Government should encourage more NGO's and Voluntary Organisations to take up the task of educating the rural investors expeditiously.

VANISHING COMPANIES

42. The capital market had witnessed a boom period during the years 1993-94 and 1994-95 when many new companies tapped the capital market and collected funds from the public issue of shares/debentures. Some of these companies defaulted in their commitments made to the public while mobilizing funds. The Securities and Exchange Board of India (SEBI) had originally identified 229 listed companies as "vanished".

43. In response to a query about the follow up action taken by the Government against promoters and directors of these "vanishing companies" in the year 2004-05 along with the latest position regarding region-wise cumulative action taken against vanishing companies, the Ministry have in a written reply stated as follows:

“The Coordination and Monitoring Committee (CMC) on Vanishing Companies has been monitoring the action taken against the vanishing companies and their Directors. Of the 229 companies identified as vanished, CMC, in its meetings, held on 25.2.2003, 15.1.2004 and 23.11.2004 deleted names of 44, 63 and 7 companies respectively from the list of vanishing companies, as these companies were found to be regular in filing statutory returns, etc. Thus, at present, 115 companies stand identified as vanishing companies.

The concerned Registrars of Companies have taken action against vanishing companies for violation of the provisions of the Companies Act, 1956 and have also tried to enlist assistance of police authorities and general public to ascertain the whereabouts of such companies. Prosecutions have been filed against vanishing companies and their Promoters/Directors for non-filing of Balance Sheet/ Annual Returns as well as under Sections 62/63, 68 and 628 of the Companies Act for misstatement in prospectus/fraudulently inducing persons to invest money/false statement made in the offer documents etc.

A Model FIR was finalized in consultation with SEBI during the month of May, 2003 for filing complaints with the police authorities against the vanishing companies and their Promoters/ Directors for offences punishable under Sections 420, 406, 403, 415, 418 & 424 of the Indian Penal Code.”

The Ministry have further stated as :—

“The latest position regarding Region-wise cumulative action taken against vanishing companies, their Directors/Promoters, is given below:

Particulars	Northern Region	Western Region	Eastern Region	Southern Region	Total
Number of vanishing companies	17	49	14	35	115
Number of companies against which prosecutions filed under Sections 62/63, 68 & 628 of the Companies Act, 1956	17	45	11	31	104
Number of companies against which prosecutions filed for non-filing of statutory returns	16	45	11	20	92
Number of companies where FIRs filed	13	41	14	24	92
Number of companies where FIRs have been registered	8	34	13	19	74

44. When asked whether increasing of the registration money is a step in the right direction to check fly-by-night or frivolous companies which vanish overnight leaving the investors in lurch, the Ministry have in a written reply stated as follows:—

“Schedule X of the Companies Act provide for fees to be paid to Registrar of Companies at the time of incorporation as registration fee. After incorporation, various returns are required to be filed under the Companies Act, 1956, with filing fee. Schedule X was amended to increase the registration fee from time to time. The last such amendment was made *vide* notification No. S.O. 419(E) dated 27.04.2000 effective from 1st May, 2000. The increase was four times more than the previous rate. Further, in order to check the fly by night or frivolous companies from registration, sub-sections (3) & (4) of Section 3 of the Companies Act, 1956 were inserted in the Act through Companies (Amendment) Act, 2000 which came into effect from 13.12.2000, according to which, every private and public company shall have to bring in liquid minimum paid up capital of one lakh rupees and five lakh rupees respectively at the time of incorporation itself. The above amendment was brought on the basis of past experience that companies with small capital base were registered and they remained dormant without any business activity but raise funds by public issue or deposits, and then become untraceable causing considerable damage to the investor community. In the light of above, further increase in the registration fee is not likely to serve the purpose as there is a limit to which it can be increased.”

45. When asked during the oral evidence about endeavours to locate “vanishing companies” and the action taken by the Ministry to provide the legitimate dues to the investors who have put their money in those companies, the representatives of the Ministry of Company Affairs have stated as under:—

“The important issue raised is that those who resurfaced, what is being done on them. The Ministry is conducting the inspection of all the companies listed as vanishing and which have now resurfaced to make up for their initial affairs as they have reported. They may come back and they may file some documents and there might be some discrepancy legally under Section 209A there is a power of inspection. So, all these companies which vanish have come back again are subject to that. This is the follow up action taken on those companies. The companies which have

vanished for which there is no trace available, Sir, the important point and this is what has come out in the experience in dealing with vanishing companies whereas you have legal provisions or some field organizations comprising of Registrar of Companies, the enforcement powers the Registrar of Companies have are powers of inspection and investigation which are prescribed under the law. But once that is done, the proper thing should either be CLB or to the courts in comparison with other enforcement agencies like Directorate of Income Tax or other agencies of the Government, enforcement powers of the field machinery of the Company Affairs is relatively low. Therefore, for example for summary disposal and imposition of minor penalties are not powers. Every case must go to the court. Judicial procedure has its own resources, which must be met at the end of it, and if it is found to be well merited then there is punishment or sometimes no punishment and that is something which we have to accept.

The investors' funds which go into these vanishing companies and when vanishing companies do not turn up—Sir, this is a very complex problem for us... and the available framework under the Companies Act is—there is a certain section or provisions which allow for judicial process under which the disgorgement of assets of company may take place. As a matter of fact, these judicial procedures are applied under the Companies Act to companies which are in liquidation and winding up. Under special enabling clause it can be applied in such companies. These are being applied. Of course, these are judicial procedures, they will go through scrutiny and presentation before the courts and the orders of the courts. But of late under the decisions taken by the Coordination and Monitoring Committee which is jointly between SEBI and DCA action has been taken up to start disgorgement procedures in the case of some companies which have vanished and for which, there are some assets which are available and where nobody has turned up. In the sense, those companies which have started re-filing, still they are vanished. In a limited number of proceedings those disgorgement proceedings have been started. According to me, disgorgement proceedings will be taken up as we go now. In other cases, we have to depend on the enforcement machinery which is available with other agencies. For that reason, FIRs are being filed so that the police machinery and various State Governments can be utilized to track down the persons or the individuals who are not available. So, that is the action going on through the filing of the FIRs but again it cannot be gainsaid that under the Companies

Act probably there is an area where some degree of enforcement powers given to the field machinery may not perhaps fully address this issue. But may perhaps to reduce the problem because powers to seize, powers to search, etc. would at least fix the physical persons of these companies little more clearly. These issues also are being looked up in the overall context of the revision of the case."

46. When asked about the criteria adopted to classify a company as "vanishing" and list others as simply "delaying in filing returns", the representative of Ministry of Company Affairs have, during the oral evidence stated as below:—

"If I may just clarify that point, in order to define what a vanishing company is, this issue was gone into jointly and a common criteria was adopted. It says that companies have not complied with the listing requirement or filing requirements of the stock exchange or the ROC. So, filing requirements were taken care of, for a period of two years and wherever a gap of two years took place, that company was categorized as a vanishing company and those companies are not public listed companies. That is the categorization of vanishing companies. Their number was a few thousands out of 6,50,000. The number is much small. Secondly, no correspondence has been received by the exchange from the company for a long time. This is the second point of issuing notices and all that".

47. When asked whether any mechanism has been made or is proposed to be evolved by the Ministry to trace vanishing companies, the Ministry have in their post evidence reply stated as follows:

"A joint mechanism has been evolved by constituting a Coordination and Monitoring Committee (CMC) between the Ministry of Company Affairs and the Securities and Exchange Board of India (SEBI) for taking stringent action against unscrupulous promoters/ companies who raised monies from investors and misused them.

The Coordination and Monitoring Committee (CMC) has adopted the following criteria for identifying vanishing companies:

- (i) Companies, which have not complied with listing requirements/filing requirements of Stock Exchange/ROC respectively for a period of 2 years;

- (ii) No correspondence has been received by the Stock Exchange from the company for a long time;
- (iii) No office of the company is located at the mentioned registered office address at the time of Stock Exchange inspection.

It was clarified by the CMC on 25.02.2003 that in the criteria laid down for identifying the vanishing companies, all the conditions laid down have to be met for treating a company as vanishing and companies satisfying one or more but not all conditions may not be considered as vanishing.

Four Task forces headed by Regional Directors under the Ministry of Company Affairs have been constituted to make concerted efforts for tracing the vanishing companies and their promoters/ Directors and also for taking necessary action as per law. Prosecutions have been filed under Sections 62/63, 68 and 628 of the Companies Act, 1956 against Directors of vanishing companies. Besides, First Information Reports have been filed under Sections 403, 406, 415, 418 and 420 of the Indian Penal Code against the promoters/ Directors of vanishing companies. Petitions have also been filed with the Company Law Board under Sections 397/398/402/408 read with Section 406 of the Companies Act. The CMC monitors and reviews the progress on a regular basis."

48. Asked to furnish the reasons for difference in the total number of vanishing companies, the number of vanishing companies, the number of FIRs that have been filed and the number of FIRs that have been registered, the Ministry have in their post evidence written reply stated as under:—

"FIRs have been filed against 92 out of the 115 vanishing companies. This difference is on account of the fact that no FIRs has been filed in cases where the companies have either gone into liquidation or are facing winding up/closure proceedings.

Registration of FIRs vests with the State Police authorities. While the State Police agency is expected to register an FIR on the basis of information furnished by any person including the ROC, for successful investigation and prosecution of criminal case, association of the person as a complainant, to whom a wrongful loss has been caused, becomes important. In many of these cases, it has been found that there have been no individual/ group complainants

who have been directly affected by investment in these companies. As such, some reluctance has been observed on the part of police authorities to register all the FIRs. However, this gap is being monitored on a regular basis through a mechanism of the Monitoring Committee set up for the purpose. Chief Secretaries of some of the States are members of this Monitoring Committee."

49. In response to a specific query about the amount of money of Investors that have been defrauded by the vanishing companies, the Ministry have in their post evidence reply furnished the figure as Rs. 803.56 crores.

50. Asked to furnish the date when the Ministry was apprised of the "vanishing" status of such companies, the Ministry have in their post evidence written reply stated as follows:

"With the establishment of the Securities and Exchange Board of India (SEBI) in 1992, SEBI has assumed the role of regulator of securities markets etc. with a view to protect the interests of the investors. The functions of SEBI include regulating the business of stock exchanges and working of merchant bankers and underwriters. Besides, Guidelines have been issued by SEBI for disclosure for investor protection in the primary market. In pursuance of these responsibilities, following the 1992 stock market scam, companies which had been failing to file returns and in whose cases the show-cause notices issued were being returned undelivered, were treated as vanishing. SEBI had identified and furnished to this Ministry lists containing the names of Vanishing Companies at different points of time starting from 20th November, 1998, 27th November, 1998, 5th April, 1999 and 23rd October, 2000."

51. The Committee are deeply anguished to note that not much is being done to address investors' grievances and save gullible investors from falling into the trap of "vanishing companies". Instances of investors continuing to be duped by capital market swindlers are heard of as a matter of routine. The Committee observe that the exercise of identifying "vanishing companies" was undertaken by SEBI in the year 1998, 1999 and 2000. Apart from this endeavour of SEBI, the Committee note that the Ministry of Company Affairs have not undertaken any serious exercise to maintain a continuously updated database of "vanishing companies". The Committee, therefore, recommend that the Government should take suitable measures to identify the "vanishing companies", debar the promoters/directors of such companies permanently, so as to eliminate any chances of them surfacing again and also ensure that the guilty are punished under the due process of law. While the Committee

note that the Government have launched prosecutions against “vanishing companies” under the Companies Act as well as Indian Penal Code, they feel that a lot more needs to be done. The Committee feel that unless the regulators get serious about their investigations and find ways to ensure that the investors get back their money, the concept of investor protection will remain meaningless.

52. The Committee also recommend that Government should take concrete measures to establish the veracity of promoters and directors of companies, inclusive of their capacity to raise funds at the time of their registration. They also feel that apart from ensuring penal action, details of promoters/directors of vanishing companies need to be widely publicized through newspapers and other media, which could contribute to protecting investors’ interest.

INSPECTION OF COMPANIES

53. Section 209A of the Companies Act, 1956, empowers the Registrar of Companies and the officers of the Central Government who have been authorized in this regard under the Act to undertake inspection of the books of accounts and other records of companies.

54. As on date, 6.5 lakh companies have been registered with all Registrar Offices of the Ministry of Company Affairs across the country. Out of these 6.5 lakh companies, the number of Inspection conducted by the Ministry during last four financial years are as under:—

Year	No. of Inspections
2001-2002	244
2002-2003	150
2003-2004	109
1.4.2004 – 28.02.2005	197

55. Asked about the major steps taken by the Ministry to improve the efficiency of inspection mechanism in the Inspection Wing, the Ministry in their written reply have stated as follows:—

“Following are the three major steps that Ministry has taken for this purpose in recent years:—

- (a) Ministry has taken up cadre review which will result in the increase of number of officers available for inspections and encourage the officers’ morale;

- (b) Ministry of Company Affairs has constituted a Committee, chaired by Shri Shardul Shroff to look into the ways and means and advise the Ministry as to how to engage private professionals also for carrying out inspections under the Companies Act, 1956. The report will be received shortly.
- (c) The Ministry, from time to time, sending its officers for training to the professional institutes, like Institute of Chartered Accountants of India, Institute of Companies Secretaries of India and Haryana Institute of Public Administration with a view to improving their techniques of inspections. It is believed that on completion of the said trainings, these officers will become more efficient and their inspections will be more effective."

56. Asked to furnish the steps taken to strengthen the organizational setup of the Inspection Wing, the Ministry have in their written reply stated as :—

"To strengthen the Inspection Wing, a cadre review of Indian Company Law Service (ICLS) has been taken up. An internal committee constituted for the purpose has submitted its report. The recommendations of the cadre review committee are under examination".

57. When asked about the steps to speed up the scrutiny, investigation and inspection of the companies, the Ministry have stated in a written reply as:—

"To speed up the scrutiny, investigations and inspections of companies, Ministry has issued fresh guidelines for taking up the technical scrutiny by ROCs. Further, a specialist organization, known as Serious Frauds Investigation Office (SFIO) has been created for quality investigations. To look into the problems of inspections, a Committee has been constituted under the Chairmanship of Shri Shardul Shroff, whose report is due any time"

58. Asked to furnish the reasons for non-willingness of any CA firm to take up inspection work and the remedial measures taken by the Ministry in this regard, the Ministry have furnished in their written reply as:—

"When attempts were made to enlist the CA firms to conducting investigations, it was found that many CA firms were unwilling

to take up the job mainly because they were requested to furnish certification that they have no dealings with the company (comfort letter), which they are going to investigate or with the group the company is associated with. As per experience CA firms are found to be unwilling to categorically furnish such statements and instead preferred to withdraw, thus leading to difficulties in obtaining services of CA firms for investigation.

As for routine inspections, since such activity is conducted on a much wider scale as compared to investigations, difficulties are anticipated in obtaining sufficient numbers of independent Chartered Accountant firms for the purpose. As at present under section 209A, routine inspections are entrusted to officials of the Central Government and SEBI only”.

59. When asked whether Shardul Shroff Committee have submitted its report, the Ministry have stated as follows:—

“The final report of Shardul Shroff Committee is expected shortly. The Committee was set up on 22.04.2002. It has since completed its consultations with various experts. The issues identified by the Shardul Shroff Committee were also presented before the Expert Committee headed by Dr. JJ Irani set up to advise the Government on the revision of the Companies Act. The report is being finalized and is expected shortly”.

60. In response to a query on the percentage of total number of companies that could be inspected by Ministry of Company Affairs, even if Regional Directors as well as ROCs are engaged, the Ministry have stated as under:—

“It has been found through practice over a period of years that one inspecting officer can submit around 12 inspection reports in a year and with 24 officers working in Inspection Wing, it should be possible to carry out approximately 240 to 250 inspections in a year after leaving one officer in each region to be in-charge of follow up action. The Registrars of Companies are also advised to take up inspections independently, at least one company a month. With this, another 240/250 inspections can be carried out. During the current year, MCA may inspect 0.2% of working companies”.

61. When asked whether any extra efforts are being made by the Ministry to strengthen their inspection wing so that the number of

inspection being conducted could increase, the Ministry have in their written reply furnished as below:-

“Inspections are mostly individual based, therefore, to improve the number of inspections to be conducted, it requires more strength and also to provide computerized system support for easy retrieval of information and analysis. The officers of the Inspection Wing are being trained in the use of computers”.

62. Elsewhere in their reply, the Ministry have while explaining the MCA-21 e-Governance project furnished in their written reply as:-

“The Government of India has approved the Ministry’s ‘MCA21’ e-Governance Project on 02.02.2005 with cost estimates of Rs. 341.214 crore plus a permissible addition of Rs. 4.68 crore towards change of scope in the software. The Project was launched on 09.02.2005 and the requisite contract agreements have been signed on 01.03.2005. Effective from the date of signing the contract, the Project has an implementation period of 60 weeks and an operation period of 6 years”.

63. Asked to furnish the status of cadre review exercise alongwith suggestions made for strengthening of inspection wings, the Ministry have submitted in their written reply as below:—

An internal Committee was constituted in January, 2003 under the Chairmanship of Joint Secretary (Admn.) with the approval of Secretary, MCA, for making recommendations/ suggestions for cadre review of the Indian Company Law Service (ICLS). The Committee, after several meetings held to discuss the draft proposals, has submitted its report in December, 2004. The report of the Committee is under examination. It has been recommended in the report that the number of posts in the Inspection Wing be increased from 49 to 112 in order to strengthen the Inspection Wings at Headquarters and the Offices of four Regional Directors at Kolkata, Kanpur, Mumbai and Chennai. However, the recommendations contained in the report are under examination in the Ministry”.

64. During the oral evidence, the Secretary of the Ministry of Company Affairs have stated as follows:—

“Already the level of inspections undertaken in the year 2004-05 has shown an increase over the previous year and has had the

declining trend. Against 109 inspections carried out in 2003-04, nearly 180 inspections have been carried out during the year 2004-05 and it is expected to reach the figure of 200 this year.

Efforts are also being made to strengthen the inspection wing of the Ministry to take up this activity on a sustainable basis. As many as 22 posts in Group 'A' have been recommended recently to the UPSC for filling up by direct recruitment. As regards Group 'B' posts and Group 'C' posts, 11 and 22 posts respectively have been approved for filling up through the competent agencies".

65. In response to the concern about the staff strength, the Secretary has during the oral evidence stated as under:—

"Another concern was about the staff needed. Over the years, the staff strength or vacancies have not been filled. This time, we have made attempts to fill 22 vacancies in Class 'A' posts. The request has been posted with the authorities and we hope that we would get their approval so that we could approach the UPSC to fill them up. Similarly, in Classes 'B' and 'C', we have had the meetings and they have been approved. We are approaching the authorities for filling up those posts also.

In the MCA, there would be a large number of officers or young staff, who would be eased out of the normal day to day activities. We hope to divert them and we have a proper work plan for them so that they could be put on inspection for inquiries and inspections. This way, we would be able to gear up the Department to meet the requirements of the growing number of companies getting registered in the country".

66. While appreciating the steps taken by the Ministry towards computerization under the MCA-21 e-Governance Project, the Committee note with concern the explanation of the Government regarding the number of inspections. The Committee observe that the number of inspections done have gone up from 109 in 2003-04 to 197 till February, 2005. However, when compared to the number of companies operating as on date *i.e.* 6,52,000, it is just a miniscule number. The Committee are dismayed to note that the Ministry envisages to conduct inspection of only 0.2% of the companies during the current year. In this regard, the Committee are reminded of their recommendation of the previous year wherein they have expressed serious concern that the number of inspections were coming down year after year and have deplored the casual approach of the

Government towards inspections. It seems that the Government have become content with only marginal increase in the number of inspections to be conducted this year. The Committee find that their concerns regarding lesser inspections over the years have not been adequately addressed to by the Government and the Ministry are not taking any strong measures to rectify this problem. The Committee note that this is despite the fact that inspection of companies are the primary responsibility of the Ministry's field organization and it is the most significant job entrusted to the Ministry.

67. The Committee are given to understand that the lesser number of inspections being carried out is a result of inadequate staff strength with the Government and after implementation of MCA-21 e-Governance Project, some surplus staff would be available who would be transferred to the inspection wings. The Committee also note that the cadre review Committee of the Indian Company Law Service has submitted its report and its recommendations are under examination. They have also been informed that the Shardul Shroff Committee on outsourcing the routine inspections under section 209A is going to submit the report shortly. The Committee recommend that the recommendations made by this Committee should be examined expeditiously and suitable steps should be taken to augment the staff strength of the Ministry apart from training those staff who are rendered surplus after the implementation of MCA-21 e-Governance project.

FILING OF STATUTORY RETURNS BY THE COMPANIES

68. Section 159 and 160 of the Companies Act 1956 makes it mandatory for the companies to file annual returns. Section 162, prescribes that if a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

69. Asked to furnish the number of companies registered, the number of companies which failed to file their annual returns and the number of cases in which penalties were imposed for delays/defiance

in failing to file the returns, the Ministry in their written reply have stated as follows:—

The number of companies registered:

Year	No. of Companies
2001-2002	21,166
2002-2003	24,170
2003-2004	30,218

The number of companies who failed to file their returns;
(Annual returns and Balance sheets)

Year	No. of Companies
2001-2002	2,62,219
2002-2003	1,64,671
2003-2004	3,30,774

70. As regards, the number of cases in which penalties were imposed for delays/defiance in failing to file the returns, the Ministry have stated that the information was not maintained centrally in the Ministry as the penalties could be imposed either by the courts or by the Company Law Board. Those imposed by courts were collected in State treasury and those imposed by Company Law Board were collected by CLB and thus the information was centrally not available.

71. When asked, whether the Ministry is thinking in terms of either increasing the field officers strength very steeply on the punishment/penalty very steeply to make those 50% of the Companies which are not filing their statutory returns comply with the statutory requirement, the Secretary of the Ministry has, during the oral evidence stated as follows:

“...It has been said here that some time after registration many companies are not filing their returns. It is correct that 50 per cent is a very high percentage. All this is because the punishment is very minimal. So, that concern is going to be met by Dr. Irani. He is addressing that concern himself. In fact, Shri Shroff is also one of the Members of that Committee. He has been associated with it.”

72. When asked specifically whether the punishment/penalty part can be delinked with the issue of revision of the Companies Act, 1956 and be taken separately on priority, the Secretary of the Ministry of Company Affairs has stated as under:

“Sir, we can take it up with the Law Ministry. Earlier efforts show that this has to come in the main Act. We are very much concerned. We do not want this again to be hung up on this.”

73. The representative of the Ministry of Company Affairs added:

“In filing of returns what has been observed is that there is some kind of a cyclic pattern taking place in a number of companies which are found not to have filed returns. They increase, then they come down, and then they increase again. A part of the answer to that is that traditionally over the last so many years under the Companies Act, over two to three years, there is an intensive exercise which is taken up by the Department, then the Department now the Ministry, to have the filing expedited. That is because what happens is that a company is required to file but it can file later with payment of late fee under the Act. In some cases there are group companies, in some cases there are related companies and they all file together. Sometimes companies do not file in the prescribed period but pay with late fee. Therefore, there is a cyclic variation which takes place, but the concern remains.

In the existing framework that we have, filing of returns is an important function because filing of return brings certain information about the company into the public domain where a member of the public may see and then take his decision as to what the company is. On the filing, the current provisions provide for a filing fee. In case it is not complied with, there is filing with payment of a late fee. Then if, as a result of this thing, there is an inspection and the company is not found to have filed its documents in time, there are certain fines and penalties which follow. Now, the view and the concern which has been expressed around the table is that perhaps it may be correct to say that these provisions do not provide an adequate deterrent for a company to avoid non-filing. For example, absence of an incentive for him to file in time, also absence of adequate deterrent in terms of punishment and whatever consequences to avoid non-filing.

This is an important matter which is also being looked at in the revision. The important issue is that this will also require a revision.

These levels which provided were there in 1956. There was one revision in the year 2000. Fees and all these things and some fines were raised also. But still, in many cases they are not found to be adequate. We hope that with this exercise a new regime for filing should be available. What is being looked at for example is that under the computerised system there will be one identification number. This identification number may be useful in many ways in the manner which is similar to the Income Tax Department where possession of a PAN number facilitates and is a positive incentive today for other actions. It is hoped that having a computerised company registration number and its valid maintenance will be a positive incentive for a company to file. A provision can be thought of that if you do not file regularly then this number may get frozen and become non-operational. This is the positive side.

At the same time, the deterrent aspect will also have to be reviewed so that the consequences of non-filing are made more stringent than they are at present. I think, this is a concern which is also very much, to our understanding, before the Irani Committee and they are expected to come out with some recommendation on this issue."

74. The Committee lament that 50% of the companies are not filing statutory returns and no concrete action is being taken against such companies by the Ministry. The Committee are of the opinion that this situation is no longer acceptable and needs to be changed. The Committee recommend evolving an effective means of identifying non-operating companies and also publish details of such companies through the print/electronic media. The Committee note with concern that the present provisions do not act as a sufficient deterrent on the companies that delay or do not file the statutory annual returns. The Committee note that the Government has gone for a computerization exercise that would provide distinctive identification number to facilitate filing of annual returns. They, therefore, suggest that inconsistencies in filing of annual returns should be met with stringent penalties.

NEW DELHI;
19 April, 2005
29 Chaitra, 1927 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

APPENDIX

MINUTES OF THE TWENTY FIRST SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 31 March, 2005 from 1030 hours to 1315 hours.

PRESENT

Maj. Gen (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Gurudas Kamat
5. Shri A. Krishnaswamy
6. Shri Bir Singh Mahato
7. Dr. Rajesh Kumar Mishra
8. Shri Madhusudan Mistry
9. Shri Rupchand Pal
10. Shri K.S. Rao
11. Shri M.A. Kharabela Swain

Rajya Sabha

12. Shri Jairam Ramesh
13. Shri M. Venkaiah Naidu
14. Shri Chittabrata Majumdar
15. Shri C. Ramachandraiah
16. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P. K. Sandhu — *Joint Secretary*
2. Shri R.K. Jain — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

Ministry of Company Affairs

1. Smt. Komal Anand, Secretary
2. Shri M. Deena Dayalan, Financial Advisor
3. Shri Jitesh Khosla, Joint Secretary
4. Shri Y.S. Malik, Joint Secretary
5. Shri Vyas Ji, Secretary, CCI
6. Smt. Usha Nigam, Secretary, MRTTP
7. Smt. Jayalakshmi Srinivasan, Secretary, CLB
8. Shri Ajay Nath, DGI&R
9. Shri O.P. Arya, Director General (SFIO)
10. Shri Paul Joseph, Economic Adviser
11. Shri A.K. Kapoor, Adviser, Cost
12. Shri V.S. Rao, D II
13. Shri R. Vasudevan, D II
14. Smt. Vibha Pandey, CCA
15. Shri K.K. Sabbarwal, Dir. (Fin)
16. Shri P. K. Kumar, Dir.

2. At the outset, the Chairman welcomed the representatives of the Ministry of Company Affairs to the sitting of the Committee and invited their attention to the provisions contained in direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of representatives of the Ministry of Company Affairs on Demands for Grants (2005-06) and other related matters.

4. Thereafter, the Chairman requested the representatives of Ministry of Company Affairs to furnish notes on certain points raised by the Members to which replies were not readily available with them during the discussion.

5. The evidence was concluded

6. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

*(The Committee then adjourned to meet again on
01 April, 2005 at 1030 hours)*

MINUTES OF THE TWENTY THIRD SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Thursday, 07th April, 2005 from 1100 to
1230 hours

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Gurudas Kamat
5. Shri Bir Singh Mahato
6. Shri Madhusudan Mistry
7. Shri Rupchand Pal
8. Shri Shrinivas D. Patil
9. Shri Lakshman Seth
10. Shri M.A. Kharabela Swain
11. Shri Magunta Sreenivasulu Reddy

Rajya Sabha

12. Shri Jairam Ramesh
13. Shri M. Venkaiah Naidu
14. Shri Yashwant Sinha
15. Shri S.P.M. Syed Khan
16. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
2. Shri R.K. Jain — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

3. The Chairman then requested the Members to give their suggestions on the issues proposed to be taken up for inclusion in the draft reports of the Committee on Demands for Grants (2005-2006) of the Ministries/Departments under their purview.

4. Thereafter, Members expressed their views on the subjects/topics that could be covered in the Reports of the Committee on Demands for Grants (2005-2006) of the Ministries/Departments, which were to be taken up for consideration and adoption at the sittings to be held on 11 and 12 April, 2005.

5. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

MINUTES OF THE TWENTY FIFTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Tuesday, 12 April, 2005 from 1100 to 1310 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Madhusudan Mistry
5. Shri Rupchand Pal
6. Shri K.S. Rao
7. Shri Lakshman Seth
8. Shri Vijoy Krishna

Rajya Sabha

9. Shri R.P. Goenka
10. Shri Jairam Ramesh
11. Shri Yashwant Sinha
12. Shri Chittabrata Majumdar
13. Shri C. Ramachandraiah
14. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri R.K. Jain — *Deputy Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting.

3. The Committee then took up for consideration the following draft reports:

- (i) ** ** ** **
- (ii) ** ** ** **
- (iii) Draft report on the Demands for Grants (2005-2006) of the Ministry of Company Affairs.
- (iv) ** ** ** **

4. The Committee adopted the report with the modifications/ amendments shown in *Annexure*.

5. The Committee authorised the Chairman to finalise the Reports in the light of modifications as also to make verbal and other consequential changes arising out of the factual verification and present the same to both the Houses of Parliament.

The Committee then adjourned

ANNEXURE

[MODIFICATIONS/AMENDMENTS MADE BY STANDING COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON THE DEMANDS FOR GRANTS (2005-06) OF THE MINISTRY OF COMPANY AFFAIRS AT THEIR SITTING HELD ON 12 APRIL, 2005]

Page No.	Para No.	Line No.	Modifications
1	2	3	4
37	51	10	<p><i>For:</i> The Committee, therefore, recommend that the Government should take suitable measures to continuously identify the “vanishing companies”, and debar the promoters/directors of such companies permanently, so as to eliminate any chances of them surfacing again.</p> <p><i>Substitute:</i> The Committee, therefore, recommend that the Government should take suitable measures to identify the “vanishing companies”, debar the promoters/directors of such companies permanently, so as to eliminate any chances of them surfacing again and also ensure that the guilty are punished under the due process of law.</p>
37	51	2 from below	<p><i>For:</i> investors are compensated for the losses suffered,</p> <p><i>Substitute:</i> investors get back their money</p>

1	2	3	4
37	52	2	<p><i>For:</i> promoters and directors of companies at the time of their registration</p> <p><i>Substitute:</i> details of promoters and directors of companies, inclusive of their capacity to raise funds at the time of their registration</p>
		3	<p><i>After:</i> They also feel that</p> <p><i>Insert:</i> apart from ensuring penal action,</p>
48	74	4	<p><i>After:</i> Needs to be changed</p> <p><i>Insert:</i> The Committee recommend evolving an effective means of identifying non-operating companies and also publish details of such companies through print/electronic media.</p>

STATEMENT OF CONCLUSIONS/RECOMMENDATIONS OF THE
STANDING COMMITTEE ON FINANCE IN THE TWENTIETH
REPORT (2005-06)

Sl. No.	Para No.	Ministry/Department Concerned	Conclusions/ Recommendations
1	2	3	4
1.	6	Ministry of Company Affairs	The Committee note with serious concern that certain discrepancies have crept in the figures supplied in Demands for Grants for the years 2004-2005 and 2005-2006. The explanation given by the Ministry that such inconsistencies would be avoided in future through the system of reconciliation with the Principal Accounts Office at regular intervals do not convince the Committee. This reconciliation exercise should have been completed well in advance of supplying figures in Parliamentary papers. They are of the view that the Government should take utmost care while furnishing the figures before Parliament. They expect that such discrepancies will not occur in future.
2.	10	Ministry of Company Affairs	The Committee are concerned to note that budgetary allocations were made by the Ministry with a casual approach due to which it had allowed a large sum of Rs 1.6 crore allocated at BE stage which was retained even at RE stage, to be surrendered. When the accommodation was not

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3.	21	Ministry of Company Affairs	<p>available, the Ministry should have changed the allocations at RE stage but it did not do so and allowed the allocations to be surrendered. The Committee recommend the Government to come out with realistic Budgetary estimates so that there is minimum gap between BE, RE and Actuals.</p> <p>The Committee note that SFIO which was intended to be a specialized agency, investigating cases of frauds involving large sum of money in excess of Rs. 50 crore and the interests of large section of the people is currently looking into 26 cases. They have been informed that within a period of two years, since SFIO came into being this number has increased from initial five or six references to 26 at present. They are given to understand that SFIO has to work within the ambit of the Companies Act, the procedures are long drawn and it has no powers similar to the ones like institutions enjoyed in other countries. The Committee were however, informed that since this organization is very new, the Government will after gaining some experience further deliberate on improving the efficacy of this institution including conferring it with statutory status. Given the important nature of the functions which the SFIO is supposed to discharge, the Committee desire that suitable measures be taken to further strengthen it.</p>

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4.	30	Ministry of Company Affairs	<p>The Committee take note that the Competition Act, 2002 which was to replace the Monopolies and Restrictive Trade Practices Act, 1959 could not be made operational because of legal challenges in the Supreme Court of India. They have been informed that the Apex Court has given its judgement on 20.01.2005 with some observations in regard to issue of separation of powers. The representatives of the Ministry have stated that the amended Bill on the lines of suggestions made by Supreme Court, would be tabled in the Monsoon Session, 2005. The Committee are of the view that this progressive legislation has already been delayed on account of legal tangles which could have been avoided, had the Ministry taken this aspect into account before its passing by both the Houses of Parliament. There should not be further delay in bringing conformity amendments. They expect that the Government would come forward with necessary legislation in the Monsoon Session, 2005 and get it enacted within the same session.</p>
5.	39, 40 & 41	Ministry of Company Affairs	<p>The Committee take note of the fact that Investor Education and Protection Fund (IEPF) has to its credit a whopping sum of about Rs. 352 crore upto 31.12.2004 and about Rs. 100 crores is added every year to the fund. This huge amount</p>

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comes mainly from four sources, namely, share application money, debentures, unpaid dividends and unclaimed deposits. They are given to understand that this amount is credited to the Consolidated Fund of India and a budgetary allocation is made by the Parliament every year to run the activities under IEPF. In this way the Ministry contributes more funds to the Consolidated Fund of India than getting from it. They are dismayed to note that such huge amount of money deposited by the companies is not being utilized for the object under which it has been constituted. They have been informed by the Secretary, Ministry of Company Affairs that the Ministry is making a proposal saying that funds could be considered to be kept as an interest bearing deposit which should flow back to them in the form of each years' budget for taking up these activities. The Committee are in total agreement with this proposal and want that Government should clear this proposal as and when received.

As far as utilization of the fund is concerned, a lot more needs to be done. As per Ministry's own admission before the Committee, the activities under IEPF need to be expanded by taking up the Financial Literacy Programme in a big way. They have been informed that a

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			<p>professional agency is being proposed to be taken on the board of IEPF to advise them apart from financing the NGOs and Voluntary organizations, conducting workshops, seminars, panel discussions and investors' clinics etc. The Committee recommend to the Government that no effort should be spared to take up this task in a big way and the proposal to engage professional agency may be expedited so as to bring about professional approach to this ambitious programme.</p> <p>The Committee are deeply concerned to note that the activities under IEPF have little penetration in rural areas. They are of the view that the rural investor is gullible and hence needs more protection but going by the registration of NGO's and Voluntary Organisations for this purpose, they find that only three agencies have been registered so far with IEPF. The Committee find that unless more and more NGO's and Volunatary Organisations are engaged and encouraged by the Government to take up this job, the entire exercise under IEPF will be rendered futile. They, therefore, recommend that Government should encourage more NGO's and Voluntary Organisations to take up the task of educating the rural investors expeditiously.</p>
6.	51, 52	Ministry of Company Affairs	The Committee are deeply anguished to note that not much is being done to address

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investors' grievances and save gullible investors from falling into the trap of "vanishing companies". Instances of investors continuing to be duped by capital market swindlers are heard of as a matter of routine. The Committee observe that the exercise of identifying "vanishing companies" was undertaken by SEBI in the year 1998, 1999 and 2000. Apart from this endeavour of SEBI, the Committee note that the Ministry of Company Affairs have not undertaken any serious exercise to maintain a continuously updated database of "vanishing companies". The Committee, therefore, recommend that the Government should take suitable measures to identify the "vanishing companies", debar the promoters/directors of such companies permanently, so as to eliminate any chances of them surfacing again and also ensure that the guilty are punished under the due process of law. While the Committee note that the Government have launched prosecutions against "vanishing companies" under the Companies Act as well as Indian Penal Code, they feel that a lot more needs to be done. The Committee feel that unless the regulators get serious about their investigations and find ways to ensure that the investors get back their money, the concept of investor protection will remain meaningless.

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7.	66, 67	Ministry of Company Affairs	<p>The Committee also recommend that Government should take concrete measures to establish the veracity of promoters and directors of companies, inclusive of their capacity to raise funds at the time of their registration. They also feel that apart from ensuring penal action, details of promoters/directors of vanishing companies need to be widely publicized through newspapers and other media, which could contribute to protecting investors' interest.</p> <p>While appreciating the steps taken by the Ministry towards computerization under the MCA-21 e-governance Project, the Committee note with concern the explanation of the Government regarding the number of inspections. The Committee observe that the number of inspections done have gone up from 109 in 2003-04 to 197 till February, 2005. However, when compared to the number of companies operating as on date <i>i.e.</i> 6,52,000, it is just a miniscule number. The Committee are dismayed to note that the Ministry envisages to conduct inspection of only 0.2% of the companies during the current year. In this regard, the Committee are reminded of their recommendation of the previous year wherein they have expressed serious concern that the number of inspections were coming down year after</p>

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year and have deplored the casual approach of the Government towards inspections. It seems that the Government have become content with only marginal increase in the number of inspections to be conducted this year. The Committee find that their concerns regarding lesser inspections over the years have not been adequately addressed to by the Government and the Ministry are not taking any strong measures to rectify this problem. The Committee note that this is despite the fact that inspection of companies are the primary responsibility of the Ministry's field organization and it is the most significant job entrusted to the Ministry.

The Committee are given to understand that the lesser number of inspections being carried out is a result of inadequate staff strength with the Government and after implementation of MCA-21 e-governance Project, some surplus staff would be available who would be transferred to the inspection wings. The Committee also note that the cadre review Committee of the Indian Company Law Service has submitted its report and its recommendations are under examination. They have also been informed that the Shardul Shroff Committee on outsourcing the routine inspections under section 209A is going to submit the report

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8.	74	Ministry of Company Affairs	<p>shortly. The Committee recommend that the recommendations made by this Committee should be examined expeditiously and suitable steps should be taken to augment the staff strength of the Ministry apart from training those staff who are rendered surplus after the implementation of MCA-21 e-governance project.</p> <p>The Committee lament that 50% of the companies are not filing statutory returns and no concrete action is being taken against such companies by the Ministry. The Committee are of the opinion that this situation is no longer acceptable and needs to be changed. The Committee recommend evolving an effective means of identifying non-operating companies and also publish details of such companies through the print/electronic media. The Committee note with concern that the present provisions do not act as a sufficient deterrent on the companies that delay or do not file the statutory annual returns. The Committee note that the Government has gone for a computerization exercise that would provide distinctive identification number to facilitate filing of annual returns. They, therefore, suggest that inconsistencies in filing of annual returns should be met with stringent penalties.</p>