TWENTY-FIRST REPORT

STANDING COMMITTEE ON FINANCE
(2009-2010)

(FIFTEENTH LOK SABHA)

THE COMPANIES BILL, 2009
(MINISTRY OF CORPORATE AFFAIRS)

Volume I—REPORT

Presented to Lok Sabha on 31 August, 2010
Laid in Rajya Sabha on 31 August, 2010

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF STANDING COMMITTEE ON FINANCE—2009-2010

Shri Yashwant Sinha — *Chairman*

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3. Shri Sudip Bandyopadhyay
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21. Shri G.M. Siddeshwara*

Rajya Sabha

22. Shri Raashid Alvi
23. Dr. K.V.P. Ramachandra Rao

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* Nominated to this Committee *w.e.f.* 09.03.2010 *vice* Shri Gopinath Munde, MP

24. Vacant**
25. Shri S.S. Ahluwalia
26. Shri Moinul Hassan
27. Shri Mahendra Mohan
28. Vacant***
29. Dr. Mahendra Prasad
30. Shri Y.P. Trivedi
31. Shri Rajeev Chandrasekhar

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Additional Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

** Shri Vijay Jawaharlal Darda, MP retired on 4 July, 2010
*** Shri S. Anbalagan, MP retired on 29 June, 2010

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Twenty-first Report on the Companies Bill, 2009.

2. The Companies Bill, 2009, introduced in Lok Sabha on 3 August, 2009 was referred to the Committee on 9 September, 2009 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took briefing/oral evidence of the representatives of Ministry of Corporate Affairs at their sittings held on 29 September, 2009, 20 October 2009, 11 November, 2009, 15 June, 2010 and 7 July, 2010.

4. The Committee at their sitting held on 21 January, 2010 heard the views of the representatives of Federation of Indian Chamber of Commerce and Industries (FICCI) and Confederation of Indian Industries (CII). At the sitting held on 24 May, 2010 Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost and Works Accountants of India (ICWAI) presented their views before the Committee. On 31 May, 2010, the Committee heard the views of the representatives of Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI). The Committee also heard the views of Dr. Ashok Haldia—Former Secretary, ICAI & Member, Appellate Tribunal set up for ICAI, ICSI and ICWAI, Shri M. R. Umerji—Chief Advisor Legal, Indian Banks Association, Shri Pradip N. Kapadia—Vigil Juris, Advocate, Solicitors and Notary, Shri LVV Iyer, Corporate Lawyer, Shri Virendra Jain—President, Midas Touch Investors Association at the sitting held on 15 June, 2010.

5. The Committee considered and adopted this report at their sitting held on 26 August, 2010.

6. The Committee wish to express their appreciation to the officials of the Ministry of Corporate Affairs concerned with the Bill for their co-operation and all the organizations and experts for their valuable suggestions on the Bill. The Committee would also thank Dr J. J. Irani (Chairman, Expert Committee on Company Law 2005) for appearing before the Committee and putting forward his views on the Bill.

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

NEW DELHI;
26 August, 2010
04 Bhadra 1932 (Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

PART-I

(i) INTRODUCTION

The Companies Bill, 2009, which has been referred to the Standing Committee on Finance of Parliament for detailed examination and report seeks to codify a new law to regulate companies and other corporate entities in the country and at the same time repeal the Companies Act, 1956. The Bill comprises of 28 Chapters including 426 Clauses. Before discussing the Companies Bill, it may be pertinent to have a brief overview of the existing Companies Act, 1956 which it seeks to replace.

The Companies Act, 1956

2. The Companies Act, 1956 was enacted with the object to amend and consolidate the law relating to companies and certain other associations following the recommendations of the Company Law Committee, known as the Bhaba Committee, set up in 1950. Simultaneously, Companies Act, 1913, then in force was repealed. In our country, the Companies Act, 1956 primarily regulate the range of activities from formation to liquidation and winding up of Companies. Regulation of corporate governance, structure and obligations of companies towards their stakeholders, investigation and enforcement and company process such as mergers/ amalgamations/arrangements/reconstructions etc. constitute the main focus of the Act. The Companies Act thus enables a statutory platform for essential corporate Governance requirements essential for functioning of the Companies with transparency and accountability, recognizing and protecting the interests of various stakeholders.

Need for change

3. The Central Government has stated that many changes have taken place in the national and international economic environment after the enactment of the existing Act which have happened particularly during the last two to three decades. The resultant expansion and growth of the Indian economy have increased the options and avenues for more international business opportunities and investment. In the light of this background, modernization of corporate regulation governing setting up and running of enterprises, structures for sharing risk and reward, governance and accountability to the investors and other stakeholders and structural changes in the law commensurate with global standards have become critical for the maintenance and enhancement of a vibrant corporate sector and business environment.

4. The Indian economy is now more diverse, complex and dynamic. In this milieu, the corporate form of organization has increasingly emerged as the preferred vehicle for economic and commercial activity, with large scale mobilization of resources from the public. The number of companies has expanded from about 30,000 in 1956 to more than 8 lakh. Companies are

now entering into and bringing new activities into the fold of the Indian economy, exporting a wide range of goods and services and providing employment opportunities to a diverse range of professions and trades. Many Indian companies have become global and expanded their operations beyond Indian borders with a spate of mergers and acquisitions abroad. Thus, the corporate form has not only contributed significantly to the growth of the national economy, but has helped Indian entrepreneurs to carve out a place for themselves in the world economy as well. In the backdrop of these developments, a need was felt to help sustain this growth by putting in place a legal framework that would enable the Indian corporate sector to operate in an environment of best international practices in a globally competitive manner, while fostering a positive environment for investment and growth.

Objectives of Comprehensive Review

5. Government had received inputs from various committees and expert bodies from time-to-time in the past, suggesting legislative measures to meet the emerging requirements. Keeping all aspects in view, it was decided that the issues concerning company law in India could be best addressed through a comprehensive review and revision of the existing Companies Act, 1956. It was decided to take up such a review keeping in view the following:-

(a) to revise and modify the Companies Act, 1956 in consonance with the changes in the national and international economy.

(b) to bring about compactness by deleting the provisions that had become redundant over time and by regrouping the scattered provisions relating to specific subjects;

(c) to re-write various provisions of the Act to enable easy interpretation; and

(d) to delink the procedural aspects from the substantive law and provide greater flexibility in rule making to enable adaptation to the changing economic and technical environment.

Guiding principles behind review of the existing Act

- To enable a compact statute, amenable to easy understanding and interpretation;
- To encourage setting up of businesses while enabling measures to protect the interests of stakeholders/investors, including small investors;
- To provide a framework for responsible and accountable self-regulation obviating the need for a regime based on Govt. approvals;
- To provide for more effective and speedy winding up process based on international practices;
- To strengthen enforcement powers and enhance penalties for offences; and
- To segregate substantive law from the procedures which are proposed to be prescribed as rules.

Amendments to Companies Act, 1956

6. Revisions have been made from time to time in the Companies Act, 1956 to address requirements of the times. There have been as many as 25 amendments made so far. Following

significant enactments were made in this regard:

(i) Companies (Amendment) Act, 1988

(ii) Companies (Amendment) Act, 1999

(iii) Companies (Amendment) Act, 2000

(iv) Companies (Amendment) Act, 2001

(v) Companies (Amendment) Act, 2002

(vi) Companies (Second Amendment) Act, 2002

(vii) Companies (Amendment) Act, 2006

Irani Committee

7. The Ministry placed a Concept Paper on its website on 4th August, 2004 and thereafter set up, on 2nd December, 2004, an Expert Committee under chairmanship of Dr. J.J. Irani, Director, Tata Sons Ltd. to examine suggestions received on the Concept Paper. This Committee included representatives from various industry and trade bodies/associations, statutory professional bodies, experts and representatives from regulatory bodies such as Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and concerned Ministries/ Departments.

8. In view of recommendations made by Irani Committee and other inputs available with the Ministry, a draft Bill was prepared in consultation with various stakeholders including concerned Ministries/Departments and accordingly, a new Companies Bill, 2008 was introduced on 23rd October, 2008 in the Lok Sabha and the Companies (Amendment) Bill, 2003, pending in the Rajya Sabha, was withdrawn on the same day. Due to dissolution of 14th Lok Sabha, the Companies Bill, 2008 lapsed. The Government then introduced the Companies Bill, 2009 in the Lok Sabha on 3rd August, 2009.

Structure of Companies Act and the proposed Bill

9. Structure of the existing Companies Act and the proposed Companies Bill, 2009 is as under:

A. Present Act comprises of

(i) 13 parts

(ii) 750 sections (including Sections inserted through amendments in the Act from time to time)

(iii) 15 Schedules

B. The Companies Bill, 2009 comprises of

(i) 28 Chapters

(ii) 426 Clauses

(iii) No Schedule

The Companies Bill, 2009

10. The Companies Bill, 2009, as referred to the Standing Committee on Finance *inter alia*, provides for the following:—

(i) the basic principles for all aspects of internal governance of corporate entities and a framework for their regulation, irrespective of their area of operation, from incorporation to liquidation and winding up, in a single, comprehensive, legal framework to be administered by the Central Government. In doing so, the Bill also seeks to harmonise the Company Law framework with the sectoral regulations;

(ii) easy transition of companies operating under the Companies Act, 1956, to the new legal framework as also from one type of company to another, freedom with regard to the numbers and layers of subsidiary companies that a company may have, subject to disclosures in respect of their relationship and transactions or dealings between them;

(iii) a new entity in the form of One Person Company (OPC), empowering the Government to provide for a simpler compliance regime for OPC and small companies and retention of the concept of Producer Companies, while providing a more stringent regime for companies with charitable objects to check misuse;

(iv) application of the successful e-Governance initiative of the Ministry of Corporate Affairs (MCA) to all the processes involved in meeting compliance obligations. Company processes may also be carried out through electronic mode;

(v) speedy incorporation process, with detailed declarations and disclosures about the promoters, directors, etc., at the time of incorporation. Every company director would be required to acquire a unique Director Identification Number;

(vi) relaxation of restriction limiting the number of persons in associations or partnerships etc., to a maximum of one hundred, with no ceiling as to associations or partnerships formed by professionals regulated by special Acts;

(vii) duties and liabilities of the directors and every company to have at least one director resident in India. The Bill also provides for independent directors to be appointed on the Boards of such companies as may be prescribed, along with attributes determining independence;

(viii) statutory recognition to audit committee, remuneration committee and stakeholders relationship committee of the Board and the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary to be as Key Managerial Personnel (KMP);

(ix) companies not to be allowed to raise deposits from the public except on the basis of permission available to them through other special Acts. The Bill prohibits insider trading by Company Directors or Key Managerial Personnel and declares it as an offence with criminal liability;

(x) recognition of both accounting and auditing standards. The role, rights and duties of the auditors have been defined so as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding companies is proposed to be made mandatory;

(xi) a single forum for approval of mergers and acquisitions along with a simple and shorter merger process for holding and wholly owned subsidiary companies or between two or more small companies as well as recognition of cross border mergers. Concept of deemed approval also provided in certain situations;

(xii) a framework for enabling fair valuations in companies for various purposes. Appointment of valuers is proposed to be made by an audit committee or in its absence by the Board of Directors;

(xiii) claim of an investor over a dividend or a benefit from a security not claimed for more than a period of seven years not to be extinguished, and Investor Education and Protection Fund (IEPF) is to be administered by a statutory authority;

(xiv) shareholders associations or group of shareholders to be enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and 'Class Action Suits';

(xv) a revised framework for regulation of insolvency, including rehabilitation, liquidation and winding up of companies and the process to be completed in a time bound manner;

(xvi) consolidation of fora for dealing with rehabilitation of companies, their liquidation and winding up in the single forum of National Company Law Tribunal and appeal to National Company Law Appellate Tribunal with suitable transitional provisions. The nature of the Rehabilitation and Revival Fund as provided in the Companies (Second Amendment) Act, 2002 is to be replaced by Rehabilitation and Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency;

(xvii) a more effective regime for inspections and investigations of companies while laying down the maximum as well as minimum quantum of penalty for each offence with suitable deterrence for repeated defaults. In case of fraudulent activities, provisions for recovery and disgorgement have been included;

(xviii) levy of additional fee in a non-discretionary manner for procedural non-compliance, such as late filing of statutory documents, to be enabled through rules. Defaults of procedural nature to be penalised by levy of monetary penalties by the adjudicating officers not below the level of Registrars. The appeals against orders of adjudicating officers are to lie with designated higher authorities;

(xix) special Courts to deal with offences under the Bill. Company matters such as mergers and amalgamations, reduction of capital, insolvency including rehabilitation, liquidations and winding up are proposed to be dealt with by the National Company Law Tribunal.

(ii) OVERVIEW OF COMMITTEE'S EXAMINATION OF COMPANIES BILL, 2009

The Process

11. The Companies Bill, 2009 was referred to the Standing Committee on Finance of Parliament in September, 2009 for detailed examination and report. At the outset, detailed

background note on the Bill was obtained from the nodal Ministry namely Ministry of Corporate Affairs, based on which preliminary questionnaire was sent to them. A communication was also sent to different institutions/organizations for their suggestions/views on the Bill. In this regard, a Press Communiqué dated 18th September, 2009 was also issued inviting suggestions from institutions/experts/interested individuals on the Companies Bill, 2009. In response to the official communication and the Press Communiqué, more than 100 Memoranda were received comprising numerous suggestions for modifications/inclusions in the Bill. Suggestions were received from regulatory bodies like RBI and SEBI; professional bodies like Institute of Company Secretaries of India (ICSI), Institute of Cost and Works Accountants of India (ICWAI) and Institute of Chartered Accountants of India (ICAI); different Chambers of Trade and Commerce like Bombay Chamber of Commerce and Industry; Confederation of Indian Industry (CII); Federation of Indian Chambers of Commerce & Industry (FICCI); PHD Chambers of Commerce and Industry and Indian Merchants' Chamber. Many Investors Associations also submitted their views and suggestions on the Bill. Besides, trade unions like Bharatiya Mazdoor Sangh, Indian National Trade Union Congress and Corporate Lawyers like Amarchand & Mangaldas & Suresh A. Shroff & Co. also gave their suggestions to the Committee. Eminent individuals like Dr. J.J. Irani, (Chairman of the Expert Committee) Shri Vinod Dhall, former Secretary, Ministry of Corporate Affairs and several other experts and interested individuals submitted their views in writing to the Committee.

12. All these suggestions were processed and a detailed questionnaire was sent to the Ministry of Corporate Affairs for their comments.

13. The Committee held nine sittings in the course of examination of the Bill, which included briefing/oral evidence of the Ministry of Corporate Affairs and the oral hearings of the representatives of different stakeholders like FICCI, CII, ICAI, ICSI, ICWAI, RBI and SEBI, as also some experts on the subject. Detailed questionnaires were sent to the Ministry seeking clarifications on the concerns/queries raised by Members during these hearings. The Ministry of Corporate Affairs furnished their replies/comments to the questionnaires sent to them at different points of time in a phased manner. The examination of the Companies Bill, 2009 was thus very detailed and comprehensive, spanning about eight months.

14. The Ministry of Corporate Affairs accepted the suggestions made by the Committee in about 500 cases and even suggested revised formulations/alternate clauses in about 125 cases (details of clauses/sub-clauses accepted for modification including alternate formulations have been indicated in annexures to the report). It resulted in large area of acceptance by the Government, with the number of issues involving different points of view reduced to the minimum. The Committee's extensive deliberations and interventions on the Bill would thus engender amendments/modifications and fresh inclusions requiring recasting of several clauses and matters covered in the Bill.

GUIDING PRINCIPLES

- Establishing a comprehensive and vibrant legal framework to cover the entire gamut of corporate functioning that will stand the vagaries of time.
- Greater clarity and lucidity recommended in the formulation of clauses and sub-clauses; restoration of existing provisions recommended if they are found less ambiguous and more inclusive.

- Reduction in delegated legislation; substantive matters and important issues to be included in the statute itself.
- Need for sturdy systems, enhanced transparency and comprehensive disclosures-based regime emphasized; as companies grow, become bigger and globalise with the number and range of stakeholders increasing by volumes, necessitating proper checks and balances.
- Self-regulation through internal mechanism/procedures, to be underpinned on strong systems and procedures; Central Government to step in only when mis-governance takes place
- Technical or procedural mistakes or delays to be considered in broader perspective, while dealing with fraudulent conduct/practices severely and decisively; deterrent provisions including imprisonment prescribed to pre-empt fraudulent conduct/practices; bonafide managerial conduct/decisions to be protected.
- In the light of recent experiences in corporate mis-governance, process of audit and functioning of auditors to be made more independent and effective; stringent joint and individual liability prescribed; setting up of oversight body to set standards and supervise quality of audit recommended.
- Role of Independent Directors to be distinguished from other Directors in terms of appointment, duties and liabilities; maintenance of a panel recommended for their appointment; independence criteria to be clearly delineated; the institution to be allowed time to evolve.
- Committees of Board to be strengthened; their terms of reference to be clearly defined.
- Effective regulation stressed, wherein benchmarks may be provided in the main statute, while the sectoral regulator may regulate by way of detailed guidelines as per evolving circumstances. Certain aspects presently included only in regulator's guidelines to be brought in as part of company law.
- Existing jurisdiction of regulators like SEBI, RBI not to be disturbed.
- Investigation under Company law to rest with Central Government and not with any sectoral regulator.
- Capacity building of Government agencies to scrutinize documents and detect non-compliance—Strengthen enforcement and investigation mechanism, particularly Registrar of Companies (RoCs) for better monitoring of compliance in coordination with SEBI.
- Investor friendly measures with adequate protection and quick relief for small investors stressed upon; recognized Investors Association to be allowed to file class section suits and also complaints on behalf of shareholders; revival of company deposits as a source of safe and secure investment for the public recommended.
- Statutory status for Serious Frauds Investigation Office (SFIO) proposed with a view to investigating corporate frauds; definition of 'fraud' brought in the Bill.

- Different aspects of corporate governance to be brought in the main statute rather than be left to guidelines; corporate governance expected to become integral to corporate functioning and governance structures of companies.
- Introduction of Corporate Social Responsibility (CSR) as a concept in the Bill, requiring bigger companies to make disclosures about their CSR policies and activities thereunder.
- Emphasis on canons of corporate democracy—the system of proxies to be discontinued and higher quorum suggested for company meetings.

BROADER ISSUES

15. Before discussing the various points raised by the Committee and their specific observations/recommendations clause-by-clause (Part-II), the Committee's examination of certain broader issues may be dealt with in brief as follows:—

(A) Corporate Governance

16. During their discussions on the Bill, the Committee have been stressing on Corporate Governance norms and its statutory recognition. The Corporate Governance Voluntary Guidelines 2009 were issued by the Central Government (Ministry of Corporate Affairs) in December, 2009 for voluntary adoption by the Companies. Pursuant to the Committee's suggestion that the substantive matters covered in these guidelines may be appropriately included in the Bill itself, the Ministry while agreeing to this suggestion in principle, has proposed that the following matters may be included in the Bill:—

(i) Separation of Offices of Chairman & Chief Executive Officer.

(ii) Nomination Committee to consider proposals for searching, evaluating, and recommending appropriate Independent Directors and Non-Executive and Executive Directors.

(iii) Number of Companies in which an Individual may become a Director.

(iv) Attributes for Independent Directors: All Independent Directors to provide a detailed Certificate of Independence.

(v) Tenure for Independent Director.

(vi) Independent Directors expected to act as 'whistle blower'.

(vii) Remuneration Committee to determine, recommend and monitor principles, criteria and the basis of remuneration policy of the company.

(viii) Risk Management: The Board to affirm and disclose in its report to members about critical risk management policy for the company.

(ix) Evaluation of Performance of Board of Directors, Committees thereof and of Individual Directors.

(x) Board to place Systems to ensure Compliance with Laws.

(xi) More specific role and responsibilities for audit committee to be provided specifically in respect of related Party Transactions: A statement in a prescribed/structured format about all related party transactions to be included in the Board's report.

(xii) Appointment of Auditors: Audit Committee to examine eligibility, independence etc. of the auditor recommend his/its appointment to the Board.

(xiii) Certificate of Independence of the auditor to be obtained by the company: The Certificate of Independence should certify that the auditor together with its consulting and specialized services affiliates, subsidiaries and associated companies or network or group entities has not/have not undertaken any prohibited non-audit assignments for the company and are independent *vis-à-vis* the client company.

(xiv) Rotation of Audit Partners and Firms.

(xv) Need for clarity on information to be sought by auditor and/or provided by the company to him/it.

(xvi) Appointment of Internal Auditor.

17. Corporate Governance Guidelines issued by the Ministry of Corporate Affairs are presently voluntary. The Committee are happy to note that the Ministry have acted upon the suggestions of the Committee and have also agreed to include these guidelines appropriately in the Bill. In addition to the afore-mentioned aspects impinging on Corporate governance, the Committee desire that other significant and substantive matters included in the Guidelines and the Listing Agreement prescribed by SEBI may also be mandated for listed companies and considered for inclusion appropriately in the Bill. For unlisted companies, the Guidelines may remain voluntary.

(B) Delegated Legislation

18. It has been seen that the words "as may be prescribed" has been used in the Bill approximately 235 times, thereby suggesting excessive role and scope for delegated legislation. As the Committee were of the view that several matters, requiring substantive provisions were left for rule making, they advised the Ministry to reconsider the provision made for excessive delegated legislation.

19. The Ministry of Corporate Affairs has agreed to shift some of the rule making provisions for inclusion in the Bill itself in respect of the following clauses:—

(i) Definition of small companies [Clause 2(1)(zzzg)];

(ii) Manner of subscribing names in the Memorandum of Association [Clause 3(1)];

(iii) Format of Memorandum to be prescribed in Schedule [Clause 5(6)];

(iv) Model Articles to be prescribed in Schedule [Clause 6(6)];

(v) Prescription of time to refund share application money [Clause 35(3)];

(vi) Time limit for lodging Share Transfer Form with a company [Clause 50(1)];

(vii) Provisions and time limit for further offer of shares, their acceptance and renunciation etc. [Clause 56(1)];

(viii) Time limit for intimation of appointment of receiver in case of assets on which charge has been created [Clause 75(1)];

(ix) Manner of conducting Extra Ordinary General Meeting by requisitionists [Clause 89(4)];

(x) Manner of appointment of proxy and procedure of voting by proxy [Clause 94];

(xi) Number of members entitled to give special notice for a resolution [Clause 104];

(xii) Resolutions/contracts/agreements to be filed with the Registrar of Companies [Clause 106(1)];

(xiii) Maintenance of Minute Books [Clause 107(1)];

(xiv) Rates of Depreciation [Clause 110(2)];

(xv) Format of Financial Statements [117(1)];

(xvi) Manner of Authentication of Financial Statements [Clause 120(1)];

(xvii) Matters into which the Auditors shall inquire while conducting audit [Clause 126(1)];

(xviii) Time limit for filing of consent by a person to act as a director [Clause 133(5)];

(xix) Proportion and Procedure for retirement of directors by rotation. [133(6)];

(xx) Procedure for reappointment of retiring director or appointment of any person as a director in place of retiring director where a company fails to do so. [Clause 133(7)];

(xxi) Notice for proposing appointment as director of person other than retiring director to be accompanied with deposit of Rs. 10,000 [Clause 141(1)];

(xxii) Procedure in case of hearing to be given to a director at the time of consideration of resolution of his removal [Clause 150(1)];

(xxiii) Computation of Net Profit [Clause 175(1)];

(xxiv) Manner of authentication of the Report of the inspector [Clause 193(4)];

(xxv) Maximum number of persons for formation of association or partnership [Clause 422(1)].

20. The Committee recommend that the afore-mentioned provisions for delegated legislation or rule-making, as agreed to by the Ministry, may be appropriately incorporated in the Bill. The Committee would however, like to emphasise in this regard that simple procedural aspects which may require flexibility and periodic revision depending on time-period or economic circumstances should continue to remain in the domain of delegated legislation. It is not the intention of the Committee that frequent amendments should be warranted in the governing statute.

21. However, the Committee believe that since the Companies Bill, 2009 needs to have a futuristic vision as well, all contemporary as well as emerging issues including anticipated problems concerning the corporate sector, such as ecology and environmental pressures,

impact of global operations of Indian companies on domestic stakeholders, technological collaborations, free movement of capital etc. would, therefore, have to be appropriately addressed in the Bill.

(C) Implementation of JPC Recommendations

22. The Committee also took stock of the extent of implementation and inclusion in the Companies Bill, the recommendations made by the Joint Parliamentary Committee (JPC) set up to enquire into irregularities in the securities and banking transactions (1993) and JPC on Stock Market Scam (2002). The Ministry informed in this regard that the recommendations made by the two JPCs were considered and duly incorporated through the Companies (Amendment) Act, 2000 as also the present Companies Bill, 2009. The proposals made in the Bill in this regard include the following:

(i) prescription of clause of Companies registered under Section 12 of SEBI Act to take inter-corporate loan or deposits within the limits prescribed by the Central Government and suitable disclosure requirements in financial statements [Clause 164(5)]; and

(ii) enhancement in penalties in respect of inter-corporate loans/investments;

(iii) The Companies Bill also seeks to restructure the penalties regime substantially, making all serious offences non-compoundable;

(iv) Similarly, the Central Government has also been enabled to order investigation on its own in public interest [Clause 183(1)(c)];

(v) Provisions for adjudication of monetary penalties by Registrars of Companies has been proposed in the Bill;

(vi) Serious offences are to be adjudicated by Special Courts;

(vii) The Companies Bill, 2009 also provides for stricter accountability for Auditors and seeks to ensure that they do not have any conflict of interest with the client Company (Clause 126). The Bill thus *inter-alia*, prohibits Auditors from performing non audit services (Clause 127); increase penalties substantially for Auditors in case of non-compliance [Clause 130(2)] and empowers the Tribunal to direct the company to remove the Auditor in case he is involved in fraudulent conduct [Clause 123(10)].

23. In addition, according to the Ministry of Corporate Affairs, the JPC recommendations for making the regulatory provisions and the regime more stringent will also be served by way of the following stringent provisions provided in the Companies Bill, 2009:

Sl. No.	Subject	Clauses of the Companies Bill, 2009
1	2	3
1.	Statutory disclosures about the affairs of companies through balance-sheets, annual returns and other event based filings like changes in directors, registered office addresses.	[11, 82, 117 and 151]

1	2	3
2.	The e-Governance is intended to provide for ease of operation for filing and access to corporate data over the internet to all stakeholders, on round the clock basis.	[360, 362 and 363]
3.	Mandatory requirement to set up audit committee has been provided.	[158]
4.	Offences for not assisting the Inspector and/or not furnishing information to him have been made non compoundable, punishable with imprisonment [upto 6 months] and fine [upto Rs. 1 Lakh but not less than Rs. 25,000 with added per day fine of Rs. 2000].	[188(6)]
5.	Duty of Central and State Government officers to assist investigating inspectors has been provided for.	[188(7)]
6.	Special provision for freezing of assets of a company under investigation has been provided.	[191(1)]
7.	The proposed Bill empowers the Central Government to order investigation against a company directly, on its own, in public interest. This addresses one of the principal causes of delay in initiating investigations under the present Act, *viz.*, Inquiry and report by the Registrar (u/s 234) as an essential condition for launch of investigation.	[183(1)(c)]
8.	Enabling power for the Central Government to enter into agreement with foreign Governments for assistance with regard to inspection, inquiry or investigations, etc.	[188(8)]
9.	Inspector has been empowered to search and seize the documents and books etc. of a company in the course of investigation without the requirement of obtaining an order from Magistrate as provided in the present Act. This is likely to make the investigation process faster.	[190]
10.	The inspector has been empowered to retain the books of accounts and other papers of the company, during the course of inspection/investigation, upto a period of 180 days—extendable by another period of 180 days.	[188(3)]
11.	Offences for mutilation/falsification of documents/ evidence/records etc. during investigation have been made non compoundable, punishable with imprisonment [upto 3 years] and fine [up to Rs. 5 lakhs but not less than Rs. 25,000/-].	[200]

1	2	3
12.	Provisions for 'Class Action Suits' proposed which empower shareholder(s) and creditor(s) to apply to Tribunal for suitable remedial action.	[216]
13.	Provision for appointment of Independent Director has been provided for in the Bill.	[132(3)]
14.	Auditor to comply with auditing standards notified under the Bill.	[126(9)]
15.	Auditors to report (in case of listed companies) about compliance with internal financial controls.	[126(3)(i)]
16.	Statutory auditors made more accountable. Substantial Civil and criminal liability provided in case of non-compliance by auditor.	[130]
17.	Recognizes the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary as Key Managerial Personnel (KMP).	[178]
18.	Imposes restrictions on non cash transactions involving directors like acquisition or selling of assets from/to directors. Also prohibits insider trading of securities by key managerial persons and makes it a criminal offence. Prohibits forward dealings in securities by directors/key managerial persons.	[170, 172 and 173]
19.	Compliance with Accounting Standards made mandatory to enable accounts to be drawn up based on fair, transparent and internationally accepted principles.	[119]
20.	Tribunal empowered to direct a company to change company's auditors in case Tribunal is satisfied that the auditor acted in a fraudulent manner.	[123(10)]
21.	Special Courts are proposed to be set up under the Bill to adjudicate fine or imprisonments (criminal matters).	[396-406]
22.	The disclosures to be made in the prospectus to be issued by the company at the time of Public Issue have been inserted in the main provisions of the Bill with power to Central Government to prescribe additional disclosures by way of rules.	[23]
23.	Mis-statements in prospectus (civil liability) Obligation to pay compensation to persons who suffered loss or damage.	[30]

1	2	3
24.	Mis-statements in prospectus (criminal liability) Imprisonment upto three years and fine upto Rs. 25 lakh but not less than 1 lakh [non compoundable]	[29]
25.	Fraudulently inducing persons to invest money Imprisonment upto three years and fine upto Rs. 50 lakh but not less than 1 lakh [non compoundable].	[31]
26.	Tribunal to have power to direct a number of measures including for removal of any managerial personnel and appointment of special directors in case the company is found to be involved in oppression or mis-management. The removal/appointment of directors shall be subject to terms and conditions provided by Tribunal.	[212-217]
27.	Penalty for false statements has been increased- Imprisonment upto three years and fine upto Rs. 5 lakhs [non compoundable]	[407]
28.	If the company has been got incorporated by furnishing any false/incorrect information/representation or by suppressing any material fact/information or by any fraudulent action at the time of incorporation, the promoters/first directors shall be punishable with imprisonment upto one year and fine upto one lakh rupees but not less than twenty five thousand rupees.	[7(6)]
29.	Unlimited liability on persons who are involved in conduct of business in fraudulent manner or purpose or to cheat creditors.	[312-316 read with 217]
30.	No suit or proceedings shall lie in any court or Tribunal or other authority in respect of any action initiated by the Central Government for making an investigation or for appointment of any inspection. No proceedings of an inspection shall be stayed by any Court or Tribunal or any authority till such investigation report is submitted.	[194]
31.	The provisions relating to inspection or investigation shall also apply *mutatis mutandis* to inspection or investigation of foreign companies.	[199]

24. While welcoming the inclusion of most aspects covered in the recommendations made by the JPCs in the Companies Bill, 2009, the Committee would hope that standards of propriety and governance practised by companies will be such as to invoke minimal use of enforcement provisions.

(D) Independent Directors

25. The role and responsibilities of Independent Directors, which has been under debate, has now come into sharp focus after the failure off many high profile corporations around the world and specially in the Indian context, the M/s. Satyam Computer Services episode involving fraud and financial irregularities. Clause 49 of the listing agreement as prescribed by SEBI between the Stock Exchanges and the listed company had mandated induction of Independent Directors on their Boards *w.e.f.* January 1, 2006. Many brush aside the Satyam episode as a one-off-case. However, this episode needs to be seen as a watershed event for the institution of Independent Directors. It is a moot point that such a huge scam could be perpetrated, and that too for several years, under the eyes of some of the most reputed and competent persons serving its Board as Independent Directors. It has raised questions that even highly qualified persons may not provide any insurance for corporate governance, as they tend to trust and provide blind support to the promoters.

26. When the Committee approached this matter with the Ministry of Corporate Affairs and suggested to them to evaluate the role and efficacy of independent directors, their mode of appointment, their responsibilities and liabilities, the Ministry in their reply submitted as below:

> The matter has been examined in the Ministry in detail. It is felt that since concept of Independent Directors is proposed to be introduced in the Companies Bill for the first time, there would be a need for setting up of a regulatory oversight structure (alongwith supporting Rules/Regulations etc.) to supervise the creation and maintenance of the Panel for Independent Directors, before such a Panel is introduced. Since companies would rely on the competence, experience etc. of the persons listed in the Panel, it is possible that the companies may not exercise the required due diligence on their own part before they appoint a person as Independent Director from the Panel. This may, in some cases, result into unsuitable candidates being appointed as Independent Directors.
>
> After examining these issues carefully in the Ministry, it is felt that it may not be appropriate to allow creation and maintenance of such a Panel through a Government Body/Authority. However, companies may have the freedom to choose any person as Independent Director from the Panel/List being maintained by various Investors Association/Non-Government Organisations (NGOs)/Industry Associations etc.
>
> Provisions of clause 132 of the Bill provide for the definition and attributes etc. of Independent Directors. It has been provided in such clause that Independent Director shall be a non-executive director (other than a nominee director) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience. Other attributes and requirements (like limits of pecuniary relationship) to be fulfilled by an Independent Director have been provided in such clause. Provisions in respect of 'Powers of Board' and 'Duties of directors' have been provided in clauses 159 and 147 of the Bill respectively. Further, clause 175(2) of the Bill also provides for provisions in respect of Directors & Officers (D&O) Insurance.

27. When the Committee again sought specific proposals from the Ministry on this issue, the Ministry submitted the following suggestions for insertion in clause 132(5) of the Bill:—

"Provided that the role, duties and functions of independent directors shall be such as may be prescribed by Central Government by way of rules.

An independent director shall be held liable, only in respect of such acts of omission or commission by the company or any officer of the company which constitutes a breach or violation of any provisions of Act, which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance and where he had not acted diligently."

The Ministry further suggested that since the term 'non-executive director' has been used in the Bill at various places but has not been defined, it would be useful to define such term in the Bill suitably. Hence it is suggested that the term 'non-executive director' may be defined as under:—

" 'non-executive director' means a director, who is not entrusted with responsibilities relating to day-to-day management or discharge of any executive function."

28. The Ministry have further expressed the view that:

"Since Companies Bill will be a general legislation for corporates and concept of Independent Directors is new in the regulatory domain, it may not be appropriate to consider provisions in the Bill for an overriding clause for grant of immunity to Independent Directors under other laws as well."

29. As the institution of Independent Directors is a critical instrument for ensuring good corporate governance, it is necessary that the functioning of this institution is critically analysed and proper safeguards are made to ensure its efficacy. The appointment of Independent Directors should not be a case of mere technical compliance reduced to the letter of the law. It is important that Independent Directors play their designated role to nurture the financial health of the Company and to protect the interests of various stakeholders, particularly the minority shareholders. The Committee, therefore, believe provisions pertaining to the Independent Directors should be distinguished from other Directors in the Bill. The Government should, therefore, prescribe precisely their mode of appointment, their qualifications, extent of independence from promoters/management, their role and responsibilities as well as their liabilities. In this context, it would be pertinent to mention that there is a need to circumscribe and limit the liabilities of Independent Directors, so that they are able to act freely and objectively and are able to share their expertise with the rest of the Board. A provision may also be made for their rotation by restricting their tenure in a company to say, five years. The Ministry of Corporate Affairs thus needs to revisit the Institution of Independent Directors and make amendments in the Bill accordingly. A code for independent directors may be considered for this purpose. The appointment process of Independent Directors may also be made independent of the company management by constituting a panel or a data bank to be maintained by the Ministry of Corporate Affairs, out of which companies may choose their requirement of Independent Directors. It is expected that the system of independent directors will evolve as a corporate

governance institution over time. The Committee also desire that the Ministry may also explore the feasibility of Advisory Boards for bigger companies comprising of qualified persons/professional experts.

(E) Regulatory Overlaps

30. The Committee has received a few suggestions from the major regulators in the country, namely, RBI and SEBI regarding jurisdictional overlaps in the Bill. The suggestions of RBI in this matter broadly relate to the following:—

> Section 616(b) of the Companies Act, 1956 provides that the Act shall apply to banking companies except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (now the Banking Regulation Act, 1949). Provisions as contained in Section 616(b) of the Companies Act, 1956 have been found missing in the Bill. Since provisions of the Companies Act, 1956 are applicable to the banking companies, except expressly provided otherwise in the Banking Regulation Act, 1949, it is very important that the provisions of the Companies Act are not in conflict with the provisions of the Banking Regulation Act. Accordingly, it is suggested that necessary provision similar to Section 616(b) of the Companies Act, 1956 may be provided in the Bill.
>
> Similarly, SEBI has expressed the view that the Companies Bill, 2009 has sought to reduce the jurisdiction of SEBI, as it restricts their regulatory powers to Chapter III and IV only. SEBI, further, submitted that the explanation to Clause 22 in the Bill stipulates that the powers relating to all other matters including those relating to prospectus, issue of shares and redemption of preference shares shall be exercised by the Central Government, Tribunal and the Registrar. SEBI, therefore, has proposed that all these matters in respect of unlisted companies may be dealt with by the Central Government through rules, while those in respect of listed companies may be dealt with by SEBI through Regulations, as is the position now. It was their plea that the provisions in respect of specified matters, irrespective of the chapters they are located, may be dealt with by SEBI or Government as the case may be, which would remove regulatory gaps, overlaps and inconsistencies in regulation.

31. When the Committee took up this issue of regulatory overlap concerning SEBI with the Ministry of Corporate Affairs, they explained that they have tried to provide basic/broad principles in respect of corporate governance in the main Act, leaving the other regulatory aspects to the sectoral regulator for improvement and articulation. In this regard, they have also cited the observations of the Irani Committee as under:—

> *"Perception in some quarters as to the need to demarcate the respective jurisdictions of Ministry of Company Affairs (MCA) and SEBI has come to our notice. In our view, this perception is misplaced. In so far as, the legal framework is concerned, the Central Government is represented through a Ministry which would be required to exercise the sovereign function and discharge the responsibility of the State in corporate regulation. SEBI, on the other hand, is a capital markets regulator having distinct responsibilities in regulation of the conduct of intermediaries capital market and interaction between entities seeking to raise and invest in capital.*

We do not subscribe to the view that corporates seeking access to capital need to be liberated from their responsibilities under all other laws of the land and, thereby the oversight by the State, and be subjected to exclusive control and supervision of a specific regulator. Corporates have to function as economic persons within the Union of India in a manner that contributes to the social and economic well being of the country as a whole and as such must be subject to the laws pronounced by the Parliament for the welfare of its citizens.

Corporate Governance goes far beyond access to capital. Taking a narrow view of Corporate Governance as limited to public issue of capital and the processes that follow would be to the detriment of corporate entities themselves. Equally, the capital market regulator has to play a central role in public access to capital by the companies and must have the necessary space to develop suitable frameworks in tune with the fluidity of the capital markets.

To our mind, with the substantive law being compiled to reflect the core governing principles of corporate operations and separation of procedural aspects, it would be possible for the regulator to provide the framework of rules for its domain consistent with the law. Such rules would be complementary to the legislated framework and there would be no overlap or conflict of jurisdiction between regulatory bodies. We therefore recommend a harmonious construction for operation of the State and regulatory agencies set up by it."

32. Further, in response to the Committee's concerns on this issue, the Ministry of Corporate Affairs have sought to address them as elaborated here under:—

"(A) In case of reduction of capital of a listed company, Tribunal will be required to give notice and seek representation from SEBI as well [Clause 59(*2*)];

(B) Notice in respect of compromise or arrangement (which includes merger as well) involving a listed company may also be sent to SEBI to give its objections, if any [Clause 201(5)];

(C) Clause 201(*10*) provides that any compromise or arrangement may include takeover offer made in such manner as may be prescribed. The proviso thereto provides that in case of listed companies, takeover offer shall be as per the guidelines issued by the Securities and Exchange Board. This recognizes the term 'takeover' in the mother Bill/Act for companies and thus brings harmony between Companies Bill/Act and SEBI Takeover Code;

(D) Clause 173 of the Bill, as a measure of good corporate governance, particularly relevant for Directors/KMPs, seeks to prohibit directors and KMPs from dealing in securities of the company, or counsel, procure or communicate about any non-public price sensitive information to any person. This clause prohibits misuse of information by directors and KMPs to their own advantage. Since the term 'insider trading' has not been defined so far in any statute (including SEBI Act or SCRA), recognition of this concept in the Companies Bill/Act may actually empower SEBI in preventing such kind of activities. SEBI may be empowered to make regulations in case of listed companies under this clause;

(E) The powers in respect of investigation into affairs of companies are not available to SEBI even under the existing Companies Act. The practice of SEBI requesting Central

Government (MCA) to initiate investigation into affairs in appropriate cases and the Central Government (MCA) taking necessary action on such matters has been continuing under the existing Act and is working well and should be continued. The administrative mechanism for coordination between MCA and SEBI is also working well and can be further strengthened on mutual agreement."

33. It is the considered view of the Committee that the Government while providing for minimum benchmarks in the Companies Bill, should allow sectoral regulators like SEBI to exercise their designated jurisdiction through a more detailed regulatory regime, to be decided by them according to circumstances. Similarly, the overriding effect of special statutes like Banking Regulation Act also requires to be clarified, while the mandate provided to RBI under such special statutes should remain unchanged. In view of doubts expressed by RBI on this count, it needs to be articulated appropriately in the Bill that only if the Special Act is silent on any aspect, the Companies Act will prevail. Further, if both are silent, requisite provisions can be included in the Special Act itself. The *status quo* in this regard may, therefore, be maintained and the same suitably clarified in the Bill. This will thus ensure that there is no jurisdictional overlap or conflict in the governing statute or rules framed thereunder.

(F) Role of Auditors

34. Suggestions have been received by the Committee that there is a need to make provisions relating to Audit and Auditors more stringent such as following:—

(a) The clause should specifically prohibit offer of non-audit services both 'directly as well as indirectly'. The term 'directly as well as indirectly' may also be suitably defined in the Bill.

(b) The prohibition proposed in the clause should be not only for the audit client company but also for the holding company, subsidiary company and associate company of the audit client company.

(c) A residual clause may be inserted to provide 'any other kind of consultancy services' to take care of any non-audit services not covered in already provided clauses.

(d) Suitable penalty may be provided in case of contravention of these provisions.

(e) Clause 123(10) of the Bill empowers the Tribunal, if it is satisfied that the auditor of a company has acted in a fraudulent manner or abetted/colluded in any fraud, to direct the company to change its auditors. Suggestions have been made that these provisions should be modified to clarify to cover act of fraud or abetment by auditor whether directly or indirectly. It has also been suggested that the Bill may provide that if auditor, whether individual or firm, against whom an order has been passed by the Tribunal under this clause should not be eligible to be appointed as an auditor of any company for a period of five years.

(f) This clause provides for disqualification of an auditor in case he has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed. Suggestions

have been received that this clause may also be modified to cover such relationship whether '*directly or indirectly*', to prevent any misuse of these provisions by the auditors.

(g) (i) At present as per provisions of Section 210A of the Companies Act, 1956, the National Advisory Committee on Accounting Standards (NACAS) has the mandate to recommend/ advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies.

(ii) The Companies Bill, 2009 has sought to enhance the role of NACAS. The Bill (Clause 118) empowers NACAS to make recommendations to the Central Government both on accounting standards as well as auditing standards. It has also been proposed in the Bill to change the title of this Committee to National Advisory Committee on Accounting and Auditing Standards (NACAAS).

(iii) Suggestions have been received expressing that in view of economic challenges being faced by many countries across the globe and failure of some of big companies in recent past casting a doubt on the role of management and auditors, there is a need to promote an independent regulatory regime which may have the power to:—

(a) recommend the standards to the Government for:

(A) corporate financial reporting,

(B) corporate audit, and

(C) quality of service of professionals associated with ensuring compliance with such standards;

(b) oversee, monitor and supervise the bodies involved in setting standards mentioned in (a) above.

(iv) It has also been suggested that the responsibility for setting financial reporting standards and auditing standards and monitoring their strict compliance should rest with the Government or a statutory authority set up by the Government. It has been expressed that setting up of such a regulatory Body would ensure healthy functioning of corporate sector, particularly in respect of financial reporting, audit and quality of service by the relevant professionals, eventually benefitting the business, investors, employees, and other stakeholders and enhance the country's economic strength in competitive international markets.

35. On being asked, the Ministry examined the aforesaid suggestions in detail, particularly in the light of provisions of Clause 118 of the Bill, which seeks to provide for widening the role of NACAAS (established at present under Section 210A of the Companies Act) to recommend both accounting as well as auditing standards. The Ministry, while agreeing to the different suggestions, have submitted as follows:

"It may also be useful to consider giving of regulatory powers to NACAAS at appropriate stage to enforce the compliance with standards in respect of matters, after they are notified

under the Companies Bill/Act and also for overseeing and monitoring the bodies involved in setting relevant standards, including on the quality of services of members of such bodies."

36. The Ministry have also suggested in this regard that:

"The Central Government should have the power to constitute the NACAAS, provide for manner of appointment, selection and nomination etc. of members of NACAAS by way of making suitable rules."

37. The Committee acknowledge the Ministry's acceptance of the Committee's views and suggestions for ensuring independence of auditors, providing safeguards to retain credibility of the audit process and creation of a supervisory mechanism for this purpose. The Committee would recommend that the proposed body, namely, NACAAS would be given sufficient mandate not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit undertaken across the corporate sector. It should, therefore, be manned by professionals. Its role may be expanded depending upon experience gained.

(G) Harmonization with International Financial Reporting Standards (IFRS)

38. The importance of financial reporting in providing essential financial information about the company to its shareholders and other stakeholders, as an integral and important part of good corporate governance is well recognised. Such information needs to be reliable, free from bias and should enable comparison on the basis of common benchmarks. This, in turn, necessitates an appropriate financial reporting system in the form of accounting standards that incorporate sound accounting principles and reflect a true picture of the financial health of the company while ensuring legally enforceable accountability. The accounting and financial reporting practices need to change and evolve with the changing business and economic situation.

39. The International Financial Reporting Standards (IFRSs) issued by the International Accounting Standards Board (IASB) are increasingly being recognized as Global Reporting Standards. Investors throughout the World express high level of trust on the accounts prepared in conformity with globally acceptable uniform financial reporting standards. Thus, the case for a single set of globally accepted accounting standards has prompted many countries to pursue convergence of national accounting standards with IFRSs. More than 100 countries including countries of European Union, Australia, New Zealand, China and Russia currently require or permit the use of IFRSs in their countries. G-20 Countries, in the summit held in September, 2009 in Pittsburgh also committed themselves towards achieving convergence by June, 2011.

40. The Ministry of Corporate Affairs has set up a Core group comprising various stakeholders (C&AG, RBI, SEBI, IRDA, ICAI Chambers, Accounting and Law Experts etc.) under the Chairmanship of Secretary, MCA to discuss and resolve implementation challenges with regard to convergence of Indian Accounting Standards with International Financial Reporting Standards (IFRS) from the year 2011. In accordance with the recommendations made by Core Group, the Government has prepared a Road Map for Convergence which seeks to achieve convergence in a phased manner starting April, 2011.

41. The Committee's examination of the subject and the replies of the Ministry received thereon reveal that the following provisions/clauses of the Bill require modification for achieving convergence with IFRS:

2(1)(*b*) Definition of the term 'accounting standard'

46(2): Utilisation of securities premium account

49(1): -do-

59(3): Reduction of share capital

110(2): Prescription of depreciation rates

117(1) and 117(4): Financial statements to comply with accounting standards

201: Schemes of mergers and amalgamations.

42. The Committee find that there are several matters included in the Bill, which need modification with a view to harmonizing them with the International Financial Reporting Standards (IFRSs). The Committee, therefore, desire that all such matters requiring harmonization with IFRS should be considered and appropriate amendments may be made in the relevant proposals contained in the Bill.

(H) Investor Protection

43. The Committee had expressed their concerns that adequate safeguards require to be provided for the investors, particularly the small investors. It was necessary that investors are made well aware about the risks involved in their investments. A good investor protection mechanism required proper disclosures as also enforcement mechanism in the event of defaults by companies.

44. The following provisions have been proposed in the Bill for protection of interests of investors:—

(a) Enhanced Disclosure Requirements including detailed disclosures at the time of incorporation to ensure that companies do not vanish. [7]

(b) Claim of an investor over unclaimed dividend beyond 7 years not to be extinguished, though companies under obligation to continue transfer of such amount to Investor Education and Protection Fund (IEPF). The refund to investor even after 7 years to be allowed out of IEPF. [112(3)]

(c) The Investor Education and Protection Fund (IEPF) shall be utilized for refund in respect of unclaimed dividends, application monies due for refund and promotion of investors' education, awareness and protection in accordance with rules to be prescribed. Central Government empowered to constitute an authority and an Administrator to administer the Fund. The authority empowered to spend money out of the Fund for carrying out the objects for which the Fund is established. [112]

(d) Shareholders Associations/Group of Shareholders enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and 'Class Action Suits'. [32/216]

(e) Directors of a company, which has defaulted in payment of interest to depositors or in repayment of deposits, shall be disqualified for future appointment as directors. (145)

(f) Requirement of appointment of Independent Directors for certain classes of companies. Such Directors would be able to monitor the actions of the companies and their promoter directors from the angle of protection of interests of minority shareholders [132]

(g) Requirement of constitution of Audit Committees, Remuneration Committees and Stakeholders Relationship Committee of the Board for certain classes of companies. Such Committees to have majority of directors to be independent directors/non-executive directors to ensure independent and effective decision making [158]

(h) Fraudulent actions to result in heavier punishments and disgorgement. Stricter penalties in case of repeated offence/default. [33(3)/410]

(i) Unlimited personal liability in case of acceptance of deposits with intent to defraud depositors or for any fraudulent purpose. [68]

(j) The offence of 'insider trading' by directors recognized in the statute. Directors or KMPs prevented from dealing with price sensitive information. [173]

(k) Provisions in respect of prevention of oppression and mismanagement alongwith action against persons engaged in fraudulent activities retained in the Bill. [212-217]

(l) Concept of Fair valuation through registered valuer proposed to tackle management irregularities in situations like issue of shares otherwise than in cash or during preferential allotments. [218/56]

(m) requirement for offer for sale of shares to be given to minority shareholders in case of acquisition of 90% or more shares by any other company or group of persons or persons acting in concert (206/207)

(n) Concept of postal ballot to include electronic voting retained. All matters may be conducted through postal/electronic voting except those relating to ordinary business and in which directors or auditors have a right to be heard. (99)

45. In response to the Committee's concerns for ensuring protection of interests of minority shareholders and small investors, the Ministry have made a few suggestions as under:—

(a) Source of promoters' contribution to be disclosed in prospectus.

(b) Company to vary terms of the contracts or objects mentioned in Prospectus subject to shareholders approval, public notice and exit option to shareholders willing to exit from the company.

(c) Acceptance of deposits from public to be allowed in case of bigger and solvent companies subject to stricter norms/rules to be prescribed by Central Government in consultation with RBI.

(d) A Return to be filed with registrar in case promoters'/top ten shareholders' stake changes beyond a limit (To ensure audit trail of ownership).

(e) Investor Education and Protection Fund to be utilized for re-distribution of disgorged amount to identifiable victims.

(f) Specific disclosure in the scheme of mergers/amalgamation regarding effect of merger on minority shareholders to be provided.

(g) During adjudication on Class Actions Suits, Tribunal to ensure that interests of shareholders are protected and wrongdoers, including auditors and audit firms, are required to compensate the victims on suitable orders by Tribunal.

(h) Further, regarding provisions of clause 112 of the Bill [Investor Education and Protection Fund (IEPF)], it is felt that the Bill may also include suitable provisions to provide that the shareholders, whose unclaimed and unpaid dividend has been transferred to IEPF, after the expiry of seven years as per provisions of the Companies Act, 1956, may also be allowed to get refund out of IEPF in respect of such claims.

46. The Committee have also received suggestions for allowing acceptance of deposits from public in case of bigger and solvent companies, subject to stricter norms/rules to be prescribed by Central Government in consultation with RBI. The Ministry has agreed in principle to these suggestions.

47. Apart from the specific suggestions made by the Ministry for strengthening Investor protection, the Committee desire that the proposed Investors Education and Protection Fund (IEPF), which is proposed to be administered by a statutory body, should be utilized to provide immediate relief to small investors, who have suffered losses due to corporate defaults. Recognised Investors Associations should also be empowered to file class action suits and also complaints to Central Government/Tribunal on behalf of a prescribed number of shareholders. The procedure prescribed for immediate relief/compensation to small investors should also be made simpler and quicker.

48. With a view to providing relief to general public, particularly senior citizens, the Committee would like that the prohibition proposed in the Bill with respect to public deposits be removed so as to restore the existing provision in the Act with sufficient safeguards against defaults, including progressively higher penal interest for non-payment or delayed payment by the company. The Committee feel that the instrument of public deposits as a source of capital for companies should not be discouraged in law, while deterrent provisions should be brought against defaulting companies.

(I) Corporate Social Responsibility (CSR)

49. In response to the Committee's overwhelming concerns on the extent of Corporate Social Responsibility (CSR) being undertaken by corporates and the need for a comprehensive CSR policy, the Ministry of Corporate Affairs have agreed that the Bill may now include provisions to mandate that every company having [(net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more)] or [a net profit of Rs. 5 crore or more during a year] shall be required to formulate a CSR Policy to ensure that every year at least 2% of its average net

profits during the three immediately preceding financial years shall be spent on CSR activities as may be approved and specified by the company. The directors shall be required to make suitable disclosures in this regard in their report to members.

50. In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/reasons in their report to the members.

51. While welcoming the Ministry's acceptance of the Committee's suggestion to bring Corporate Social Responsibility (CSR) in the statute itself, the Committee feel that separate disclosures required to be made by Companies in their Annual Report by way of CSR statement indicating the company policy as well as the specific steps taken thereunder will be a sufficient check on non-compliance.

(J) Exemption Regime for Small Companies, One Person Companies (OPCs), Private Companies and Limited Liability Partnerships (LLPs):

52. Clause 421 provides for exemptions from the compliance of certain provisions for small companies and One Person Companies (OPCs). The clause reads as under:

> "in case of one person company or small company, the Central Government may by notification exempt the compliance of certain provisions. However, a copy of draft notification shall be laid before both the Houses of Parliament."

53. The Committee find from their examination that there are scattered references in the Bill to different forms of companies like small companies, One Person Company (OPCs) and private companies. However, the exemption regime applicable for these forms of companies is not very precise and explicit in the Bill. The Committee would, therefore, like the Ministry to examine this aspect so that the classification of companies and the exemption/concession regime to be made applicable for each of these forms of companies is clearly spelt out in the relevant provisions/clauses itself. It should thus be known from the statute which are the provisions that are applicable to these forms and in what way these forms are distinguishable from each other and the regular public limited company. The synchronization with the Limited Liability Partnership Act (LLP) and its implications for the provisions contained in the Bill should also be considered and modifications, if required, may be made accordingly.

(K) Corporate Delinquency

54. In response to the Committee's concerns on incidence of Corporate Delinquency and the adequacy of proposals made in the Bill to deal with it, the Ministry of Corporate Affairs have submitted as follows:

The Bill seeks to introduce following new concepts for good corporate governance. These provisions would ensure check on the corporate delinquencies:-

(i) Enhanced Disclosure Requirements including detailed disclosures at the time of incorporation to address the problem of vanishing companies;

(ii) Electronic modes proposed even for corporate actions like keeping books of accounts, holding of board meetings, shareholders meeting, circulation of financial statements etc;

(iii) Requirements for Cash flow statement and Consolidated Financial Statements provided;

(iv) A report to be filed by listed companies to confirm that AGM was held in accordance with Law;

(v) Every company to have at least one director who is resident in India. Duties of directors provided in the Bill. Concept of Key Managerial Personnel (KMP) introduced;

(vi) More stringent provisions for independence and integrity of the auditor and for holding him more accountable in case of defaults provided. Auditor prohibited from rendering non audit services. Auditing standards also recognized in the Company Law;

(vii) Quantum of penalties enhanced substantially. Fraudulent actions to result in heavier punishments and disgorgement. Stricter penalties in case of repeated offence/ default. Special Courts to be set up to adjudicate offences under the Bill in a speedier manner;

(viii) Unlimited personal liability in case of acceptance of deposits with intent to defraud depositors or for any fraudulent purpose. Action by Shareholders/Depositors Association and Class Action Suits' recognised in the Bill to protect interests of investors.

55. Not being entirely satisfied with the existing proposals, when the Committee sought additional measures to strengthen the existing legal mechanism, the Ministry came forward with the following suggestions.

(i) Subsidiary Companies not to have further subsidiaries. Every company to have only one Investment Company.

(ii) Source of promoters' contribution to be disclosed in prospectus. Promoter to be included in the list of officer in default'.

(iii) Main objects for raising public offer to be mentioned in the prospectus on first page.

(iv) Company to vary terms of the contracts or objects mentioned in Prospectus subject to shareholders approval and public notice.

(v) A Return to be filed with registrar in case promoters'/top ten shareholders' stake changes beyond a limit (To ensure audit trail of ownership)

(vi) Investor Education and Protection Fund to be utilized for re-distribution of disgorged amount to identifiable victims.

(vii) Internal audit to be made mandatory for bigger companies

(viii) Rotation of individual auditor and audit firm to be mandated in the Bill.

(ix) In case of contravention of provisions relating to audit, both the audit partner as well as audit firm to be held liable in case of any civil and criminal liability.

(x) Tenure of Independent Directors to be provided in law.

(xi) Number of maximum directorships to be held by an individual to be restricted to 20 for all companies, private as well as public. Out of which (a) public companies not to exceed 15 and (b) listed companies not to exceed 7.

(xii) Role of Audit Committee to include determination of remuneration and terms of engagement of auditor, evaluation of auditors' independence, functioning etc.

(xiii) Role and Functions of Nomination and Remuneration Committee regarding nomination or selection of directors etc. to be incorporated more specifically.

(xiv) Separation of office of chairman and MD/CEO. (Transitional period of one year to be given to companies to comply with this requirement).

(xv) Definition of the term SFIO' to be included in the Bill. Keeping into consideration the nature and expertise of officers of SFIO, the SFIO investigation report should be treated in a manner similar to police report by the Court. (This would allow faster prosecution in SFIO investigated matters/cases).

(xvi) Inspector conducting investigation (being an officer of the Government) to also have the power of civil court for summoning and enforcing attendance of persons.

(xvii) During adjudication of Class Actions Suits, Tribunal to ensure that interests of shareholders are protected and wrongdoers, including auditors and audit firms, are required to compensate the victims on suitable orders by Tribunal.

(xviii) For proper regulation of monitoring of end use of funds raised by such companies through public offers, a new Explanation may be added to clause 22 to provide that the term issue and transfer of securities' shall include monitoring of utilization or application of end use of monies received by the company. This has been considered necessary so that there should be clarity in the law about the role of SEBI for monitoring of end use of funds raised by listed companies through public offers. For non listed companies the monitoring of utilization of funds raised through shareholders or loans from banks etc. shall be done by Registrars of companies and the inspection wing of the Ministry through scrutiny of financial statements and other documents filed with the Registry.

56. **Clause 164 deals with inter-corporate loans and investments.** It, inter-alia stipulates that no company shall directly or indirectly give a loan to any person or other body corporate, give any guarantee security or acquire the securities of any other body corporate exceeding 66% of its paid-up share capital and free reserves or 100% of its free reserves, whichever is more.

57. With regard to stricter provisions in respect of inter-corporate loans and investments sought by the Committee, the following suggestions for modifications in the Bill have been submitted by the Ministry:

(a) A subsidiary company should not have its own subsidiary company(ies).

(b) A company should have only one investment company.

(c) *Complete exemptions from compliance with the provisions in respect of inter-corporate loans and investments to private companies and wholly owned subsidiary companies not to be allowed.*

(d) *Central Government to have power to make rules to prescribe the manner and format of disclosure in case of consolidated financial statements.*

(e) *Central Govt. to have power to make rules/regulations to guide the companies on matters relating to inter-corporate loans and investments.*

58. On the issue of corporate delinquency, the Committee recommend that the Government should make the necessary modifications in the Bill to incorporate the afore-mentioned suggestions made to the Committee in the course of examination of the Bill. While endorsing the disclosures and transparency based regime proposed in the Bill, the Committee would like to emphasise that technical or procedural defaults of companies may be seen in a broader perspective in contrast to fraudulent practices/activities, which have to be dealt with severely and decisively.

59. With regard to inter-corporate loans/investments, the Committee note that the Ministry have allowed themselves the freedom to frame necessary rules subsequently. The Committee would however like the Ministry to incorporate the afore-mentioned suggestions relating to restrictions on subsidiaries and investment companies and inclusion of private companies within the purview of the restrictive regime, governing inter-corporate loans/ investments. It is the Committee's considered view that the mechanism of inter-corporate loans/investments and resultant transfer of funds to subsidiaries etc. should remain only an instrument of corporate growth rather than a method for diversion of funds from a healthy enterprise.

(L) Shareholders Democracy

60. Every member of a company, having share capital, has a right to appoint a proxy to attend and vote at a general meeting on his behalf. A member can appoint one or more proxies to vote in respect of the different types of shares held by him. The proxy need not be member of the company. No public company or private company which is a subsidiary of a public company can make any provision requiring that proxies should be deposited earlier than 48 hours before the meeting at which they are to be used.

61. The provision relating to Quorum and proxy for company meetings have been made in Clauses 92 and 94 of the Bill respectively as under:

Clause 92 (Quorum) (*1*) Unless the articles of the company provide for a larger number, five members personally present in the case of public company and two members personally present in the case of a private company, shall be the quorum for a meeting of the company.

Clause 94 (Proxy) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf in writing or by electronic mode in such manner and subject to such conditions as may be prescribed:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

62. The Ministry, in response to a suggestion for review of provisions relating to proxy has submitted that provisions as proposed in the Bill may be retained.

63. The Committee find that the provisions proposed in the Bill on appointment of proxies are broadly similar to corresponding provisions provided in Section 176 of the existing Act. As the Bill has sought to enhance the number of matters on which approval of shareholders can be sought through postal/electronic ballot, the need for proxies may become minimal. The Committee are, therefore, of the view that keeping in mind canons of corporate democracy, the system of proxy itself may be discontinued. In the same vein, the Committee would also recommend a higher quorum for company meetings than the proposed requirement of "five members personally present" to a reasonable percentage.

(M) Foreign Companies Incorporated Outside India

64. A 'foreign company' is a company which is incorporated in a country outside India under the law of that country and has a place of business in India. Section 592 of the Companies Act, 1956 lays down that every foreign company which establishes a places of business in India must, within 30 days of the establishment of such place of business, file specified documents with the Registrar of Companies at New Delhi and also with the Registrar of Companies of the State in which such place of business is situated. The same requirements as regards accounts and their filing and also the registration charges created in India are applicable to them, as to Indian Companies.

65. Section 591 of the existing Act provides that where not less than 50% of the paid up share capital of a company incorporated outside India having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act, as may be prescribed by the Central Government with regard to the business carried on by such a company in India, as if it were a company incorporated in India.

66. Chapter XXI of the Companies Bill, 2009 relates to companies incorporated outside India, wherein the enabling Clause 341 states as under:

> "Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India."

67. Clause 342 refers to the documents etc. to be delivered to the Registrar by foreign companies.

68. The Committee observe from the enabling provisions proposed in respect of 'foreign companies incorporated outside India' that it does not explain unambiguously the applicability of this Chapter to foreign companies which are incorporated outside India and which have a place or places of business in India. It thus needs to be better clarified in the enabling

Clause whether all the foreign companies which are incorporated outside India, with place of business in India with minority shareholding will be covered under this Chapter. It is necessary that all such 'foreign companies incorporated outside India', which have a place of business in India with or without any shareholding in the country are brought within the ambit of this Chapter.

(N) Whistle Blowing Mechanism

69. In the light of recent experiences of corporate delinquency and mis-governance not only in India but also in the developed economies of the World, the Committee had expressed their concern on the need for an internal watchdog mechanism in the company. In response to the Committee's concern, the Ministry of Corporate Affairs have proposed to incorporate two new sub-clauses 158(10A) and 158(10B) for bringing a Whistle Blowing Mechanism for companies, which are given as under:-

"New sub-clause 158(10A)–Whistle Blowing Mechanism

Such class or description of companies, as may be prescribed, shall establish a mechanism for directors, employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism shall provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases.

Provided further that details of existence of such mechanism shall be disclosed by the company in the Board's Report.

New sub-clause 158(10B)—Role of Nomination and Remuneration Committee to be incorporated in the Bill more specifically.

The Nomination and Remuneration Committee shall identify individuals qualified to become board members consistent with the criteria laid down, recommend to the board the appointment and removal of directors and of senior management and shall carry out evaluation of individual director's performance."

70. The Committee are satisfied that a fresh proposal has been put forward by the Ministry, at their behest, for a Whistle Blowing Mechanism in companies. The Committee hope such an internal mechanism without external regulation or control will enable a company to evolve over time a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the Management on deviant practices.

71. Having discussed the broader issues, the clause by clause examination of the Bill and the Committee's observations/recommendations thereon have been dealt with in the succeeding pages in Part-II of the Report. In response to the Committee's concerns, queries and suggestions, the Ministry have proposed several alternate as well as new clauses/sub-clauses/proviso, which have been appropriately highlighted (italicized and the changes underlined) in Part-II of the Report.

PART II

CLAUSE-BY-CLAUSE EXAMINATION

CHAPTER I

PRELIMINARY

1. Clause 1—Short title, extent, commencement and application

1.1 Clause 1(4) reads as under:—

"The provisions of this Act shall apply to—

(a) companies incorporated under this Act or under any previous company law; and

(b) any company or body corporate governed by any special Act, in the absence of any corresponding provisions therein."

1.2 While submitting their written memorandum, IBA on this clause suggested as follows:—

Before extending the Company Law to bodies corporates it will be necessary to examine the various existing enactments governing such corporates and modify them suitably and then extend the provisions of the Company Law to such corporates. The proposed provision may therefore be converted into an enabling provision empowering the Central Government to issue a notification extending specific provisions of the Company Law to such corporates.

1.3 The Ministry of Corporate Affairs in their written submission on the above said suggestion stated as follows:—

"(i) Clause 1(4) of the Bill provides that the provisions of this Act shall apply to 'any company or body corporate governed by any Special Act, in the absence of any corresponding provisions therein.'

(ii) These provisions are intended to replace the provisions of section 616 of the Companies Act, 1956. The intention behind these provisions is that in case any Special Act contains any provisions which are in contradiction with any of the provisions of the Companies Bill, 2009, the provisions of such Special Act would prevail over the provisions of the Bill. It is only in respect of matters where such Special Act is silent that provisions of the Companies Bill would be applicable.

(iii) It is felt that this approach would reduce the element of conflict between different provisions of the Bill and other Special Acts.

(iv) In view of above, there may not be any necessity of any modification in the Bill on this matter."

1.4 In their written memorandum submitted to the Committee, RBI on this clause suggested as follows:—

"Section 616(b) of the Companies Act, 1956 provides that the Act shall apply to banking companies except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (now the Banking Regulation Act, 1949). Provisions as contained in Section 616(b) of the Companies Act, 1956 have been found missing in the Bill. Since provisions of the Companies Act, 1956 are applicable to the banking companies, except expressly provided otherwise in the Banking Regulation Act, 1949, it is very important that the provisions of the Companies Act are not in conflict with the provisions of the Banking Regulation Act. Accordingly, it is suggested that necessary provision similar to section 616(b) of the Companies Act, 1956 may be provided in the Bill."

1.5 While replying to a related query raised by the Members during evidence on this Clause, the Ministry in their post oral evidence information submitted to the Committee stated as follows:—

"The provisions of section 616 of the existing Act have been reflected in clause 1(4)(b) of the Bill. However, the suggestion received for omission of the words 'body corporate' used in clause 1(4)(b), is noted to be addressed appropriately through legislative vetting."

1.6 During evidence the Committee sought to know about the harmony between various regulators. In their post evidence information the Ministry on this issue informed as under:—

"The Bill seeks to rely on the recommendations made by Irani Committee on the matter relating to harmony between various regulators. Accordingly, it has been proposed that the requirements under the Companies Bill/Act would be minimum applicable for every company or a class of companies as may be provided therein. Any sectoral regulator may provide for a more detailed or stringent provisions for sectoral companies under their jurisdiction. With this approach, there would be harmony between provisions of the Bill and rules/regulations prescribed by various regulators."

1.7 During further evidence on the Bill, the representative of the Ministry of Corporate Affairs on this issue stated as follows:—

"The RBI in the existing Act specifies nine phrases, which gave them powers. These nine phrases have been brought back into the Bill on the suggestion of the Committee. But, nevertheless, keeping in view their apprehensions, we have brought back those nine provisions in the existing Act and that would fully satisfy the RBI's request. As far as SEBI is concerned, we have given a large number of powers to SEBI even under the present Bill and after discussions with the hon. Members."

1.8 The Committee note that the proposed clause 1(4) is not as clear and explicit in articulating the overriding effect of special statutes as section 616 of the existing Act, whenever there are any provisions contained therein which are in contradiction with any of the provisions of the Companies Bill. It also needs to be clarified in the clause that only in respect of matters where the Special Act is silent that provisions of the Companies Bill would be applicable. If both Acts are silent on a general issue, it should be covered in the

Companies Act. Further, while restoring Section 616, it should be ensured that the element of conflict/contradiction between different provisions of the Bill and other Special Acts is entirely removed and there is no ambiguity whatsoever in this regard.

2. Clause 2(1)(a)—Abridged Prospectus

1.9 Clause 2(1)(a) reads as follows:—

"Abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed.

1.10 In their written memoranda submitted to the Committee, SEBI on this clause suggested as follows:—

The said clause may be modified to define abridged prospectus as a memorandum containing such salient features of a prospectus as may be specified by Securities and Exchange Board.

1.11 While responding to the above said suggestion, the Ministry of Corporate Affairs in a written submission stated as under:—

"(i) The proposed definition is similar to existing definition provided under the Companies Act, 1956.

(ii) The requirement for abridged prospectus is relevant in context of clause 28 of the Bill which provides that no form of application for purchase of securities of a company shall be issued unless it is accompanied with abridged prospectus.

(iii) Since the contents of prospectus under the Companies Bill, 2009 shall be prescribed by the Central Government keeping in view the provisions of clause 23 of the Bill, it is provided in clause 2(1)(a) of the Bill that contents of abridged prospectus should also be prescribed by Central Government.

(iv) In view of above, there may not be any necessity of any modification in the Bill on this matter."

1.12 While submitting their fresh comments on the above said suggestion of SEBI, the Ministry stated as follows:—

"Since 'abridged prospectus' would be required to be attached with the application form in case of public offers by listed companies or companies intending to be listed, the suggestion to define the term in the manner suggested by SEBI may be considered. The term may be defined as under:—

'abridged prospectus' means a memorandum containing such salient features of a prospectus as may be specified by Securities and Exchange Board."

3. Clause 2(1)(b)—Accounting Standards

1.13 Clause 2(1)(b) relating to 'accounting standards' reads as follows:—

" 'Accounting standards' means such accounting standards as the Central Government may notify under section 119, in consultation with the National Advisory Committee on Accounting and Auditing Standards constituted under section 118."

1.14 ICWAI in their written memorandum submitted to the Committee suggested as follows:—

Cost accounting standard may also be defined by inserting the following provisions—

'cost accounting standards' means such—cost accounting standards as the Central Government may notify under section 119, in consultation with the appropriate authority like National Advisory Committee on Cost Accounting and Auditing Standards;

In the interest of uniformity and consistency of standardization of cost accounting practices these standards may be statutorily imposed on the lines of Accounting Standards.

1.15 The Ministry of Corporate Affairs in their written submission on the above said suggestion stated as follows:—

(i) In the existing Act, the provisions in respect of maintenance of cost records and requirements for appointment of cost auditor have been provided in section 209(1)(d) and section 233B of the Act respectively. Provisions of section 209(1)(d) empower Central Government to prescribe maintenance of cost records for a class of companies engaged in production, processing, manufacturing or mining activities. Further, provisions of section 233B provide that where Central Government is of the opinion that it is necessary so to do in relation to a company covered under section 209(1)(d), the Central Government may, by order direct cost audit of cost records of such company conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant.

(ii) Attention is drawn to the recommendation of Expert Committee on Company Law (2005) [Irani Committee] [Chapter IX, Paras 34 and 35] on the matter which reads as under:—

"At present, the Companies Act contains provisions relating to maintenance of Cost Records under section 209(1)(d) and Cost Audit under section 233B of the Companies Act in respect of specified industries. The Committee felt that Cost Records and Cost Audit were important instruments that would enable companies make their operations efficient and exist in a competitive environment.

The Committee noted that the present corporate scenario also included a sizeable component of Government owned enterprises or companies operating under administered price mechanism or a regime of subsidies. It would be relevant for the Government or the regulators concerned with non-competitive situations to seek costing data. The Committee, therefore, took the view that while the enabling provision may be retained in the law providing powers to the Government to cause Cost Audit, legislative guidance has to take into account the role of management in addressing cost management issues in context of the liberalized business and economic environment. Further, Government approval for appointment of Cost Auditor for carrying out such Cost Audit was also not considered necessary."

(iii) Keeping in view the above recommendations, the provisions have been proposed in the Bill in respect of maintenance of cost records by certain classes of companies and for audit of such records in clause 2(1)(m) and 131 of the Bill respectively. It is felt that these provisions are proper and reasonable in present economic environment.

(iv) The suggestions made for recognizing the term 'cost accounting standard' or 'cost auditing standard' in the Bill require examination in detail and on merits alongwith all related issues on the matter. The matter is under examination by a Group in the Ministry and final view may be taken after the recommendations made by such group are available.

1.16 On the issue of recognizing the term 'cost accounting standard' in the Bill, the Ministry suggested an alternate clause for this, which is given as under:—

"2(1)(b) 'accounting standards' means such accounting standards or any addendum thereto *as the Central Government may notify under section 119, in consultation with the National Advisory Committee on Accounting and Auditing Standards constituted under section 118.*

4. Clause 2(1)(f)—Associate Company

1.17 Clause 2(1)(f) specifies as follows:—

" 'Associate company', in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence or of any other company."

1.18 In their written memoranda submitted to the Committee on this clause various experts/ Chambers of Commerce and Industry suggested as under:—

This definition is at variance with the definition of an Associate Company provided under Accounting Standard 18 ("AS 18'), where under, control of 20% of the total votes in a company is sufficient to make the company an associate company. Further AS 18 does not provide for parameters in relation to control of business decisions.

Clause 2 (1)(f) of the Bill defines "Significant Influence" as control of at least 26% while the definition of Significant Influence under IFRS is holding, directly or indirectly 20% or more, but less than 50% of an entity's voting rights. It is recommended that such discrepancies be addressed.

1.19 On the above said suggestion, the Ministry of Corporate Affairs in their written submission commented as under:—

"The intent and objective behind provisions of the Bill and Accounting Standard (AS) 18 are not same. While AS 18 only deals with the accounting part, the Bill has to address the issues from the point of view of ensuring that directors or persons in control of the company do not take undue advantage of corporate form and do not use company's funds to their own advantage. Directors have the duty not to place themselves in a position. When their fiduciary duties towards the company conflict with their personal interests.

Amendments in few provisions of the Bill are required in connection with achieving convergence of Indian Accounting Standards with IFRSs. Keeping in view the advantages and benefits to the country and its corporate sector, India has committed its intention to achieve convergence with IFRSs w.e.f. 1.4.2011.

The suggestion for making suitable provision in the Bill to provide for harmonization with International Financial Reporting Standards (IFRS) is noted. The Government has set up a Core Group and two Sub-Groups for making suitable recommendations on the matter. Further action may be taken on receipt of the reports of these Groups."

5. Clause 2(1)(g)—Auditing Standards

1.20 Clause 2(1)(g) reads as follows:—

'Auditing standards' means such auditing standards as the Central Government may notify under sub-section (*10*) of section 126, in consultation with the National Advisory Committee on Accounting and Auditing Standards constituted under section 118.

1.21 In their written memorandum, the ICWAI on this clause suggested as follows:—

Central Government, after consultation with the National Advisory Committee on Cost Accounting and Auditing Standards established under section 118, lay down "Cost Auditing Standards" on the lines of "Auditing Standards".

1.22 A new section may be inserted as under—

" 'cost auditing standards' means such cost auditing standards as the Central Government may notify in consultation with appropriate authority like National Advisory Committee on Cost Accounting and Auditing standards."

1.23 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as follows:—

"The suggestion for making suitable provision in the Bill to provide for harmonization with International Financial Reporting Standards (IFRS) is noted. The Government has set up a Core Group and two Sub-Groups for making suitable recommendations on the matter. Further action may be taken on receipt of the reports of these Groups."

6. Clause 2(1)(k)—Body Corporate or Corporation

1.24 Clause 2(1)(k) states as follows:—

" 'body corporate' or 'corporation' includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification published in the Official Gazette, specify in this behalf."

1.25 ICSI in their written memorandum on this clause suggested that the definition of 'body corporate' or 'corporation' should include 'Limited Liability Partnership' also.

1.26 While accepting the suggestion made by the ICSI, the Ministry in their written submission stated that *the suggestion is noted to be addressed appropriately with legislative vetting.*

7. Clause 2(1)(m)(iv)—Books of account

1.27 Clause 2(1)(m)(iv) of the Bill on Books of account reads as under:—

"in the case of a company which belongs to any class of companies specified under section 131, such items of cost as may be prescribed under that section."

1.28 ICWAI while forwarding their written memorandum suggested to substitute this clause as under:—

A company specified under section 131, items of cost as may be prescribed under that section.

1.29 In response to the above said suggestion, the Ministry in their written submission stated as follows:—

"The suggestions made for recognizing the term 'cost accounting standard' or 'cost auditing standard' in the Bill require examination in detail and on merits alongwith all related issues on the matter. The matter is under examination by a Group in the Ministry and final view may be taken after the recommendations made by such group are available."

8. Clause 2(1)(s)—Chief Financial Officer

1.30 Clause 2(1)(s) of the Bill reads as follows:—

" 'Chief Financial Officer' means a person appointed as the Chief Financial Officer of a company."

1.31 ICWAI in their written memorandum suggested on this clause as under:—

It may be specified for the sake of clarity as to who may be appointed as the Chief Financial Officer by a company. It is proposed that the qualifications of Chief Financial Officer may be prescribed.

1.32 The clause may be replaced by the following—

"Chief Financial Officer" means a Cost Accountant or a Chartered Accountant designated by the company to function as "Chief Financial Officer".

1.33 While submitting their written information, the Ministry on the above said suggestion stated as under:—

Clause 2(1)(s) of the Bill defines the term as under:—

" 'Chief Financial Officer' means a person appointed as the Chief Financial Officer of a company;"

"This definition gives the companies the flexibility to appoint any suitable qualified or experienced person for the position of CFO. Placing any specific qualification for this position may bring rigidity in the provisions. In view of above, there may not be any necessity of any modification in the Bill on this matter."

9. Clause 2(1)(y)—Company Secretary in practice

1.34 Clause 2(1)(y) reads as under:—

" 'Company Secretary in practice' means a Company Secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980."

1.35 ICSI in their written memorandum suggested that the term may be defined on the lines of the definition of Chartered Accountant in clause 2(1)(q) and Cost Accountant in clause 2(1)(zb).

1.36 The written comments of the Ministry on the above said suggestion are as under:—

"The provisions proposed in the Bill are similar to the provisions presently provided in section 2(45A) of the existing Companies Act. Hence there may not be any necessity of any modification in the Bill on this matter."

10. Clause 2(1)(z)—Contributory

1.37 Clause 2(1)(z) reads as follows:—

" 'contributory' means a person liable to contribute towards the payment of a company's debts in the event of its being wound up."

1.38 On this clause, various institutions/experts in their written memorandum submitted to the Committee suggested as follows:—

To the definition of contributory, the following words need to be added:

> Notwithstanding anything contained in the Act, a person holding fully paid up shares in a company shall be considered a contributory but shall have no liabilities of a contributory under the Act whilst retaining all the rights of a contributory under the Act.

1.39 While submitting their agreement with the suggestion made by various stakeholders on this clause, the Ministry of Corporate Affairs in their written submission stated that *the suggestion is noted to be addressed appropriately with legislative vetting.*

11. Clause 2(1)(za)—Control or Controlling interest

1.40 Clause 2(1)(za) of the Bill reads as under:—

" 'controlling interest' means the largest voting power a member may exercise in a general meeting of a company, whether directly or indirectly, and either alone or in association with his relatives, bodies corporate or firms controlled by such person or his relatives."

1.41 Written suggestions as received from various institutions/experts on this clause are as follows:—

(i) The definition of 'Control' or 'Controlling interest' in the Bill should be aligned with the definition as used in the SEBI Takeover Regulations. This would assist in achieving harmonization of regulations applicable to companies (CII).

(ii) If at all there is a need to define 'control/controlling interest' in the Bill, the definition as used in the SEBI Takeover Regulations be adopted. Any person merely by virtue of holding the largest voting power at a general meeting may be deemed to be in 'control' of a company, a premise which may be incorrect and misleading. (PHDCCI).

(iii) The rationale for defining 'Controlling Interest' in the Bill is not understood in as much as this term has not been used elsewhere in the Bill. If at all there is a need to define 'Control' or Controlling Interest in the Bill, the definition as used in the SEBI Takeover Regulations be adopted. (Indian Merchants' Chamber)

(iv) The definition of 'Controlling Interest' be either removed from the Bill or aligned with the definition under the Takeover Code.

(v) Any provision in the Companies Bill that militates against professionalization of companies should be avoided.

1.42 The written comments of the Ministry of Corporate Affairs on the above said suggestions are as follows:—

(i) " 'Clause 2(2) of the Bill provides that words and expressions used and defined in this Act but not defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in that Act'.

(ii) Attention is drawn to provisions of Clause 159(3) of the Bill which provide as under:—

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

* * * * * *

(i) to take over a company or acquire a controlling or substantial stake in another company.

(ii) Since the term 'controlling interest' has been defined in Clause 2(1)(za) but has not been used in the Bill anywhere it may be considered for omission.

(iii) The suggestion to define the term 'control' in the Bill, particularly in context of the definition of the term 'promoter' may be considered."

1.43 While defining the term 'control', the Ministry in their written submission suggested to amend the Clause 2(1)(za) as follows:—

"2(1) (za) 'control' shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."

1.44 The Committee agree with the Ministry's replies/viewpoint on the suggestions in respect of sub-clauses above, namely 2(1)(a)—Abridged Prospectus, 2(1)(b)—Accounting Standards, 2(1)(f)—Associate Company, 2(1)(g)—Auditing Standards, 2(1)(k)—Body Corporate or Corporation, 2(1)(m)(iv)—Books of account, 2(1)(s)—Chief Financial Officer, 2(1)(y)—Company Secretary in Practice, 2(1)(z)—Contributory, and 2(1)(z)(a)—Control or Controlling Interest. The Committee would, therefore, recommend that the modifications as proposed in respect of the aforementioned sub-clauses may be suitably incorporated in the definitions provided in the Bill.

12. Clause 2(1)(ze)—Deemed Director

1.45 Clause 2(1)(ze) specifies as follows:—

" 'deemed director' means a person under whose advice, instructions or directions, the Board of Directors is accustomed to act, but does not include a person who has been engaged by the company to advise it in a professional capacity."

1.46 In this regard, FICCI in their written submission suggested as follows:—

To remove all inadvertent confusion, the intention should be to cover such a person, if any, only when he is not a director/member of the Board (if he is a Board member, then he is already a part of the collective accountability).

1.47 The suggestion received from the PHDCCI on this clause is as follows:—

A person whose advice or opinion is only recommendatory and facilitates the Board in effective decision making, should not be considered as a deemed director. Further, if a person is already a member of the Board, he would become a part of the collective accountability.

1.48 The written comments received from the Ministry of Corporate Affairs on both the above said suggestions are as follows:—

"The concept of 'deemed director' is available even in section 5 of the existing Act [meaning of 'Officer who is in default'] in the form of the phrase 'a person in accordance with whose instructions or directions the Board is accustomed to act'.

The Bill only proposes to give this phrase a suitable name as 'deemed director'.

The intention is to include a person who directs or advises the directors or the Board in a deeming or clandestine manner should not escape from the liabilities under law.

In view of above, there may not be any necessity of any modification in the Bill on this matter."

1.48A. However, on further suggestions received and forwarded to the Ministry, the Ministry re-examined the matter and suggested that the term 'deemed director' may be considered to be omitted from the Bill since such term is covered within the definition of the term 'officer who is in default'.

1.49 The Committee would like the Ministry to review the concept of 'deemed director' and its desirability for the functioning of the Board, which is the body accountable to the shareholders and other stakeholders. Such a concept extraneous to the Board of Directors, as a collective entity, can only bring avoidable ambiguity in the functioning of the Board.

13. Clause 2(1)(zo)—Financial Institution

1.50 Clause 2(1)(zo) provides as under:—

" 'financial institution' includes a scheduled bank."

1.51 In their written memorandum, CII on this clause suggested as follows:—

The term 'financial institutions' be employed throughout the Bill to unify references and entities primarily regulated by RBI *i.e.*, scheduled banks, NBFCs and Public Financial Institutions (and their subsidiaries, given consolidated supervision by RBI of such entities) be included in the definition.

1.52 The Ministry in their written submission on the above said suggestion stated as follows:—

(i) Various entities being regulated by RBI have different objectives and since the term 'financial institution' has been defined in the RBI Act, the term 'financial institution' has been defined in the Bill [clause 2(1)(zo)] in an inclusive manner to include banks as well.

(ii) The term 'public financial institution' has been defined in the Bill clause 2(1)(zzt). This definition covers any financial institution which meets the criteria provided in the clause. Since clause 2(1)(zo) includes banks also, the banks would be covered under the definition of PFI as well, in case they meet the criteria provided in the Bill.

(iii) In view of above, there may not be any necessity of any modification in the Bill on this matter.

1.53 The Committee are of the view that the definition of the term 'financial institution' proposed in the Bill is not inclusive. The Committee also find that the term 'public financial institution' defined elsewhere in clause 2(1)(zzt) covers only those financial institutions, where the Government holds majority shareholding. It is, therefore, necessary that 'financial institution', if it is to be defined separately in clause 2(1)(zo), should be defined in an inclusive manner so as to comprise within its ambit all financial institutions including scheduled banks and NBFCs. If required, reference may be made to other Acts as well to broaden the ambit.

14. Clause 2(1)(zq)—Financial Year

1.54 Clause 2(1)(zq) of the Bill reads as under:—

"financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year,

in respect whereof financial statement of the company or body corporate laid before it in its annual general meeting is made up:

Provided that on an application made by a company or body corporate, the Tribunal may, if it is satisfied that the circumstances so warrant, allow any period as its financial year, whether that period is a year or not.

1.55 While forwarding their suggestions on this clause, various institutions/experts in their written memorandum suggested as follows:—

"(i) There should be transitional provision to enable companies presently having financial year ending other than on March 31, to meet the new requirement.

Companies should have flexibility to determine their financial year instead of being mandated to have 31st March. (FICCI)

(ii) Determination of financial year should be left to the concerned company, as is the case presently under the Act.

(iii) The flexibility to determine financial year ending should be left to the concerned companies and the new clause should be removed. The current provisions in section 212 of the Companies Act should be retained, along with the specific provision therein restricting the financial year-end of the subsidiary from exceeding that of the holding company by more than 6 months. (CII)

(iv) This definition does not provide flexibility to companies to choose their financial year. An Indian company with foreign subsidiaries and a different financial year may not be able to have a uniform financial year for the company and its subsidiaries. It is recommended that the companies be provided with the flexibility to determine their financial year.

(v) There is no transitional provision in the Bill to enable an existing company to fall in line with this new requirement if it has a financial year not ending on March 31. Therefore, a transitional provision may be made for such companies.

The power to allow any period as financial year whether that period is year or not may be given to the Central Government. (ICSI)

(vi) A company or a body corporate is mandated compulsorily to close its financial year on 31st March of the following year.

There is no provision for an existing company to change its financial year which ends on a date other than 31st March.

It is proposed that the bill may include a provision to enable a company to change its existing financial year which is other than 31st March, to fall in line with requirements of 2(1)(zq). (ICWAI)

(vii) The concept of a uniform financial year may pose problems for Indian companies which are subsidiaries of overseas corporate bodies having a different financial year. Thus exemption in this regard may be given to such companies.

This authority may be given to the Registrar of Companies. Alternatively, some guidelines should be laid down within which the Board of Directors should be

authorized to extend or reduce the period of a financial year, in case of extreme urgency, once in a block of four-five financial years or so.

There is no transitional provision to enable companies presently having financial year ending other than on March 31, to move to the new requirement. Therefore, a transitional provision may be put in place. (PHDCCI)

(viii) Determination of financial year should be left to the concerned company, as is the case presently under the Act.

The multinational companies prefer to have calendar year as their Financial Year. This freedom should not be curtailed.

If at all this provision is retained, then the power in the proviso should be given to the Regional Director or to the Registrar of Companies instead of to the Tribunal, as this is not a judicial or quasi judicial matter. If the concept of uniform Financial Year is retained in the Bill, then it is necessary to provide for a transitory provision, as to what should be done in respect of the then current Financial Year of the Company, if it is not ending on 31st March. (Bombay Chamber of Commerce and Industry).

(ix) Determination of financial year should be left to the concerned company, as is the case presently under the Companies Act, 1956. Multinational companies prefer to have calendar year as their financial year. This freedom should not be curtailed.

This provision needs altering. As it stands, it is a needless and unproductive interference in corporate affairs, which does nothing to enhance either reporting, or transparency, or shareholder value."

1.56 While forwarding their comments in respect of all the above said suggestions, the Ministry in their written information submitted to the Committee stated as follows:—

"(i) Attention is drawn to following recommendation of Irani Committee in Chapter IX of its Report

"The Companies Act at present does not contain any provision relating to the minimum period of a Financial Year. The Concept Paper has defined the Financial Year with the minimum period of six months. The Committee dwelt on the subject and came to the conclusion that the ***first financial year should begin from the date of incorporation and end on the immediately succeeding 31st March and the subsequent Financial Years should also end on 31st March every year****. The definition of Financial Year may be modified to indicate that the duration of the first Financial Year should be minimum three months instead of the six months proposed in the Concept Paper (2004). It was also suggested that the present provisions regarding laying down of the accounts before the shareholders within six months of the end of the Financial Year should continue."*

(ii) In view of above recommendations, suitable provisions were made in the Bill in clause 2(1)(zq) to provide that companies would follow 31st March ending financial year.

(iii) In view of above, there may not be any necessity of any modification in the Bill on this matter.

(iv) The intention behind provisions of the clause is to ensure uniformity in financial years. Attention, however, is drawn to proviso to this clause which provides that on an application made by a company or body corporate, the Tribunal may, if it is satisfied that the circumstances so warrant, allow any period as company's financial year, whether that period is a year or not. Therefore, any company which may have difficulty in complying with the provisions of this clause may make an application to Tribunal for necessary exemption. The suggestion to modify these provisions to empower Tribunal to grant exemption from these provisions to a class of companies also may be considered."

1.57 During evidence, Secretary, Ministry of Corporate Affairs on this issue also submitted as follows:—

"We should have a common parameter for comparison sake. So, we have to have a uniform financial year for the entire corporate sector."

1.58 While agreeing with the Ministry's view for providing uniformity in financial years, the Committee note that there is enough flexibility built in the provisions to enable a company to make an application to the Tribunal for exemption from uniformity. The Committee would, however, recommend that keeping in view the large number of suggestions received on this issue, a provision may be made for empowering the Tribunal to grant exemption from the applicability of this sub-clause to a class of companies.

1.59 In view of the serious concern expressed by the Committee to define the term 'fraud' in company law, the Secretary, Ministry of Corporate Affairs in his deposition before the Committee stated as follows:—

"There was not even a definition of fraud even in the present Act. So, what we have tried to do is the definition of the fraud. We are also having some provisions of the special courts for these types of things so that the fraud types of things can be disposed off very quickly."

1.60 In view of above, the Ministry in their written submission have proposed to add a new sub-clause after clause 2(1)(zr) in the definition clause to define the term 'fraud', which is given as under:—

" 'Fraud' in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with his connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or other persons associated with the company, whether or not there is any wrongful gain or wrongful loss."

15. New provision for defining 'Fraud'

1.61 While acknowledging the acceptance by the Ministry of the suggestion of the Committee to bring in a new sub-clause for defining 'fraud', the Committee recommend that the proposed new sub-clause may be suitably incorporated in the Bill.

16. Clause 2(1)(zs)—Free Reserves

1.62 Clause 2(1)(zs) in the Bill provides that:—

" 'free reserves' means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend."

1.63 Suggestions as received through written memorandum from various institutions on this clause are as under:—

(i) 'Free Reserves' should be redefined to include securities premium account. (ICSI, FICCI and PHDCCI)

(ii) The definition of the term 'Free Reserves' should be delinked from declaration of dividend since under the 1956 Act as also under the Companies Bill, 2008, there are restrictions prescribed for declaration of dividend out of Free Reserves. The definition of the term 'free reserves' which is contained in the Companies Acceptance of Deposit Rules, 1975 should be suitably modified. We suggest clause 2(zs) should read as under:-

'Free Reserves' includes the balance in the securities premium account and any other reserves shown or published in the balance sheet of the company and created by appropriation out of the profits of the company, but does not include the balance in any reserve created.

1.64 The written comments received from the Ministry of Corporate Affairs in regard to all the above said suggestions are given as follows:—

"This issue has been raised by many Chambers/Bodies. In view of provisions of clause 46 (utilization of share premium) and the nature of amount raised through share premium, the Bill does not allow the share premium account to be a free reserve. The logic is that since premium is collected alongwith face value of share, the premium is of the nature of capital and should not be allowed to be treated as free reserves. Because if it is allowed to be treated as free reserves, dividend can be declared out of it, which would amount to declaration of dividend out of capital which may not be a prudent practice.

However, since capital is taken into account while calculating 'net worth', the share premium account should also be allowed to be taken into consideration while calculating 'net worth', Therefore, share premium account should be allowed to be part of 'net worth' as share premium only and not as part of 'free reserves'."

1.65 Further, in response to the suggestion regarding alteration of the definition of the term 'Free Reserves' and its implications on Clause 164, the Ministry in their written submission commented as follows:—

"The suggestion is noted in context of modification in clause 164 of the Bill to allow inclusion of 'securities premium amount' also in the calculation of limits of Inter-corporate loans and investments alongwith 'paid up share capital' and 'free reserves'."

1.66 The Committee, agree with the Ministry's view that securities premium account, being in the nature of capital, should not be allowed to be treated as 'free reserves', out of which dividend can be declared. However, the Committee do not have any reservation if, Clause 164 of the Bill, dealing with inter-corporate loans/investments, is modified to allow inclusion of 'securities premium account' also in computing the limits of inter-corporate loans and investments together with paid-up share capital and free reserves.

17. Clause 2(1)(zza)—Key Managerial Personnel

1.67 Clause 2(1)(zza) provides as under:—

"key managerial personnel", in relation to a company, means—

(i) the Managing Director, the Chief Executive Officer or the Manager and where there is no Managing Director or Manager, a whole-time director or directors;

(ii) the Company Secretary; and

(iii) the Chief Financial Officer.

1.68 Clauses 2(1)(r) and 2(1)(s) read as under:—

(r) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;

(s) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;

1.69 In this connection, suggestions as furnished by various institutions on this clause are as under:—

(a) Whole-time directors should be recognized as a key managerial personnel irrespective of whether a company has Managing Director/Manager. (Bombay Chamber of Commerce and Industry).

(b) The term CEO should be described/defined in way which covers the officer performing the functions of CEO. (Same principle should also apply to CFO). (FICCI)

(c) As an example, since the existing Act refers to the MD as one exercising substantial powers of management in a company and a 'Manager' as one who exercises powers of management over a substantial part of the company; therefore, a combination of these could be used to define a CEO (by whatever name called)—for example, as one who—under the superintendence, control and direction of the Board, is entrusted with substantial powers of management, or has the management of the whole or substantially the whole of the affairs of the company." (FICCI)

1.70 The Ministry have submitted their comments on this issue as under:—

(i) The intention is to provide that in case of managerial personnel, if an MD or a CEO or manager is employed, the whole-time director(s), who is/are normally directors in the whole-time employment of the company looking into specific

business areas like Sales, Finance or Human Resources should not be included in the definition of term KMP.

(ii) Attention is drawn to clause 2(1)(zzi) which defines the term officer who is in default'. A whole-time director is covered under such term. In view of above, there may not be any necessity of any modification in the definition of term 'Key Managerial Personnel' on this matter.'

(iii) The suggestions for describing role or functions of these officers in the Bill in a clearer manner are noted to be addressed appropriately with legislative vetting. The intention is that while these officers should be appointed in all companies in respect of which these would be mandated, companies should have flexibility in appointing appropriate persons on these positions themselves and law should not mandate any education qualification or experience etc.

1.71 Keeping in view the suggestions made for greater clarification in the definition of 'Key Managerial Personnel' (KMP), the Committee recommend that whole-time Directors should also be recognized as a KMP irrespective of whether a company has Managing Director/ Manager.

18. Clause 2(1)(zzd)—Managing Director

1.72 Clause 2(1)(zzd) reads as follows:—

" 'managing director' means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with the management of the whole, or substantially the whole, of the affairs of the company."

1.73 ICSI in their written memorandum submitted to the Committee have stated that this definition would cause hardship to number of companies (including large companies) which have more than one managing director, as permitted under the existing Companies Act.

1.74 The Ministry in this regard stated that this suggestion is noted to addressed appropriately with legislative vetting.

1.75 The Committee recommend that the need for having more than one Managing Director in a company should be suitably reflected in the definition.

19. Clause 2(1)(zzi)—Officer who is in default

1.76 Clause 2(1)(zzi) reads as follows:—

"officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means all or any of the following officers of a company, namely:—

(*i*) whole-time director or directors;

(*ii*) other key managerial personnel;

(*iii*) where there is no key managerial personnel such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(*iv*) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(*v*) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act other than a person who gives advice to the Board in a professional capacity;

(*vi*) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(*vii*) in respect of the issue or transfer of any shares of a company, the share transfer agents, bankers, registrars and merchant bankers to the issue or transfer.

1.77 CII on this clause suggested that several matters come before the Board and assenting to those should not make the director in question liable if the act in question subsequently results in contravention. Some sort of test of knowledge and application of due care and caution may be provided as a defence.

1.78 On the above said suggestion the Ministry of Corporate Affairs in their written submission commented as under:—

"(i) It is felt that the above provisions adequately provide for safeguards to protect a person who exercised due diligence and care and skill at the time of taking a decision, even if the decision is called in question subsequently.

(ii) In view of above, there may not be any necessity of any modification in the Bill on this matter."

1.79 Further, in response to a suggestion by the Committee, the Ministry proposed an alternate clause for this, which is given as under:—

" '2(1) (*zzi*) officer who is in default', for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means all or any of the following officers of a company, namely:—

(i) to (iii) *****

(iv) promoters; (New category proposed to be included)

Subsequently, item nos. (iv) to (vii) shall be changed to (v) to (viii).

(*vi*) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than *an advice to the Board* given in a professional capacity."

1.80 The Committee would like the above modifications regarding inclusion of 'promoters' as a new category under 'officer who is in default' and exclusion of persons advising the Board in a professional capacity to be incorporated. In this connection, the Committee would like to emphasise that it must also be ensured that bonafide conduct/decisions are duly protected.

20. Clause 2(1)(zzk)—One Person Company

1.81 Clause 2(1)(zzk) reads as follows:—

"One Person Company" means a company which has only one person as a member.

1.82 PHDCCI in their written memorandum suggested as follows:—

All provisions pertaining to OPC may be consolidated in one place. It may be clarified whether the OPC would be allowed to be formed by a person other than an individual. Further, many issues such as whether the owner is required to bring the entire share capital, taxability of OPC etc. would also need to be defined.

1.83 Another suggestion on this issue states as follows:—

(i) Whether the new entity of One Person Company should be clothed with the privileges of incorporation as a separate legal entity with a common seal and perpetual succession.

(ii) Perhaps the new entity of OPC would be of help to small traders and other business concerns, at present functioning as sole proprietorship, to form limited companies and get the protection of limited liability. But for this purpose, it is not necessary to introduce the new concept and dilute the company law to a great extent. There are already other avenues open to the above small businessman in the form of Limited Liability Partnership or as a private company.

(iii) There are already several lakhs of companies in the country consisting of mostly private ones. If the new entity is allowed, there is expected to be much more proliferation of corporations with no tangible benefit to the country.

(iv) Whether the government administration can cope with a large increase in company population that the new concept is expected to bring around.

(v) It is, therefore, submitted that the inclusion of One Person Company in the memorandum and other provision is not in the overall interest of the corporate sector and may be deleted from the bill.

1.84 The written comments as received from the Ministry of Corporate Affairs on both the above said suggestions are as under:—

(i) This may not be necessary since reference to One Person Company (OPC) has not appeared in the Bill at many places. Further any exemption for such companies would be provided under notifications to be issued under clause 421 of the Bill.

(ii) It is intended that only natural persons should be allowed to set up OPCs. Once the experience is gained on implementation of these provisions, further modification may be considered.

(iii) Since OPC would be a company with only one member, the entire share capital would have to be brought in by the said member only. Further, taxation aspects for OPCs would be covered under Income-tax Act, 1961.

(iv) Since this provision is likely to benefit professionals, individual experts and other entrepreneurs which are presently part of small and medium sector of the economy, it is suggested that these provisions may be considered to be retained in the Bill.

1.85 Since One Person Company (OPC) is a new concept proposed in the Bill, the Committee believe that the regime applicable to them including the exemptions available to them are made clear in the Bill itself.

21. Clause 2(1)(zzl)—Paid up Share Capital

1.86 Clause 2(1)(zzl) provides to reads as follows:—

"Paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued, but does not include any other amount received in respect of such shares, by whatever name called.

1.87 In this regard, CII in their written memorandum stated that the definition does not clarify that amount capitalized on issue of bonus shares, shares issued against consideration other than cash and other arrangements would be included as paid-up capital. They have, therefore, suggested that the Clause should be suitably amended.

1.88 The Ministry noted the above said suggestion to be addressed appropriately with legislative vetting.

1.89 The Committee would recommend that the definition of "paid-up share capital" should also include the amount capitalized on issue of bonus shares, shares issued against consideration other than cash and other arrangements etc.

22. Clause 2(1)(zzp) & (zzs)—Private Company

1.90 Clause 2(1)(zzp) & (zzs) read as under:—

"private company" means a company which, by its articles,—

(*i*) restricts the right to transfer its shares;

(*ii*) limits the number of its members to fifty:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(*iii*) prohibits any invitation to the public to subscribe for any securities of the company;

"public company" means a company which is not a private company or such private company which is a subsidiary of a company which is not a private company;

1.91 In this regard, it has also been suggested that the minimum-capitalization norms as existing under the 1956 Act be retained with a provision for revising it from time to time by a notification.

1.92 The Ministry in their written comments on this suggestion stated as follows:—

"The provisions of section 3(1)(iii) and 3(1)(iv) of the existing Act provide for the requirement of minimum paid up share capital of Rs. 1 lakh and Rs. 5 lakh for private companies and public companies respectively. Since these provisions are considered necessary to ensure that only serious persons with sufficient financial stake get a company incorporated, it may be considered to include these provisions in the Bill."

1.93 When the Committee asked the Ministry to consider the suggestion for a minimum capitalization norm, the Ministry proposed to amend the clause as follows:—

"2(1)(zzp) "private company" means a company *which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed*, and by its articles—

(*i*) restricts the right to transfer its shares;

* * * * * * * * * * * *

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2(1)(zzs) "public company" means a company which—

(a) is not a private company or a one person company;

(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed; and

(c) is a private company which is a subsidiary of a company which is not private company or a one person company.

1.94 The Committee are of the view that a capitalization threshold higher than that proposed above may be provided for definition of 'private company' and 'public company', as the Bill also proposes new forms like 'small companies' and 'One Person Companies' with lower capitalization limits.

23. Clause 2(1)(zzq)—Promoter

1.95 Clause 2(1)(zzq) reads as under:—

"promoter" means a person who has—

(*a*) been named as such in a prospectus; or

(*b*) control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise:

Provided that nothing in sub-clause (*b*) shall apply to a person who is acting in a professional capacity.

1.96 On this clause, various institutions in their written memorandum submitted to the Committee suggested as follows:—

(i) Inclusion of "or (c) been instrumental in the formulation of a plan or program pursuant to which the securities are offered to the public in a public offer by the company" after sub-clause (b) in the definition under clause 2(1)(zzq) of the Bill. This will bring the definition of "promoter" in conformity with the definition provided in the DIP Guidelines.

Further, a carve-out with regard to applicability of clauses imposing duties or obligations, in respect of 'promoters', should be created for companies incorporated under the previous companies law, which do not have any identifiable promoters, (CII).

(ii) The expression "Promoter", is not justified in the Companies Act and should be deleted. It is more a capital market terminology, but extensively used in the media to create a separate "class".

The purpose for which "Promoter" is sought to be defined in Law (as distinct from Regulations) is unclear, more so since the "control sequence" which is Shareholder-Boards-Management is well defined in existing law. It is the Board which has control over the affairs of the Company and the same is delegated to Management. To define a nebulous and extra constitutional authority who in law "has control over affairs of Company" is wrong in fact, as well as holding potential to severely compromise the accountability of the Board and Management.

It is the Board which has "Control over Affairs of the Company" under Law.

Incidentally, The JJ Irani Committee had suggested that "Promoters" of a company should be identified by each company at the time of incorporation and in its Annual Return. (FICCI)

(iii) The need for definition of promoter separately needs to be reviewed. Alternatively, greater clarity may be brought in about the purpose for which a promoter is sought to be defined. Promoters whose names are mentioned in the offer document or the prospectus may change after a period of time or may transfer his stake in the company. It needs to be clarified that a person under such circumstances would not be considered as a promoter.

Further, the term 'control' has not been defined for this purpose. To maintain harmony in legislations, definition of 'control' may be defined on the same lines as in SEBI Regulations. Otherwise it may lead to interpretative difficulties. (PHDCCI).

1.97 The comments of the Ministry in respect of all the above said suggestions are as under:—

(i) It is felt that definition proposed in the Bill is correct. The suggestion made for specifically including a person who has been instrumental in the formulation of a plan or program pursuant to which the securities are offered within the purview of the definition, may not be necessary as this appears to have been covered within the definition proposed in the Bill.

(ii) A view is being expressed that the term promoter,' should, in fact, be included in the term 'officer in default' specifically in connection with offences in which the promoters may have possible role. This is being considered important since most of the companies in India are owned/controlled by promoters/their families. In view of this, the suggestion for including suitable provisions in the Bill for ensuring due accountability and liability on promoters may be considered.'

(iii) The term 'promoter' defined in clause 2(1)(zzq) proposes a person to mean promoter if he has either been named in the prospectus as promoter or if he controls the affairs of the company. It is not the intention that in the likelihood of change in the 'promoter' of a company over a period of time, the promoter initially indicated in the offer document should continue to remain liable even for the actions of the company after the change in promoter has taken place.

(iv) The suggestion to define the term control' in the Bill may be considered.

1.98 The Committee agree with the above views expressed by the Ministry. As suggested, the term 'control' may also be defined in the Bill in the context of the definition of 'promoter'.

24. Clause 2(1) (zzs)—Public Company

1.99 Clause 2(1) (zzs) reads as under:—

"public company" means a company which is not a private company or such private company which is a subsidiary of a company which is not a private company.

1.100 Suggestions as received from various institutions/experts on this clause are as under:—

Any private company that is subsidiary of a public company is to be understood as a public company. However this definition has often raised concerns regarding the exact nature of such companies—are these companies private companies for all purposes other than where specifically provided in the Act or are these companies public companies for all purposes, in which case, their continued status as a private company is questioned. Accordingly, we recommend introduction of a new definition of *'Deemed Public Company'*, which shall essentially be private companies, which are subsidiaries of public companies. These companies should be treated as private companies for all purposes except where specifically provided

to the contrary under the Bill. The way the current definition of Public Companies is drafted *("private company which is a subsidiary of a company which is not a private company")*, implies that a private company that is a subsidiary of a One Person Company or a small company can also be construed as a public company. In our view, this would lead to an absurd and unintended consequence.

It is therefore suggested that the definition of a public company be amended to:

"a company which:

(i) is not a private company, a one-person company or a small company,

(ii) has a minimum issued and paid up capital of Rs. Five lacs."

1.101 The written comments as furnished by the Ministry of Corporate Affairs on all the above said suggestions are as follows:—

(i) Suggestions have been received that the phrase 'a private company' which is subsidiary of 'a public company' may be omitted from the Bill, wherever it appears, since such a company, by definition of public company (clause 2(1)(zzs)) is a 'public company'.

(ii) It is felt that such phrase may be omitted from the Bill wherever it appears.

(iii) It is further suggested that a time period of 6 months may be considered to be given to a private company, which gets converted into public company, to comply with the following:

To increase number of its members to 7;

To increase number of its directors to 3; and

To increase amount of paid up share capital to Rs. 5 lakh.

(iv) Further in case such a company fails to comply with above requirements within a period of six months, the law may provided that liability of all members and directors of such a company would become unlimited and such a company would be liable to be struck off from the register of companies, besides payment of heavy punishment.

1.102 In response to the Committee's intervention on this basic definition, the Ministry have proposed to amend the clause 2(1)(zzs) as under:—

"2(1) (zzs) 'public company' means a company which is not a private company or such private company which is a subsidiary of a company which is not a private company:

Provided that a company which has become subsidiary of a public company under this clause shall, within a period of six months of becoming subsidiary of a public company,—

(i) increase the number of its members to seven or more;

(ii) increase the number of its directors to at least three; and

(iii) increase the amount of its paid up capital to rupees five lakh or more.

Provided further that in case such a company fails to comply with requirements provided in this clause within such period of six months, the liability of its members and directors would become unlimited and, without prejudice to any other action, the name of such a company would be liable to be struck off from the register of companies.

1.103 While endorsing the proposed amendment for incorporation in the Bill, the Committee would like to point out that the modification proposed above by the Ministry still leaves scope for some ambiguity in the basic definition of "public company." It thus needs to be further clarified as follows:

"public company means a company which is not a private company, One Person Company or a small company and includes all subsidiaries of public companies."

1.104 The threshold capitalization limit proposed to qualify as a 'public company' may also be raised, keeping in view the lower limits required for private companies, OPCs and small companies. Accordingly, the phrase 'a private company' which is subsidiary of a public company may be omitted from the Bill wherever it appears.

25. Clause 2(1)(zzv)—Red Herring Prospectus

1.105 Clause 2(1)(zzv) reads as follows:—

"red herring prospectus" means "a prospectus which does not include complete particulars of the quantum or price of the securities or class of securities included therein".

1.106 On this clause various institutions/experts in their written memoranda submitted to the Committee suggested that the definition of red herring prospectus should be amended to bring the same in line with the SEBI DIP Guidelines and there should be deletion of words 'or class of securities' from the definition provided in the Bill.

1.107 With regard to the suggestion regarding deletion of the words *"or class of securities"* from the definition in the Bill, the Ministry stated that the *suggestion is noted to be addressed appropriately with legislative vetting.*

1.108 The Committee desire that as accepted by the Ministry, the words 'or class of securities' may be deleted from the definition of 'red herring prospectus' in clause 2(1)(zzv).

26. Clause 2(1)(zzy)—Related Party

1.109 Clause 2(1)(zzy) reads as under:—

"related party with reference to a company means—

(*i*) a relative of a director or key managerial personnel;

(*ii*) a firm, in which a director, manager or his relative is a partner;

(*iii*) a private company in which a director or manager is a member or director;

(*iv*) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent of its paid-up share capital;

(*v*) any body corporate whose Board of Directors, managing director, or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(*vi*) any person under whose advice, directions or instructions a director or manager is accustomed to act;

(*vii*) any company which is—

(*A*) a holding, subsidiary or an associate company of such company;

or

(*B*) a subsidiary of a holding company to which it is also a subsidiary:

Provided that nothing in sub-clauses (*v*) and (*vi*) shall apply to the advice, directions or instructions given in a professional capacity."

1.110 In this regard, ICSI in their written memorandum have suggested that in the definition of Related Party, director and Key Managerial Personnel may be added as sub-clause (1)(i) and consequently existing sub-clauses (i) to (vii) be renumbered.

1.111 While accepting the above-said suggestion, the Ministry noted the same to be addressed appropriately with legislative vetting.

1.112 The Committee would like the aforementioned suggestion for inclusion of Director and Key Managerial personnel in the definition of 'related party' under clause 2(1)(zzy) to be incorporated.

27. Clause 2(1)(zzz)—Relative

Clause 2(1)(zzz) specifies that relative, with reference to any individual, means the spouse, brother, sister and all lineal ascendants and descendants of such individual related to him either by marriage or adoption.

1.113 Written suggestions received from various institutions/experts on this clause are as follows:—

(i) The definition should provide a definite list of persons who would be considered as relatives in relation to an individual.

(ii) The definition in the Bill is ambiguous as different personal laws govern the concept of lineal ascendants and descendants. This will lead to the expansion of the scope to persons beyond the set of 24 relations as per current provisions of the Companies Act. In order to ensure legitimate compliance by a company of the provisions and enforcement thereof, a definitive list of relations should be provided. Further in the context of passage of the LLP Bill, 2008; which does not prescribe any upper limit on the number of partners in a LLP firm; it would be practically unfeasible to maintain an account of transactions undertaken by the broad-range of relatives

of a multitude of partners. It is thus, recommended that the term 'relative' should be defined to include only the 'spouse and dependent children'. (CII).

(iii) Some other relations like brother's wife, sister's husband, son's wife, son's son's wife, daughter's husband etc. should also be covered in the definition of 'relative'. (ICSI).

(iv) The words in the definition "related to him either by marriage or adoption" in this definition are confusing because only the "spouse" of an individual is related to him by marriage. However, all lineal ascendants and descendants of spouse will also be added to the list of relatives. This does not appear to be the intention, hence, the definition be revised as under—

"relative", with reference to any individual, means the spouse, brother, sister and all lineal ascendants and descendants of such individual related to him either in the above manner or by adoption. (ICWAI).

(v) To avoid any ambiguity, a list of relatives may be provided in the Bill, as under the current Act. (PHDCCI).

(vi) The word "marriage" in this definition appears to be redundant and should be deleted. (Bombay Chamber of Commerce and Industry).

(vii) It makes sense to simplify this: parents (including step-parents), spouse, children including their spouses, brothers and sisters (including their spouses).

(viii) A definitive list of relations should be provided which can be shorter than the current list of 24 specified relations. Consideration may be also given to the Accounting Standards (AS18), which specifies a set of 6 relations.

1.114 The comments of the Ministry on the above-said suggestions are as follows:-

(i) Attention is drawn to the following recommendation made by Irani Committee in Chapter III:—

" 'Relative' should mean the husband, the wife, brother or sister or one immediate lineal ascendant and all lineal descendents of that individual whether by blood, marriage or adoption."

(ii) In view of above recommendation, the definition of relative has been provided in the Bill in clause 2(1)(zzz) as under:—

(zzz) "relative", with reference to any individual, means the spouse, brother, sister and all lineal ascendants and descendants of such individual related to him either by marriage or adoption;

(iii) The intention is not to prescribe in the Bill a detailed list indicating who could be relatives of an individual. The intention is to define this term in a clear and unambiguous manner so that administration of provisions relating to related party transactions and conflict of interests are suitably addressed in the Bill.

(iv) The suggestions to make this definition to cover all close relatives of an individual whether by blood, marriage or adoption including those from his/her spouse side are noted to be addressed suitably with legislative vetting.

1.115 During evidence, the Committee desired that the definition of relative should be in the same pattern as the definition of relative in the Income Tax Act. The representative of Ministry of Corporate Affairs in this regard replied as under:—

"It is much wider than the Income Tax Act and it includes in its ambit very wide circle of relatives, which are prohibited."

1.116 While suggesting an alternative clause in this regard, the Ministry in their written information have stated as follows:—

2(1)(zzz) Meaning of "relative"—A person shall be deemed to be a relative of another, if, and only if,—

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated below:

1. Father (including step-father)
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brother).

20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.
23. Wife's brother.
24. Wife's sister.
25. Husband's brother.
26. Husband's sister.
27. Son's wife's Mother.
28. Son's wife's Father.
29. Son's wife's Brother.
30. Son's wife's Sister.
31. Daughter's husband's Mother.
32. Daughter's husband's Father.
33. Daughter's husband's Brother.
34. Daughter's husband's Sister.

1.117 The Committee believe that the detailed list of 34 relatives proposed by the Ministry for inclusion in the definition of 'relative' provided in the Bill is longer than the current list of 24 specified relations provided in the existing Act. The Committee are of the view that a broader definition may be formulated instead of listing out all the relatives in the statute. If required, an exhaustive list may be provided by way of Rules.

28. Clause 2(1)(zzzi)—Subsidiary Company

1.118 Clause 2(1)(zzzi) reads as follows:—

"subsidiary company" or "subsidiary", in relation to any other company (hereinafter referred to as the holding company), means a company in which the holding company—

(*i*) controls the composition of the Board of Directors; or

(*ii*) exercises or controls more than one-half of the total voting power.

Explanation.—For the purposes of this clause, a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (*i*) or sub-clause (*ii*) is of another subsidiary company of the holding company."

1.119 Suggestions as furnished by various institutions/experts through their written memoranda on this clause and the comments of the Ministry thereon are as follows:—

(i) The definition of subsidiary in the Bill should be modified to include a company in which the holding company holds voting power with/through two or more subsidiary

companies as also the other carve outs as currently provided under Section 4(3) of the Act. (PHDCCI and Bombay Chamber of Commerce and Industry).

(ii) (a) The circumstances wherein a company shall be deemed to control the composition of the Board of Directors of another company as specified in sub-clause (i) of clause 2(1)(zzzi) may be specified in the Bill.

(b) The definition of subsidiary may be modified to include a company in which the holding company holds voting power with/through one or more subsidiary company(ies). (ICSI).

(iii) Definition of subsidiary to be in line with definition of subsidiary under IFRS (FICCI).

(iv) In the new Bill no separate definition of the expression the 'Company' is given for determining whether one Company is a subsidiary of another or not. The omission of the words 'any body corporate' from the definition of 'Company' given in the Bill will create a problem in as much as a foreign Subsidiary Company will not be regarded as Subsidiary Company because the foreign Subsidiary Company is not covered by the definition of Company given in Clause 2(1)(t) because that would be a company neither incorporated under the existing Companies Act nor any previous Companies Act in India. This definition be, therefore, be amended to cover foreign Subsidiary Companies. (Indian Merchants' Chamber).

(v) Continuance with the previous definitions of holding and subsidiary company is suggested.

1.120 With regard to the suggestion at Sl. No. (i) the Ministry in their written comments stated that:

"Since the provisions in respect of holding and subsidiary companies and regulation of inter-corporate loans and investments are important from the point of view of avoiding diversion of funds and protection of interests of minority shareholders, the suggestions for review of these provisions, including for providing any restriction on the number of subsidiary companies a company may have, are noted to be addressed appropriately with legislative vetting.

1.120 A. With regard to the suggestion at Sl. Nos. (ii), (iv) & (v) the Ministry stated that the suggestions are noted to be addressed appropriately with legislative vetting."

1.121 During evidence, the representative Ministry of Corporate Affairs on the issue of diversion of funds, stated as under:—

"As far as diversion of funds is concerned, we found that opening up of "N" number of subsidiaries is a very major source of diversion of funds. As of today, under the Companies Act, there Is no limit as to the number of subsidiaries a holding company can really open. It goes down even to the seventh line, eighth line or ninth line of subsidiaries. So, a major suggestion which has come up during the course of discussions before the hon. Committee which the Ministry has agreed to, is that we will stop it only at the first line of subsidiary."

1.122 In the light of the significance of the aforementioned suggestions for including in the definition of 'subsidiary company', a company in which the holding company holds voting power through two or more subsidiary companies as also specifying the circumstances wherein a company shall be deemed to control the composition of the Board of Directors of another company, the Committee recommend that these may be considered for incorporation in the Bill, particularly in the context of inter-corporate loans/investments and prevention of diversion of funds. It also needs to be clarified in the definition that it will also cover within its ambit foreign subsidiary companies as well. While re-formulating the definition, alignment with IFRS as also the definition provided in the existing Act, which is more inclusive, may also be kept in mind.

CHAPTER II

INCORPORATION OF COMPANIES

Clause 3—Formation of Company

2.1 This clause seeks to provide minimum number of persons to form a public, private or One Person Company for any lawful purpose, by subscribing their names to the memorandum.

2.2 Clause 3(1) reads as under:—

"A company may be formed for any lawful purpose by any—

(*a*) seven or more persons, where the company to be formed is to be a public company, or

(*b*) two or more persons, where the company to be formed is to be a private company, or

(*c*) one person, where the company to be formed is to be a One Person Company,

by subscribing their names or his name to a memorandum in the manner prescribed and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of a One Person Company shall indicate the name of the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company:

Provided further that it shall be the duty of the member of a One Person Company to intimate the Registrar the change, if any, in the name of the person referred to in the preceding proviso and indicated in the memorandum within such time and in such form as may be prescribed, and any such change shall not be deemed to be an alteration of the memorandum.

(*2*) A company formed under sub-section (*1*) may be either—

(*a*) a company limited by shares, or

(*b*) a company limited by guarantee, or

(*c*) an unlimited company."

2.3 In their written memorandum submitted to the Committee, ICSI stated that written consent should be taken from the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company. Therefore, the words, 'with his prior written consent' be added after the words, 'the name of the person'.

2.4 One more suggestion received on this clause is given as under:-

One member company will be misleading & may result into cheating of public lured by the name "Limited Co." and one member death will lead to chaos. Rationale for permitting one member company is unexplained & unjustified. He can not have Board meeting or A.G.M. etc.

2.5 The Ministry in their written submission on this suggestion stated as under:

The Expert Committee on Company Law (Dr. Irani Committee), in its report (Chapter III) had *inter-alia* suggested that:

"With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.

The concept of 'One Person Company' may be introduced in the Act with following characteristics:- (a) OPC may be registered as a private Company with one member and may also have at least one director; (b) Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member. (c) Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies."

In view of the above recommendations, the concept of 'One Person Company' has been inserted in the Companies Bill, 2009 in clause 2(1)(zzk).

Proviso to clause 3(1) of the Companies Bill, 2009 provides that OPC shall indicate the name of the person, who will be member of the company in the event of the subscriber's death, disability or otherwise.

Also clause 5 (1)(a) of the Companies Bill, 2009 provides for One Person Company to use "OPC Limited" as last letters and word of the name of the company. This will give an indication to any person dealing with such company that it is a one person company.

Exemption to OPC may be considered as per clause 421 of the Companies Bill, 2009.

The suggestion for legal requirement in the Bill for obtaining prior written consent of the nominee by the sole member of the OPC may be considered alongwith an enabling provision for the person who has given his consent, to withdraw it.

2.6 In the light of the Ministry's reply, the Committee recommend that necessary modifications may be made in the clause providing for written consent with right to withdraw, from the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the one person company.

Clause 4—Formation of Companies with charitable objects etc.

2.7 This clause empowers the Central Government to register an association as limited company having charitable objects without adding to its name the words "Limited", "Private Limited" or "OPC Limited".

2.8 Clause 4(11) reads as under:-

"Where a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors of the company and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both."

2.9 On the above said clause, the ICSI suggested that in case of companies, the penalty may be restated in the range of five lakh rupees to twenty five lakh rupees. Also, for directors penalty may be restated as Rs. twenty five thousand to Rs. five lakh.

2.10 The comments of the Ministry of Corporate Affairs on this suggestion are as follows:-

"Keeping in view the importance of compliance with these provisions, it appears that the amount of punishment and penalty provided is reasonable.

In view of above, there may not be any necessity of any modification in the Bill on this matter."

2.11 The Committee agree with the views of the Ministry that in view of the need for ensuring compliance by the companies formed with charitable objects etc., the quantum of punishment and penalty proposed may not be reduced.

Clause 5—Memorandum

2.12 This clause seeks to provide for the requirements with respect to memorandum of a company.

2.13 Clause 5(1)(e) reads as under:

"in the case of a company having a share capital,—

(*i*) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(*ii*) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name."

2.14 In this regard, in their written memorandum, SEBI suggested that:-

This provides for shares of a fixed amount. This means that the shares would have a face value. Not only the use of face value has lost relevance, but also it creates confusion in the market when the shares are split/consolidated. The investors are more comfortable with the price per share, return per share, etc. It is, therefore, suggested the shares may not have any face value.

2.15 While replying to the above said suggestion, the Ministry in their written information stated as under:

"It is felt that the requirement of division of share capital of a company into shares of a fixed amount is necessary to ensure that all shares of the company are of same value. These provisions are considered very essential and there is no necessity of any modification on this matter."

2.16 While forwarding further information on this Clause, the Ministry in their written replies stated as follows:

(i) The provisions of the Companies Act as well as Companies Bill provide that share capital of the company shall be divided into shares of a fixed amount. The face value of share is relevant because:-

(a) the amount of share capital in the books of the company is linked to the number of shares and the face/par value of the shares; and

(b) it allows shareholder to compare the face value with the issue price or market price of the share and make informed decisions for investments.

(ii) Omission of the concept of fixed/face value of shares may, therefore, not be necessary and should not be considered since this may create more confusion in the minds of investors/shareholders and general public.

2.17 While agreeing with the views expressed by the Ministry, the Committee recommend that the concept of face value of shares may be retained, as it allows shareholders to compare the face value with the issue price or market price of the share and make informed decisions for investments.

Clause 6—Articles

2.18 This clause seeks to provide the contents and model of articles of association. The articles may contain an entrenchment provision also.

2.19 Clause 6 (5) reads as under:

"Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions."

2.20 In their written submission ICSI on this Clause stated that after the words, 'of such provisions' the words, 'in such form as may be prescribed' may be added.

2.21 While accepting the above said suggestions endorsed by the Committee, the Ministry in their written information stated that the suggestion has been noted to be addressed appropriately with the legislative vetting.

2.22 The Committee desire that necessary modification may be made by adding the words, 'in such form as may be prescribed' after the words, 'of such provisions' in Clause 6(5).

Clause 7—Incorporation of Companies

2.23 This clause seeks to provide for the procedure to be followed for incorporation of a company.

2.24 Clause 7(1)(b) reads as under:

"Clause 7(1)(b) provides that a declaration in the prescribed form by an advocate, a Chartered Accountant, Cost Accountant or Company Secretary, who is engaged in the formation of the company, or by a person named in the articles as a director, manager or Secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with."

2.25 The suggestion of ICSI on this clause is as follows:

After the words 'of the company' and before 'by a person', the word, 'or' may be replaced with 'and'.

After the word 'company secretary' and before the word 'who is engaged' the word 'in practice' may be inserted.

2.26 In response, the Ministry in their written submission stated as under:-

(i) The suggestion is to make requirements for certificate to be given both by the professional as well as by director or manager or secretary. Since this may ensure more accountability, the suggestion may be considered.

(ii) The suggestion is noted to be addressed appropriately with legislative vetting.

2.27 With a view to ensuring greater accountability, the Committee would recommend that necessary changes may be made in clause 7(1)(b) requiring certificate of compliance under this clause to be given both by the professional as well as by Director/Manager/ Secretary of the Company.

Clause 9—Effect of Memorandum and Articles

2.28 This clause seeks to provide for the effect of memorandum and articles whereby the memorandum and articles shall be binding on the company and the members to the extent as if they respectively had been signed by the company and by each member.

2.29 Clause 9 reads as under:

"(*1*) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(*2*) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company."

2.30 The suggestions received from various Institutions/experts on this clause are as follows:-

(i) Provision akin to Section 9 should be inserted in the Companies Bill, 2009 (CII).

(ii) Add the following as Sub-clause (3) in Clause 9:

"(3) Any contract or arrangement between the shareholders including in respect of voting rights, transfer of shares, management of the Company, shall not become non-enforceable as a contract *inter-se* between the parties to such contract merely because it is not mentioned in the Company's Articles of Association, even though the same shall not bind the Company if it is not contained in the Company's Articles of Association. (Bombay Chamber of Commerce and Industry)

(iii) It is proposed that to give teeth and make contractual agreements *inter-se* between Joint Venture Partners/Promoters enforceable as elaborated above, necessary provisions be built in new Companies Bill.

2.31 In response to the above said suggestion, the Ministry in their written replies stated as follows:-

The relevance of provisions of section 9 of existing Act was examined in view of recommendations made by various Committees set up by the Government from time to time. After considering various issues it was felt that various Agreements like Joint Venture Agreements or Shareholders Agreements were being entered into by companies and which contained clauses and covenants impinging some of the provisions of the Companies Act.

It was in this context that provisions of this section were omitted from the Bill.

However, keeping In view the importance and usefulness of these provisions for better administration of Companies Act it may be considered to include these provisions in the Bill.

2.32 While accepting the above said suggestion agreed to by the Committee, additional provisions under the clause have been suggested by the Ministry to be included in the Bill, which is given as under:-

"Act to override memorandum, articles, etc.—

Save as otherwise expressly provided in the Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in

general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."

2.33 The Committee would like the above modifications to be carried out with regard to the overriding effect of the provisions of the Act over the memorandum or articles of associations of the company or provisions of any agreement executed by the Company or any resolution passed by the company.

Clause 11—Registered Office of Company

2.34 This clause seeks to provide that from the date of incorporation and at all times thereafter, a company shall have a registered office capable of receiving and acknowledging all communications and notices addressed to it.

2.35 Clause 11(1) reads as follows:

That a company shall, on and from the date of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

2.36 ICSI on this clause suggested that the proposed company may be allowed to have registered office from the fifteenth day of incorporation.

Clause 11(2) provides that the company shall furnish to the Registrar verification of its registered office within fifteen days of its incorporation in such manner as may be prescribed.

2.37 In their written memoranda ICSI suggested that the provisions for verification of registered office may be extended from fifteen days to thirty days of its incorporation.

2.38 Clause 11(3) (c) reads as under:

"Every company shall-get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, e-mail and website addresses printed in all its business letters, billheads, letter paper and in all its notices and other official publications; and"

2.39 Written suggestion as received from the ICSI states that the word 'if any' may be added after the word 'fax number' and 'website address' respectively.

2.40 In respect of all the above said suggestions received from ICSI on clause 11, the Ministry have stated that *all the suggestions have been noted to be addressed appropriately with legislative vetting.*

2.41 The Committee would recommend that these minor procedural changes relating to registered office of the company be duly incorporated in the Bill.

Clause 13—Alteration of Articles

2.42 This clause seeks to provide for alteration of articles including alterations having effect of conversion of a private company or a One Person Company into a public company or a One Person Company or a public company into private company with the approval of members through special resolution and approval of the Tribunal will be required for conversion of a public company into a private company or OPC.

2.43 Clause 13(1) reads as under:

"Subject to the provisions of this Act and to the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—
(*a*) a private company into a public company or a One Person Company,"

2.44 Written suggestions as received on this clause are as follows:-

(i) A proviso should be added after the second proviso to Clause 13 (1) for regulating the conversion of a private company into a One Person Company. (ICSI).

(ii) It is suggested that same principle be applied while dealing with any alteration having an effect of converting a Private company into One Person Company.

2.45 The above said suggestions have been noted by the Ministry to be addressed appropriately with legislative vetting.

2.46 The Committee would expect suitable inclusion/amendments to be incorporated to smoothen the process of conversion of one form of company into another as suggested above.

Clause 19—Service of documents

2.47 This clause seeks to provide for the mode in which documents may be served on the company, its members and also on the Registrar.

2.48 Clause 19(1) states as under:-

"A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by post under a certificate of posting or by registered post or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or disks or any other similar device."

2.49 IBA, in their written memorandum submitted to the Committee have suggested that this clause may be modified to bring it in conformity with order V, Rule 9 (3) of the Code of Civil Procedure, 1908.

2.50 The comments as received from the Ministry on this suggestion are as follows:-

(i) "Rule 9(3) Order V Civil Procedure Code (CPC) reads as under:-

The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(ii) The suggestion for specifically providing for allowing service of documents through UPC, Speed Post and Courier Service approved by Central Government or any other mode to be provided in rules by the Central Government may be considered."

2.51 The Committee desire that the afore-mentioned suggestion for bringing clause 19(1) relating to service of document in conformity with the corresponding provision in the Code of Civil Procedure may be considered for inclusion in the clause.

2.52 Clause 19(2) reads as under:-

"A document may be served on Registrar or any member by sending it to him by registered post or by delivering at his office or address, by such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for which he will pay such fee as may be determined by the company in its annual general meeting."

2.53 The suggestions received from various organizations/experts on this clause are as follows:-

(i) The current provisions of sending shareholders' communications by post should be continued. Since the Bill recognises electronic mode of communication in various clauses, companies with large shareholder base should be permitted to adopt provisions similar to the UK Act and website communication should suffice if an opportunity to shareholders to 'opt out' is given. Accordingly, suitable provisions should be made in the Bill;

(ii) This Clause should be amended to facilitate service of documents by Companies through advertisement in the newspaper. This provision should form part of the new Act and should not be prescribed by Rules. (PHDCCI and Bombay Chamber of Commerce & Industry).

2.54 The Ministry noted the above said suggestions to be addressed appropriately with legislative vetting.

2.55 The Committee recommend that since the Bill recognizes electronic mode of communication in various clauses, companies with large shareholder base should be permitted to adopt website/online communication after giving the shareholders the option for such a mode. Necessary amendments may thus be made for this purpose.

CHAPTER III

PROSPECTUS AND ALLOTTMENT OF SECURITIES

Clause 22—Power of SEBI to regulate issue and transfer of securities etc.

3.1 This clause seeks to provide that on provisions of Chapter III and IV the powers relating to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed on any stock exchange in India, be administered by the Securities and Exchange Board of India, and in other cases be administered by the Central Government.

3.2 Clause 22 reads as under:—

"The provisions contained in this Chapter and Chapter IV,—

(*a*) in so far as they relate to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed on any stock exchange in India, shall, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations;

(*b*) in any other case, shall be administered by the Central Government.

Explanation—For the removal of doubts, it is hereby declared that all powers relating to all other matters including those relating to prospectus, return of allotment, issue of shares and redemption of preference shares shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be."

3.3 SEBI in their written memorandum suggested that Clause 22(a) may also cover provisions relating to payment of dividend, non-payment of interest, redemption of bonds or debentures, acceptance of deposits by listed companies and matters relating to corporate governance. The *Explanation* to Clause 22 may limit the matters to unlisted companies. The Explanation may be deleted.

3.4 While replying to the above said suggestion, the Ministry of Corporate Affairs in their written information stated as follows:—

(i) Irani Committee in Chapter II of its report has inter-alia, recommended as under:

"Perception in some quarters as to the need to demarcate the respective jurisdictions of Ministry of Company Affairs (MCA) and SEBI has come to our notice. In our view, this perception is misplaced. In so far as, the legal framework is concerned, the Central Government is represented through a Ministry which would be required to exercise the sovereign function and discharge the responsibility of the State in corporate regulation.

SEBI, on the other hand, is a capital markets regulator having distinct responsibilities in regulation of the conduct of intermediaries capital market and interaction between entities seeking to raise and invest in capital.

We do not subscribe to the view that corporates seeking access to capital need to be liberated from their responsibilities under all other laws of the land and, thereby the oversight by the State, and be subjected to exclusive control and supervision of a specific regulator. Corporates have to function as economic persons within the Union of India in a manner that contributes to the social and economic well being of the country as a whole and as such must be subject to the laws pronounced by the Parliament for the welfare of its citizens.

Corporate Governance goes far beyond access to capital. Taking a narrow view of Corporate Governance as limited to public issue of capital and the processes that follow would be to the detriment of corporate entities themselves. Equally, the capital market regulator has to play a central role in public access to capital by the companies and must have the necessary space to develop suitable frameworks in tune with the fluidity of the capital markets.

To our mind, with the substantive law being compiled to reflect the core governing principles of corporate operations and separation of procedural aspects, it would be possible for the Regulator to provide the framework of rules for its domain consistent with the law. Such rules would be complementary to the legislated framework and there would be no overlap or conflict of jurisdiction between regulatory bodies. We therefore recommend a harmonious construction for operation of the State and regulatory agencies set up by it."

(ii) The Bill seeks to rely on the above recommendations made by Irani Committee on the matter relating to harmony between various regulators. Accordingly, it has been proposed that the requirements under the Companies Bill/Act would be minimum applicable for every company or a class of companies as may be provided therein. Any sectoral regulator may provide for a more detailed or stringent provisions, not inconsistent with such provisions provided in the Bill for sectoral companies under their jurisdiction. With this approach, there would be harmony between provisions of the Bill and rules/regulations prescribed by various regulators.

(iii) Explanation to clause 22 is important to bring clarity and hence is required to be retained in the Bill.

3.5 Another suggestion on this clause reads as follows:—

A provision similar to that contained in section 64 of Companies Act, 1956 may be introduced in the Companies Bill, 2009. A draft clause is given below for consideration.

> Where certain members of a company propose in consultation with the board of directors to offer part of their holding of shares to the public, they may do so in accordance with the procedure that may be prescribed."
>
> Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all enactments and rules of

law as to the contents of the prospectus and as to liability in respect of statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

The members, whether individuals or company or companies or both, whose shares are proposed to be offered to the public, shall collectively authorize the company whose share are offered for sale to the public, to take all action in respect of offer of sale for and on their behalf and they will reimburse the company of all expenses incurred by it on this matter.

3.6 While accepting the above said suggestion, the Ministry in their written submissions have stated that it is noted to be addressed with legislative vetting.

3.7 Further, the Ministry has also suggested to insert explanation—1 to Clause 22 as follows:

"Explanation I—For the purposes of Clause (a), the term 'issue and transfer of securities' shall include monitoring of utilization or application of end use of monies received by the company."

3.8 With regard to offer of sale of shares by certain members of a Company, the Committee would recommend that a provision similar to that contained in section 64 of Companies Act, 1956 may be introduced. Thus, any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the Company.

3.9 However, the fresh explanation to Clause 22 proposed by the Ministry for mandating SEBI with regard to monitoring of utilisation or application of end use of monies received by the Company does not appear to be tenable, as this falls in the domain of the Registrar of Companies (RoCs) under the Ministry of Corporate Affairs, who have to ensure this in coordination with SEBI. The Committee would, therefore, recommend that this Explanation—I proposed by the Ministry may be deleted.

3.10 As stated in the overview (Part-I), the Committee would emphasize in this regard that sectoral regulators like SEBI should continue to provide for a more detailed or stringent regulations, consistent with the benchmarks proposed in the Bill. The Committee would expect that with this approach, there would be harmony between the provisions of the Bill and rules/regulations prescribed by different regulators. The Committee, therefore, desire that the existing jurisdiction of SEBI as a sectoral regulator may be preserved and Clause 22 and the explanation thereto may accordingly be modified to reflect the principle stated above.

Clause 23—Matters to be stated in prospectus

3.11 This clause seeks to provide for the matters to be stated and information to be given in the prospectus.

3.12 Clause 23(1)(a)(xi) reads as under:—

"Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been

engaged or interested in the formation of a public company, shall be dated and signed and shall—

(a) state the following information, namely:—

(i) .....(x).....;

(xi) particulars of management perception of risk factors."

3.13 On this clause, a suggestion has been received as follows:—

The requirement set out in Clause 23(1)(a)(xi) of the Bill relating to management perception of risk factors should be deleted as may not be in the best interests of the issuer company as well as for the development of the capital markets in general. This is because the management, in light of the strict provisions for any mis-statement in the prospectus, may overstate the risks in order to avoid personal liability.

3.14 In the light of discussions held with the Committee, the Ministry have proposed two modifications in the sub-clause as follows:—

"Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(a) state the following information, namely:—

(i) to .....(viii);

(ix) Disclosure about source of promoters contribution in such manner as may be prescribed;

(x) Main objects of raising public offer, terms of the present issue and such other particulars as may be prescribed."

3.15 The Committee recommend that the statement to be made in the prospectus regarding management perception of risk factors should be specific and not overstated. It should clearly indicate the gestation period of project, extent of progress made, deadlines, track-record of promoters etc. It should also contain a statement as to the time by which the first dividend will be payable after commencement of production and the expected rate of dividend. The statement to be made in the prospectus should thus not be couched in ambiguities and generalities. It should be printed in bold and prominently shown.

3.16 The Committee further, desire that the modifications proposed above regarding information on promoters contribution and main objects of raising public offer etc. may also be incorporated in the clause.

Clause 23 (1)(b)—Prospectus—Financial Information

3.17 Clause 23 (1)(b) reads as under:—

"Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(b) set out the following reports for the purposes of the financial information, namely:—

(i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of the subsidiaries and in such manner as may be prescribed;

(iii) reports made by the auditors upon the profits and losses of the business of the company for each of the five financial years, immediately precedings issue and assets and liabilities of its business on the last date before the issue of prospectus in the prescribed manner; and

(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly."

3.18 In this regard, SEBI in their written memorandum suggested that a proviso may be inserted in clause 23, to enable the companies which are not in existence for five years to make public issue subject to such conditions as may be specified by SEBI.

3.19 Ministry in their reply have agreed to consider the aforesaid suggestion of SEBI.

3.20 At the behest of the Committee, the Ministry have agreed to consider the above said suggestion of SEBI for making suitable enabling provisions in Clause 23(1)(b) of the Bill for allowing companies in existence for a period of less than 5 years to raise money from the capital market. The Committee would like the Ministry to consider and incorporate necessary modifications accordingly.

Clause 23 (1)(b)(iii)—Prospectus—Reports Made by Auditors

3.21 Clause 23 states that:—

"Reports made by the auditors upon the profits and losses of the business of the company for each of the five financial years, immediately precedings issue and assets and liabilities of its business on the last date before the issue of prospectus in the prescribed manner."

3.22 Suggestions received from different organizations/experts on this clause are as follows:—

(i) The Bill should provide that the balance sheet should be recent and a maximum time gap between the date of the balance sheet and the date of issue of the prospectus should be provided. On the lines of SEBI-DIP Guidelines, the auditors' reports should be based on the balance sheet which should not be more than 120 days old as at the date of the prospectus. (PHDCCI & Bombay Chamber of Commerce and Industry).

(ii) It is suggested to change it to "as on the last date to which the accounts of the business were made up, being a date not more than 'one hundred and eighty days' before the date of the issue of the prospectus." (CII)

(iii) Presently, provisions of Sec. 56 of the Companies Act, 1956 are not applicable if Company's existing shares which are dealt in or quoted in a recognized stock exchange are offered for subscription by public. Similar provision may be made in the Bill. (ICSI)

3.23 *The Ministry have agreed, in principle, to the above suggestions.*

3.24 The Committee desire that the suggestions made above may be considered for necessary modification in clause 23(1)(b), so as to make the disclosures in the prospectus regarding reports made by auditors on the financial position of the Company more meaningful and relevant.

Clause 23 (1)(c)—Prospectus—Statement on Compliance

3.25 Clause 23 (1)(c) reads as under:—

"Make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act and the Securities and Exchange Board of India Act, 1992."

3.26 On this Clause, SEBI in their written submission suggested as follows:—

"This Clause may be modified, inserting the words *'and regulation made there under'* after the words *'the Securities and Exchange Board of India Act, 1992'*."

3.27 The Ministry noted the above suggestion to be addressed appropriately with legislative vetting.

3.28 Further, keeping in view the concern expressed by the Committee that the terms of a contract referred to in the prospectus, in the light of the objects stated therein, are not freely changed by the Company subsequently, the Ministry have suggested to insert a new Clause 23A restricting a Company to vary terms of the contracts or objects mentioned in prospectus subject to shareholders approval through special resolution, as given under:—

"23A. A Company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of or except subject to an authority given by the Company in general meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one English and one Vernacular) in the city where the registered office of the Company is situated indicating clearly the justification for such variation."

3.29 The Committee recommend that the proposed new Clause 23A may be duly incorporated for restricting a Company to vary terms of the contracts or objects mentioned in prospectus, subject to shareholders approval through special resolution.

Clause 24—Offer of invitation for subscription of securities

3.30 This clause seeks to provide that a Company may make an offer or invitation to the public to subscribe for securities.

3.31 Clause 24 (3) provides that:—

"A Company making an offer or invitation under this section shall allot its securities within seventy days from the date of receipt of the application money for such securities and if the Company is not able to allot the securities within that period, it shall repay the application money within eight days from the date of completion of seventy days."

3.32 Many suggestions have been received that Clause 24(3) should be amended to provide for interest on the share application money remaining unpaid beyond the above 8-day period.

3.33 During evidence, Chairman SEBI on this issue, stated as under:—

> "Earlier, the requirement was that if a company through a prospectus invited subscription to securities then there was a requirement that the securities must be allotted to the shareholder in 70 days after the issue is closed and within eight days after that 70 days, there was a need that the refund should be made to investors who could not be allotted securities. Over a period of time, we have shrunk these time lines because technology has improved because the discipline in the market has improved but the Bill goes back again to 70 days. The present guidelines under the SEBI regulations is that within 15 days, this process has to be converted and it is our ambition that by the end of this calendar year, we want to go to six working days. So, some of the provisions are not in keeping with what is going on in the market."

3.34 While not accepting the suggestion regarding share application money remaining unpaid beyond the stipulated period, the Ministry have proposed to insert a proviso to this clause, which is given as under:—

"24(3) A Company making an offer or invitation under this section shall allot its securities within seventy days from the date of receipt of the application money for such securities and if the Company is not able to allot the securities within that period, it shall repay the application money within eight days from the date of completion of seventy days.

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the Company is unable to allot securities."

3.35 The alternate provision proposed by the Ministry is not in conformity with that prescribed by SEBI for allotment of securities. As currently allotment of securities is being done on a fast track basis, the provision proposed by the Ministry seems to be out of sync with the reality. It may, therefore, be modified accordingly in tune with the SEBI norms as well as the emerging reality in the securities market. The aforementioned new proviso to

the Clause may however be suitably incorporated, providing for monies received on application for shares to be kept in a separate bank account and to be utilized for specified purposes. The Committee would also recommend that a provision for payment of interest on share application money remaining unpaid beyond the stipulated period may be incorporated in the Clause as an investor-friendly measure.

Clause 34—Allotment of Securities by Company

3.36 This clause prohibits allotment of securities where the minimum amount has not been subscribed and the amount received is to be refunded to all the applicants within a given time frame.

3.37 Clause 34(4) states that whenever a company having a share capital makes any allotment of shares, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

3.38 On this Clause, in their written Memorandum, ICSI suggested that:—

Sub-section (4) of section 34 relating to filing of return of allotment should be applicable to public as well as private companies. Therefore, sub-section 5 should be suitably amended.

3.39 *The Ministry have noted the above said suggestion to be addressed appropriately with legislative vetting.*

3.40 The Committee recommend that the suggestion to make this Clause applicable to both public as well as private companies may be incorporated.

CHAPTER IV

SHARE CAPITAL AND DEBENTURES

Clause 37—Kinds of share capital

4.1 This clause seeks to provide that there shall be two kinds of share capital namely equity share capital and preference share capital.

4.2 Clause 37 reads as under:—

"(1) The share capital of the company limited by shares shall be of two kinds, namely:—

(*a*) equity share capital, and

(*b*) preference share capital.

(*2*) Equity share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which has no limits for participation, either with respect to dividends or with respect to capital, in distribution of profits or otherwise.

(*3*) Preference share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to:—

(*a*) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(*b*) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up."

4.3 Suggestions received from different quarters on this clause are as follows:—

(i) This provision which provides flexibility to corporates to issue participating shares, should be retained because this too is a useful way of raising capital in different situations.

(ii) Amendment to this section is necessary to enable companies which have already issued shares with differential voting rights to comply with the provisions based on extant Section 86 and the rules framed there under. Accordingly a saving clause is suggested. (ICSI).

(iii) The flexibility given to the companies to issue shares with differential voting rights may be allowed to continue. Alternatively, necessary provisions may be put in place to deal with cases where the companies have already introduced this category of shares. (PHDCCI).

(iv) The provisions relating to issue of shares with differential rights should be retained in the Act. The eligibility criteria for companies which are eligible to issue such shares may be made stricter. This provision which provides flexibility to corporates to issue participating shares should be retained. (Bombay Chamber of Commerce and Industry).

(v) Under Clause 37 of the Bill, the different kinds of share capital exclude equity share capital with differential voting rights. Equity share capital with differential voting rights is allowed under the Companies Act under Section 86. In the present market, there may be investors who do not intend to participate in the management and operation of a company by voting in the resolutions put forth before them, whilst at the same time being interested in the economic benefits attaching to the shares. This provision may accordingly bring in a certain class of investors who are only interested in the economic benefits and not in participating in the operations and management of a company. The deletion of this flexibility from the Bill is a cause for concern and we accordingly suggest reinstatement of this provision.

The reasons for such an amendment are unclear. It is recommended that preference shareholders be allowed the right to participate in the proceeds of winding up if so allowed by the Articles of the Company. In any case, a saving provision should be introduced to protect the rights of preference shareholders who have such rights from before the enforcement of the Bill as an Act.

(vi) Substantive provisions enabling issuance of shares with differential voting rights be incorporated in the proposed Bill. In this context it would be relevant to note that SEBI, who is the regulator of our capital market, has approved the issue of shares with differential voting rights and recognizing the relevance of such securities has recently made some modifications in order to provide more safeguards. It would perhaps not be out of place to suggest that such shares could also be considered by Government as part of its divestment programme for public sector companies in those cases where it is considered strategically important not to dilute Government's voting powers in sensitive industries.

(vii) A separate provision may be inserted in the Bill to provide for issuance of equity shares with DVRs, other than superior voting rights. (SEBI).

(viii) Section 86 of The Companies Act 1956 permitted issue of shares with differential rights as to dividend or voting. Section 37(1) in the Companies Bill, 2009 permits only equity share capital and preference share capital . But there is no transitory provision for the existing shares with differential voting already issued by companies. Therefore, a transitory provision may be made for specified period within which such companies may bring their capital structure in line with provisions of the bill. (ICWAI).

4.4 In respect of all the above said suggestions, the Ministry stated as follows:—

"This Ministry had agreed that the suggestion could be considered. However, on re-examination of the issue, it is felt that the position stated in the Bill is correct and does not warrant any change."

4.5 Keeping in view the large number of suggestions received for retaining the provisions to enable companies to issue shares with differential voting rights, the Committee would recommend that the Ministry may re-examine their position in the matter in line with the corresponding provision in the existing Act.

Clause 42—Variation of Share holders' rights

4.6 This clause seeks to provide that where share capital is divided into different classes of shares, the rights attached to any class of shares may be varied with the written consent of the holders of not less than three-fourths of the issued shares or by special resolution.

4.7 Clause 42(2) reads as under:—

"Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal."

4.8 On this clause, CII, PHDCII and ICSI in their written memorandum suggested that the time period may be prescribed on the lines of existing Section 107(2) of the present Act which provides for twenty one days period within which an application may be made in this regard by dissenting shareholders.

4.9 *The Ministry noted the suggestion to be addressed appropriately with legislative vetting.*

4.10 The Committee recommend that suitable modifications may thus be made in the Clause to prescribe a time period on the lines of existing Section 107 (2), which provides for 21 days period within which an application may be made by dissenting shareholders, who did not consent to variation of rights attached to any class of shares.

Clause 46—Application of premium received on issue of shares

4.11 This clause seeks to provide that a company shall transfer the amount received by it as share premium to securities premium account and states the purposes in which the amount in that account can be applied.

4.12 Clause 46 (2) reads as under:—

"Notwithstanding anything contained in sub-section (*1*), the share premium account may be applied by the company—

(*a*) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(*b*) in writing off the preliminary expenses of the company;

(*c*) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(*d*) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(*e*) for the purchase of its own shares or other securities under section 61."

4.13 FICCI in their written submission to the Committee suggested that as per IFRS, preliminary expenses should be charged off as expenses to determine profit/loss for the period and not adjusted against share premium account as proposed in the clause.

4.14 The comments of the Ministry on this suggestion are as follows:—

The suggestion for making suitable provision in the Bill to provide for harmonization with International Financial Reporting Standards (IFRS) is noted. The Government has set up a Core Group and two Sub-Groups for making suitable recommendations on the matter. Further action may be taken on receipt of the reports of these Groups.

4.15 The Ministry further suggested to provide an alternate clause to amend this Clause which is given as under:—

"46 (2)—The securities premium account may, notwithstanding anything in sub-section (1), be applied by the company;

(a) in paying up un-issued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company."

4.16 The Committee note that while proposing an alternate Clause as above, the Ministry have omitted the other items of expenditure, for which the share premium account may be applied by the company. The Committee would, therefore, like the Ministry to review their fresh proposal, particularly with a view to harmonizing the provisions of the Bill with the IFRS, wherever warranted.

Clause 49—Issue and redemption of Preference Shares

4.17 This clause seeks to provide that no company limited by shares shall issue irredeemable preference shares. A company may issue preference shares for a period not exceeding twenty years. However, for certain infrastructural project preference shares can be issued for more than twenty years.

4.18 Clause 49(2) reads as under:—

"A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed:

Provided that a company may issue preference shares for a period exceeding twenty years for such infrastructural projects as may be prescribed, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders

Provided further that—

(*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve fund, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and

(*d*) the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's Securities Premium Account, before such shares are redeemed."

4.19 Suggestion as received on this clause is as follows:—

In respect of preference shares which are redeemable after 20 years, the provision should be inserted to provide that dividend on such preference shares will be linked to certain market benchmark or reset periodically, in such a manner, as may be prescribed. (Bombay Chamber of Commerce and Industry).

4.20 While not accepting the above said suggestions for benchmarking the dividend payable on preference shares of the company, the Ministry have suggested to amend clause 49(2)(d) as follows for benchmarking their redemption:—

"the premium, if any, payable on redemption shall be provided for out of the profits of the company."

4.21 The Committee would like the above modification with regard to premium payable on redemption of preference shares to be duly incorporated in the Bill.

Clause 50—Transfer and transmission of securities

4.22 This clause seeks to provide that transfer of securities/interest of a member not to be registered except on production of instrument of transfer duly stamped, dated and executed.

4.23 Clause 50(7) reads as follows:—

"Where the transfer of securities is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register of records concerned."

4.24 SEBI in this regard suggested that this Clause relates to rectification and therefore needs to be inserted in provisions relating to rectification under Clause 53.

4.25 On this suggestion the Ministry stated that the inclusion of this sub-clause in clause 50 appears to be proper and no change may be considered necessary in this regard.

4.26 While furnishing their fresh comments on the above said suggestion of SEBI, the Ministry stated as follows:—

"The suggestion made by the SEBI, which is basically of a drafting nature, is noted to be addressed appropriately with legislative vetting."

4.27 The Committee would expect suitable drafting changes, as suggested by SEBI, to be made in the Bill regarding rectification of register of Members, wherever, transfer of securities is effected in contravention of any of the provisions of SEBI Act or Companies Act or any other law.

Clause 56—Further issue of share capital

4.28 This clause seeks to provide that a company having a share capital can increase its subscribed capital by the issue of further shares to its existing members, to employees through employee's stock option, or to the general public.

4.29 Clause 56(1) reads as under:—

"(i) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered —

(*a*) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the share capital paid-up on those shares by circulating an offer for sale subject to such terms and conditions relating to the time within which the offer has to be accepted, the renunciation of such offer and such other matters as may be prescribed;

(*b*) to employees under a scheme of employees' stock option, subject to such conditions as may be prescribed; or

(*c*) if it is authorised by a special resolution, to persons other than those mentioned in clause (*a*) or clause (*b*), either for cash or for a consideration, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed."

4.30 Suggestions received from different quarters on this clause are as follows:—

(i) The provisions of the Bill needs to be harmonized with the pricing guidelines in case of issue of shares to non-residents. (CII).

(ii) It may be clarified in the clause that pursuant to a rights offer, allotment to renouncees/underwriters (when shares not subscribed by shareholders) etc. and fraction shares will not require special resolution under sub-clause(c). (FICCI).

(iii) The sub-clause (c) of Clause 56 may be modified by deleting the words *or "clause (b)*" 'in order to make shareholders' approval mandatory for issue under ESOP" (SEBI).

(iv) Preferential issue of shares should be permitted to existing shareholders also. This is currently available under the existing Companies Act, 1956 and should be retained in the proposed Company law as well. This would also be in the interest of

transparency. Clause 56(1)(c) of the Bill should therefore, be modified appropriately. (CII and Indian Merchants' Chamber).

(v) A specific enabling provision may be introduced in the Bill for issue of bonus shares and it may be clarified that bonus shares can be issued out of free reserves created from the profits of a company and from the Share Premium Account but not from Asset Revaluation Reserve. [PHDCCI and Bombay Chamber of Commerce and Industry].

4.31 The comments of the Ministry in this regard are as follows:—

(i) The Suggestions at Sl. Nos (i to iv) may be addressed appropriately with legislative vetting. The intention is to continue the position provided under the existing Act or rules made thereunder.

(ii) As regards suggestion at (v) above Clause 46(2)(a) of the Bill provides that the share premium account may be applied by the company, *inter-alia*, towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares.

(iii) Attention is drawn to clause 110(5) of the Bill which provides as under:—

No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash.

Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

(iv) Though there are adequate provisions in the Bill making reference to companies having powers to issue bonus shares, the suggestion to include a specific enabling provision allowing companies to issue bonus shares may be considered. The manner and procedure of issue of bonus shares by companies, however, may be included in the Model Articles to be prescribed under rules to the Bill.

4.32 As agreed to by the Ministry, the Committee desire that the suggestions on clause 56(i) dealing with further issue of Share capital may be suitably incorporated in the clause or considered while framing the rules thereunder. However, the Committee also recommend that the suggestion to include a specific enabling provision allowing companies to issue bonus shares may be considered.

Clause 59—Reduction of Share Capital

4.33 This clause seeks to provide that on the confirmation by the Tribunal a limited company may reduce its share capital and alter its memorandum accordingly.

4.34 Clause 59(3) reads as under:—

"The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction on such terms and conditions as it deems fit."

4.35 The suggestion as received from the Indian Merchants' Chamber on this clause is given below:—

In the case of reduction of capital, creditors are not affected in as much as paid up capital is reduced only to the extent of accumulated losses. Even if on paper if the capital is not shown as reduced, when there are accumulated losses, the capital in fact is, already, eroded. Elaborate Clause 59 needs to be reviewed and amended.

4.36 While not agreeing with the above suggestion, the Ministry have submitted as follows:—

The creditors should have the right to make their representations or objections in case of any attempt by the company to reduce its share capital. The creditors extend credit to a company after considering the amount of equity share capital of a company since it represents the stake of the promoters and other shareholders in the company.

4.37 Further, in the light of the discussions held with the Committee, the Ministry have also proposed a proviso to clause 59(3) as follows:—

"59 (3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction on such terms and conditions as it deems fit:—

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, if any, proposed by the company for such reduction is not in violation of the accounting standards specified in section 119 or any other provision of the Act and a certificate to that effect by the company's auditor has been filed with the Tribunal."

4.38 While agreeing with the Ministry not to modify the main Clause which upholds the right of creditors, the Committee desire that the proviso proposed above to the Clause for ensuring adherence to accounting standards with certification by the Company's auditor may be incorporated.

Clause 63—Prohibition of buy back in certain circumstances

4.39 This clause seeks to prohibit buy-back through any subsidiary company, through any investment company or through such company which has defaulted in making repayment of deposits, interest thereon, redemption of debentures, payment of dividend, etc.

4.40 Clause 63 reads as under:—

"No company shall directly or indirectly purchase its own shares or other specified securities—

(*a*) through any subsidiary company including its own subsidiary companies;

(*b*) through any investment company or group of investment companies; or

(*c*) if a default is made by the company in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company."

4.41 The suggestions received from various quarters on this clause are as follows:—

(i) The reference to 'term loans' should be extended to cover working capital or other financial facilities. (CII)

(ii) Buy-back should be permitted if the default is no longer subsisting. (FICCI).

(iii) The provision in the Bill on the contrary disables a company once and for all if there was a default and such default is cured or remedied. This strict prohibition is unwarranted and the clause may be suitably amended such that if the default is not continuing, buy back of securities by a company may be permitted. (PHDCCI).

(iv) In Clause 63(c) add the following words: and such default is subsisting. (Bombay Chamber of Commerce and Industry).

(v) If, the default is remedied, the company may be permitted to buy-back its securities. (ICSI)

(vi) It is suggested that some period, say 2-3 years may be specified post remedy of default during which the company cannot buy-back its securities.

4.42 *The Ministry have noted all the above said suggestions to be addressed appropriately with legislative vetting.*

4.43 The Committee would expect suitable amendments as agreed to by the Ministry, to be incorporated in this regard in the Bill, which will permit buy-back of securities, if the default mentioned in clause 63(c) is remedied and a certain period, say three years, has lapsed after such default ceased to subsist.

Clause 64—Debentures

4.44 This clause seeks to provide that a company may issue debentures with an option to convert into shares at the time of redemption but cannot issue debentures with voting rights.

4.45 Clause 64(1) reads as under:—

"A company may issue debentures either with an option to convert such debentures into shares at the time of redemption or otherwise."

4.46 It has been suggested on this clause that:—

In this connection, the proviso in sub clause (2) of clause 56 already provides that the terms of issue of such debentures or loan containing such option would have been approved before issue of such debentures or the rising of loan by a special resolution passed by the company in general meeting.

Thus clause 56 pre supposes that before such debentures with conversion option are issued, such an issue would have been approved by a special resolution passed at a general meeting.

But clause 64 which governs issue of debentures with an option to convert such debentures into shares at the time of redemption or otherwise does not contain any provision that requires approval by special resolution passed at a general meeting.

To rectify the above lacuna, the existing clause 64 (1) may be modified as under:—

64(1) A company may issue debentures with option to convert such debentures into shares, either wholly or partly at the time of redemption or other debentures.

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be by way of a special resolution passed at a general meeting.

4.47 *The Ministry accepted this suggestion to be addressed appropriately with legislative vetting.*

4.48 The Committee recommend that the suggestion to incorporate the requirement of special resolution at a general meeting for converting debentures into shares, wholly or partly, may be considered for inclusion in the Clause.

4.49 Clause 64(3) states that all secured debentures may be issued only by such class of companies and subject to such terms and conditions as may be prescribed.

4.50 While submitting their suggestions on this clause, various organizations/experts have suggested that all public companies should be permitted to issue secured debentures, subject to such terms and conditions as may be prescribed.

4.51 *The Ministry have accepted this suggestion to be addressed appropriately with legislative vetting.*

4.52 Keeping in view the large number of suggestions received and considering the need for increasing the avenues for secure investments, the Committee would recommend that all public companies should be permitted to issue secured debentures, subject to such terms and conditions as may be prescribed.

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

Clause 66—Prohibition on acceptance of deposits from public

5.1 This clause seeks to provide that no company shall invite, accept or renew deposits from public. It can do so only from members of the company subject to fulfillment of certain conditions.

5.2 Clause 66 reads as under:—

"(1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except as provided under this Chapter:—

Provided that nothing in this sub-section shall apply to a banking company and non banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:—

(*a*) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(*b*) filing a copy of the circular along with such statement with the Registrar thirty days before the date of issue of the circular;

(*c*) depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, in a Deposit Repayment Reserve Account;

(*d*) providing such deposit insurance in such manner and to such extent as may be prescribed;

(*e*) certifying that the company has not defaulted in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(*f*) providing such security for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the company property or assets.

(*3*) Every deposit accepted by a company under sub-section (*2*) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(*4*) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (*3*), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit."

5.3 Suggestions received from various institutions/experts on this clause are given as under:—

(i) The amount allocated for Deposit Repayment should be in a separate account with a bank. (ICSI).

(ii) Clause 66 in Chapter V of the Bill restricts the ability of a company to 'invite, accept or renew deposits under this Act from the public except as provided under this Chapter. This clearly seems an unintentional lapse which should be addressed.

(iii) At present there is no Agency which issues such insurance policies. Unless a scheme to insure repayment of deposits is framed and implemented by creating suitable agencies the Companies will not be able to comply with this requirement and accept deposit from its members. (Indian Merchants' Chamber).

(iv) A sub-clause may be inserted in Clause 66 to the effect that *'Acceptance of deposits by listed companies shall be in accordance with the regulations made by the Securities and Exchange Board in this behalf'*. (SEBI).

5.4 The Ministry have furnished their comments as under:—

(i) The Insurance companies may come up with deposit insurance once enabling provisions recognizing this concept are provided in a statute.

(ii) Since deposits of a company are not proposed to be listed on any stock exchange, it may not be proper to involve Capital Market Regulator in this regard.

(iii) Keeping in view the suggestion made, it is proposed that the bigger and solvent companies having a net worth of Rs. 500 crores or above and turnover of Rs. 1000 crores or above may be allowed to accept deposits from public as well.

(iv) Further, it is also suggested that the Central Government may have the power to prescribe, in consultation with RBI, rules to be followed by such companies while accepting deposits from public.

(v) Since acceptance of deposits is an activity regulated by RBI, the necessary consultation with RBI has already been provided in the Bill. Suggestion made by SEBI in respect of deposit related matters to be regulated by it may not be considered.

Clause 67—Repayment of deposits, etc. accepted before commencement of this Act

5.5 This clause seeks to provide that the deposit accepted before this Act comes into force by a company or any interest due thereon shall be repaid within one year.

5.6 Clause 67(1) reads as under:—

"Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

(*a*) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(*b*) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

5.7 In their written memorandum, Indian Merchant Chamber on this clause suggested that Clause 67(1) needs to be redrafted and the amount of penalty should be commensurate with the quantum of default in repayment of deposit.

5.8 The Ministry noted the above said suggestion to be addressed appropriately with legislative vetting.

Clause 68—Damages for fraud

5.9 This clause seeks to provide that in case the company fails to pay the deposit or any interest thereon and it is proved that the deposits had been accepted with intent to defraud the depositors, every officer who was responsible for acceptance of deposits shall be personally responsible, without any limitation of liability for all losses or damages incurred by the depositors.

5.10 Clause 68 reads as follows:—

(1) "Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 67 within the time specified in sub-section (*1*) of that section or such further time as may be allowed by the Tribunal under sub-section (*2*) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (*3*) of that section, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

(2) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon."

5.11 At the behest of the Committee, with a view to allowing receipt of public deposits with sufficient safeguards, the Ministry of Corporate Affairs have suggested to insert a new clause 68A which is given as under:—

"A new provision/section - 68A may be inserted in the Bill:—

68A (1) Notwithstanding anything contained in sections 66 to 68, a public company, having net worth of not less than rupees five hundred crores and turnover of not less than rupees one thousand crores, as per audited balance sheet of the immediately preceding financial year, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 66 and subject to such rules as the Central Government may prescribe in consultation with Reserve Bank of India:—

Provided that such a company shall be required to obtain the highest rating from a recognized credit rating agency at the time of invitation of deposits from the public.

(2) The provisions of this Chapter shall apply mutatis mutandis *to acceptance of deposits from public under this section.*"

5.12 While acknowledging the Ministry's acceptance of the Committee's suggestion to review their original proposal not to allow acceptance of public deposits by Companies (except from their shareholders), the Committee recommend that the alternate new clause 68A proposed above allowing acceptance of public deposits may be incorporated in the Bill. The Committee would also like to emphasise in this regard that the deposits accepted by companies should be secured by creation of such charge on the company's assets. The penal interest for delayed payment should also be such as to be a deterrent for the defaulting companies. In the event of non-payment, the Committee desire that the prescribed process of providing relief to the depositors through the Tribunal should be simple and quick. The Committee, however, feel that the stipulation of highest rating from a recognized credit rating agency for inviting deposits from the public, as proposed by the Ministry in the new Clause 68A above, should not prohibit otherwise sound companies from inviting deposits. As the Committee would like public deposits to become a potential source of capital for companies while remaining an avenue of investment with safety and assured return for the public, the requirement of 'high credit rating with adequate safety' may be stipulated.

CHAPTER VI

REGISTRATION OF CHARGES

Clause 69—Duty to register charges, etc.

6.1 This clause seeks to provide that a company creating a charge within or outside India, shall, register the said charge with the Registrar within thirty days.

6.2 Clause 69 reads as under:—

"(*1*) It shall be the duty of every company creating a charge within India or outside, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in India or outside, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fee and in such manner as may be prescribed, with the Registrar within thirty days of its creation:—

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fee as may be prescribed.

(*2*) Where a charge is registered with the Registrar under sub-section (*1*), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(*3*) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (*1*) and a certificate of registration of such charge is given by the Registrar under sub-section (*2*).

(*4*) Nothing in sub-section (*3*) shall prejudice any contract or obligation for the repayment of the money secured by a charge."

6.3 Suggestions as received from CII on this clause are given as under:—

(1) Bankers' lien, other statutory liens and pledge of shares be specifically excluded from registration requirements. It is also recommended that the existing provisions of the Companies Act with regard to the following be retained:—

(i) Time period for registration of charges;

(ii) Provisions as to when charge becomes void and;

(iii) Creditor's right of inspection without payment of fees.

6.4 While replying to the above said suggestion, the Ministry in their written submission stated as follows:—

(i) The provisions in the Bill propose to provide that every charge on the property of the company should be registered with the Registrar of Companies to enable Registry to have complete picture about solvency and creditworthiness of the company. The provisions of existing Act on this matter have been reviewed in the Bill keeping in view the recommendations of Irani Committee and other inputs.

(ii) Since existing provisions requiring condonation of delay by the CLB in case a company is not able to file charge documents with the Registrar within time have been considered to be not necessary, since in most of such cases these delays are condoned by the CLB. This also takes a lot of time of CLB which is a quasi judicially forum required to address other corporate matters. In view of this, the Bill empowers Registrar to allow filing of charge documents upto 300 days on payment of additional fees. The intention is to provide substantial additional fees in case of delayed filing of charge documents so that companies avoid such fees and file documents on time.

(iii) Clause 69 (3) of the Bill provide that notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).These provisions adequately cover the suggestion made and no change is considered necessary on this matter.

(iv) The suggestion to allow a creditor to inspect company's register of charges without payment of fee may be considered.

6.5 The Committee agree with the views of the Ministry that the existing provision with regard to registration of charges on property/assets of a company is sought to be strengthened in the proposed Bill by stipulating that every charge on the property of the Company should be registered with the ROC to enable the Registrar to have complete picture about the solvency and creditworthiness of the company. This viewpoint is also in harmony with the suggestions made by the Irani Committee on this issue. The Committee, therefore, do not find tenable the suggestions made to restore the existing position, excluding certain charges like Banker's lien and other statutory liens/pledges from the registration requirement. The Committee, would however recommend that the suggestion made to allow a creditor to inspect company's register of charges without payment of any fee may be considered for incorporation in the clause.

Clause 76—Company's register of charges

6.6 This clause seeks to provide that every company shall keep a register of charges at its registered office and this register shall be open for inspection during business hours by members without fee and by any other person with fee.

6.7 Clause 76 states that:—

"(*1*) Every company shall keep at its registered office a register of charges in such form and in such manner as may be prescribed, which shall include therein all

charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

(*2*) The register of charges kept under sub-section (*1*) shall be open for inspection during business hours—

(*a*) by any member without any payment of fee; or

(b) by any other person on payment of such fee as may be prescribed,

subject to such reasonable restrictions as the company may, by its articles, impose.

6.8 ICSI on this clause have suggested that a copy of the instrument creating charges should be kept at the registered office of the company and the same should be open for inspection.

6.9 The Ministry have submitted that the said suggestion will be addressed appropriately with legislative vetting.

6.10 The Committee would recommend for inclusion of the afore-mentioned suggestion for keeping at the registered office of the Company a copy of instrument creating charges.

CHAPTER VII

MANAGEMENT AND ADMINISTRATION

Clause 82—Annual Return

7.1 This clause seeks to provides that every company shall prepare an annual return containing certain particulars such as registered office, principal business activities, particulars of holding, subsidiary and associate companies, its shares, debentures and other securities, members, promoters, etc.

7.2 Clause 82(1) reads as under:

"Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(*a*) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(*b*) its shares, debentures and other securities and shareholding pattern;

(*c*) its indebtedness;

(*d*) its members and debenture holders along with changes therein since the close of the last financial year;

(*e*) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;

(*f*) meetings of members or a class thereof, Board and its various Committees along with attendance details;

(*g*) remuneration of directors and key managerial personnel;

(*h*) penalties or punishments imposed on the company, its directors or officers and details of compounding of offences;

(*i*) matters related to certification of compliances, disclosures; and

(j) such other matters as may be prescribed,

and signed both by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice:

Provided that the annual return, filed by a company having such paid-up capital and turnover as may be prescribed, or a company whose shares are listed on a recognised stock exchange,

shall also be signed by a Company Secretary in whole-time practice certifying that the annual return states the facts correctly and adequately and that the company has complied with all the provisions of this Act, in the prescribed form:

Provided further that in relation to a One Person Company and small company, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company."

7.3 On this clause, ICSI in their written memorandum suggested as follows:—

(I) In sub-clause (1)(i), the words as may be prescribed may be added.

(II) (i) This clause should be made applicable to every listed company and a company having such paid-up capital **or** turnover instead of such paid-up capital and turnover so as to cover all large companies in terms of paid-up capital or turnover.

(ii) For the words "a company whose shares are listed on a recognized stock exchange", the words "listed company" may be substituted.

(iii) Also with a view to ensure independence of Company Secretary in whole-time practice, the provisions contained in Chapter X in respect of appointment, duties and powers of an auditor should *mutatis mutandis* be made applicable to the Company Secretary in whole-time practice for compliance with this section.

7.4 The Ministry noted the suggestion at (I) above to be addressed with legislative vetting.

7.5 With regard to the suggestion at (II) above the Ministry stated as follows:—

(i) Under the existing Act, the certification of annual return by a practicing company secretary has been provided for listed companies only. The Bill seeks to provide that besides listed companies, bigger companies having such paid up capital and turnover, as may be prescribed, shall be required to get certification of annual return done. Since the provisions appear to be reasonable, the suggestion may not be considered.

(ii) It is a suggestion for improving the drafting and may be considered.

(iii) The role of Company Secretary in context of certification of annual return may not be similar to the role of auditor in context of audit of books of accounts of the company. In view of this, the suggestion may not be considered. However, a provision may be considered putting an obligation on the company management to provide every assistance to the company secretary in whole time practice to enable him to verify any record or information etc. in connection with certification of annual return of such company.

(iv) Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of non-compliance of the provisions of the Companies Act and other important corporate laws.

It is, accordingly, felt and suggested that the Bill may provide for requirement of conduct of secretarial audit by at least bigger companies by a company secretary in practice.

The Board of Directors shall, in their Report to shareholders, explain in full any qualification or observation or other remarks made by company secretary in practice in his secretarial audit report.

7.6 In response to a suggestion by the Committee, the Ministry proposed to include an alternate clause to clause 82(1), which is given as under:—

"82. (1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(a) to (i) (no change proposed).

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses/countries of incorporation/ registration and percentage of shareholding held by them."

7.7 While endorsing the re-drafting of the clause and the inclusion of an additional sub-clause relating to disclosure of details in respect of shares held by or on behalf of Foreign Institutional Investors, the Committee desire that the provision contained in the residual sub-clause 82(1)(j) may be retained and serialized as 82(1)(k) after the inclusion of the afore-mentioned new provision as 82(1)(j).

7.8 Further, the suggestion for placing an obligation on the Company to provide every assistance to the Company Secretary in whole time practice to enable him to verify any record or information etc. in connection with certification of annual return of the company may be considered for inclusion in the clause. Besides, Secretarial Audit may also be mandated for bigger companies, including all listed companies; as it *inter-alia* provides necessary assurance to the investors that the affairs of the Company are being conducted in accordance with the legal requirements.

7.9 Clause 82(2) reads as under:

"Clause 82(2) provides that an extract of the annual return in such form as may be prescribed shall form part of the Board's Report."

7.10 The Suggestions received from the ICSI on this clause are given as under:—

"Sub-section (2) of section 82 requires that an extract of the annual return in such form as may be prescribed shall form part of the Board's Report. The Company Secretary in whole-time practice may while certifying annual return of listed companies or other companies having such paid-up capital or turnover as may be prescribed under first proviso to sub-section (1), may make qualifications or adverse remarks. In such a case it should be necessary for the Board to give its explanation or comments on such remarks in the Board's Report."

7.11 The Ministry noted the suggestion to be addressed appropriately with legislative vetting.

7.12 *In the light of the discussions held with the Committee, the Ministry of Corporate Affairs proposed a new clause 82A—Return to be filed with registrar in case promoters' stake changes beyond a limit in order to provide audit trail of ownership, which is given as under:—*

"82A: Every listed company shall file a return in the prescribed form with the Registrar whenever there is a change in the shareholding position of promoters and top ten shareholders of such company. The return shall be filed within fifteen days of such change in the shareholding."

7.13 The Committee recommend that the new provision requiring return to be filed with Registrar, in case promoters' stake changes beyond a limit, in order to provide audit trail of ownership may be duly incorporated in the Bill. The Committee would also recommend in this regard that any adverse remarks or qualification, made by the Company Secretary-in-whole time practice, while certifying the annual return, should be necessarily explained for or commented upon in the Board's report.

Clause 83—Place of keeping and inspection of registers, returns, etc.

7.14 This clause seeks to provide that register of members, debenture holders and any other security holders and copies of annual returns shall be kept at the registered office and can also be kept at any place other than registered office where more than one-tenth of total members reside, if approved by special resolution.

7.15 Clause 83 reads as under:—

"(1) The registers required to be kept and maintained by a company under section 78 and copies of the annual return filed under section 82 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.

(*2*) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of the returns shall be open for inspection by any member, debenture holder, other security holder or beneficial owner, during business hours without payment of any fee and by any other person on payment of such fee as may be prescribed.

(*3*) Any such member, debenture holder, other security holder or beneficial owner or any other person may—

(*a*) take extracts from any register, or index or return without payment of any fee; or

(*b*) require a copy of any such register or entries therein or return on payment of such fee as may be prescribed.

(*4*) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

(*5*) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day during which the refusal or default continues but not exceeding one lakh rupees."

7.16 On this clause, PHDCCI while submitting their written memorandum suggested that:—

The Bill may specifically provide for the maximum retention period of registers, documents and minutes. The Bill should also provide for a minimum shareholding threshold for shareholders requesting for inspection/copies of registers. It should also be specified that a shareholder can seek inspection/copies of registers/records for a period since he became a member.

7.17 On this suggestion the comments of the Ministry are as follows:—

(i) The suggestion for including enabling provisions empowering Central Government to prescribe retention period of registers and records to be kept by companies, may be considered. The rules may empower certain documents to be kept permanently by companies.

(ii) Since inspection and obtaining copies of registers is a basic right of a shareholder and ensures check/accountability on the part of actions of companies, the suggestion may not be considered.

7.18 The Committee, while accepting the views of the Ministry on the suggestion, desire that enabling provisions empowering central Government to prescribe retention period of registers and records to be kept by companies may be made.

Clause 85—Annual General Meeting

7.19 This clause seeks to provide for that every company other than One Person Company in addition to any other meeting shall hold a general meeting as its annual general meeting.

7.20 Clause 85(2) reads as under:—

"Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose."

7.21 Suggestions received from various institutions/experts on this clause are given below:—

(i) Annual General Meeting may also be held at a place where the maximum number of shareholders of the company reside provided such number being not less than 10% of the total number of members. (ICSI).

(ii) The Annual General Meeting of the Company should be permitted to be held at a place, in India, within the territory of the State, where the maximum number of members of the Company resides. This place may be the registered office or any place other than the registered office.

7.22 While replying to the above said suggestions, the Ministry in their written comments stated as under:—

(i) With shares changing hands from time to time, it may be difficult to ascertain as to where the maximum number of shareholders shall be residing on the day of AGM. This may also result in AGM shifting from place to place. To tackle this problem provision of postal ballot and participation by electronic mode has been proposed in the Bill which, in addition to enabling ease of participation will enable the shareholders to be informed of and participate in making important decisions for the company.

(ii) In view of this, there may not be any necessity of any modification in the Bill on this smatter.

7.23 While broadly agreeing with the provisions of this clause, the Committee would suggest that the Annual General Meeting of the Company may be held in an accessible place, which may be either the place where the registered office or corporate office is located, or some other accessible place within the vicinity of the registered office or corporate office of the company. The clause may be modified accordingly.

Clause 94—Proxies

7.24 This clause seeks to provide that a member who is entitled to attend and vote can appoint another person as a proxy to attend and vote at the meeting on his behalf, in writing or by electronic mode.

7.25 Clause 94 reads as under:—

"Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf in writing or by electronic mode in such manner and subject to such conditions as may be prescribed:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll."

7.26 While forwarding their suggestion on this clause, the ICSI in their written memorandum suggested that this proviso should be deleted.

7.27 On the issue of proxy, the Committee sought to know whether we are going to provide for either physical presence of the shareholder or postal ballot, and how proxy mechanism is affecting the functioning of corporate democracy. In response, the Ministry in their written comments have submitted that:—

(i) *As per existing provisions provided in section 176 of the Companies Act, 1956, a proxy is prohibited from speaking at a meeting. These provisions also provide that unless the articles otherwise provide, the proxy shall not be entitled to vote except on a poll.*

(ii) *The Bill has provided for broadly similar requirements in clause 94.*

(iii) *However, keeping in view the existing provisions in section 176 to enable a company to allow a shareholder to vote even on show of hands, in case its articles so permit, may be retained in the Bill.*

(iv) *In view of the directions given by Hon'ble Committee to consider/re-examine the matter relating to delegated legislation provided in the Bill, the provisions of clause 94 of the Bill have been re-examined. Since principles/provisions in respect of regulation/management of proxies is considered important, it is felt that relevant provisions provided in section 176 of the Act may be considered to be included in clause 94 of the Bill instead of providing them through rules subsequent to enactment of the Bill.*

(v) *The Bill has sought to enhance the number of matters on which approval of shareholders can be sought through postal ballot (which also includes electronic ballot). As per clause 99 of the Bill, the approval of shareholders through postal/ electronic ballot can be obtained on any matter other than matters of ordinary business and on which directors or auditors have a right to be heard. In case of matters on which approval through postal/electronic ballot is required, there is no meeting and the need of attendance of a member or of appointment of proxy does not arise.*

(vi) *The matters of ordinary business [i.e. (a) consideration of accounts, (b) declaration of any dividend, (c) appointment of directors, (d) appointment and remuneration of auditors] and in which directors or auditors have a right to be heard, shall be decided by shareholders through a physical meeting in which members may attend personally or through proxies.*

(vii) *The provisions proposed in the Bill on appointment of proxies (Clause 94) are broadly similar to corresponding provisions provided in section 176 of the existing Act.*

(viii) *These provisions enable a member of the company to appoint any other person to attend the general meeting and vote on his behalf. The provisions for receipt of prescribed proxy form by the company from the concerned member at least 48 hours before the general meeting ensure any likelihood of misuse of these provisions.*

(ix) *The concept of proxies is prevalent in many countries including in UK. In many countries proxies even have the right to speak. Under the existing Companies Act, 1956 as well as in the Bill, the proxies are not having a right to speak.*

(x) Since these provisions have been continuing even in the existing Act for long and no suggestion or recommendation from any committee/stakeholder has been received in the recent past for their review, it is submitted that these provisions may be retained in the Bill.

7.28 As already suggested in the Overview (Part-I), the Committee recommend that keeping in view the provision for postal as well as electronic voting, the system of proxy itself may be discontinued.

Clause 97—Voting through electronic means

7.29 This clause provides that a member may exercise his vote at a meeting by electronic means.

7.30 Clause 97 reads as under:—

"unless the articles provide otherwise, a member may exercise his vote at a meeting by electronic means in the manner as may be prescribed."

7.31 On this clause, PHD Chamber of Commerce and Industry and Bombay Chamber of Commerce and Industry in their written memorandum suggested that:—

The way Clause 97 is worded, it would make it compulsory for a company to provide the facility of electronic voting unless the company otherwise provides, by amending the Articles. Instead of negative wordings, it should be provided that if the Articles of Association of the company so provide, a member may exercise his vote at a meeting by electronic means in the manner as may be prescribed.

7.32 The written comments of the Ministry on this suggestion are as under:—

This is a drafting matter and may be considered to be addressed through legislative vetting suitably. The intention is to recognize in the law the principle that a company, by making suitable provisions in its articles, may enable its members to vote through electronic means in the manner as may be prescribed by Central Government in this regard.

7.33 The Committee desire that the drafting ambiguity pointed out above may be addressed so as to make it amply clear that a Company, by making suitable provisions in its Articles, may enable its members to vote through electronic means in the manner as may be prescribed.

Clause 103—Ordinary and special resolutions

7.34 This clause seeks to provide that a resolution shall be an ordinary resolution if the votes cast in favour of the resolution exceed the votes, if any, cast against the resolution by the members. A resolution shall be special when it is duly specified in the notice calling the general meeting and votes cast in favour are three times the votes cast against the resolution.

7.35 Clause 103 (1) reads as under:—

> "A resolution shall be an ordinary resolution if it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, etc., so entitled and voting."

7.36 In their written memorandum submitted to the Committee, CII suggested that this Clause should be amended to specifically mention that postal ballot can be undertaken for both ordinary resolutions as well as special resolutions.

7.37 *When the above suggestion was pointed out by the Committee, the Ministry replied that the intention is to allow postal ballot for both kinds of resolutions—special as well as ordinary.*

7.38 Necessary drafting modifications, may, therefore, be made in the Bill to address the suggestion and reflect more precisely the intent behind the clause that postal ballot may be undertaken for both ordinary as well as special resolutions.

Clause 104—Resolutions requiring special notice

7.39 This clause seeks to provide that where a special notice is required of any resolution, notice of the intention to move such resolution is to be given by such number of members in such manner as may be prescribed.

7.40 Clause 104 provides to read as under:—

> "Where, by any provision contained in this Act or in the articles, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members as may be prescribed and the company shall give its members notice of the resolution in such manner as may be prescribed."

7.41 On this clause, various institutions/experts suggested that this being a substantive provision, should be included in the Act itself on the lines of Clause 100 of the Bill.

7.42 The comments of the Ministry on this suggestion are as under:—

(i) "The provisions proposed to be prescribed through rules are of procedural nature since they empower Central Government to prescribe (i) the number of members who are entitled to give notice for such motion and (ii) the manner in which company concerned shall give notice to its members.

(ii) In view of above, there may not be any necessity of any modification in the Bill on this matter."

7.43 The Committee, while disagreeing with the Ministry's viewpoint on this subject, recommend that resolutions requiring special notice, being a substantive matter, related

matters like (a) number of members entitled to give notice for moving a motion and (b) the manner in which company concerned shall give notice to its members, should rather be included in the main clause itself, instead of being left for delegated legislation.

Clause 107—Minutes of Proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot

7.44 Clause 107(3) reads as under:—

> "All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting."

7.45 ICSI on this clause suggested that the expression 'officer' may be defined in the Bill.

7.46 *The Ministry accepted the suggestion to be addressed appropriately with legislative vetting.*

7.47 PHDCCI and Bombay Chamber of Commerce and Industry on this clause suggested that in clause 107(3) the word 'officers' be replaced by the words 'Key Managerial Personnel'.

7.48 On this suggestion the Ministry in their written submission commented that:-

> *"The intention is to record minutes in respect of appointment of all officers in the minutes as is provided in section 193(3) of the existing Act. The suggestion will be suitably taken care of once the suggestion to define term 'officer' is considered to be included in the Bill as suggested above."*

7.49 The Committee find that since all the appointments made at the meetings are recorded in the minutes, the specific provision for 'officers' is redundant and may, therefore, be deleted.

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

Clause 110—Declaration of Dividend

8.1 This clause seeks to provide that dividend shall be declared by a company for any financial year at a general meeting out of the profits for that year or any previous year or years arrived at after providing for depreciation or out of money provided by the Central Government or a State Government for the payment of dividend.

8.2 Clause 110(1) reads as follows:—

"(*1*) No dividend shall be declared or paid by a company for any Financial year except—

(*a*) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(*b*) out of money provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that if owing to inadequacy or absence of profits in any financial year, the company proposes to declare dividend out of the accumulated profits earned by it in the previous financial year or years and transferred by it to the reserves, such declaration shall be made by a resolution passed at a meeting of the Board with the consent of all the directors and the approval of the financial institutions whose term loans are subsisting, and thereafter in accordance with a special resolution passed by the shareholders at an annual general meeting."

8.3 In their written memoranda submitted to the Committee, it has been suggested as follows:—

Essentially, there is no fundamental distinction between final and interim dividends. The latter are being increasingly used to help shareholders have better cash flows. Therefore, it is not sensible to have this distinction in law. The simplest solution is a deletion.

8.4 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

The suggestion is noted. However, the intention behind the provision is that the interim dividend(s) should not be declared in a financial year in which the company is expected to suffer or has actually suffered losses.

8.5 In their written memoranda submitted to the Committee, PHDCCI suggested as follows:—

The requirement of obtaining consent of all directors would have the effect of empowering a single director to veto such proposal, which is not a good governance practice and will not be in the best interest of the company and its shareholders.

8.6 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

The suggestion is noted. It may be considered to modify the provisions to provide that consent of all directors who are present in the meeting shall be required.

8.7 Further, in their written memoranda submitted to the Committee, ICSI and PHDCCI suggested as follows:—

Further, the approval of the shareholders may be taken by Ordinary resolution instead of special resolution. (ICSI)

Approval of financial institutions may be required only if there is a default by the company in payment of term loan and the rate of proposed dividend is higher than the average dividend declared in the recent few years. (PHD Chamber of Commerce and Industry)

8.8 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

> *"This suggestion may not be accepted as it is proposed that for this kind of action a special resolution should be necessary."*

8.9 The Committee agree with the views of the Ministry in this regard, and desire that the provision may be modified to require that consent of all directors who are present in the meeting may suffice instead of "consent of all Directors" of the Board as proposed in the proviso to clause 110(1), whenever the Company proposes to declare dividend out of the accumulated profits of previous financial years, which has been transferred to the reserves.

8.10 Clause 110(2) reads as follows:—

"For the purposes of clause (a) of sub-section (1), depreciation shall be provided in any one of the following manners, namely:—

(a) the amount of depreciation on assets as shown by the books of the company at the end of each financial year at the rate prescribed in the rules made in this behalf;

(b) as regards any other depreciable asset for which no rate of depreciation has been laid down under this Act, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by a special order in any particular case:

Provided that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.

8.11 In their written memoranda submitted to the Committee, FICCI suggested as follows:—

As per IFRS, depreciation should be based on useful life of the relevant assets.

8.12 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

"The suggestion for making suitable provision in the Bill to provide for harmonization with International Financial Reporting Standards (IFRS) is noted. The Government has set up a Core Group and two Sub-Groups for making suitable recommendations on the matter. Further action may be taken on receipt of the reports of these Groups."

8.13 As observed in the overview (Part-I), the Committee would expect that harmonization with IFRS will be made, wherever required.

Interim Dividend

8.14 Sub-clause 110(3) on declaration of interim dividend reads as under:

"110 (3) The Board of Directors of a company may declare interim dividend during any financial year out of the profits of the company for part of the year."

8.15 Suggestions on Clause 110(3) received from various institutions are as under:-

Restriction of distributing interim dividend only out of profits earned by the Company during the part of that year should be removed. The company may be permitted to declare interim dividend out of accumulated profits, if otherwise eligible. (FICCI)

The interim dividend may be allowed to be declared out of the accumulated profits also. Accordingly, the words "out of the profits of the company for part of the year" may be deleted. (ICSI)

The company may be allowed to distribute interim dividend out of accumulated profits and not be restricted to profits earned for part of the year. (PHDCCI)

The section may be modified to read as under:-

The Board of Directors of a company may declare interim dividend during the financial year out of the profits of the company. (ICWAI)

This Clause of the Bill should be amended to provide that interim dividend can be declared out of the surplus in the Profit and Loss Account as well as profits of the financial year in which such interim dividend is sought to be declared; provided that no loss has been incurred during the current year up to the date of declaration of the interim dividend.

This Clause permits the Board of Directors to declare interim dividend from the profits of the company only for that part of the year. A company may have brought forward balance in its Profit & Loss Account and may wish to declare interim dividend from out of such profits also. This should be modified to provide that interim dividend can be declared out of the surplus in the P&L Account including profits of the financial year in which such interim dividend is sought to be declared. (CII)

8.16 The Comments of the Ministry of Corporate Affairs on the above said suggestions are as under:—

(i) The suggestion is noted. However, the intention behind the provision is that the interim dividend(s) should not be declared in a financial year in which the company is expected to suffer or has actually suffered losses.

(ii) The provisions, however, can be considered to be modified to the extent that 'interim dividend' can be declared out of the surplus in the Profit and Loss Account, provided that no loss has been incurred during the financial year up to the date of declaration of the interim dividend.

8.17 Keeping in view the large number of suggestions received by the Committee on this clause, the Committee would recommend that interim dividend may be permitted to be declared out of the surplus in the Profit & Loss Account as well as profits of the financial year in which such interim dividend is sought to be declared; provided that no loss has been incurred upto the preceding quarter of the current financial year.

Non-declaration of dividend

8.18 Clause 110(6) reads as follows:—

"A company which fails to comply with the provisions of section 67 shall not, so long as such failure continues, declare any dividend on its equity shares."

8.19 In a written memoranda it has been submitted to the Committee, as follows:—

The word and figure 'Section 66' may also be included in the sub-clause (6) of clause 110 as under:—

110(6) A company which fails to comply with the provision of sections 66 and 67 shall not, so long as such failure continues, declare any dividend on its equity shares.

8.20 *While accepting the above-mentioned suggestion, the Ministry of Corporate Affairs have stated that the suggestion is noted to be addressed appropriately with legislative vetting.*

8.21 The Committee recommend that the suggestion, as agreed to by the Ministry, may be incorporated stipulating that any failure to comply with clauses 66 as well as 67 relating to acceptance of deposits from public will bar the company to declare any dividend during the period of non-compliance.

Clause 112—Investor Education and Protection Fund (IEPF)

8.22 This clause seeks to provide that the Central Government shall establish a fund to be called the Investor Education and Protection Fund. The Fund shall be utilized for refund of unclaimed dividends, application monies due for refund and interest thereon, the promotion of investors' education, awareness and protection.

8.23 Clause 112(*1*) and (*2*) reads as follows:—

"(*1*) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the Fund).

(*2*) There shall be credited to the Fund—

(*a*) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilized for the purposes of the Fund;

(*b*) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(*c*) the amount in the Unpaid Dividend Accounts of companies transferred to the Fund under sub-section (*4*) of section 111;

(*d*) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (*5*) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;

(*e*) the amount lying in the Investor Education and Protection Fund under section 205(C) of the Companies Act, 1956;

(*f*) the interest or other income received out of investments made from the Fund;

(*g*) the amount received under sub-section (*4*) of section 33; and

(*h*) such other amount as may be prescribed."

8.24 In their written memoranda submitted to the Committee, PHDCCI and ICSI suggested as follows:—

Since the amounts transferred to IEPF can be utilized for refund of the application monies received for allotment of securities, it will be in the fitness of things that the IEPF should be allowed to be credited with the application monies received by companies for allotment of any securities and due for refund. (PHDCCI)

(a) The following items which are presently required to be transferred to Investor Education and Protection Fund under section 205(C) of the Companies Act, 1956 may also be included under clause 112(2):

(i) unclaimed matured debentures,

(ii) unclaimed application money received on any securities,

(iii) unclaimed interest on debentures or deposits unclaimed matured deposit (ICSI).

8.25 The Ministry of Corporate Affairs have accepted the above suggestion to be addressed appropriately with legislative vetting.

8.26 Clause 112(3) reads as follows:—

"The Fund shall be utilized for the refund in respect of unclaimed dividends, the application monies due for refund and interest thereon, and promotion of investors' education, awareness and protection in accordance with such rules as may be prescribed."

8.27 In their written memoranda submitted to the Committee, ICSI suggested as follows:-

To provide for the reimbursement of legal expenses incurred in pursuing class action suits under Clauses 32 and 216 by members, debenture-holders or depositors as may be sanctioned by the Court or the Tribunal.

8.28 While accepting the abovementioned suggestions endorsed by the Committee, the Ministry of Corporate Affairs have stated that the suggestion is noted to be addressed appropriately with legislative vetting and have provided an alternate clause to 112(3) as follows:—

"Clause 112(3) The Fund shall be utilized for

(a) the refund in respect of unclaimed dividends, the application monies due for refund and interest thereon;

(b) promotion of investors' education, awareness and protection; and

(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement and subject to such rules as may be prescribed by the Central Government."

Clause 113—Amount lying in previous Fund to become part of Fund under this Act

8.29 This clause seeks to provide that all amount lying in the existing fund, *i.e.* Investor Education and Protection Fund as per section 205C of the Companies Act, 1956, shall stand credited to the Investor Education and Protection Fund established under this Act.

8.30 Clause 113 reads as follows:—

"The amount lying in the Investor Education and Protection Fund established under section 205C of the Companies Act, 1956, shall stand credited to the Investor Education and Protection Fund established under sub-section (*1*) of section 112."

8.31 In their written memoranda submitted to the Committee, ICSI suggested as follows:—

"Clause 113 may be deleted".

8.32 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

"Since requirement provided in clause 113 has also been provided in clause 112(2)(e), of the Bill, the suggestion is noted to be addressed appropriately with legislative vetting."

8.33 With a view to increasing the corpus of the IEPF, Committee recommend that the suggestion for including unclaimed matured debentures, unclaimed application money received on any securities and unclaimed interest on debentures or matured deposits unclaimed may also be included in the Fund.

8.34 While endorsing the alternate clause suggested for greater utilisation of the Fund under clause 112(3), the Committee desire that the same may be incorporated in the Bill. In this context, the Committee would like to emphasise that the Investor Education and Protection Fund should not only be utilized to promote and build investor awareness, but also made an effective instrument to deliver speedy compensation and justice to small investors. Recognised Investor Associations should also be permitted and encouraged to file class section suits under Clauses 32 and 216 on behalf of the shareholders, debenture-holders and depositors.

8.35 The Committee would also recommend that as agreed to by the Ministry, Clause 113 may be deleted, as the same is already covered in Clause 112(2)(e), wherein it has been provided that the amount lying in IEPF established under Section 205(c) of the existing Act, will also be credited to the Fund established under Clause 112(1) of the proposed Bill.

Clause 115—Punishment for failure to distribute dividends within thirty days

8.36 Clause 115 reads as follows:—

"Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed in the following cases, namely:—

(*a*) where the dividend could not be paid by reason of the operation of any law;

(*b*) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;

(*c*) where there is a dispute regarding the right to receive the dividend;

(*d*) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(*e*) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company."

8.37 In their written memoranda submitted to the Committee, ICSI suggested as follows:—

Add the word 'and the same has been communicated' in the end.

8.38 While accepting the above-mentioned suggestions, the Ministry of Corporate Affairs have stated that the suggestion is noted to be addressed appropriately with legislative vetting.

8.39 The Committee recommend that the words 'and the same has been communicated' may be added in sub-clause 115(e) after the word 'company' at the end of the sentence for greater clarity in the matter.

CHAPTER IX

ACCOUNTS OF COMPANIES

Clause 116—Books of account, etc., to be kept by company

9.1 This clause seeks to provide that every company shall prepare and keep at its registered office books of account and other relevant books and papers which give a true and fair view of the state of the affairs of the company and its branch offices.

9.2 Clause 116 reads as follows:—

"(*1*) Every company shall prepare and keep at its registered office books of account and other relevant books and papers which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

(*2*) Where a company has a branch office within India or outside, it shall be deemed to have complied with the provisions of sub-section (*1*), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (*1*).

(*3*) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

Provided that the inspection in respect of any subsidiary of the company shall be done only by any person authorised in this behalf by a resolution of the Board of Directors.

(*4*) Where an inspection is made under sub-section (*3*), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under section 183 or section 184, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(6) Where any company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."

9.3 Suggestions on Clause 116 (6) received from various institutions are as under:—

The relevant provision regarding defence available when default not committed wilfully under section 209(5) of the Act should be incorporated in this Clause.

The defenses that are currently available under Companies Act, which provides that competent and reliable person/s were charged with the duty or that default was not committed wilfully be retained. This is particularly relevant keeping in mind the introduction of personal liability. (CII)

The relevant provision under section 209(5) of the present Act should be incorporated in this clause. (PHDCCI and Bombay Chamber of Commerce and Industry)

9.4 The Comments of the Ministry of Corporate Affairs on the above said suggestions are as under:—

The existing provisions have been reviewed in the Bill. The provisions proposed in the Bill provide clearer and more accountable provisions for fixing accountability in case of non-maintenance of books of accounts in the manner provided in the Bill. In view of this, there may not be any necessity of any modification in the Bill on this matter.

9.5 The Committee are of the view that the Ministry may consider a less harsher position on the question of default not committed wilfully with respect to books of accounts etc., to be kept by company, particularly in the context of the existing position in law, which provides defenses for non-wilful cases.

Clause 117—Financial statement

9.6 This clause seeks to provide that the financial statements shall give a true and fair view of the state of affairs of the company and shall comply with accounting standards.

9.7 Clause 117 reads as follows:—

"(*1*) The financial statement shall give a true and fair view of the state of affairs of the company or companies as at the end of the financial year, comply with the accounting standards notified under section 119 and shall be in such form as may be prescribed.

(*2*) At every annual general meeting of a company held in pursuance of section 85, the Board of Directors of the company shall lay before such meeting a financial statement for the financial year.

(*3*) Where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*).

(*4*) Where the financial statements of a company do not comply with the accounting standards referred to in sub-section (*1*), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(*5*) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(*6*) Where any company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any note or document annexed or attached thereto, giving information required to be given by this Act and allowed by this Act to be given in the form of such note or document."

9.8 Suggestions on Clause 117(1) received from RBI are as under:—

It would be appropriate to insert the following provisos in sub-clause (1) of Clause 117 of the Companies Bill, 2009:

Provided that the form as may be prescribed under this sub-section shall not be applicable to banking companies for which a form of balance sheet and profit and loss account has been specified in the Banking Regulation Act, 1949:

Provided further that the balance sheet and the profit and loss account of a banking company shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949.

9.9 In this regard, the Ministry of Corporate Affairs have proposed an alternate clause to 117(1) as under:—

"117 (1) The financial statement shall give a true and fair view of the state of affairs of the company or companies as at the end of the financial year, comply with the accounting standards notified under section 119 and shall be in the form prescribed in Schedule to the Act:

Provided that the items contained in such financial statements shall be in accordance with the definitions of such items provided in the accounting standards."

9.10 The Committee, however, find that the suggestion of RBI that the form as may be prescribed under this sub-section shall not be made applicable to banking companies, for which a separate form of balance sheet and profit and loss account has been specified in the Banking Regulation Act, has not been considered by the Ministry. The Committee would therefore, recommend that the non-application of Clause 117(1) to banking companies may be clarified in the Bill.

9.11 Further suggestions on Clause 117(1) received from ICWAI and Bombay Chamber of Commerce and Industry are as under:—

In sub-section (1) of section 117 after the words comply with the accounting standards the words "Cost Accounting Standards" may be inserted.

9.12 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

In the existing Act, the provisions in respect of maintenance of cost records and requirements for appointment of cost auditor have been provided in section 209(1)(d) and section 233B of the Act respectively. Provisions of section 209(1)(d) empower Central Government to prescribe maintenance of cost records for a class of companies engaged in production, processing, manufacturing or mining activities. Further, provisions of section 233B provide that where Central Government is of the opinion that it is necessary so to do in relation to a company covered under section 209(1)(d), the Central Government may, by order direct cost audit of cost records of such company conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant.

Attention is drawn to the recommendation of Expert Committee on Company Law (2005) [Irani Committee] [Chapter IX, Paras 34 and 35] on the matter which reads as under:

'At present, the Companies Act contains provisions relating to maintenance of Cost Records under section 209(1)(d) and Cost Audit under section 233B of the Companies

Act in respect of specified industries. The Committee felt that Cost Records and Cost Audit were important instruments that would enable companies make their operations efficient and exist in a competitive environment.

The Committee noted that the present corporate scenario also included a sizeable component of Government-owned enterprises or companies operating under administered price mechanism or a regime of subsidies. It would be relevant for the Government or the regulators concerned with non-competitive situations to seek costing data. The Committee, therefore, took the view that while the enabling provision may be retained in the law providing powers to the Government to cause Cost Audit, legislative guidance has to take into account the role of management in addressing cost management issues in context of the liberalized business and economic environment. Further, Government approval for appointment of Cost Auditor for carrying out such Cost Audit was also not considered necessary.'

Keeping in view the above recommendations, the provisions have been proposed in the Bill in respect of maintenance of cost records by certain classes of companies and for audit of such records in Clause 2(1)(m) and 131 of the Bill respectively.

9.13 The Committee are of the view that the suggestions made for recognizing the term 'cost accounting standard' or 'cost auditing standard' in the Bill require examination in greater detail and on merits alongwith all related issues on the matter. As the issue is stated to be under examination by a Group in the Ministry, the Committee would expect the Government to take an objective view in the matter keeping in mind the wider ramifications.

9.14 In this regard, the Committee would agree to a feasible alternate definition to Clause 2(1)(*b*) dealing with accounting standards as proposed by the Ministry as follows:—

"Accounting Standards means such accounting standards or any addendum thereto as the Central Government may notify under Section 119, in consultation with the National Advisory Committee on Accounting and Auditing Standards constituted under Section 118."

Clause 117(3)

9.15 Suggestions received from various institutions/experts on Clause 117(3) are given as under:—

(i) Add "Own" before financial statement under sub-section (2). (ICSI)

(ii) Since 'financial year' has been defined in the Bill to mean the year ending on March 31, it would be necessary to provide clarity as to how a company would deal with the preparation of consolidated financial statements if the financial years of the subsidiaries are different, especially in case of foreign subsidiaries. Accordingly, a suitable provision may be included in the Bill. (PHDCCI)

(iii) Automatic exemption, as provided in IFRS, from preparation of consolidated financial statements to unlisted companies, which are subsidiaries of another entity and where the ultimate parent or any of the intermediate parents prepare consolidated

financial statements for public use. This would reduce cost of preparation of consolidated accounts at each level. (CII)

(iv) A suitable provision to deal with situations when subsidiaries have different accounting years may be included. (FICCI)

(v) Provision of Sub-Clause should be applicable only to listed Companies. In case of unlisted Companies just a statement of summary details of subsidiaries as per the existing section 212(3) of the Companies Act, 1956 should be made mandatory. (Indian Merchants' Chamber).

9.16 In response, the Ministry of Corporate Affairs have suggested some modification in Clause 117(3) as under:—

"Where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall provide a copy of the standalone audited financial statements of its subsidiary or subsidiaries to any shareholder of the company who asks for it:

Provided that a company shall place standalone audited accounts of its subsidiaries on its website, if any:

Provided that the Central Government may prescribe the manner of consolidation of accounts of companies by way of rules."

9.17 The Committee find that the Ministry of Corporate Affairs have not agreed to the suggestion for providing automatic exemption to unlisted companies, from preparing consolidated financial statements for their subsidiaries or even allowing them to file only a statement of summary details as per the existing Section 212(3) of the Companies Act, 1956. The Ministry, have instead only proposed a minor modification in the sub-clause, while leaving the manner of consolidation of accounts by companies to rule-making. While endorsing the modification proposed, the Committee would recommend that the Ministry may re-consider the suggestion to exempt unlisted companies from preparing detailed consolidated financial statements of all their subsidiaries in the same form and manner as that of its own. Instead, they may be permitted to prepare only a summary statement in respect of their subsidiaries.

Clause 118—Constitution of National Advisory Committee on Accounting and Auditing Standards

9.18 This clause seeks to provide that the Central Government may by notification constitute an Advisory Committee to be called the National Advisory Committee on Accounting and Auditing Standards to advise the Central Government on accounting and auditing policies and standards for adoption. The clause further provides for the members who shall constitute the Advisory Committee.

9.19 Clause 118 reads as follows:—

"(*1*) The Central Government may, by notification, constitute an advisory committee to be called the National Advisory Committee on Accounting and Auditing Standards (hereinafter referred to as the Advisory Committee) to advise the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be.

(*2*) The Advisory Committee shall consist of the following members, namely:—

(*a*) a Chairperson who shall be a person of eminence and well versed in accountancy, finance, business administration, business law, economics or similar disciplines, to be nominated by the Central Government;

(*b*) one representative of the Central Government to be nominated by it;

(*c*) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 or his nominee;

(*d*) one representative of the Reserve Bank of India to be nominated by it;

(*e*) one representative of the Securities and Exchange Board to be nominated by it;

(*f*) one representative of the Comptroller and Auditor-General of India to be nominated by him;

(*g*) one member each to be nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

(*h*) a person who is or has been a professor in accountancy, finance or business management in any University or deemed University to be nominated by the Central Government; and

(*i*) two representatives of the Chambers of Commerce and Industry, to be nominated by the Central Government.

(*3*) The members of the Advisory Committee nominated by the Central Government shall hold office for such term as may be determined by it at the time of their appointment and any vacancy in the membership of the Committee shall be filled by the Central Government in the same manner as that for the member in whose vacancy it is proposed to be filled.

(*4*) The members of the Advisory Committee shall be entitled to such fees, traveling, conveyance and other allowances as may be prescribed.

(*5*) The Advisory Committee shall, after consulting the Institute of Chartered Accountants of India, submit its recommendations to the Central Government on matters relating to accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be."

9.20 In their written memoranda submitted to the Committee, ICAI and Indian Merchants' Chamber on this clause have suggested as follows:

(i) Status quo should be maintained for this section. The National Advisory Committee on accounting standards should remain as there in Companies Act, 1956 (Section 210A) and National Advisory Committee on Auditing Standards should not be created.

(ii) (a) The section should cover only Accounting Standards since The Institute of Chartered Accountants of India has already laid down the Auditing Standards for Auditors and for regulating the profession. Hence the introduction of Auditing Standards in Companies Act will lead to duplication & delays with no benefit gained. (ICAI)

(b) It is not clear who would prepare those standards and who would make a reference to the NACAAS and get its recommendations on those standards whether can NACAAS go about it in a *suo moto* manner is not clear. (Indian Merchants' Chamber)

9.21 While disagreeing with the above suggestions, the Ministry of Corporate Affairs have submitted as under:—

(i) The intention is to recognize the concept of auditing standards in the Companies Act with a view to bring more acceptance of following auditing standards. Presently compliance with auditing standards is being seen by ICAI through its members who are performing audits of their clients. The recognition of the term 'auditing standards' in the Company Law is necessary for ensuring that verification or audit of accounts of companies is conducted after following auditing standards prescribed and monitored by the Central Government in consultation with National Advisory Committee provided in the Bill to recommend both auditing and accounting standards.

(ii) Clause 2(1)(g) of the Bill defines "auditing standards" to mean such auditing standards as the Central Government may notify under Section 126(10) in consultation with the National Advisory Committee on Accounting and Auditing Standards (NACAAS). Further, clause 126(10) of the Bill provides as under:—

> *"The Central Government may, after consultation with the National Advisory Committee on Accounting and Auditing Standards, by notification, lay down auditing standards:*
>
> *Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards."*

(iii) Provisions of clause 118 provide the constitution and role etc of National Advisory Committee on Accounting and Auditing Standards. Clause 118(5) provide that the Advisory Committee shall, after consulting the Institute of Chartered Accountants of India, submit its recommendations to the Central Government on matters relating to accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be.

(iv) In view of above, it is felt that the provisions proposed in the Bill clearly provide for the role of NACAAS in connection with making recommendations on auditing standards. Hence, there may not be any necessity of any modification in the Bill on this matter.

9.22 During evidence, representative of Ministry of Corporate Affairs on this issue stated as follows:—

"As of now the Companies Act recognizes only accounting standards. The auditing standards had all along been undertaken only by the Institute of Chartered Accountants of India. Now we are proposing that the auditing standards should also be vetted by NACAAS and later on it can come for formal approval from the Ministry. This is very essential keeping in view the increasing role of auditors and the entire Bill focuses upon tightening the role of auditors themselves. So, we cannot leave the auditing standards to be decided by a single institute. We thought that there should be an oversight body for this."

9.23 The Committee while welcoming the introduction of auditing standards as a concept in the Bill, would like the National Advisory Committee on Accounting and Auditing Standards (NACAAS) to be institutionalized not only as a body for setting up auditing standards but also as a quasi-regulatory body for generally supervising the quality of audit undertaken. The Committee would expect the Ministry to clearly delineate the role and responsibilities of this body accordingly.

Clause 120—Financial Statement, Board's report, etc.

9.24 This clause seeks to provide that the financial statement including consolidated financial statements should be approved by the Board of Directors before they are signed and submitted to auditors for their report.

9.25 Clause 120(*1*) reads as under:

"The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the Chairman where he is authorised by the Board or by two directors out of which one shall be Managing Director or Chief Executive Officer, or, in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon:

Provided that such financial statements shall be authenticated in such manner as may be prescribed."

9.26 In their written memoranda submitted to the Committee, ICSI have suggested as follows:

The Chief Executive Officer may be authorized to sign the financial statement on behalf of the Board only if he is a member of the Board of the Company.

9.27 The Ministry of Corporate Affairs while accepting the abovesaid suggestion endorsed by the Committee, have stated that the suggestion is noted to be addressed appropriately with legislative vetting.

9.28 The Committee would thus recommend the Ministry to make the necessary changes in the Bill with regard to authorizing the CEO to sign the financial statement on behalf of the Board only if he is a member of the Board.

9.29 Clause 120 sub-clauses (*2*) and (*3*) read as under:

120(*2*) The auditors' report shall be attached to every financial statement.

120(*3*) There shall be annexed to every financial statement laid before a company in general meeting, a report by its Board of Directors, which shall include—

(*a*) the extract of the annual return as provided under sub-section (*2*) of Section 82,

(*b*) number of meetings of the Board,

(*c*) Directors' Responsibility Statement,

(*d*) declaration by independent directors where they are required to be appointed under sub-section (*3*) of Section 132,

(*e*) Report of the committee on directors' remuneration,

(*f*) explanations or comments by the Board on every qualification, reservation or adverse remark made by the auditor in his report,

(*g*) particulars of loans, guarantees or investments under sub-section (*2*) of Section 164, and

(*h*) particulars of contracts or arrangements under sub-section (*1*) of Section 166.

9.30 In their written memoranda submitted to the Committee on these sub-clauses, PHDCCI have suggested as follows:

(*i*) The directors of a company occupy a fiduciary position *vis-à-vis* its shareholders and accordingly, being accountable to the shareholders, they should provide explanations on every reservation, qualification or adverse remarks that may feature in the auditor's report. It is desirable that the present requirement of providing such explanations in the Board's Report should continue.

(*ii*) Section 217(1) of the existing Companies Act requires the board to, *inter alia*, include the following matters in its report:—

(*a*) The state of the company's affairs.

(*b*) The amounts, if any, which it proposes to carry to any reserves in such balance sheet.

(*c*) The amount, if any, which it recommends should be paid by way of dividend.

(*d*) Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report.

These matters have been omitted from the matters to be included in the report of the Board of Directors under the new Companies Bill. On account of the nature of information under the above clauses, it is suggested that the same should also be included in the report of the Board under clause 120 under the new Companies Bill also.

9.31 The Comments of the Ministry of Corporate Affairs on the abovesaid suggestion are as under:—

Provisions in this regard have been provided in clause 120(3)(f) of the Bill.

9.32 As provisions proposed under Clause 120(3)(f) do not seem to be adequate, the Committee are of the view that provisions similar to the existing Section 217 of the Companies Act, 1956 may be included in the Bill under Clause 120, requiring the Board of Directors to furnish explanations about the state of the company's affairs, material changes and commitments, if any, affecting the financial position of the company and such other matters specified in the aforesaid Section of the existing Act.

9.33 In their written memoranda submitted to the Committee, ICSI suggested as follows:

Directors' remuneration report to be prepared containing therein such matters as may be prescribed including a statement of Company's policy on Directors' Remuneration and should form part of the Annual Report of the company.

9.34 The Comments of the Ministry of Corporate Affairs on the above-mentioned are as under:—

It is suggested that disclosure in respect of policy being followed by the Nomination and Remuneration Committee w.e.f. appointment and remuneration of directors and related matters may be considered to be provided in the report by the Board of Directors to the shareholders. Accordingly, it is suggested that the provisions of clause 120(3)(e) of the Bill may be considered to be modified as suggested.

9.35 The Committee suggested that the policy being followed by the Nomination and Remuneration Committees of the Board should form part of the Annual Report of the Company. While accepting the suggestion of the Committee, the Ministry have proposed an alternate Clause to 120(3) as given below:

"120(3) There shall be annexed to every financial statement laid before a company in general meeting, a report by its Board of Directors, which shall include—

* * * * * * *

(e) Company's policy on directors' appointment and remuneration including on criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (13) of Section 158."

9.36 The above modification pertaining to Directors report containing *inter-alia* particulars on the company's policy on directors, appointment and remuneration etc. may, therefore, be suitably carried out in the Bill.

9.37 On this sub-clause, in their written memoranda submitted to the Committee, ICSI suggested as follows:

(*a*) Details of material Related Party Transactions, not in the ordinary course of business or not on an arm's length basis, should be prepared in such manner as may be prescribed and should also form part of the annual report of the company.

(*b*) A related party to a Company should include a Director or Key Managerial Personnel to the company first which seems to have been inadvertently missed out. It is suggested to include Director or Key Managerial Personnel of the company in the abovesaid clause as a related party as detailed under:

"related party" with reference to a company means—

(*i*) a Director or Key Managerial Personnel;

(*ii*) a relative of a director or key managerial personnel;

(*iii*) a firm in which a director, manager or his relative is a partner.

9.38 The Comments of the Ministry of Corporate Affairs on the above-mentioned are as under:—

Central Government should have power to prescribe a structured format requiring details about all related party transactions taken place in a particular year to be included in the Board's report for that year for disclosure to various stakeholders'. The suggestion was made to consider inclusion in clause 120(3)(h) of the Bill provisions for empowering Central Government to prescribe format of the disclosure in respect of related party transactions.

9.39 When the afore-mentioned suggestions on material related party transaction in subject of both a Director and Key Managerial Personnel (KMP) of the company were taken up by the Committee, the Ministry proposed alternate sub-sections as below:

"120*(3)(d):* a statement on declaration given by independent directors under second proviso to sub-section (5) of Section 132…,

120(3)(g): particulars of loans, guarantees or investments under sub-section (2) of Section 164.

120(3)(h): particulars of contracts or arrangements under sub-section (1) of Section 166 in a prescribed form."

9.40 On the question of Director's Report, at the behest of the Committee, the Ministry further suggested alternate provisions as below:

"120(3) There shall be annexed to every financial statement laid before a company in general meeting, a report by its Board of Directors, which shall include—

* * * * * *

(i) A Statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(ii) the details about the policy developed and implemented by the company on Corporate Social Responsibility initiatives taken during the year;

(iii) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors."

9.41 Further, when the Committee sought more detailed and meaningful disclosures in the Director's Responsibility Statement, the Ministry agreed to modify the sub-clause 120(3) as follows:

The Directors' Responsibility Statement referred to in sub-section (3) shall state that—

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls were adequate and operating effectively.

> *"For the purpose of this clause, the term 'internal financial controls' means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information."*

"(f) The directors had devised proper systems to ensure compliance with the provisions of this Act and rules made thereunder and that such systems were adequate and operating effectively."

9.42 On the issue of Corporate Social Responsibility, during evidence, the Committee raised their concerns on the role of corporates in discharging their social responsibilities.. In response, the Secretary, Ministry of Corporate Affairs stated during evidence as follows:—

"There was no mention in the earlier Companies Act about corporate social responsibility. We are just mentioning that there will be a Corporate Social Responsibility Policy in each and every company beyond a certain limit, which are profitable companies and which are of certain size."

9.43 He further stated that:—

"2 per cent of the profit of the last 3 years should be spent on corporate social responsibility. We are going up to that extent. There could be argument as to whether it should go there or the Government should mandate anything. But we have taken a considered view."

9.44 On being asked as to who will be monitoring the social obligation, the Secretary replied during evidence as under:—

"The whole emphasis of the Act is disclosure method. Whatever is being done, what is being done will be in public domain. It will be disclosed. It will be given in the report. It will come to the Ministry and anybody can monitor that way. But if you think of an oversight mechanism that some Government officer will look into it, then no, we have not conceived of that idea. We have not put up that type of idea there."

9.45 He further added:—

"This is the first time and historically it may be the first time in the world—is that we are putting the Corporate social responsibility which the Chairman directed to us. We are putting it in the law itself that every company beyond the certain limit should have a corporate social responsibility policy. This is something we cannot mandate beyond that, but we are making a provision in the law itself."

9.46 On this issue, the Ministry in their post evidence replies submitted as follows:—

(i) The Ministry has examined the matter in detail in view of discussions taken place before Hon'ble Committee on 15th June, 2010.

(ii) It is felt that the Bill may include provisions to mandate that every company having [(net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more)] or [a net profit of Rs. 5 crore or more during a year] shall be required to formulate a CSR policy to ensure that every year at least 2% of its average net profits during the three immediately preceding financial years shall be spent on CSR activities as may be approved and specified by the company. The directors shall be required to make suitable disclosures in this regard in their report to members.

(iii) In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/reasons in their report to the members.

9.47 The Committee would like the Ministry to modify the sub-clause 120(3) incorporating details about Directors' responsibility statement comprising of disclosures about material related party transactions and corporate social responsibility policy along the lines suggested above. In this regard, the Committee would however like to point out that all the details of material related party transactions in respect of both a Director and Key Managerial Personnel (KMP) of the company should also be required to be disclosed under clause 120(3). The Committee have already made their observation on corporate social responsibility and its inclusion in the statute itself in Part-I of the report (Overview).

Clause 121—Right of member to copies of audited balance sheet

9.48 This clause seeks to provide that a copy of financial statement, auditor's report along with annexures/attachments shall be sent to every member, every trustee for the debenture holder, and all other persons who are so entitled 21 days before the date of general meeting.

9.49 Clause 121 reads as follows:—

"(*1*) A copy of the financial statement, auditor's report and every other document required by law to be annexed or attached to the financial statement, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture holder of any debentures issued by the company, and to all the persons other than such member or trustee, being the person so entitled, twenty-one days before the date of the meeting:

Provided that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

(*2*) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (*1*) at its registered office during business hours.

(*3*) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees."

9.50 In written Memoranda submitted to the Committee, suggestions received from various quarters are as under:—

This Clause of the Bill should be amended to enable listed companies to send abridged financial statements (both stand alone as well as consolidated) to its shareholders; provided those who want the detailed report can demand it from the company.

Considering that most of the information including the financial statements of listed companies are required to be made available on their website, this would go a long way in conservation of the environment. (PHDCCI)

We believe that uploading the Annual Report on the Company's website with a facility to download would enable all the shareholders to access the same. This will save the company cost of printing and circulating the annual reports to all the shareholders which could be lakhs for any publicly listed company. (FICCI)

9.51 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

The format of financial statements which are proposed to be prescribed by way of rules under clause 117 of the Bill may prescribe format of abridged statements also for preparation and circulation by listed or bigger companies. The suggestion for inclusion of enabling provisions to allow companies to circulate such abridged financial statements and for furnishing complete financial statements to any member on demand may be considered. Attention is drawn to proviso to Clause 121(1) of the Bill which reads as under:

"Provided that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

The proviso to clause 121, therefore, empowers Central Government to prescribe manner of circulation of financial statements by bigger companies to their shareholders. The rules under this clause may provide for placing of financial statements by such companies on their websites.

It is felt that with above approach the Bill would provide for due protection of interests of investors alongwith saving of avoidable expenditure of the companies on preparation and circulation of full financial statements."

9.52 Considering the practical utility of the suggestions made to enable listed companies to send abridged financial statements to its shareholders and to furnish complete financial statements to any member on demand and also to post the detailed statements on the website, the Committee desire that the same may be considered for inclusion in the Clause.

Clause 122—Copy of financial statement to be filed with Registrar

9.53 This clause corresponds to section 220 of the Companies Act, 1956 and seeks to provide that copies of financial statement and all such documents which are annexed to the financial statement and adopted at the annual general meeting shall be filed with Registrar. In case a company does not hold an annual general meeting in any year, a statement of facts and reasons along with financial statement and attachment has to be filed with the Registrar.

9.54 Clause 122 reads as follows:—

"(*1*) A copy of the financial statement along with all the documents which are required to be annexed or attached to such financial statement under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fee or additional fee as may be prescribed within the time specified under section 364:

Provided that where the financial statement under sub-section (*1*) is not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statement along with the required documents under sub-section (*1*) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statement is filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statement adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fee or such additional fee as may be prescribed within the time specified under section 364.

(*2*) Where the annual general meeting of a company for any year has not been held, the financial statement along with the documents required to be annexed or attached under sub-section (*1*), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fee or additional fee as may be prescribed within the time specified, under section 364.

(*3*) If a company fails to file the copy of the financial statement under sub-section (*1*) or sub-section (*2*), as the case may be, before the expiry of the period specified in section 364, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees, and the Managing Director or the Managing Director and the Chief Financial Officer, if any, and, in the absence of the Managing Director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both."

9.55 In their written memorandum submitted to the Committee, CII suggested on Clause 122(3) as under:—

Imprisonment of a person who is not directly responsible for the failure to comply with the provisions of this clause would be too harsh. It is thus recommended that only financial penalty be imposed for any non-compliance with the provision of clause 122.

9.56 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

The intention is not to hold a person responsible if he is not directly responsible. The penal provisions propose to ensure proper accountability on the part of the company managements to comply with these important provisions of timely filing of financial statements with registrar.

In view of above, there may not be any necessity of any modification in the Bill on this matter.

9.57 As already emphasised in the Overview (part-I), the Committee are of the view that technical/procedural faults of companies may be viewed in a broader perspective, while fraudulent acts/conduct/practices should be pre-empted by way of deterrent provisions including imprisonment.

New provision for appointment of Internal Auditor

9.58 At the behest of the Committee, with a view to strengthening the compliance systems in companies, the Ministry of Corporate Affairs have agreed to incorporate a new Clause 122A, wherein Internal Audit has been made mandatory for bigger companies, as under:—

"Such class or description of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a Chartered Accountant or a Cost Accountant, to conduct internal audit of the books of accounts of the company.

The Central Government may make rules to prescribe the manner in which internal audit shall be conducted and reported."

9.59 The Committee recommend that suitable amendments be made in the Bill accordingly incorporating the proposal for mandatory appointment of internal auditor by companies.

CHAPTER X

AUDIT AND AUDITORS

(i) Clause 123—Appointment of auditors

10.1 This clause seeks to provide that a company shall appoint an individual or a firm as an auditor at annual general meeting subject to his written consent who shall hold office till conclusion of next annual general meeting. A notice of appointment should be filed with the Registrar.

Rotation

10.2 Clause 123 reads as follows:

"(*1*) Subject to the provisions of this Chapter, every company shall, at each annual general meeting, appoint an individual or a firm as an auditor who shall old office from the conclusion of that meeting till the conclusion of the next annual general meeting:

Provided that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided further that the company shall inform the auditor concerned of his appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.—For the purposes of this Chapter, "appointment" includes re-appointment.

10.3 In a written memorandum on the appointment of auditors submitted to the Committee, it has been suggested as follows:—

Auditors should be appointed on rotational basis say for a period of 3 years. At the end of 3 years the outgoing Auditors should hand over the assignment to the incoming Auditor. The new Auditor should take a sign off from the outgoing Auditors as it would be difficult for any Auditor to assist in perpetuating wrongdoings.

10.4 In the light of the recent instances of corporate fraud committed in respect of M/s Satyam Computer Services Ltd. wherein the role of auditors had come under scanner, the Committee had expressed their concern to make the process of statutory audit and the functioning of auditors truly independent and effective in this regard. The Committee sought to know from the Ministry whether compulsory rotation of auditors could be considered.

10.5 While specifying the need for rotation of auditors, the representative of Ministry of Corporate Affairs during evidence stated as under:—

"Maintenance of auditor firms by any particular agency may create other types of problem in future, which firm is there and which firm is not there; and that also has to be monitored. This will make a complicated system. So, we did not venture on that. We are insisting on the rotation of the auditors as well as the auditing firms. This is our present stand."

10.6 Responding to the concern of the Committee during the evidence on this issue, Ministry of Corporate Affairs replied as under:—

"Keeping in view the strong concerns expressed by the Committee, and the experience gained by the Ministry including from investigation of certain companies recently, it is felt that the Bill must have the provisions for rotation of auditors (both firms and partners) alongwith cooling off period before the same auditor/firm can re-join the company."

10.7 Accordingly, the Ministry of Corporate Affairs has provided an alternate clause to Clause 123(1) as follows:—

"123(1) Subject to the provisions of this Chapter, every company shall, at each annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of the next annual general meeting:

Provided that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed, shall be obtained from the auditor."

10.8 Not being satisfied with the aforesaid proposal of the Ministry, the Committee observed that the alternate clause proposed by the Ministry does not address the concern for stipulating rotation of auditors, but leaves it to be addressed by way of delegated legislation. The Committee desired that the principle of rotation of auditors should be enshrined in the statute itself and not left to be covered under rules.

Accordingly, the Ministry further suggested a new clause for this purpose as follows:—

New clause 123 (1A)

"123 (1A) No company shall appoint or re-appoint an individual or a firm as auditor for more than five consecutive years:

Provided that—

(i) an individual auditor who has completed a consecutive tenure of five years shall not be eligible for re-appointment as auditor in the same company for three years from the completion of such tenure of five consecutive years.

(ii) an audit firm which has completed a consecutive tenure of five years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such tenure of five consecutive years:

Provided further that where a firm is appointed as an auditor of a company, the auditing partner of the firm shall be rotated by the audit firm on completion of three consecutive years and such auditing partner shall not be eligible to be re-appointed as auditing partner of the same company till the expiry of three years from the date of completion of his three year tenure.

Explanation:—For the purpose of this Part, the term 'firm' shall include a limited liability partnership incorporated under Limited Liability Partnership Act, 2008:

Provided further that the certificate under first proviso shall also indicate whether the auditor satisfies the eligibility and independence criteria provided in clause 124."

10.9 The Committee recommend that the fresh proposal submitted by the Ministry, at the behest of the Committee, regarding rotation of auditors be suitably incorporated in the Bill.

Panel of Auditors

10.10 In a written memorandum submitted to the Committee, it has also been suggested as follows:—

In order to maintain independence of Auditor, it is essential that the appointment should be made by the Registrar of Companies from the panel of Chartered Accountants maintained by his office. Appointment by the company put the Auditor at the mercy of the company and as such he can't be independent.

10.11 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

It is suggested that audit committee should be made responsible to ensure that auditor remains independent throughout his tenure with the company. Modifications in this regard in clause 123 of the Bill are suggested for consideration by Hon'ble Committee.

10.12 The Committee recommend that the advisory body, proposed under clause 118 of the Bill to formulate and oversee accounting and auditing standards for adoption by companies or class of companies or their auditors, namely National Advisory Committee for Auditing and Accounting Standards (NACAAS) may be entrusted to develop and prepare a comprehensive list of audit firms over a period of three years, after which it will be mandatory for any company to appoint an auditor from this list. During the interim period, the companies may appoint their auditors on their own.

Casual Vacancy

10.13 Clause 123(5) reads as follows:

"(*5*) Any casual vacancy in the office of an auditor shall,—

(*i*) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by

the Board of Directors, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the approval of the Board;

(*ii*) in case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled within thirty days, failing which by the Board."

10.14 In their written memorandum submitted to the Committee, PHDCCI suggested as follows:—

"The clause 123(5) does not provide for the time limit within which the vacancy needs to be filled. It is therefore suggested that Clause123 (5) may be redrafted as under:

(5) Any casual vacancy in the office of an auditor shall,—

(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General of India, be filled by the Board of Directors *within thirty days*, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the approval of the Board *and he shall hold the office till the conclusion of the next annual general meeting.*

(ii) In case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General of India, be filled by *Comptroller and Auditor General of India* within thirty days. *In case Comptroller and Auditor General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days."*

On this clause, ICAI in their written submission stated that:—

"With regard to filing of casual vacancy by board of directors time period should be specified. Moreover, it should be clearly stated that the auditor appointed to fill in the casual vacancy should hold office till the conclusion of next annual general meeting."

10.15 The Ministry of Corporate Affairs have accepted in principle the above mentioned suggestions relating to filling up of casual vacancies of auditors. The Committee would expect suitable amendments to be incorporated in the Bill with regard to the time limit within which casual vacancy arising out of resignation of an auditor should be filled.

Audit Committee

10.16 Clause 123(8) reads as follows:—

"(*8*) Where a company constitutes an Audit Committee as required under section 158, all appointments, including the filing of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee."

10.17 In written memorandum submitted to the Committee, it has been suggested as follows:—

> Audit committee comprising of independent directors should be made responsible to ensure that auditor remain independent and are organisationally and professionally competent to discharge their responsibility.

10.18 While accepting the aforesaid suggestion endorsed by the Committee, the Ministry of Corporate Affairs has provided an alternate clause to 123(8) as follows:—

> *"123 (8): Where a company constitutes an Audit Committee as required under section 158, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee. The Audit Committee shall ensure and monitor that the independence criteria has been fulfilled by the auditor of the company throughout his tenure."*

10.19 The Committee would like the above modifications regarding the responsibilities entrusted to the audit committee to be duly incorporated in the Bill.

Removal of Auditor

10.20 Clause 123(9) reads as follows:—

> "(9) The auditor appointed under this section may be removed from his office before the expiry of his term only by a special resolution of the company:
>
> Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard."

10.21 In their written memorandum submitted to the Committee, some Chambers of Commerce and Industry have suggested as follows:—

> The Auditor of the Company must be suitably protected against any pressures or harassment from the promoters. At the same time, the shareholders should have the power to recall/remove the auditors by passing a special resolution as provided in Clause 123(9).

10.22 On this clause, ICAI in their written submission has stated as follows:

> This Proviso may be given to provide for mandatory recommendation of the audit committee for removal of auditor as a pre-requisite to move a special resolution for removal of auditors before the expiry of their term, in all those cases where the audit committee has been constituted in terms of section 158.

10.23 While accepting the above said suggestion, the Ministry of Corporate Affairs in their written reply stated as under:—

"The suggestion to provide that shareholders shall take into consideration recommendation of audit committee, if there is one, before taking a decision on removal of an auditor, may be considered to be included in the Bill."

10.24 In this connection, the Ministry of Corporate Affairs have also suggested new sub-clauses 123 (9A) and 123 (9B)—as under, stipulating the auditor who has resigned or has been removed before expiry of his term to file a statement:—

"(9A) The auditor who has resigned from the company or has been removed before expiry of his term as auditor, shall file a statement in the prescribed form with the company as well as the Registrar indicating reasons and other facts as may be relevant with regard to his resignation or removal, as the case may be.

(9B) In case the auditor does not comply with sub-section (9A) he shall be punishable with fine which may extend to five lakh rupees but which shall not be less than fifty thousand rupees."

10.25 While proposing new sub-clauses above, the Committee note that the Ministry have not addressed the aforesaid suggestion to provide that recommendation of the Audit Committee may be considered before a special resolution is moved by the shareholders for removal of auditors before their term expires. The Committee would, therefore, like the Ministry to consider this suggestion for inclusion in the clause.

(ii) Clause 124—Eligibility, qualifications and disqualifications of auditors

10.26 This clause seeks to provide for appointment of only Chartered Accountant in practice as auditors. The clause further provides for the persons who are not eligible for appointment as an auditor of a company. An auditor who is disqualified subsequent to his appointment, has to vacate office.

Clause 124 "(1) A person shall be eligible for appointment as an auditor of a company only if he is a Chartered Accountant in practice.

(*2*) Where a firm is appointed as an auditor of a company, only the partners who are Chartered Accountants in practice shall be authorised by the firm to act and sign on behalf of the firm.

(*3*) None of the following persons shall be eligible for appointment as an auditor of a company, namely:—

(*a*) a body corporate;

(*b*) an officer or employee of the company;

(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(*d*) a person who, or his relative or partner—

(*i*) is holding any security of the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of value in terms of such percentage as may be prescribed;

(*ii*) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company; or

(*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(*e*) a person or a firm who has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(*f*) a person whose relative is in the employment of the company as a director or key managerial personnel;

(*g*) a person who is in employment elsewhere or a person or firm who holds appointment as an auditor in companies exceeding such number as may be prescribed on the date of his appointment.

(*4*) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (*3*) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor."

10.27 Keeping in view the serious concern expressed by the Committee on the need to appoint Auditors with right credentials, the Ministry of Corporate Affairs have suggested that after item (g) of sub-clause (3) of clause 124, the following sub-clause may be added:—

"124. (3) None of the following persons shall be eligible for appointment as an auditor of a company, namely:—

*** *** ***

(h) a person who has been convicted by a Court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction."

10.28 The Committee would like this modification relating to eligibility for appointment as auditor to be suitably incorporated so as to ensure that only persons/firms with right credentials are appointed as auditors.

(iii) Clause 125—Remuneration of auditors

10.29 This clause seeks to provide for remuneration of auditors of the company. The remuneration is to be fixed in the general meeting. The clause further defines the term "remuneration".

10.30 Clause 125 reads as follows:—

"(*1*) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.

(*2*) The 'remuneration' under sub-section (*1*) in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of

the company and anything given to him otherwise than in cash, but does not include any remuneration paid to him for any other service rendered by him at the request of the company."

10.31 In their written memorandum submitted to the Committee, ICSI have suggested to add "or by the Board as the case may be" after its general meeting in sub-clause 125(1) (a).

10.32 Reply of the Ministry of Corporate Affairs on the above suggestion is as follows:—

The provisions of clause 125(1) provide that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Thus, the shareholders in a general meeting may, if they consider appropriate, authorise the Board of directors to fix the amount of remuneration to be paid to auditors.

In view of above, there may not be any necessity of any modification in the Bill on this matter.

10.33 Keeping in view the concern expressed by the Committee to have safeguards on auditor's remuneration so that they are not paid excessively, influencing thereby their impartiality, the Ministry have suggested an alternate clause to 125 (1) as under:—

"The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.

Provided that the shareholders, while determining the remuneration of the auditors shall take into account the net worth and turnover of the company.

Provided further that the notice for the general meeting in which appointment of auditor shall be discussed, shall give justification for payment of such remuneration to auditor."

10.34 The Committee desire the proposed change stipulating a benchmark for the remuneration of auditors may be duly incorporated in the Bill.

(iv) Clause 126—Powers and duties of auditors and auditing standards

10.35 This clause seeks to provide for the powers and duties of auditors. Every auditor can access books of accounts, vouchers and seek such information and explanation from the company and enquire such matters as he consider necessary. In case of financial statements, auditor of holding company can access records of subsidiaries.

10.36 Clause 126 (1) reads as under:

"Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place in India, and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and shall inquire into such matters as may be prescribed:

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries."

10.37 In their written memorandum submitted to the Committee, Indian Merchants' Chamber and Bombay Chamber of Commerce and Industry have suggested on sub-clause 126(1) as follows:—

The right of access should not be restricted to "in India" which words should be deleted. (Indian Merchants' Chamber)

The right of access should not be restricted to places "in India". The words "in India" should be deleted as a number of companies now have branches/offices/subsidiaries outside India. (Bombay Chamber of Commerce and Industry)

10.38 The Ministry of Corporate Affairs have accepted the afore-mentioned suggestion made to the Committee.

10.39 The sub-clause may, therefore, be modified by deleting the words 'in India', so as not to restrict right of access to auditors, as companies have operations outside India as well.

Auditor's Report and Audit Standards

10.40 Sub-clause 126(3) reads as follows:—

The auditor's report shall also state—

"(*a*) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;

(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(*c*) whether the report on the accounts of any branch office of the company audited under sub-section (*8*) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(*d*) whether the company's balance-sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(*e*) whether, in his opinion, the financial statements comply with the accounting standards and the auditing standards;

(*f*) the observations or comments of the auditors which have any adverse effect on the functioning of the company;

(*g*) whether any director is disqualified from being appointed as a director under sub-section (*2*) of section 145;

(*h*) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) in case of listed companies, whether the company has complied with the internal financial controls and directions issued by the Board; and

(j) such other matters as may be prescribed."

10.41 In their written memorandum submitted to the Committee, PHDCCI and CII further suggested on sub-clause 126(3) as follows:—

The statement that "the company has complied with the internal financial controls and directions issued by the Board" may not be appropriate. What is required is that the company should have internal control systems in place and the auditor should be required to report on the existence/adequacy thereof and the operating effectiveness of such controls. Thus, the provision may be suitably amended.

10.42 The Comments of the Ministry of Corporate Affairs on the above said suggestion are as under:—

The intention is that every listed company should have an adequate internal financial control system in place which should be designed and implemented by the Board of Directors.

Keeping in view this objective, the provisions of clause 120(4)(e) of the Bill provide that the Board's report shall disclose, in the case of a listed company, details about laying down of and compliance by company of such internal financial controls. As per provisions of clause 158, the audit committee has also been entrusted with the function of evaluation of internal financial controls of a company.

10.43 In addition, specific suggestions on sub-clause 126(3)(e) as received from various quarters are given below:—

Auditors should state in their report whether they have complied with the auditing standards while conducting audit of financial statements.

In sub-clause (3)(e), the words "and the auditing standards" may be deleted and the same may be covered under a new sub-clause (f) and the subsequent sub-clauses may be renumbered accordingly. (ICSI)

Delete the words "and the auditing standards" from the said clause (e). This requirement may be added in sub-clause (9) of clause 126 as under:

The auditor shall state in the audit report that in auditing the accounts of the company they have complied with the auditing standards. Auditors should state in their report whether they have complied with the auditing standards while conducting audit of financial statements. (Bombay Chamber of Commerce and Industry)

10.44 The comments of the Ministry of Corporate Affairs on these suggestions are as follows:

Clause 126(3)(e) read with clause 126(9) seek to provide for the requirement that auditing standards are complied with during preparation and audit of accounts/financial statements. The suggestion to improve language of this clause is, however, noted to be addressed appropriately with legislative vetting.

The intention of the Bill is that the auditing standards are considered during preparation as well as audit of the accounts. With this objective, it has been considered appropriate to recognize the term 'auditing standards' in the Companies Bill itself. It is felt that

this would bring more accountability in respect of setting and enforcing compliance with sound auditing practices, standards and techniques matching or excelling the best international practices on the matter.

10.45 However, with a view to strengthening the process of audit and making internal financial controls of a company robust, the Committee sought additional suggestions from the Ministry on the disclosure to be made in the auditor's report. Accordingly, the Ministry proposed alternate sub-clauses as under:—

"126(3) The auditor's report shall also state—

(a) (i) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit; (ii) whether the company has failed to provide any information sought by the auditor and if so, the details thereof;

(j) whether the balances in respect of every debtor, creditor, loan and advance, investment and bank balance in excess of rupees five lakh have been confirmed in writing by such debtor, creditor, lender or investee, as the case may be;

(k) such other matters as may be prescribed."

(*The proposals contained in other sub-clauses may remain unchanged).*

10.46 While endorsing the modification proposed above regarding disclosures to be made in auditors report, the Committee believe that in order to ensure proper and responsible audit, there should be clarity between company management and auditors on the nature and extent of information/documents/records etc. and periodicity/frequency for supply/obtaining such information/documents/records etc. In view of this, it is necessary that the auditor concerned should be under an obligation to certify whether he had obtained all the information he sought from the company or not. In the latter case, he should specifically indicate the likely effect of such non-receipt of information on the financial statements. The Committee desire that this aspect should be reflected with clarity in the sub-clause relating to auditor's report.

Clause 127—Auditor not to render certain services

10.47 This is a new clause and it seeks to provide that an auditor can do such other services as approved by the Board or audit committee. The clause further provides for the services which the auditor cannot perform.

10.48 Clause 127 reads as under:

"An auditor appointed under this Act shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services, namely:—

(a) accounting and book keeping services;

(b) internal audit;

(c) design and implementation of any financial information system;

(d) actuarial services;

(e) investment advisory services;

(f) investment banking services;

(g) rendering of outsourced financial services; and

(h) management services."

10.49 Suggestions on Clause 127 received from various institutions/experts are given below:—

(i) Sub-clauses (a) and (c) may be amended and may read as under—

(a) accounting, cost accounting and book keeping services.

(c) design and implementation of any financial and cost information system. (ICWAI)

(ii) To enable due diligence and unbiased application of mind of the auditors without succumbing to external influences, Clause 127 of the Bill provides for a negative list of items, which an auditors cannot perform. It is suggested that the negative list of item be extended to the subsidiary companies also.

(iii) Subsidiaries over a certain size to have different auditors than the parent company. The business conducted in subsidiary companies is normally not scrutinized in the same details as the parent company and is open to abuse. Subsidiary companies which cross a certain size relative to the size of the parent company. This combined with a rotating tenure for auditors would ensure transparency and further minimize the possibility of conflict of interest.

The Ministry have accepted this suggestion in principle.

10.50 The Committee recommend that the Ministry may incorporate the suggestion for extending the scope of Clause 127 concerning non-rendering of certain specified services by auditors to the Subsidiary Companies as well, so that necessary independence is ensured with regard to business operations of subsidiary companies also.

Secretarial Audit

10.51 Suggestions have been received regarding inclusion of secretarial audit as below:

"Every company having paid-up share capital exceeding ten lakh rupees of having loan outstanding exceeding twenty five lakh rupees from any bank or financial institution or having turnover as per its last financial statement exceeding one crore rupees, or such higher amounts in any of the aforesaid criteria as may prescribed, shall attach with its each financial statement a report called Secretarial Auditor's Report addressed to the members of the company."

10.52 The comments of the Ministry of Corporate Affairs on this issue are as follows:—

Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of non compliance of the provisions of the Companies Act and other important corporate laws.

It is, accordingly, felt and suggested that the Bill may provide for requirement of conduct of secretarial audit by at least bigger companies by a company secretary in practice.

10.53 Keeping in view its significance for ensuring procedural compliance by companies, particularly with regard to various statutory disclosures and to ensure adherence to prescribed secretarial standards, the Committee recommend that Secretarial Audit report may be required to be attached with financial statements by companies exceeding certain threshold limit of paid-up share capital.

Clause 130—Punishment for contravention

10.54 This clause seeks to provide for the penalties for contravention of provisions of the clauses 123 to 129.

10.55 Clause 130 reads as follows:—

"(*1*) Where any of the provisions of sections 123 to 129 is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and any officer who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(*2*) Where an auditor of a company contravenes any of the provisions of section 126 or section 127 or section 128 he shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees;

Provided that where it is proved that an auditor has knowingly or wilfully contravened any of the provisions of the aforesaid sections, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees, or with both.

(*3*) Where an auditor has been convicted under sub-section (*2*), he shall be liable to—

(*i*) refund the remuneration received by him to the company; and

(*ii*) pay for damages to the company or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report."

10.56 Suggestion on the Clause 130 received from various institutions/experts are given below:—

(i) The auditor's duty of care thus, is only towards the addressee of the report. The auditor should accordingly, not be held liable to pay damages to any person other

than the members for loss arising out of incorrect or misleading statements of particular made in his audit report. If done so, it would lead to exorbitant cost to the company in terms of auditor's fee. Further, this escalation in the audit cost would not bring in any commensurate benefits. Imprisonment for contravention would become applicable if a default is committed 'knowingly/wilfully'. 'Knowingly/ wilfully' are very subjective terms and can lead to protracted litigation. Also the Government may consider applying appropriate safeguards and shift the burden of proof on the auditors. (CII)

(ii) The punishment of imprisonment appears very harsh. Instead, the penalty in monetary terms may be increased to, say, 5 to 10 times of the auditors' remuneration.

(iii) Also, imprisonment takes place if a default is committed 'knowingly/wilfully'. 'Knowingly/wilfully' are very subjective terms and can lead to protracted litigation. Also the Government may consider applying appropriate safeguards and may even shift the burden of proof on the auditors. (FICCI)

10.57 The Ministry of Corporate Affairs have however, disagreed with the suggestion of the Chambers on this issue. The Ministry have explained their position thus:

(i) The auditor's report forms an integral part of financial statements and is seen by the world (including banks, financial institutions, regulators, tax authorities, investors, potential strategic partners etc.) as a certificate on the veracity and correctness of financial statements. In view of this, it may not be correct to say that auditor's duty is only towards the shareholders of the company. Since auditor would be a competent professional having expertise in the field of audit, it is properly expected of him to exercise due care and skill during audit of the accounts. Hence there may not be any need for modification in this clause.

(ii) Since the auditor of a company would be a competent professional having expertise in the field of audit of accounts, any non compliance by him in respect of any of the provisions indicated in the penalty clause should be considered seriously.

It is suggested that the auditor concerned should be under an obligation to certify whether he had obtained all the information he sought from the company during the conduct of audit process or not. In case he did not get any such information, he should specifically indicate the likely effect of such non receipt of information on the financial statements.

10.58 Keeping in view the concerns of the Committee to bring in deterrence to regulate audit and conduct of auditors in general, the Ministry have suggested to amend Clause 130 as follows:-

*130. (1) Where any of the ***** or with both.*

(2) Where an auditor of a company contravenes any of the provisions of section 126 or section 127 or section 128, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees.

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report".

10.59 In accordance with the views expressed by the Committee on this issue, the Ministry of Corporate Affairs have also proposed to incorporate a new sub-clause 130(4) as under:—

"(4) Where, in case of audit of a company being conducted by an audit firm, it is proved that the audit partner or partners has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law, for such act would be of the audit partner or partners as well as of the firm jointly and severally."

10.60 The Committee recommend that the stringent proposals submitted by the Ministry, at the behest of the Committee, stipulating joint and individual liability of the firm and the audit partner(s) respectively in case of fraud etc. may be suitably incorporated in the clause.

Clause 131—Central Government to specify audit of items of cost in respect of certain companies

10.61 This clause seeks to empower Central Government after consultation with regulatory body to direct certain companies to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.

10.62 Clause 131 reads as under:

"(*1*) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production, processing, manufacturing, mining or infrastructural activities, as may be specified therein, direct that particulars relating to the utilisation of material or labour or to such other items of cost as may be prescribed shall also be included in the books of account kept by such class of companies:

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(*2*) If the Central Government is of the opinion, in relation to any company covered by an order under sub-section (*1*), that it is necessary to do so, it may, by order, direct that the audit of cost records of such company shall be conducted in the manner specified therein.

(*3*) Where a company includes the particulars relating to items of cost in the books of account in pursuance of a resolution passed by the company, the audit of cost records as contained in the books of account of the company shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined

by the members in such manner as may be prescribed:

Provided that no person appointed under section 123 as an auditor of the company shall be appointed for conducting the audit of cost records.

(*4*) An audit conducted under this section shall be in addition to the audit conducted under section 126.

(*5*) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the Cost Accountant in practice to the Board of Directors of the company.

(*6*) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (*2*) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

(*7*) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (*6*), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

(*8*) Where any default is made in complying with the provisions of this section,—

(*a*) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;

(*b*) the cost auditor who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees."

10.63 A suggestion has been received on the above clause as given below:—

Clause should be amended to provide that the remuneration of cost auditors can be determined by the members or by Board if so delegated by the members.

10.64 The comments of the Ministry are as under:—

In view of recommendations made by Irani Committee, the requirement of appointment of cost auditor by Central Government has been proposed to be omitted in the Bill. Clause 131(3) of the Bill provides that cost auditor shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

The suggestion made, therefore, is already taken care of. In view of above, there may not be any necessity of any modification in the Bill on this matter.

10.65 The ICWAI has made the following suggestion for amendment in Clause 131. The changes suggested by them are indicated as follows:

Clause 131 may be substituted as follows:

(1) Notwithstanding anything contained in this chapter, every company shall keep at its registered office proper books of account with respect to utilization of material or labour or to other items of cost as may be prescribed.

The Central Government may, by notification in the Official Gazette, exempt any company or class of companies from compliance with any of the requirements of section, if in its opinion, it is necessary to grant the exemption in the public interest.

(2) Subject to the provision of this chapter every company, which is not exempted in sub section (1), shall at each general meeting appoint an individual or a firm as a Cost Auditor who shall hold office from the conclusion of that meeting till the next general meeting.

Provided that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided further that the company shall inform the auditor concerned of his appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.—For the purposes of this Chapter, "appointment" includes re-appointment.

Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned and controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the adoption of accounts of that financial year.

(3) The audit of cost accounts should be by a Cost Accountant in practice pursuant to a resolution passed by the shareholders on such remuneration as may be determined by the shareholders in the Annual General Meeting:

Provided that where a firm is appointed as cost auditor of the company only the partners who are Cost Accountants in practice shall be authorized by the firm to act and sign on behalf of the firm.

Provided that the report on the audit of cost records shall be submitted by the Cost Accountant in practice to the members of the company.

Provided further that every cost auditor shall comply with the Cost Accounting and Auditing Standards.

(b) the cost auditor who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh of rupees.

10.66 However, on the issue of cost audit and appointment of cost auditor, the Ministry of Corporate Affairs have submitted a contrary view as follows:

"(i) In the existing Act, the provisions in respect of maintenance of cost records and requirements for appointment of cost auditor have been provided in section 209(1)(d) and section 233B of the Act respectively. Provisions of section 209(1)(d) empower Central Government to prescribe maintenance of cost records for a class of companies engaged in production, processing, manufacturing or mining activities. Further, provisions of section 233B provide that where Central Government is of the opinion that it is necessary so to do in relation to a company covered under section 209(1)(d), the Central Government may, by order direct cost audit of cost records of such company conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant.

(ii) Attention is drawn to the recommendation of Expert Committee on Company Law (2005) [Irani Committee] [Chapter IX, Paras 34 and 35] on the matter which reads as under:—

'At present, the Companies Act contains provisions relating to maintenance of Cost Records under section 209 (1) (d) and Cost Audit under section 233B of the Companies Act in respect of specified industries. The Committee felt that Cost Records and Cost Audit were important instruments that would enable companies make their operations efficient and exist in a competitive environment.

The Committee noted that the present corporate scenario also included a sizeable component of Government owned enterprises or companies operating under administered price mechanism or a regime of subsidies. It would be relevant for the Government or the regulators concerned with non-competitive situations to seek costing data. The Committee, therefore, took the view that while the enabling provision may be retained in the law providing powers to the Government to cause Cost Audit, legislative guidance has to take into account the role of management in addressing cost management issues in context of the liberalized business and economic environment. Further, Government approval for appointment of Cost Auditor for carrying out such Cost Audit was also not considered necessary.'

Keeping in view the above recommendations the provisions have been proposed in the Bill in respect of maintenance of cost records by certain classes of companies and for audit of such records in clause 2(1)(m) and 131 of the Bill respectively. It is felt that these provisions are proper and reasonable in present economic environment."

10.67 The Committee note that a suggestion has been made for mandating maintenance of cost records for every company with the power to the Central Government to exempt a company or class of companies from these provisions in public interest. Although the Committee agree that maintenance of cost records and cost control are important management instruments, the Committee note that the Irani Committee had felt that maintenance of cost records should not be made mandatory and the existing arrangement

should continue. However, keeping in view the significance of cost control for industry, the Committee recommend that the Ministry may consider the above suggestion positively for appropriate coverage of corporate sector for mandatory maintenance of cost records. Further, the appointment of Cost Auditor should be made by the shareholders of the company in their annual general meeting, as in the case of statutory auditors, instead of the Board of Directors as proposed in Clause 131 (3) of the Bill.

10.68 Further, in the context of Administered Price Mechanism, the Committee would like to emphasise that the Central Government should retain the power to institute cost audit in larger companies, whenever circumstances so warrant, particularly in sectors concerning exploration, mining, processing, manufacturing, infrastructure and utilities.

CHAPTER XI

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Clause 132—Company to have Board of Directors

11.1 This clause seeks to provide that every company shall have a Board of Directors and prescribes the minimum and maximum number of directors. The clause also seeks to provide that every company shall have at least one director who would be ordinarily resident in India. The clause further provides the conditions for appointment of independent director. The clause also seeks to define the terms 'independent director' and 'nominee director' and seeks to provide that an Independent Director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in Board meeting and profit related commission and stock options as approved by the members.

11.2 Clause 132(1) reads as under:—

Every company shall have a Board of Directors consisting of only individuals as directors and shall have—

(*a*) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(*b*) a maximum of twelve directors, excluding the directors nominated by the lending institutions.

11.3 On clause 132 (1) (a), CII in their written memorandum suggested as follows:—

This definition is restrictive, as it does not provide for directors nominated by persons other than institutions. The definition of a nominee director in Clause 132 should not be limited to 'directors appointed by institutions' but should include any directors nominated to the board by any person.

11.4 While replying to the above said suggestion the Ministry in their written comments stated as follows:—

The intention behind these provisions is to bring clarity in the Bill in respect of status of directors nominated by (financial) institutions or Government on the board of various companies. These provisions provide that such directors shall not be deemed to be independent directors.

Hence, there may not be any necessity of any modification in the Bill on this matter.

11.5 Various suggestions on Clause 132 (1) (b) have been received from several institutions/ experts. The same are given as under:—

(i) 132(1)(b) may be revised as under:

"a maximum number of directors, as prescribed by the articles of the company." (CII).

(ii) To promote better governance and broad basing of a board, there should be a floor on minimum number of Directors such that the minimum size is prescribed. If at all a limit on the number of directors needs to be prescribed, such limit may be kept at a reasonable number, say a maximum of 18 (excluding nominees). If the stipulated number exceeds limit, then shareholder approval should be sought. (FICCI).

(iii) This provision be re-examined. Multi-business large companies may need a larger number of directors as compared to relatively smaller companies. Considering that one of the objectives of the Bill is to reinforce shareholder democracy, it would be appropriate to leave the decision with regard to the optimum size of the Board with the shareholders of the company.

Alternately, flexibility should be provided to companies to increase the number beyond the stipulated limit with the approval of the Central Government, as is presently available under Section 259 of the Companies Act, 1956. (PHDCCI and Indian Merchants Chamber).

(iv) Considering that one of the objectives of the Bill is to reinforce shareholder democracy, it would be appropriate that the shareholders decide on the size of the Board. Multi-business large companies do need large Boards to operate effectively. If at all a limit needs to be prescribed, it should be pragmatic, say a maximum of 18 directors.

(v) (a) Maximum number of Directors should not be specified in the Act. It should be left to the company to provide maximum number of directors in its Articles.

(b) If the limit on maximum number of directors is retained, then, the Bill should contain transitory provision to enable companies to comply with the new requirement. (ICSI)

(vi) With a view to ensure an active participation of the Directors as a member of the Board as well as the member of the committee of the Board it is suggested that the maximum number of directorships to be held by an Individual should be pegged to maximum of Nine (9) for listed companies.

11.6 While accepting all the above said suggestions, the Ministry of Corporate Affairs in their written replies submitted to the Committee stated as follows:—

The suggestion for inserting enabling provisions in the Bill to allow companies to appoint more than 12 (or any other appropriate number) directors, through suitable checks and balances, is noted to be addressed appropriately with legislative vetting.

It has been suggested that the Bill does not allow flexibility to companies on appointment of directors beyond 12. It has been expressed that since number of directors is related directly to size, area of operations and diversified business activities of companies, the maximum number of directors is suggested to be increased from twelve to fifteen.

It has also been suggested that directors beyond fifteen may be appointed with approval of members through special resolution and the prior approval of Central Government.

In view of above, it is suggested to consider modification in clause 132(1)(b) of the Bill.

11.7 In view of above, the Ministry provided an alternate clause to be included in the Bill, which is given as under:—

"132.(1)(b) a maximum of fifteen directors, excluding the directors nominated by the lending institutions.

Provided that a company may appoint more than fifteen directors after passing a special resolution and after obtaining prior approval of Central Government in this regard."

11.8 The Committee agree with the Ministry's proposal for an alternate clause providing for a maximum of fifteen Directors, excluding the directors nominated by the lending institutions, with the proviso that a company may appoint more than fifteen directors after passing a special resolution. However, the proposed stipulation for prior Central Government approval to increase the number of directors beyond fifteen may not be warranted, as this is a matter which can be best decided by the shareholders.

Clause 132(2)—Director—Ordinarily resident in India

11.9 Clause 132(2) reads as under:—

"One of the directors shall at least be a person ordinarily resident in India.

Explanation.—For the purposes of this sub-section, "ordinarily resident in India" means a person who stays in India for a total period of not less than one hundred and eighty-two days in a calendar year."

11.10 Suggestions as submitted by CII in this clause are given as under:

"In current times, It will be far more desirable to drop the reference to 'in India' and to provide for electronic mode or other mode prescribed for circulation.

Additionally, the requirement for at least one director to be resident in India should be done away with, as it is an obstacle to the operation of MNCs in India."

11.11 Comments of the Ministry on this suggestion are given as under:

(i) *The requirement for every company to have at least one director who is resident in India as per provisions of this clause is considered to be very important from the point of view of accountability of Board.*

(ii) Irani Committee in Chapter IV of its report had recommended as under:—

'5.4 Every Company should have at least one director resident in India to ensure availability in case any issue arises with regard to the accountability of the Board.'

(iii) In view of above, there may not be any necessity of any modification in the Bill on this matter. However, since the word 'ordinarily' may not be necessary, the term 'resident in India' may be used in this clause in stead of 'ordinarily resident in India'."

11.12 The Committee recommend that the term 'resident in India' may be used in Clause 132(2) instead of 'ordinarily resident in India', with reference to the residential requirement stipulated for Director.

Clause 132(3)—Independent Directors—Number

11.13 Clause 132(3) reads as under:—

"Every listed public company having such amount of paid-up share capital as may be prescribed shall have at least one-third of the total number of directors as independent directors. The Central Government may prescribe the minimum number of independent directors in case of other public companies and subsidiaries of any public company.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one."

11.14 On this clause various institutions/experts in their written memorandum submitted to the Committee suggested as follows:—

(i) (a) This is not harmonious with the SEBI listing requirements. To make both provisions harmonious, it is suggested that the definition of independent director be brought in line with the SEBI requirement.

(b) The need for appointment of Independent Directors in closely held public companies and subsidiaries of any public companies should be governed by the materiality and scale of operations of such companies. Accordingly, unlisted public companies and private companies which are subsidiaries of any public company should be required to appoint independent directors only if they exceed the prescribed thresholds of size and scale. The thresholds may be prescribed in the rules framed for compliance with the instant provision." (CII)

(ii) A provision may be inserted in both these clauses to the effect that these requirements will not apply in case of listed companies and that such listed companies shall comply with the requirements specified by SEBI in this regard. (SEBI).

(iii) The proposal of presence of independent directors on the board of the company is indeed a progressive step, in the sense that the pressure of independent directors would provide balance in the composition and functioning of the board wherein the independent directors are likely to bring an element of objectivity to the board, which would thereby benefit smaller shareholders and minority interests.

(iv) This clause, to the extent that it prescribes that 1/3 of the directors of a company need to be independent directors, is a departure from the Listing Agreement as the Bill does not distinguish between boards having an executive or a non executive chairman.

11.15 While submitting their comments on this clause the Ministry in their written submission stated as under:—

(i) It may not be proper to exclude for a class of companies (viz. listed companies) the essential and basic principles of corporate governance provided in the main Act for all companies. One of the main objectives of revising the existing Act is to provide an essential level of basic corporate governance principles and compliance requirements in the Bill itself, for all kinds of companies including listed companies.

(ii) The sectoral regulators for various specific sectors such as TRAI, IRDA etc. may prescribe higher or more stringent requirements in respect of special classes of companies being regulated by them. The principles provided in the main statute namely the Companies Bill/Act shall be the minimum benchmarks for all companies.

(iii) The issue relating to the requirement of independent directors, their qualifications, attributes, role and liability is of critical importance and must be provided in the substantive legislation for regulation of companies itself so that the position is clearly available to all stakeholders. These matters are therefore, not proposed to be left to subordinate legislation. However, as pointed out above, it is open to the sectoral regulators to prescribe stricter norms, if needed, for the purposes of that sector.

(iv) In view of above, the suggestion made by SEBI is appropriately covered in the scheme of the proposed Bill.

Clause 132(5)—Independent Director—Definition

11.16 Clause 132(5) reads as under:—

" 'Independent director', in relation to a company, means a non-executive director of the company, other than a nominee director,—

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

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

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

(*ii*) holds or has held any senior management position, position of a key managerial personnel or is or had been employee of the company in any of the three financial

years immediately preceding the financial year in which he is proposed to be appointed;

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

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

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

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

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

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

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

11.17 On this clause, suggestions received from various institutions/individuals are as follows:—

(i) The definition under the Bill, refers to association with a legal or consulting firm as transactions amounting to 10% or more of the gross turnover of such firm. The materiality test for transactions with legal or consulting firms be brought down to 5% of the firm's gross turnover. The materiality test for transactions with legal or consulting firms be brought down to 5% of the firm's gross turnover. (CII)

(ii) The discrepancies in the provisions relating to independent directors in the proposed Bill and Listing Agreement be harmonized. Specifically, in relation to the prescribed thresholds for association with a legal or a consultancy firm, please note that the threshold of 10% may be very high. The NYSE Listing Rules which lays down the test of independence under Rule 303A.02, provides that transactions amounting to 2% or more of the firm's consolidated gross revenues may lead to consideration of the director as a non-independent director. We suggest that the threshold under the Bill be brought down to 5% of the firm's gross turnover.

11.18 The Ministry's comments on this aspect reads as under:—

"Many members of Parliamentary Committee felt that the limits for assessing the independence outlined in the Bill i.e. pecuniary relationship up to 10% of income or turnover is liberal and may lead to appointment of a "related" or "interested" person as an

independent director. It was suggested that the materiality test for transactions be brought down. It is felt that the limit of 2% of the firm's gross turnover may be reasonable.

The suggestion to replace the words 'ten per cent' with the words 'two per cent' may be considered by the Hon'ble Committee."

11.19 The Ministry have subsequently suggested the following alternative clause to be included in the Bill:—

"132(5) .....

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

11.20 The Committee are of the view that in order to protect the independent character of the Independent Directors, it is necessary that they should not have any kind of pecuniary relationship at all with the company. The proposed clause prescribing the pecuniary relationship with the company may, therefore, be made applicable only to the relatives of the Independent Directors.

Code for Independent Directors—Role and Responsibilities

11.21 FICCI in this regard suggested that there is a need for greater clarity on the role, responsibilities and obligations of independent directors.

11.22 Written Comments received from the Ministry on the suggestion are as follows:—

Attention is drawn to clause 147 of the Bill which provides for duties of directors. These duties shall also be applicable for independent directors.

Further, the role of non-executive directors and independent directors has also been specifically provided in context of various committees of the Board like Audit Committee, Remuneration Committee etc. The suggestion, however, may be considered in context of need for prescribing a Code for Independent Directors which may indicate duties, obligations and expectations etc. from non-executive Directors/Independent Directors.

11.23 The Ministry while accepting the said suggestion proposed an alternate clause to be included in the Bill, which is given as under:—

"132 (5) 'Independent director' in relation to a company, means a non-executive director of the company, other than a nominee director,—

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

* * * * *

(d) who possesses such other qualifications as may be prescribed:

Provided that the role, duties and functions of independent directors shall be such as may be prescribed by Central Government by way of rules."

11.24 Another suggestion as received from RBI on this clause is as under:—

The independent director should not be related to the promoters or persons occupying management positions at the board level. It is, therefore, suggested that sub-clause 3(b) of Clause 49 (under 'Composition of Board') of the Listing Agreement may be incorporated in Clause 132(5) of the Bill.

11.25 *While noting the said suggestion to be addressed appropriately with legislative vetting, the ministry suggested the following alternate clause to be included in the Bill.*

"(5) 'Independent director', in relation to a company, means a non-executive director of the company, other than a nominee director,—

(b) who, is not related to promoters, directors or senior management."

Nominee Directors

11.26 A suggestion received regarding nominee directors is given as under:—

Nominee directors representing Public Financial Institutions (PFIs) should be considered as independent directors. (PHDCCI and Bombay Chamber of Commerce and Industry).

11.27 The comments of the Ministry are as follows:—

"(i) Attention is drawn to following recommendation made by Irani Committee in Chapter IV, Para 8.4:

> *"Nominee directors appointed by any institution or in pursuance of any agreement or Government appointees representing Government shareholding should not be deemed to be independent directors. A viewpoint was expressed that nominees of Banks/Financial Institutions (FIs) on the Boards of companies may be treated as "Independent". After detailed deliberation, the Committee took the view that such nominees represented specific interests and could not, therefore, be correctly termed as independent."*

(ii) In view of above recommendations of Irani Committee, the Bill has proposed such directors not to be treated as independent directors."

11.28 While giving justification for distinguishing the nominee Director and independent Director, representative of the Ministry of Corporate Affairs during evidence stated as under:—

As far as independent Directors are concerned, we are not including nominee Directors as independent Directors whereas that is so in the SEBI Act. It is for the reason that nominee Directors would also mean PFI representatives and obviously they would be an interested party and therefore they cannot be counted as independent Directors. That is why, we have distinguished between nominee Directors and independent Directors in the Bill.

11.29 The Committee agree with the view expressed by the Ministry that the nominee Directors cannot be treated as Independent Directors. Thus, there may not be any necessity for any modification in the Bill on this matter.

11.30 On the issue of independent directors, another suggestion received by the Committee reads as under:—

It is important to understand who can be legitimately and credibly classified an "independent director". A person who has worked for decades in a senior management position in a group company re-cast as an independent director of the company on his retirement, would not be a credible choice keeping in view the objectives sought to be achieved by the appointment of "independent directors".

11.31 The comments of the Ministry on this suggestion are as under:—

Clause 132(5) of the Bill provides for various attributes and other requirements in respect of a person who may be as an independent director. It is felt that while broad attributes and requirements may be retained in the Bill, the Bill may empower Central Government to prescribe a Code on Corporate Governance in which other issues in respect of Corporate Governance viz. manner of appointment and remuneration of non-executive directors and independent directors, their role, duties, tenure and training for them etc. may be provided alongwith other related matters relating to Corporate Governance. In this background, the suggestion is noted to be addressed appropriately with legislative vetting.

11.32 In this connection, it has been further suggested that:—

The Bill should indicate specific issues or tasks that independent directors should perform (exercise oversight) or remain vigilant, for example, related party transactions, auditor-auditee relationship, transparency in disclosures, quality of control mechanism and financial reporting, protection of minority of interest, etc.

Independent directors are expected to devote considerable time and effort, and, therefore limit for number of directorship and committee membership should be reduced to 10.

Criteria for assessing the independence outlined in the Bill for example, pecuniary relationship up to 10% of income or turnover, or upto 2% of shareholding are too liberal and may lead to appointment of a "dependent" or "interested" person as an independent director.

Independent directors no doubt need to be remunerated but not in the manner and to the extent that a person independent at the time of appointment become dependent or interested because of the payments received in the form of sitting fee or incentive or commission. The Bill should built enough safeguard in this regard.

Independent director should be allowed to report to shareholders in case they encounter threats to their independence or otherwise feel necessary in over all interest of the company and its various stakeholders.

11.33 The comments of the Ministry on the aforesaid suggestion are as below:—

(i) Though it might be difficult to bring everything about what is expected from a director or independent director in law, attention is drawn to clause 147 of the

Bill which, for the first time, provides for duties of directors. Such duties would be equally applicable to independent directors. Further, the role of non-executive directors and independent directors has also been specifically provided in context of various committees of the Board like Audit Committee, Remuneration Committee etc. The suggestion, however, may be considered in context of need for prescribing a Code for Independent Directors which may indicate duties, obligations and expectations etc. from Independent Directors.

(ii) Clause 107(4) of the Bill provides for the mechanism through which the reference about any dissent made by a director on any agenda item before board or a committee thereof shall be recorded. It is felt that while there has to be a reasonable degree of freedom required for Independent director to perform their functions properly, it should also be necessary to ensure that an independent director does not unfairly obstruct the functioning of an otherwise proper board or committee of the Board.

In view of this, the suggestion may be considered to provide that companies may have a suitable whistle blower policy to allow directors or employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

11.34 The ICWAI have made a submission on this issue as follows:—

It is proposed that in order to ensure complete independence of the independent directors the Government should constitute a regulatory body consisting of representatives of Ministry of Corporate Affairs, Securities and Exchange Board of India, Reserve Bank of India, SCOPE, Professional Institutions, Chambers of Commerce and Industry etc., for preparation of a panel of persons of integrity and who are having relevant expertise and experience useful in the management of business of the company.

11.35 The Ministry have responded to this suggestion as:

"The suggestion has been noted to be addressed appropriately through legislative vetting."

Clause 132(5)(b)(ii)—Key Managerial Personnel

11.36 On this clause, Indian Merchants' Chamber in their written submission suggested as follows:—

"In this clause there is a reference to senior management position and position of key managerial personnel. The Bill contains the definition of key managerial personnel but it does not contain definition of senior management position."

11.37 *While noting the aforesaid suggestion to be addressed appropriately with legislative vetting, the Ministry suggested the following alternate clause to be included in the Bill:—*

132 (5) 'Independent director', in relation to a company, means a non-executive director of the company, other than a nominee director,—

* * * * * *

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

* * * * * *

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

* * * * * * *

Explanation II—"Senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including all functional heads."

11.38 With regard to suggestions received on clause 132(5), the Ministry suggested to include a new provision namely 132(5)(d) regarding Independent Director to give certificate of independence to the Board in the Bill which is given as under:—

"132(5)(d): New (second) proviso to be provided:—

Provided further that every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstance, give a declaration that he meets the criteria of independence as provided above."

Clause 132(6)—Remuneration of Director

11.39 Clause 132(6) reads as under:—

"An independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit-related commission and stock options as may be approved by the members."

11.40 On this clause following suggestions have been received from the ICWAI, PHDCCI and Bombay Chamber of Commerce and Industry:

(i) The words "profit related commission and stock option as may be approved by members" are proposed to be deleted in section 132(6)(ICWAI).

(ii) Clause 132 (6) should be made a part of Clause 176 with necessary clarity, so that there is no conflict between the two provisions. (PHDCCI and Bombay Chamber of Commerce and Industry).

(iii) It has also been suggested to modify the clause as below in tandem with clause 176.

A director who is neither a whole-time director nor a managing director of a company may be paid remuneration in the form of—

(a) fee for attending meetings of the Board or committees thereof in accordance with the articles; and

(b) profit-related commission with the prior approval of members by a special resolution; and

(c) stock options with the prior approval of Members by a special resolution.

11.41 *As advised by the Committee, the Ministry have suggested an alternate clause to clause 132(6) which is given as under:—*

"132 (6) Subject to the provisions of section 176, an independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit-related commission as may be approved by the members.

The words "and stock option" are proposed to be omitted from clause 132(6) of the Bill to allow independent directors to remain independent in decision making. It is also suggested that the Bill may include provisions to allow payment of higher sitting fee to independent directors. The Bill may have provisions in clause 176 to empower Central Government to prescribe the amount of sitting fees to be paid to directors (including independent directors). The rules may provide different slabs/categories for payment of sitting fees to different class or classes of companies on the basis of net worth or/and turnover of companies. Further, the Independent Directors may have a higher slab of sitting fees under such rules."

11.42 Indian Merchants' Chamber also suggested to include a new clause under the heading, 'Liability of an Independent Director' after clause 132(6) in the Bill. The suggested clause 132(7) is given as under:—

A new Clause 132(7) on liability of an Independent Director

Notwithstanding anything to the contrary contained in this Act or in any other Law for the time being in force,—

(a) any Independent Director on the Board of Directors of a Public Limited Company shall not be liable or punishable for any act or omission by the Company or by any officer of the Company which constitutes a breach or violation of any of the provisions of this Act or any other law for the time being in force; and

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

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

11.43 *The Ministry have accepted the aforesaid suggestion for incorporating a new clause on liability of Independent Directors and have accordingly proposed a new sub-clause as under:*

New sub-clause 132(8)—(immunity from civil or criminal action to independent director in certain cases)

An independent director shall be held liable, only in respect of such acts of omission or commission by the company or any officer of the company which constitutes a breach or violation of any provisions of Act, which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance and where he had not acted diligently.

11.44 *In addition, as suggested by the Committee, the Ministry have also proposed another new sub-clause on tenure of Independent Directors as under:*

New sub-clause: 132(7)—(Tenure of Independent Directors)

New sub-clause: 132 (7) No Independent Director shall have a tenure exceeding, in the aggregate, a period of six consecutive years on the Board of a company:

Provided that a period of three years shall elapse before such an individual is inducted in the same company in any capacity:

Provided further that no individual shall have more than two tenures as independent director in any company in the manner provided in this clause.

11.45 As already recommended by the Committee in the overview (Part-I of the Report), the Committee would like the Government to formulate a code of Independent Directors, which may, *inter-alia* include their mode of appointment, role and responsibilities vis-à-vis other Directors, their remuneration and extent of their liability. It is the Committee s considered view that Independent Directors should be distinguished from other Directors in the Board. They should also not be 'related' to the promoters or persons occupying management positions at the Board level and as already recommended, they should also not have any kind of pecuniary relationship with the company. The proposed code should be suitably incorporated in the Bill to enable the institution of independent directors to evolve with time.

Clause 133—Appointment of Directors

11.46 This clause seeks to provide the manner in which the directors including the first directors shall be appointed by a company. The clause seeks to provide that other than first directors, the directors shall be appointed in general meetings. The clause further provides that every director would obtain DIN from the Central Government before he acts as a director in any company.

11.47 Clause 133(3) reads as under:—

"No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number (DIN) under section 135:

Provided that a person may be appointed as a director, if an application for the allotment of a DIN has been made to the Central Government under section 134 and the same is pending with the Central Government and he may hold the office of a director till such time that person is allotted DIN."

11.48 On this clause, a written memorandum has been received as follows:—

"In terms of proviso to clause 133(3) pending the approval of the DIN Application, a person may be appointed a director 'till such time that person is allotted DIN'. This implies that a person can not continue to be a director after DIN allotment and reappointment would be required. This appears to be an unintentional drafting error and accordingly appropriate Drafting changes are recommended."

11.49 *The Ministry have stated that they have noted the above said suggestion relating to a drafting error.*

11.50 Clause 133(5) reads as under:—

"A person appointed as a director shall not act as a director unless he gives his consent to hold the office as such director and such consent shall be filed with the Registrar within such time and in such manner as may be prescribed:

Provided that in the case of appointment of an independent director, the Board shall also give a report in the general meeting that in its opinion he fulfils the conditions specified in this Act for such an appointment."

11.51 On this clause suggestions as received from ICSI and Indian Merchants' Chamber are given below:—

(i) Since every special business of a general meeting requires explanatory statement for understanding of members. Instead of placing report in general meeting, such explanatory statement may contain this provision. Notice shall state "that in its opinion he fulfils the conditions specified in this Act for such appointment". (ICSI)

(ii) What kind of report is to be given in the General meeting is not clear. Is it required to be a part of Directors' Report or should it be a separate report is not clarified. (Indian Merchants' Chamber)

11.52 The Ministry in their written information submitted to the Committee stated as follows:-

The suggestion is noted to be addressed appropriately with legislative vetting. The requirement for disclosure in respect of Board forming an opinion about fulfillment of criteria or conditions by the appointee may be provided through a statement (to be made by the Board) to be attached alongwith the notice sent to shareholders for relevant meeting.

11.53 The Ministry therefore, agreed to modify the clause 133(5) as under:—

"133(5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as such director and such consent shall be filed with the Registrar within such time and in such manner as may be prescribed:

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement shall be attached to the notice of the meeting which shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

Clause 133(6)—Retirement of Director

11.54 Clause 133(6) reads as under:—

"Unless the articles provide for the retirement of all the directors at every annual general meeting, not exceeding one-third of the total number of directors of a public company shall be liable to retire, and out of the remaining, one-third shall retire by rotation at every annual general meeting in accordance with such procedure and principles as may be prescribed and such retiring directors shall be entitled to be re-appointed."

11.55 Suggestions as received from various institutions/experts on this clause are given as under:—

(i) Needs proper drafting to provide that not exceeding one-thirds of total number shall not be liable to retire and out of remaining two-thirds, 1/3rd shall retire compulsorily. (ICSI)

(ii) Sub-clause (6) should be re-drafted to clearly convey the concept that not less than 2/3 of the total number of directors are liable to retire by rotation and 1/3 of such of those directors whose office is liable to retirement, shall retire by rotation at every annual general meeting. (PHDCCI).

(iii) Wordings of this Clause should be brought in line with the existing Section 255(1) read with 256(1) of the 1956 Act.

Add the word "not" before the words "liable to retire" so that sub-clause (6) should read as under:

"Unless the Articles provide for the retirement of all the Directors at every annual general meeting, not exceeding one-third of the total number of Directors of a public company shall be not liable to retire, and out of the remaining, one-third shall retire by rotation ..." (Bombay Chamber of Commerce and Industry)

(iv) It should be provided that a director retires at the conclusion of the AGM. It should also be provided that a person's appointment/reappointment as a Director takes effect from the conclusion of that AGM. (Bombay Chamber of Commerce and Industry).

(v) The meaning is not at all clear. We suggest that this clause be redrafted to make the intention clear and unambiguous. The existing Section 255 is very clear and should replace clause 133(6) of the Bill. (Indian Merchants' Chamber)

(vi) The sub clause (6) in the bill may be substituted by the following sub clause (6):

133(6) unless the articles of a public company provide for the retirement of all its directors at every annual general meeting:

(a) not exceeding two-third of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation;

(b) the remaining directors shall not be liable to retirement by rotation and shall be appointed in accordance with the articles, and

(c) one-third of the directors, whose office is liable to retirement by rotation, shall retire at every annual general meeting in accordance with such procedure as may be prescribed, any fraction being rounded off as one:

Provided that such retiring directors shall be entitled to be reappointed.

The Ministry accepted all the above said suggestions to be addressed appropriately with legislative vetting.

Clause 133(7)—Appointment of Director

11.56 Clause 133(7) reads as under:—

"Where a company fails to re-appoint a retiring director or to appoint any person as a director in place of the retiring director at any general meeting, such appointment shall be made at any adjourned meeting within such time and in accordance with such procedure as may be prescribed."

11.57 On this clause, Bombay Chamber of Commerce and Industry in their written submission suggested as under:—

(i) This Clause needs to be altered, as the intended meaning is not understood.

(ii) The provisions similar to section 256(4) of the 1956 Act should be inserted in Clause 133.

11.58 The Ministry in their written information on this suggestion stated that the detailed provisions in this regard are proposed to be prescribed under rules to be made under this clause.

11.59 As the suggestions mentioned above related to drafting errors, the Committee would expect suitable rectification/amendments, as agreed to by the Ministry, to be incorporated in this regard in the Bill. It may be worded along the lines of the corresponding sections in the present Act so that the intention gets across unambiguously. As regards the retirement of directors proposed in clause 133(6), the Committee desire that it should be amply clarified as to the proportion of directors in the Board, who shall be liable to retire in general as well as the proportion of directors, who shall retire by rotation at every Annual General Meeting.

Clause 141—Right of persons other than retiring directors to stand for directorship

11.60 This clause seeks to provide that a person, not being a retiring director shall be eligible for appointment as a director at any general meeting. The clause further provides the manner in which the persons other than retiring director can stand for directorship and the company shall inform its members of the candidature of a person for the office of director.

11.61 Clause 141(1) reads as under:—

"A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some

member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of such sum of money as may be prescribed and the amount so deposited shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total votes cast."

11.62 On this clause Bombay Chambers of Commerce and Industry in their written memorandum suggested as follows:—

The wordings of Clause 141(1) at the end should be altered to read '…. or gets more than 25% of total valid votes cast either on show of hands or on poll'.

11.63 *While accepting the above said suggestion the Ministry noted the same to be addressed appropriately with legislative vetting.*

11.64 The Committee would like suitable amendment to be incorporated in regard to the wordings of Clause 141(1), concerning right of persons other than retiring directors to stand for directorship, which may be altered at the end to read as 'or gets more than 25% of total valid votes cast either on show of hands or on poll'.

Clause 146—Number of Directorships

11.65 This clause seeks to provide that no person, shall hold office as a director, in more than fifteen public limited companies at the same time.

11.66 Clause 146 reads as under:—

"(*1*) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than fifteen public limited companies at the same time.

(*2*) Where a person accepts an appointment as a director in contravention of sub-section (*1*), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day during which the contravention continues."

11.67 On this Clause suggestions as received from various institutions/individuals are given as under:—

(i) For reckoning the limit of fifteen directorships, directorship in private companies that are either holding or subsidiary company of a public company should be included.

(ii) The maximum number of listed companies, in which a person can be a director, be restricted to seven.

(iii) If an individual is a Managing or Whole Time Director in a listed company, he should not hold office as Non-executive Director in more than 10 public companies

and further, he should not hold office as Non-executive Director in more than 2 listed companies.

(iv) The section should specify a time limit from the commencement of this Act by which time a person who holds office as a director (excluding alternate directorship) in more than the prescribed number of companies, should conform to this new requirement. (ICSI)

11.68 The Ministry have noted all the above said suggestions to be addressed appropriately with legislative vetting.

11.69 A related suggestion on this clause states as follows:—

(i) With a view to ensure an active participation of the Directors as a member of the Board as well as the member of the committee of the Board it is suggested that the maximum number of directorships to be held by an individual should be pegged to maximum of Nine (9) for listed companies.

(ii) 15 directorships limit of a person is impractical & will lead to pocketing director's remuneration & sitting fees without value addition, attention & contribution to the growth of the company. Maximum directorship must range between 5 to 10 only or it will be decorative post causing financial strain on the company. And persons with relevant knowledge only must be appointed & celebrity having zero or little relevant business knowledge must be legally debarred from directorships.

11.70 While forwarding their written comments on the issue, the Ministry replied as under:—

It has been suggested that effective performance of directors is directly related to the time that the directors can devote. A director needs to spend sufficient time for understanding the nature and working of the company in which he is a director, to enable him to perform his functions, as a director, properly. Directorship in a listed company would require even more time to be devoted due to implications of the actions of the company on minority shareholders and other stakeholders.

In the light of above, it is proposed that the Bill may provide clear provisions in respect of restrictions on number of companies in which he may be appointed as director. The Bill may also empower the Central Government to allow a person to become directors in more than twenty private companies if the Central Government is satisfied that grant of such a permission is necessary keeping in view the nature and working of such private companies.

11.71 In response to the Committee's suggestion for restricting the number of companies in which a person can become a Director, the Ministry of Corporate Affairs have proposed an alternate Clause which is given as under:—

(1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed fifteen:

Provided further that the maximum number of listed companies in which a person can be appointed as a director shall not exceed seven:

Provided also that subject to the provisions of the first and second proviso, Central Government may, on an application made by any person in this behalf, permit him to be appointed as director in more than twenty private companies if the Central Government is satisfied that it is necessary to allow such permission, keeping in view the nature and working of such private companies.

(2) In case a person is a managing or whole-time director in a listed company, the number of public companies in which such a person can be appointed as non-executive director, shall be restricted to ten and the number of listed companies in which such a person can be appointed as a non-executive director, shall be restricted to two.

(3) Any person holding office as director or non-executive director, as the case may be, in companies more than the limits as specified in sub-section (1) and sub-section (2) of this section, immediately before the commencement of this Act shall, within a period of six months from such commencement,—

(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director or non-executive director;

(b) resign his office as director or non-executive director in the other companies; and

(c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director or non-executive director before such commencement and to the Registrar having jurisdiction in respect of each such company.

(4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the dispatch thereof to the company concerned.

(5) No such person shall act as director in more than the specified number of companies:

(a) after dispatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3), or

(b) after the expiry of six months from the commencement of this Act whichever is earlier.

(6) Where a person accepts an appointment as a director in contravention of this section, he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty five thousand rupees for every day during which the contravention continues.

11.72 The Committee, while broadly agreeing with the alternate formulation proposed by the Ministry above, would like to recommend that the maximum number of listed companies in which a person can be appointed as a director may be reduced to five from the proposed seven; while the maximum number of public companies in which a person can be appointed as a director may be reduced to ten from the proposed fifteen.

11.73 However, the Committee would like to point out that the proposed alternate clause, as reproduced below, may be reconsidered, keeping in view practical considerations:—

'in case a person is a managing or whole-time director in a listed company, the number of public companies in which such a person can be appointed as non-executive director, shall be restricted to ten and the number of listed companies in which such a person can be appointed as a non-executive director, shall be restricted to two.'

11.74 Similarly, the Committee also disagree with the proviso suggested in the alternate clause by the Ministry requiring Central Government permission for appointment as director in more than twenty private companies. The Ministry may, therefore, reconsider this proviso.

Clause 147—Duties of Directors

11.75 This is a new clause and seeks to provide that a director of a company shall act in accordance with the company's articles. It further seeks to provide for various duties of directors.

Clause 147(2)

11.76 Clause 147 (2) reads as follows:—

"A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company."

11.77 Suggestion as received from ICSI on this Clause is given as under:—

Specific reference for duty of directors towards shareholders, employees, environment and community should be given.

11.78 While accepting the above said suggestion the Ministry of Corporate Affairs in their written replies stated as follows:—

The suggestion is noted to be addressed appropriately with legislative vetting. The suggestion is also relevant in context of need for enabling provisions in the Bill for allowing corporates to voluntarily have a suitable Corporate Social Responsibility Policy.

11.79 They have therefore, suggested an alternate Clause to be included in the Bill, which is given as under:—

"(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company, its employees, the community and the environment."

11.80 The Committee welcome the proposed changes with regard to the duties of a director to promote the objects of the company in the best interests of its employees, the community and the environment as well, particularly in the backdrop of Corporate Social Responsibility, which is proposed to be included in this statute.

Clause 149—Resignation of Director

11.81 This is a new clause and seeks to provide that a director may resign from his office by giving a notice in writing and the Board shall, on receipt of such notice intimate the Registrar and place such resignation in the subsequent general meeting of the company. The clause further provides for the date on which the notice of resignation shall take effect. The clause seeks to provide that where the number of directors is reduced below the quorum fixed, the continuing director or director(s) shall be deemed to constitute the quorum.

11.82 Clause 149 (1) reads as under:—

"A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and intimate the Registrar in such manner and in such form as may be prescribed and shall also place the fact of such resignation in the subsequent general meeting held by the company:

Provided that a director may also forward a copy of his resignation to the Registrar in the manner as may be prescribed."

11.83 Suggestion received from ICSI and FICCI are given as under:—

(i) (a) This clause provides for filing intimation of resignation of Director to Registrar, it is suggested that the power to specify the time within which intimation is to be filed with the Registrar should be included in the section.

(b) Instead of the word "subsequent"—"immediately following" should be used.

(c) The fact of resignation should be mentioned in the Directors Report.

(ii) If some directors has resigned from the board, it needs to be clarified whether he will be held responsible for any Criminal Act of Company held during the period of directorship or even after his resignation or filing of form 32. It needs to be clarified whether the liability of a director ceases from the date of his resignation or from the date of acceptance of his resignation by the board or from the date of filing of the necessary form intimating Registrar of Companies of resignation.

11.84 While accepting the abovesaid suggestions noted to be addressed appropriately with legislative vetting the Ministry of Corporate Affairs in their written comments submitted to the Committee stated as follows:—

The manner of forwarding the resignation by the resigning director with the registrar is proposed to be prescribed in rules under clause 149(1). The suggestion to provide in the Bill the maximum period within which such director should forward the resignation to Registrar is noted for inclusion in the clause and may be considered.

11.85 The Committee recommend that the position that a director who has resigned would be liable even after his resignation, but for the offences which occurred during his tenure should be made clear in the provision. A time period may also be prescribed within which the Board should forward his resignation to the Registrar of Companies.

Clause149 (3)—Vacancy

11.86 Clause 149(3) reads as under:

"Where as a result of any vacancy in the Board, the number of directors is reduced below the quorum fixed for a meeting of the Board, the continuing director or director(s) shall be deemed to constitute the quorum."

11.87 In the written memorandum submitted to the Committee, it has been suggested that:—

(i) This sub-clause may be shifted to clause 155 as clause 155(2), which deals with quorum for board meetings, and a proviso may also be added. Accordingly clause 4 may be renumbered as clause 3.

There is a possibility that because of resignation or death, the number of continuing directors could be reduced to one or zero. For a board meeting there should always be more than one director. Under this circumstance, it is suggested to provide that the remaining director or any member, if there is no director, may convene a general meeting in which other directors could be appointed first to meet the quorum.

(ii) A suitable clause needs to be incorporated in the Bill which makes it mandatory for a resigning independent director to specify/disclose the detailed reason for his/her resignation instead of present practice of merely stating "personal reasons" etc.

11.88 While accepting the above said suggestions endorsed by the Committee, the Ministry of Corporate Affairs noted the same to be addressed appropriately with legislative vetting.

11.89 The Committee recommend that the suggestion to consider the implication of this sub-clause on vacancy in the Board for deciding the quorum for Board meetings as also the suggestion to make it mandatory for a resigning independent director to specify/disclose the detailed reasons for his/her resignation may be suitably incorporated in the sub-clause.

Clause 150—Removal of Director

11.90 This clause seeks to provide that a company may, by ordinary resolution remove a director.

11.91 Clause 150 reads as under:—

"A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 213, before the expiry of period of his office after giving him a reasonable opportunity of being heard and following such procedure as may be prescribed."

11.92 In the written memoranda submitted to this Committee on this Clause it has been suggested as follows:—

(i) To prescribe certain percentage of shareholding to be held in case any member intends to send a notice to the Company for say removal of Director, to ensure

that small shareholders holding few shares do not create problems to the Management for personal gains and hold the companies to ransom. (FICCI)

(ii) It is necessary that the Bill should prescribe minimum qualification for giving notice for removal of a director.

On the lines of the requirement in clause 98 for demanding a poll, clause 150 may also be amended to require that the shareholders holding 10% of the voting rights or holding shares of which paid-up value is at least Rs. 5 lacs, can only give such notice. (PHDCCI)

(iii) The same requirement which is prescribed in clause 98 for demanding a poll should be provided in clause 150 relating to removal of directors. That means the shareholder holding 10% of the voting rights or holding shares of which paid-up value is atleast Rs. 5 lacs, can only give such notice. (Bombay Chamber of Commerce and Industry)

11.93 The comments as received from the Ministry of Corporate Affairs on the abovesaid suggestions are given as under:

Though some of the procedural aspects have been proposed to be included in the rules to be framed under this clause, the suggestion to indicate in the clause that a minimum number of shareholders or holding minimum amount of share capital would be a pre-requisite to move the motion to remove a director is noted to be addressed appropriately with legislative vetting. Alternatively, the Bill may provide for a deposit of a reasonable sum to be made by the person intending to move the motion for removal of a director, which may be refunded to him in case the relevant motion/resolution is approved by the company.

11.94 The Committee recommend that a minimum number of shareholders or holding of a minimum share capital be made a pre-requisite to move the motion to remove a Director. The Committee, however, do not accept the alternate suggestion for a deposit of a reasonable sum to move the motion for removal of a director, which is not conducive for corporate democracy.

Clause 151—Register of Directors and Key Managerial Personnel and their shareholding

11.95 This clause seeks to provide that every company shall keep at its registered office a register containing particulars of its directors and the key managerial personnel including the details of securities held by each of them in the company or its holding, subsidiary or associate companies.

11.96 Clause 151 (1) reads as follows:—

"Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary or associate companies."

11.97 Suggestion received from ICSI on this Clause is as under:—

Every company is required to keep a register containing particulars of its directors and key managerial personnel. It shall also include details of securities held by each of them in the company, its holding company or subsidiary company or associate companies. It is suggested that the holdings of such persons in subsidiary of company's holding company should also be included. This requirement is in line with existing provisions of section 307 of the Companies Act, 1956.

11.98 While accepting the said suggestion as agreed to by the Committee, the Ministry noted the same to be addressed appropriately with legislative vetting.

11.99 The Committee recommend that the particulars of directors and Key Managerial Persons (KMPs) provided in the company's register should also include details of securities held by each of them in the company or its holding or subsidiary or associate companies.

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

Clause 154—Meetings of Board

12.1 This clause seeks to provide that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and hold a minimum number of four meetings of its Board of Directors every year. The participation of directors in a meeting of the Board may be either in person or through video conferencing or such other electronic means.

12.2 Clause 154(1) reads as follows:—

"Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification."

12.3 On this Clause it has been suggested by the Institute of Company Secretaries of India that a meeting of the board must be held atleast once in every three months.

12.4 In this regard, the Ministry in their written comments stated that the *suggestion may result into allowing a company to hold the first Board meeting on 1st of January and the next one on 30th June which may actually result in a gap of six months between two meetings. This is not the intention. In view of this, there may not be any necessity of any modification in the Bill on this matter.*

Clause 154 (2)

12.5 Clause 154(2) reads as under:—

"The participation of directors in a meeting of the Board may be either in person or through video conferencing or such other electronic means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other electronic means."

12.6 Suggestion as received from various institutions/experts on this Clause are as follows:

(i) The following Clause may be included in the Bill:—

"The participation of directors in a meeting of the Board, or of any members of a committee constituted by the Board, may be either in person or through video conferencing or such other electronic means, as may be prescribed, which are capable of recording and recognising the participation of the directors (or of any members of committees) and of recording and storing the proceedings of such meetings:

Provided that where video conferencing or such other electronic means, as may be prescribed, are used for participation, recording and storage of the proceedings conducted in this manner shall be restricted to the commencement and conclusion of such meetings, and the discussions of the Board or of a committee constituted by the Board by aforementioned electronic means should be excluded from recording and Storage." (CII)

(ii) Since it is possible to participate fully in a Board Meeting through video-conferencing, the need for keeping aside matters, which cannot be decided at such meetings, seems to be misplaced. It will be incumbent on the companies to establish the identity of a Director participating through video-conferencing and once his presence is established, such a valid meeting should not be constrained to keep aside one or more matters, as may be specified later by the Central Government, for discussion/decision at a meeting where physical presence of a Director would be necessary. (FICCI)

(iii) Recording of entire meeting: The Bill provides that in case of video conferencing, the entire meeting must be recorded. This is more onerous than a normal meeting where the recording of minutes does not entail the recording of the various discussions at the board meeting and such a step may compromise the confidentiality of a board meeting as recorded meetings are capable of being stolen/hacked.

(iv) Permitting participation of Directors in a meeting of the Board through video conferencing is a welcome step. However, participation of directors through other electronic means such as email, facsimile, etc. would not be a healthy practice. We suggest that the words, 'or such other electronic means' appearing in clause 154(2) should be replaced by the words, 'or similar audio visual means'.

(v) Right to decide to have a Board Meeting by video conferencing should be with the Board. (Indian Merchants Chamber)

(vi) The means of conducting such meetings be limited to video conferencing only where the participation by the concerned director himself can be recorded and not leave any possibilities of misuse of this progressive step. (*i.e.* through hacking, false representation, voice modulation.)

12.7 Comments of the Ministry on all the above said suggestions are as follows:—

The suggestion may not be considered since in the absence of proper and thorough coverage and storage of such a board meeting held through video conferencing or other electronic

mode, the views made by a particular director or independent director could be ignored or not duly considered. The objective is to enable information technology help the companies in saving time and resources in connection with the meeting processes, yet it should not result in companies adopting this facility in piecemeal without any logic. Thus suggestion for not recording and storing complete board proceedings may not be allowed.

In view of above, there may not be any necessity of any modification in the Bill on this matter.

12.8 The Committee note that the Ministry have accepted these suggestions for allowing Directors to participate in a meeting through video conferencing alone and not through other electronic means which will not facilitate recording of such participation. The Committee recommend necessary modification in the provision so that possibilities of misuse of this progressive step are eliminated.

Clause 156—Passing of resolution by circulation

12.9 This Clause seeks to provide that no resolution shall be deemed to have been duly passed by the Board or by a Committee thereof by circulation unless the resolution has been circulated in draft, to all the directors, or members of the committee at their addresses in India, and has been approved by a majority.

12.10 Clause 156 (1) reads as under:—

"No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their usual addresses in India, and has been approved by a majority of the directors or members, who are entitled to vote on the resolution."

12.11 Bombay Chamber of Commerce and Industry on this Clause suggested that the words "in India" appearing in Clause 156 (1) may be deleted. Also, it may be provided in the Bill that circular of resolutions can be delivered to the directors through electronic mode such as e-mail.

12.12 The Ministry noted the said suggestion to be addressed appropriately with legislative vetting.

12.13 Further, ICSI in their written submission on this Clause stated that there should be a power to the prescribed number of directors to require that any resolution under circulation should be decided at a meeting and in that event the resolution should be withdrawn from circulation. Therefore, a proviso to this effect may be added to clause 156(1).

12.14 While accepting the above suggestion the Ministry replied as under:—

"Since there could be some important matters which should be passed through physical meeting only and the suggestion to provide in the Bill that a minimum number of board members should have the power to require that any such important matter should not be passed through circulation is noted to be addressed appropriately with legislative vetting."

12.15 The Committee would like the Ministry to provide that prescribed number of Directors may require that important matters should be decided only through physical meeting and not through circulation of resolution.

Clause 158—Committees of Board

12.16 This Clause seeks to provide the requirement and manner of constituting audit, remuneration, stakeholders relationship committees of the Board. The clause also provides for the requirements in respect of such committees.

12.17 Clause 158 (1) reads as under:—

"The Board of Directors of every listed company and such other class or description of companies, as may be prescribed, shall constitute an Audit Committee and a Remuneration Committee of the Board."

12.18 On this Clause FICCI and CII *vide* their written memorandum suggested as follows:—

Currently Clause 158 requires only listed companies and "such other class or description of companies as may be prescribed" to constitute Audit and Remuneration Committee with independent directors constituting a majority. However, Clause 49 of the Listing Agreement requires that 2/3rd of the directors in the Audit Committee should be independent directors. We recommend that the provisions of the Bill be harmonized with the Listing Agreement.

12.19 The comments of the Ministry on this suggestion are as follows:—

The Bill seeks to rely on the recommendations made by Irani Committee (in Chapter III of its Report) on the matter relating to harmony between various regulators. Accordingly, it has been proposed that the requirements under the Company Bill/Act would be minimum/basic applicable for every company or a class of companies as may be provided therein. Any sectoral regulator may provide for a more detailed or stringent provisions, not inconsistent with such provisions provided in the Bill for sectoral companies under their jurisdiction. It is felt that with this approach, there would be harmony between provisions of the Bill and regulations prescribed by various regulators.

12.20 Further, ICWAI on this Clause suggested that the Board of Directors of every listed company and such other class or description of companies, as may be prescribed, shall constitute an Audit Committee, a Remuneration Committee and a Strategic Oversight Committee of the Board.

12.21 In this regard, the Ministry replied that this type of committee may be left to be decided by the companies themselves. They have therefore, suggested to include an alternate Clause which is given as under:—

"158. (1) The Board of Directors of every listed company and such other class or description of companies, as may be prescribed, shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board."

12.22 The Committee desire the proposed change in the clause for constituting a Nomination and Remuneration Committee of the Board instead of only Remuneration Committee as originally proposed may be duly incorporated in the Bill.

12.23 Clause 158 (2) reads as under:—

"The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and at least one director having knowledge of financial management, audit or accounts."

12.24 At the behest of the Committee, the Ministry of Corporate Affairs suggested to alter the Clause 158 (2) as given below:—

"The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and at least two directors having knowledge of financial management, audit or accounts."

12.25 Clause 158(5) reads as under:—

"Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include, among other things, the recommendation for appointment of auditors of the company, examination of the financial statements and the auditors' report thereon, transactions of the company with related parties, valuation of undertakings or assets of the company, wherever it is necessary, evaluation of internal financial controls and related matters."

12.26 ICWAI in their written memorandum suggested that the section may be amended as under:—

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include, among other things, the recommendation for appointment of auditors of the company, examination of the financial statements and the auditors' report thereon, examining cost statements and the cost auditors' report thereon, transactions of the company with related parties, valuation of undertakings or assets of the company, wherever it is necessary, evaluation of internal checks, internal controls, internal audit & internal auditors' report thereon and related matters.

12.27 While submitting their reply to above suggestion, the Ministry stated that:—

Suggestion proposes to specifically include examination of cost records/statements/reports within the purview of Audit Committee. It is felt that the function of examination of 'financial statements' provided in the Bill would cover examination of cost records or report of cost auditor as well, wherever they are relevant.

Hence, the provisions proposed in the Bill are considered to be appropriate and there may not be any necessity of any modification in the Bill on this matter.

12.28 In accordance with the concern expressed by the Committee during evidence, the Ministry submitted an alternate Clause to Clause 158(5) as under:—

"158 (5) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include, among other things:—

(i) the recommendation for appointment, remuneration and terms of engagement of auditors of the company,

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process,

(iii) examination of the financial statements and the auditors' report thereon,

(iv) approval/modification of transactions of the company with related parties, scrutiny of inter-corporate loans and investments,

(v) valuation of undertakings or assets of the company, wherever it is necessary,

(vi) evaluation of internal financial controls and risk management systems, monitoring of end use of funds raised through public offers and related matters."

12.29 Clause 158 (6) reads as under:—

The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review financial statements before their submission to the Board.

12.30 The Ministry while accepting the concerns expressed by the Committee on this Clause suggested to alter this clause as under:—

"158(6)—Audit Committee to hold discussions with internal auditor statutory auditors & management separately.

158(6) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review financial statements before their submission to the Board. The Audit Committee shall have power to have separate discussions with internal and statutory auditors as well as management of the company."

12.31 The Committee while accepting the views of the Ministry on the above suggestions, recommend that the alternate clause proposed above specifying the terms of reference and duties of Audit Committee of the Board may be suitably incorporated.

12.32 Clause 158 (10) reads as under:—

"The Remuneration Committee shall consist of non-executive directors as may be appointed by the Board out of which at least one shall be an independent director."

12.33 *In accordance with the views and concern expressed by the Committee on the need for an internal watchdog mechanism, the Ministry of Corporate Affairs have proposed to incorporate two new sub-clauses 158(10A) and 158(10B) which are given as under:-*

"New sub-clause 158(10A) – Whistle Blowing Mechanism

Such class or description of companies, as may be prescribed, shall establish a mechanism for directors, employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism shall provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases:

Provided further that details of existence of such mechanism shall be disclosed by the company in the Board's Report.

New sub-clause 158(10B)—Role of Nomination and Remuneration Committee to be incorporated in the Bill more specifically.

The Nomination and Remuneration Committee shall identify individuals qualified to become board members consistent with the criteria laid down, recommend to the board the appointment and removal of directors and of senior management and shall carry out evaluation of individual director's performance."

12.34 As elaborated in the overview (part-I), the Committee recommend that the new clause proposed above providing for an internal watchdog mechanism or a whistle blower system within the company may be suitably incorporated in the Bill.

12.35 Clause 158 (11) reads as under:

"The Remuneration Committee shall determine the company's policies relating to the remuneration of the directors, including the remuneration and other perquisites of the directors, key managerial personnel and such other employees as may be decided by the Board."

12.36 In accordance with the views expressed by the Committee on this issue, the Ministry suggested to alter the clause 158 (11) as given below:

"158 (11) The Nomination and Remuneration Committee shall formulate and recommend to the Board the company's policies, relating to the remuneration for the directors, key managerial personnel and other employees, criteria for determining qualifications, positive attributes and independence of a director:

Provided that the Nomination and Remuneration Committee shall ensure that—

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully.

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks.

(c) Remuneration to directors, KMPs and Senior Management involves a balance between fixed and incentive pay reflecting short and long term performance objectives appropriate to the company's circumstances and goals:

Provided further that such policy shall be disclosed in the report by the Board of directors under sub-section (3) of section 120."

12.37 The Committee desire that the alternate proposals made above prescribing the terms of reference of the nomination and remuneration Committee of the Board be duly incorporated in the Bill.

12.38 Clause 158 (15) reads as under:—

"In case of any contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both."

12.39 It has been suggested in their written memorandum to eliminate the punishment with imprisonment for a term which may extend to one year in these as well as other instances in the Bill where the violations are purely civil and technical in nature, and are not acts conducted with criminal intent.

12.40 The Ministry noted the said suggestion to be addressed appropriately with legislative vetting.

12.41 The Committee, while reiterating their view expressed in the Overview (Part-I) of the Report, would like to emphasise that transgressions, purely procedural or technical in nature, should be viewed in a broader perspective, while serious non-compliance or violations including fraudulent conduct should invite stringent/deterrent provisions. The Committee desire that the clauses/sub-clauses in question may be re-considered accordingly.

Power of Board

Clause 159(3)

12.42 Clause 159(3) reads as under:-

"The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

(*a*) to make calls on shareholders in respect of money unpaid on their shares;

(*b*) to authorise buy-back of securities under section 61;

(*c*) to issue securities, including debentures, whether in India or outside;

(*d*) to borrow monies including arrangement with its bankers for overdraft, cash credit or other account;

(*e*) to invest the funds of the company;

(*f*) to grant loans or give guarantee or provide security in respect of loans;

(*g*) to approve financial statement and the Director's report;

(*h*) to diversify the business of the company;

(*i*) to approve amalgamation, merger or reconstruction;

(*j*) to take over a company or acquire a controlling or substantial stake in another company:

Provided that the Board may, by a resolution passed at a meeting, delegate to any Committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (*d*) to (*f*) on such conditions as it may specify."

12.43 Various suggestions have been received on this Clause as under:

The second proviso to Section 292 (1) of the Act clarifies that the acceptance of deposits by a banking company or the placing of deposits by a banking company with another banking company does not constitute a borrowing of moneys and accordingly does not require this power to be exercised by the Board of Directors of such banking company. There is no corresponding provision in Clause 159(3) of the Bill (which corresponds to Section 292 of the Act). The existing proviso may be retained as banking companies should be permitted to retain the internal flexibility to conduct their primary business.

12.44 The comments of the Ministry on this suggestion are as follows:-

"It is felt that these kinds of provisions should be provided in the Special Act viz., Banking Regulation Act. Attention is drawn in this regard to provisions of clause 1(4) of the Bill which provide that the provisions of Companies Act shall apply to sectoral/companies regulated under Special Act to the extent such Special Act is silent on that matter.

In view of above, there may not be any necessity of any modification in the Bill on this matter."

12.45 One more suggestion received on this Clause is as follows:—

"Under Section 292 of the Act dealing with powers of the Board of Directors, whenever the power to borrow money otherwise than on debentures is delegated by the Board of Directors to a Committee or certain officers, the total amount which can be so borrowed must be specified by a Board Resolution. This has been deleted in Section 159(3) of the Bill (which corresponds to Section 292 of the Act). This provision may be retained as there appears to be no rationale to permit the Board of Directors to delegate its entire power in this regard to a committee or certain officers."

12.46 The comments of the Ministry on this issue are as follows:—

"Clause 159 of the Bill corresponds to section 292 of the Companies Act. Attention is drawn to Proviso to sub-clause (3) of clause 159 of the Bill which empowers the Board to

delegate, by way of a resolution passed at a meeting of Board, its powers to borrow monies to any Committee, Managing Director etc., with such conditions as may be specified by the Board.

Since the provisions provide for adequate safeguard on such delegation by Board, it is felt that there may not be any necessity to make any modifications in these provisions."

12.47 Another related suggestion is as follows:-

Bill proposes issue of shares by Board of Directors at a meeting only and not by a Committee. Amendments to be made that such issue/allotment of shares pursuant to exercise of ESOPs be exempt as such shares are allotted by most listed companies almost every week and calling a Board meeting for such issues will be cumbersome. Issue of shares arising from exercise of ESOPs should also be included in list of items that can be delegated to a Committee of the Board under proviso to section 159(3).

12.48 The comments of the Ministry on this aspect are as follows:—

The Companies Bill, 2009 has proposed enabling provision for issue of shares to employees under clause 56(1)(b). The manner/procedural aspects on Employees Stock Option Schemes (ESOPs) are proposed to be provided under the rules to be framed under such clause. Regarding delegation of powers to allot such shares to a Committee of Board, it is felt that the Board may allot shares under ESOPs subject to details procedures/formalities provided under rules. It is not the intention that every individual allotment of shares under ESOPs shall have to be approved by Board. The rules to be framed under this clause may clarify this aspect.

12.49 The Committee, while accepting the views expressed by the Ministry on the suggestions received, would expect that the concerns expressed regarding the procedural aspects on Employees Stock Option Schemes (ESOPs) will be addressed while framing the rules. In this context, the Committee would also suggest that Clause 159(3), which provides for powers of the Board, should also have a provision for residual powers of the Board.

Clause 160—Restrictions on powers of Board

12.50 This clause seeks to provide for the powers of the Board of Directors of a company to be exercised only with the consent of the company by a special resolution.

12.51 Clause 160 (1) (a) to (c) reads as under:-

"The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

(*a*) to sell, lease or otherwise dispose of the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—

(*i*) the word 'undertaking' shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding

financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

(*ii*) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(*b*) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(*c*) to borrow money exceeding the aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business."

12.52 On this clause, suggestions have been received that the existing explanation regarding 'temporary loans' under the Act be incorporated in Clause 160 of the Bill.

12.53 While noting the above said suggestion, to be addressed appropriately with legislative vetting, the Ministry, at the behest of the Committee, suggested to alter this clause as below:-

"160. (*1*) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

(a) xxx

(b) xxx

(c) to borrow money exceeding the aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;

(d) xxx

(*e*) to contribute to charitable and other funds as donation in any financial year an amount in excess of five per cent. of its average net profits for the three immediately preceding financial years.

Explanation.—For the purposes of this clause,—

(iii) The expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature."

12.54 The Committee would expect the Ministry to incorporate the above changes explaining the details of 'temporary loans', which may be authorized by the Board.

Clause 161—Prohibitions and Restrictions regarding political contributions

12.55 This clause seeks to provide the manner and limits up to which a company shall be able to contribute the amount to any political party or to any person for a political purpose.

The clause further provides the manner in which every company shall disclose in its profit and loss account any amount so contributed by it during any financial year.

12.56 Clause 161(1) reads as under:-

(*1*) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly—

(*a*) to any political party, or

(*b*) to any person for a political purpose:

Provided that the amount or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed five per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

12.57 During evidence, the Committee raised the issue regarding political contribution by corporates to political parties. In response, the Secretary, Ministry of Corporate Affairs during evidence stated that:

"Whatever is there in the Act, which is there from 1956, the same provisions are there and there was no discussion. You can take a view. I have nothing to say on that."

12.58 The Committee further sought to know during evidence as to why the provision for contributions made to the National Defence Fund which was in clause 293 (b) of the existing Act has been omitted from the present Bill.

12.59 In response, the Secretary, Ministry of Corporate Affairs replied during evidence that *'he will abide by the decision of the Committee on this issue'*.

12.60 The Committee desire that sub-clause 1(a) of Clause 161 may be modified so as to make it clear that 'any political party' would mean and read as 'a political party registered with the Election Commission'. Similarly, sub-clause 1(b), which reads as 'to any person for a political purpose' may be deleted, as it may leaves scope for ambiguity and misuse. In this context, the Committee also recommend that the prescribed maximum percentage for contributions to political parties in a financial year may be raised to 7.5% from the existing 5% of the average net profits during the three immediately preceding financial years, keeping in view the fact that the number of political parties in the country has increased and such donations are not made every financial year.

The Committee further recommend that the Ministry should also stipulate a cap on contribution to charitable and other funds as donation as proposed in sub-clause 160(1) (e). Any contribution under this sub-clause, regardless of percentage, should be required to be

made only with the consent of the shareholders of the company by a special resolution. It also needs to be stipulated in the sub-clause that the contribution should be made only to 'bonafide' charitable institutions, that is, those institutions which have neither attracted any restraints from any regulatory authorities, including the Revenue Department of Government, in the past nor have defaulted in filing the requisite annual returns and statements with the Government.

The Committee desire that the existing provision regarding contributions made to the National Defence Fund may be restored, as there does not appear to be any justification for its exclusion from the Bill.

Clause 163—Loan to Director

12.61 This clause seeks to provide the circumstances and manner in which a company shall advance any loan to any of its directors or to any other person in whom he is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

12.62 Clause 163 (1) reads as under:

"Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom he is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

(*a*) the giving of any loan to a managing or whole-time director—

(*i*) as a part of the conditions of service extended by the company to all its employees; or

(*ii*) pursuant to any scheme approved by the members by a special resolution.

(*b*) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India."

12.63 On this Clause PHDCCI have suggested as follows:

The meaning of the expression 'to any other person in whom he is interested' may be brought out more clearly. Further, persons or entities to whom the loan cannot be given may be outlined, as has been done in the existing Act.

12.64 The reply of the Ministry on this suggestion is as follows:—

"(i)(a) Attention is drawn to clause 2(1)(zy) of the Bill which reads as under:—

(zy) "interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract

or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

(i)(b) The intention is to use the above provisions of clause 2(1)(zy) as the reference to the expression 'to any other person in whom he is interested' used in clause 163(1) and referred in the suggestion. In view of this, the suggestion to clarify the position in this regard is noted to be addressed suitably.

(ii) The intention of the clause is to prohibit loans by a company to its directors or relatives of directors or other entities in which such directors have any interest or concern. The clause, however, allows loans to managing and whole time directors subject to conditions provided in the clause.

In view of above, there may not be any necessity of any modification in the Bill on this matter."

12.65 Further, FICCI on this Clause suggested that:—

(i) It should be clear that the section does not apply to sale on credit to any party in which a director may be interested.

(ii) The persons and entities etc. to whom loan can not be given may be elaborated, as is done in extant Section 295 of the Companies Act.

12.66 The Ministry noted the suggestion at (i) above to be addressed appropriately with legislative vetting.

12.67 While with respect to the suggestion at (ii) above, the Ministry stated that the intention of the clause is to prohibit loans by a company to its directors or relatives of directors or other entities in which such directors have any interest or concern. The clause, however, allows loans to managing and whole time directors subject to conditions provided in the clause. Therefore, there may not be any necessity of any modification in the Bill on this matter.

12.68 With a view to bringing greater clarity to the provision, the Committee recommend that the expression used in the clause 'to any other person in whom he is interested' (*i.e.* as per the definition "interested director" used in the Bill may be suitably clarified. Further, persons or entities to whom loan cannot be given may also be outlined in the clause in line with the existing Section 295 of Companies Act.

Clause 164—Loan and Investment by Company

12.69 This clause seeks to provide the manner in which and limits up to which a company shall give any loan or give any guarantee or provide security in connection with a loan to any other body corporate or person or acquire by way of subscription, purchase or otherwise, the securities of any other body corporate.

12.70 Clause 164 (1) reads as under:

"No company shall directly or indirectly —

(*a*) give any loan to any person or other body corporate;

(*b*) give any guarantee or provide security in connection with a loan to any other body corporate or person; or

(*c*) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital and free reserves or one hundred per cent. of its free reserves, whichever is more."

12.71 On this Clause, FICCI in their written submission suggested as follows:

(i) The upper limits of 60% and 100% prescribed under Section 372A of the Companies Act, 1956 applies to aggregate of all corporate loans and investments etc. (both present and proposed). But Clause 164 of the Bill seems to suggest that such limits are applicable to loans and investments etc. to one person and not in the aggregate. In other words, a company may give three loans to three companies each equal to 50% of the net worth.

(ii) Clause 164 (3) provides that a company giving loans should disclose to the members in the financial statements full particulars of the loans given and the purpose for which the loan is proposed to be utilized by the recipient of the loan. Such a provision is not there with regard to giving of guarantees or providing security in connection with a loan. [*May be this is an omission while drafting the provisions.]*

(iii) The provision of this clause should not apply to public financial institutions and companies established with the object of financing industrial enterprises.

(iv) Further, companies whose principal business is the acquisition of shares, debentures and other securities and are not registered as NBFC under RBI Act and companies established with the object of financial industrial enterprises or of providing infrastructural facilities who have availed exemption under Section 372A of the extant 1956 Act have not been given any time frame for regularizing their exposure should they have any amounts outstanding as loans, guarantees or investments in securities.

12.72 The comments of the Ministry as stated in their written replies are as follows:

Since the provisions in respect of regulation of inter-corporate loans and investments are important from the point of view of avoiding diversion of funds and protection of interests of minority shareholders, the suggestions for review of these provisions, including for providing any restriction on the number of subsidiary companies a company may have, are noted to be addressed appropriately with legislative vetting.

12.73 Subsequently, the Ministry proposed to amend this Clause as under:

"164. (1) No company shall directly or indirectly—

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid-up share capital and free reserves or one hundred per cent of its free reserves, whichever is more.

12.74 More suggestions relating to inter-corporate investments are as follows:

(i) Inter corporate investments under Clause 164 of the Bill should be subjected to close scrutiny of audit committee. Exemption given to loan/investment made in a private company or in a wholly owned subsidiary company should be denied particularly in the context of Satyam and other recent cases of corporate frauds engineered through off-balance sheet and on-balance sheet investment transactions with inter-connected companies.

(ii) The limits of loans, guarantees and investments in section 164(1) are prescribed with reference to paid up capital and free reserves/free reserves. In the corresponding section 372A of the Companies Act, 1956 a definition of free reserves for the purposes of that section as contained in explanation are as under—

Explanation—for the purpose of this section,—

(a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) "free reserves" means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money. It is proposed that the above definition may be re-introduced; and

(c) It is felt that the companies with the object of financing industrial enterprises who have already availed of loans have not been given any time to bring their borrowings in conformity with amended provisions, appropriate relaxation by way of time-frame within which they may regularize their position may be provided." (ICWAI)

12.75 The reply of the Ministry on these suggestions is as under:—

> *"Suggestions have been received that exemption from compliance with all the provisions of clause 164 (which merely require Board/shareholders approval alongwith reasonable disclosures thereto) to loan/investment made in a private company or in a wholly owned subsidiary company is not justified and proper since such exemption allows companies to divert/siphon-off the funds or use circular route to evade regulatory provisions of Companies Act or other laws.*
>
> *This was noticed during investigation into affairs of some companies recently. Hence, it is proposed that such exemptions should be omitted from the provision of clause 164."*

12.76 Clause 164 (3) reads as under:—

"The company shall disclose to the members in the financial statements the full particulars of the loans given and the purpose for which the loan is proposed to be utilized by the recipient of the loan."

12.77 RBI in their written submission on this Clause suggested as follows:—

"(i) Banks/FIs should be excluded from the requirement of detailed disclosure of the end use of loans and advances by a recipient entity as Banking Companies are not required to disclose the end use of loans and advances under the provisions of Banking Regulation Act, 1949.

(ii) For the sake of more clarity, it is proposed that the following proviso may be added to sub-clause 3 of the clause 164 of the Bill:—

Provided that the provisions of this sub-section shall not apply to the Banking Companies as defined in Section 5(c) of the Banking Regulation Act, 1949."

12.78 The reply of the Ministry on the above said suggestion is as under:—

The Bill seeks to provide that any relaxation or restriction for sectoral companies should be provided in the relevant sectoral laws only. As per clause 1(4) of the Bill, such provisions of the Special Sectoral Statutes would have overriding effect over the provisions of the Companies Bill/Act.

Keeping in view this broad approach, no modification is considered to be necessary.

12.79 Further, PHD Chamber of Commerce and Industry in their written note suggested to modify the Clause 164 (3) as per the suggestion given below:—

Companies whose principal business is the acquisition of shares, debentures and other securities and are not registered as NBFC under RBI Act and companies established with the object of financial industrial enterprises or of providing Infrastructural facilities who have availed exemption under Section 372A of the extant Companies Act, 1956 should be exempt from the provisions of clause 164(3) or alternatively, should be given a time frame for regularizing their exposure in case they have any amounts outstanding as loans, guarantees or investments in securities.

12.80 *While noting the above said suggestion the Ministry decided to improve the drafting of this clause to bring about clarity on the intent of clause 164(3) in respect of need for disclosures to members regarding the purposes for which the recipient entity shall use loan, guarantee or security. They have therefore proposed to amend the clause 164(3) as follows:—*

"164 (3) The company shall disclose to the members in the financial statements the full particulars of the investment made or loan or guarantee or security given and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan."

12.81 Clause 164 (7) reads as under:—

"No company which is in default in the repayment of any deposits accepted before the commencement of this Act or payment of interest thereon even after such commencement, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting."

12.82 It has been suggested to amend this sub-clause as follows:—

"No company, which is in default in the repayment of any deposits accepted before or after the commencement of this Act or payment of interest thereon, shall give any loan or give any guarantee or provide any security or acquire by way of subscription, purchase or otherwise the securities of any other body corporate."

12.83 While noting this suggestion to be addressed appropriately with legislative vetting the Ministry suggested an alternate clause to amend this sub-clause as follows:—

"164 (7) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or guarantee or provide any security or make an acquisition till such default is subsisting."

Clause 164(10)(a)(iii)

12.84 Bombay Chamber of Commerce and Industry while submitting their written memoranda suggested as follows:—

The Bill should not make any reference to private companies which are subsidiaries of public companies as a separate class (except in the definition of public company). Further, such private companies should not be allowed to continue as private companies and the Bill should also provide for a procedure and timeline for conversion of such private companies into public companies upon becoming a subsidiary of a public company.

12.85 The Ministry noted the suggestion to be addressed appropriately with legislative vetting.

Clause 164(10)(b)(i)

12.86 Another suggestion on this clause states as follows:—

Exemption from the applicability of Clause 164 of the Bill be extended to NBFCs for their lending activities as well.

Ideally, Clause 164 should be so drafted as to reflect the exemptions from the provisions of Section 372A of the Companies Act, 1956—which are currently available for investment companies and infrastructure companies.

12.87 The Ministry noted the suggestion to be addressed appropriately.

12.88 In order to clarify intention of grant of exemptions from inter-corporate loans, the Ministry suggested to include the following drafting improvements in Clause 164 (10):—

"164 (10) Nothing contained in this section shall apply—

(a) to a loan made, guarantee given or security provided by—

(i) a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities."

New sub-clause 164(12)—

12.89 While noticing that every company to have only one investment company, the Ministry suggested to provide a new sub-clause 164 (12) in the Bill, which is given as under:—

"164 (12) Without prejudice to the provisions contained in this Act, every company shall make investment only through one investment company.

Explanation. — For purposes of this section, investment company means a company whose principal business is the acquisition of shares, debenture or other securities."

12.90 The Committee note that the Ministry have tried to address their concerns by proposing alternate clauses/sub-clauses in respect of some of the provisions relating to inter-corporate loans and investments with a view to making the process transparent and more restrictive. In this regard, the Committee would like to emphasise that no exemption should be given from compliance with the provisions of clause 164 relating to inter-corporate loans/investments made in a private company or OPC or in a wholly owned subsidiary company or any other form of company. Any exemption would only allow companies to divert/siphon-off funds or use a circuitous route to evade regulatory provisions. Further, the disclosures/restrictions concerning inter-corporate loans and investments should be ideally laid out in the Act itself rather than be left out for rule-making.

Clause 165—Investments of Company to be held in its own name

12.91 This clause seeks to provide that all investments made or held by a company in any property, security or other asset shall be made and held by it in its own name. It also seeks to provide that the company may hold any shares in its subsidiary company in the name of any nominee of the company, if it is necessary to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

12.92 Clause 165 reads as under:—

(*1*) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if and in so far as it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(*2*) Nothing in this section shall be deemed to prevent a company from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(*3*) Where in pursuance of sub-section (*2*), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to the inspection by any member or debenture holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(*4*) Where a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

12.93 On this Clause, CII, ICSI, PHDCCI and FICCI have suggested that the exemption provided in the extant Section 49 be incorporated in clause 165 of the Bill.

12.94 The Ministry in response to the Committee's endorsement of the above suggestions, have proposed to amend this Clause as follows:—

"165. (1), (2), (3)….

(4) Nothing in this section shall be deemed to prevent a company—

(a) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(b) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a Scheduled Bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a Scheduled Bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the Scheduled Bank or, as the case may be, again hold the shares or securities in its own name; or

(c) from depositing with, or transferring to, any person any shares or securities, by way of security for the re-payment of any loan advanced to the company or the performance of any obligation undertaken by it; and

(d) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.

(e) existing sub-clause (4) in the Bill shall be renumbered as sub-clause (5)."

12.95 The Committee recommend that the afore-mentioned proposals relating to Investments of Company to be held in its own name be suitably incorporated.

Clause 166—Related party transactions

12.96 This clause seeks to provide the manner in which contracts or arrangements by a company with related parties shall be made and disclosed.

12.97 Clause 166(1) reads as under:—

"Except with the consent of the Board of Directors of a public company accorded by a resolution passed at a meeting of the Board and subject to such conditions as may be prescribed, no such company shall enter into any contract or arrangement with a related party with respect to—

(*a*) sale, purchase or supply of any goods or materials;

(*b*) selling or otherwise disposing of, or buying, property of any kind;

(*c*) leasing of property of any kind;

(*d*) availing or rendering of any services;

(*e*) appointment of any agents for purchase or sale of goods, materials, services or property;

(*f*) appointment to any office or place of profit in the company or its subsidiary company; and

(*g*) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis."

12.98 Suggestions as received from various institutions/experts on this Clause are given as under:—

(i) The transactions should not be subject to shareholders' approval and the same should be permitted to be decided by the Board of Directors of the company concerned. (PHD Chamber of Commerce and Industry);

(ii) A suggestion has been made which proposes an alternate proviso as follows:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

The resolution should be supported by the certificate of Cost Accountant in practice based on assessment of the transaction on the test of Cost Price Ratio after applying the relevant Cost Accounting Standards.

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

(iii) The requirement of shareholders' resolution should be confined only to the business of contracts listed in clauses (f) and (g) of sub-section 1. So far as clause (e) is concerned, it should be confined only to sole agents.

So far as transaction mentioned in clauses (a), (b), (c) and (d) of sub-section 1 are concerned, a provision should be made that these should be disclosed in the annual report of the Company—

Similar to disclosure currently required under accounting standard AS 18.

In any case, in the first proviso to Clause 166(1) the word 'prior' should be deleted so that even *post facto* approval can be obtained by passing a special resolution.

12.99 The reply of the Ministry in respect of all the above said suggestions is given as under:—

(i) The intention is to provide that companies manage their affairs, without intervention of Government, in a responsible manner with full disclosures, transparency and after obtaining approval of competent body(ies) *i.e.* Board or shareholders, as the case may be. Hence there may not be any necessity of modification on the matter in the Bill.

(ii) The provisions provide for disclosures to be made in the Board's report about related party transactions made by a company during a year. It is felt that this information would be useful for members of the company to know the manner in which the transactions with related parties are taking place.

It is proposed that the suggestion may not be considered and the disclosure proposed in the Bill may be considered to be retained.

(iii) In the existing Act the provisions on related party transactions provide for approval of Central Government in case of bigger companies i.e. *companies beyond a particular paid-up capital.*

The Bill, in view of recommendations made by Irani Committee has proposed to provide for approval of Board of directors and only in case of bigger companies, the approval of Shareholders has been provided.

In view of more freedom being proposed for companies on this matter, it is felt that the provisions requiring shareholders approval are reasonable and may not be considered for revision.

12.100 While endorsing the viewpoint of the Ministry on this issue, the Committee welcome the proposal to provide greater freedom to companies in respect of 'related party transactions', by leaving the approval to the shareholders for bigger companies and to the Board of Directors for the remaining, while simultaneously enhancing the disclosures to be made in this regard.

Clause 167(1)—Register of contracts or arrangements in which Directors are interested

12.101 This clause seeks to provide the particulars and the manner in which such particulars shall be entered by the company in the registers of contracts or arrangements in which directors are concerned or interested.

12.102 Clause 167(1) reads as under:—

"Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (*2*) of section 162 applies, including such particulars and in such manner as may be prescribed."

12.103 While submitting their written memorandum ICSI have suggested that the provisions of Clause 167 do not specify whether the register is required to be placed at the meeting of the Board of Directors held after the contract is entered and whether the register should be signed by all the Directors, as is provided under section 301 of the Companies Act, 1956.

12.104 The Ministry have accepted the above suggestion.

12.105 The Committee recommend that as suggested, the stipulation for signature of the register by all the directors as provided under Section 301 of the existing Act may be retained.

Clause 172—Prohibition on forward dealings in securities of company by a key managerial personnel

12.106 Clause 172 reads as under:—

"(*1*) No director of a company or any of its key managerial personnel shall buy —

(*a*) a right to call for delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures,

(*b*) a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures, or

(*c*) a right, as he may elect, to call for delivery at a specified price and within a specified time, or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(*2*) Where a director or any key managerial personnel contravenes the provisions of sub-section (*1*), he shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

(*3*) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (*1*), he shall, without prejudice to any punishment which may be imposed under sub-section (*2*), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition.

Explanation.—For the purposes of this section, relevant shares and relevant debentures mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial person or shares and debentures of its holding and subsidiary companies."

12.107 Suggestions received from Bombay Chamber of Commerce and Industry and Indian Merchants' Chamber and others on this Clause are given as below:—

In order to avoid prohibiting such genuine transactions and also to ensure that the Act does not result in regulatory overlap on account of the provisions of the Insider Trading regulations or the Securities Contracts (Regulation) Act, 1956, Clause 172 be deleted from the Bill.

12.108 Written comments as received from the Ministry on this suggestion are given as under:—

During preparation of the Bill it was observed that at present the offence of insider trading has not been defined in any statute. Though this term has been referred and prohibited in SEBI Act, 1992, the definition and other detailed requirements for 'insider trading' have been provided in relevant regulations framed by SEBI. Since regulation of insider trading is an important matter for good corporate governance, the provisions in this regard in context of prohibitions for directors and KMPs have been provided in the Bill without referring to any regulatory provisions framed by SEBI. It is not the intention to modify the existing regulatory structure formulated by SEBI on this matter, which may continue as it is.

(b) In view of above, keeping in view the need and appropriateness for enabling provisions on offence relating to insider trading to be provided in the principal legislation for corporate entities, the provisions may not be considered to be deleted from the Bill. However, any suggestion to improve the drafting of this clause to bring more clarity on the matter may be considered.

Clause 173—Prohibition on insider trading of securities

12.109 This clause seeks to prohibit directors or key managerial person of the company to deal in securities of a company, or counsel, procure or communicate, directly or indirectly, about any unpublished price-sensitive information to any person.

12.110 Clause 173 reads as under:—

"(1) No director or key managerial personnel shall either on his own behalf or on behalf of any other person, deal in securities of a company, or counsel, procure or communicate, directly or indirectly, about any non-public price-sensitive information to any person:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section, 'price-sensitive information' means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(2) If any director or key managerial personnel contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to one crore rupees, or with both."

12.111 In their written memoranda submitted to the Committee, PHDCCI and FICCI have suggested as follows:—

> The drafting of this provision seems to suggest that directors and Key Managerial Personnel (KMP) are prohibited from dealing in securities of the company, which may not be the intent. Directors/KMP may hold securities either in their capacity as promoters or through stock options or market purchase etc. Dealing in securities should be prohibited only when a director/KMP is in possession of non-public price-sensitive information. This would also be in consonance with the SEBI (Prohibition of Insider Trading) Regulations, 1992. The Clause may accordingly be modified.

12.112 The Ministry noted the above said suggestion to be addressed appropriately with legislative vetting.

12.113 The Committee, while appreciating the fact that enabling provisions are required to prohibit forward dealings and insider trading in securities of company by a KMP or a director, would like to point out that the provisions proposed in Clauses 172 and 173 for this purpose should remain in consonance with SEBI regulations on the subject. These clauses may, therefore, be modified accordingly so as to bring greater clarity to the legislative intent on the issue. It is also necessary in this regard that 'insider trading' is also suitably defined in the Bill.

CHAPTER XIII

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

174—Appointment of Managing Directors, Whole Time Director and Manager

13.1 This clause seeks to provide the manner in which a managing director, whole-time director or manager shall be appointed.

13.2 Clause 174(2) reads as under:—

"No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term."

13.3 A suggestion has been received on this clause as follows:

"Sub-clause (2) of clause 174 may be amended as under:

(2) No company shall appoint or reappoint any person as its managing directors whole time director or manager for a term exceeding 5 years at a time:

Provided that a person may be appointed managing director or manager of not more than two companies at a time if it is considered expedient that as two companies are inter-connected, inter-related or inter-dependent in respect of their business operations, the same person as managing director or manager would result in optimum management of the two companies.

Provided further that no reappointment shall be made earlier than one year before the expiry of his term."

13.4 Reply of the Ministry on this suggestion is as under:

*"Attention is drawn to provisions of clause 178 (3) which prohibit appointment of a whole-time KMP in more than one company. Since provisions of clause 178 are proposed to be made applicable to a class or description of companies (*i.e. *bigger companies), there is likely to be flexibility to companies which would not be covered under such prescription on the matter relating to appointment of managerial personnel in more than one company.*

In view of this, there may not be any necessity for modification in the Bill on this matter."

13.5 Clause 174(4) reads as under:

"No company shall appoint or continue the employment of any person as its key managerial personnel who—

(*a*) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution;

(*b*) is an undischarged insolvent or has at any time been adjudged an insolvent;

(*c*) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(*d*) has at any time been convicted by a court of an offence involving moral turpitude."

13.6 SEBI in their written submission suggested as follows:

Conviction under SEBI Act, SCR Act and Depositories Act may be retained as a disqualification for the persons to be appointed as managing or whole time directors as per the existing Section 269 read with provisions under the schedule XIII of the Companies Act.

13.7 The Ministry have accepted in principle the said suggestion to be addressed appropriately with legislative vetting.

13.8 The Committee recommend that conviction under SEBI Act Securities Contract (Regulation) Act, Depositories Act and for committing fraud, forgery etc. may also be considered as a disqualification for persons to be appointed as Managing or whole time Directors broadly in line with the provisions contained in existing Section 269 of the Companies Act. However, with regard to extension of age for the appointment of Managing Directors beyond seventy years by special resolution as proposed in the Bill, the Committee are of the view that considering the need for greater professionalisation of companies and nurturing of younger talent in the management, this may be resorted to only in extraordinary circumstances.

13.9 Clause 174(5) reads as under:

"A managing director, whole-time director or manager shall be appointed by the Board of Directors at a meeting with the consent of all the directors present at such meeting, which shall be subject to approval by a special resolution at the next general meeting of the company:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, if any, of a director or directors in such appointments, if any."

13.10 In a written memoranda received on this clause, it has been suggested as follows:—

The requirement of seeking unanimous consent from all directors present at a meeting for appointment of managerial personnel needs to be re-examined. Such requirement will pose

an impediment to the smooth functioning of corporates and will be inappropriate. The process of appointment of managerial personnel is long drawn, involving identification, evaluation and discussions at various levels.

The Bill proposes that even if a single director does not support an appointment, the same will fall through. Empowering a single director to veto such critical appointments will not be a good governance practice and definitely will not be in the best interest of the company and its shareholders. Besides, there is no logic for requiring a special resolution from the shareholders for appointment of managing director, whole-time director or manager; such a requirement will impede smooth functioning of corporates.

13.11 In response to the above said suggestions, the Ministry in their written replies stated as follows:

(i) Attention is drawn to provisions of section 372A(2) of existing Act which, inter-alia, provide for requirement of obtaining consent of all the directors present in the meeting in respect of resolutions relating to inter-corporate loans and investments.

(ii) The fixation of remuneration for directors is considered to be an important matter since the beneficiaries of such decision are the persons themselves who are deciding it. The Bill proposes to remove Government intervention on the matter and proposes to empower Shareholders to take a final decision on the matter.

(iii) In this background, the requirement for approval of all the directors who are present at the meeting is considered important on matters relating to remuneration of directors and, therefore, there may not be any necessity of any modification in the Bill on this matter.

13.12 The Committee, endorse the view of the Ministry with regard to the requirement of obtaining consent of all the directors present in the meeting for deciding the appointment of managing director and whole-time director.

Clause 175—Remuneration of Managerial Personnel

13.13 This clause seeks to provide the remuneration paid to managerial personnel.

13.14 Clause 175(1) reads as under:

"A managing or whole-time director or a manager of a company may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company, computed in the manner prescribed, or partly by monthly payment and partly by the percentage of net profits."

13.15 Section 198 of the existing Companies Act stipulates that:—

"Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits—(1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its

manager in respect of any financial year shall not exceed eleven per cent of the net profits of that Company for that financial year computed in the manner laid down in sections 349[and 350], except that the remuneration of the directors shall not be deducted from the gross profits.

(2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309.

(3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.

(4) Notwithstanding anything contained in sub-sections (1) to (3), but subject to the provisions of section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government.

Explanation: For the purposes of this section and sections 309, 310, 311, 381 and 387, "remuneration" shall include,—

(a) any expenditure incurred by the company in providing any rent-free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1);

(b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(c) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child."

13.16 Suggestions received from various institutions/experts on this clause are given as under:

(i) In sub-section (1), for the word monthly, the word "periodical" may be substituted. (ICSI).

(ii) A provision be made in the Bill on the following lines:

The remuneration of an individual Managing Director/Whole-time Director/Manager shall not exceed 5% of the net profits of the Company or Rs. Three Crores (*i.e.* limit prescribed

by the Rules), whichever is higher. In the event, there are more than one such executives, their aggregate remuneration shall not exceed higher of the following:—

(a) 10% of the net profits of the company for that year by way of aggregate remuneration of all such managerial personnel.

(b) Rs. 3 Crores (*i.e.* limit prescribed by the Rules) for each such managerial personnel.

The remuneration shall be subject to approval of the shareholders in general meeting by passing an ordinary/special resolution, as the case may be.

Any company may pay remuneration in excess of the limit prescribed in sub-clause (1) above with the approval of the shareholders under sub-clause (2) and with approval of the Central Government.

(iii) A proviso may be inserted after the existing clause 175 as under:

"175.(1) A managing or whole time director or a manager of a company may be paid remuneration by way of monthly payment or at a specified percentage of the net profits of the company, computed in the manner prescribed, or partly by monthly payment and partly by the percentage of the net profits.

Provided that in the event of in adequacy or absence of profits for any two consecutive financial years, the company shall not pay any managerial remuneration to its managerial personal after the end of the said two financial years except after obtaining the prior approval of the central government in the manner that may be prescribed."

(iv) The proposed Bill should make a liberal yet reasonable revision of the ceiling on managerial remuneration and leave it for the shareholders of a company to determine what remuneration should be given to the management within such ceiling. This approach will balance the interest of all stakeholders. (Shri J.J. Irani)

13.17 In respect of all the above said suggestions, the Ministry in their written replies submitted to the Committee stated as follows:—

"(a) The suggestion is noted in context of modifying the provisions of the Bill for:

— *providing in the Bill a maximum/umbrella limit (similar to limits depending on net profits of the company as is provided in existing section 198 of the Act) for remuneration, within which the companies having sufficient profits should have the freedom to pay remuneration after obtaining approvals of remuneration committee, Board and shareholders as provided in the Bill and*

— *in case of inadequacy of profits, the payment of remuneration should be subject to compliance with the regulations or guidelines to be framed by Government without, however, there being a requirement for Government giving case to case approval to companies.*

(b) the exemptions to private companies from the requirements of this clause may be considered in clause 421 of the Bill."

"It is also suggested that the limits and other provisions viz. *provisions of sections 198, 269, 309-311, 387-388, 637A and 637AA read with Schedule XIII, provided in the existing Companies Act, 1956 may be considered to be included suitably in the Bill. It is suggested*

for consideration of the Hon'ble Committee that the Bill may include provisions in respect of:

(a) specific outer limits within which the companies shall pay remuneration to their directors/managerial personnel, and

(b) empowering the Central Government to prescribe rules for guiding the companies on the matter relating to limits regarding remuneration in case of inadequacy of profits."

13.18 The Committee note that the existing section 198 of the Companies Act 1956 provides for an overall ceiling of 11% of the net profits of the company for managerial remuneration as also Central Government approval for managerial remuneration in case of absence or inadequacy of profits in the company. The Committee are of the view that an overall outer ceiling on managerial remuneration may be prescribed. The Ministry may evolve a rational formula for this purpose, keeping in view the growth in corporate profits and other related factors. The remuneration payable within this overall ceiling may be decided by the remuneration Committee of Board or shareholders as already proposed in the Bill. With regard to situations of absence of profits, the existing stipulation for Central Government approval may be retained. In this context, it may also be considered whether the remuneration paid to the Key Managerial Personnel (KMP) may be recovered in the event of established fraud or fudging of profits by the company.

Clause 176—Remuneration payable to Director

13.19 This clause seeks to provide the kind of remuneration which can be paid to a director who is neither a whole-time director nor a managing director of a company.

13.20 176(1)(b) reads as under:

"profit-related commission with the prior approval of members by a special resolution."

13.21 Suggestion as received from ICSI on this clause is given as under:

One of the form of remuneration to non-executive Directors could be payment in form of 'stock option'. Accordingly, the provision should be made in the section.

13.22 The Ministry noted the said suggestion to be addressed appropriately with legislative vetting.

Clause 178—Appointment of Key Managerial Personnel—

13.23 This clause seeks to provide that every company belonging to such class or description of companies, as prescribed by the Central Government, shall have whole-time key managerial personnel.

13.24 Clause 178(1) reads as follows:

"Every company belonging to such class or description of companies as may be prescribed shall have whole-time key managerial personnel."

13.25 ICSI in their written memorandum submitted to the Committee suggested as follows:—

The Bill may be specific in respect of the class or description of companies which shall be required to have whole time key managerial personnel. It is suggested that every listed company and every other company having paid-up share capital of Rupees 5 crores or more should mandatorily be required to employ whole-time key managerial personnel.

13.26 Reply of the Ministry on this suggestion is given as under:

The suggestion is to specifically indicate in clause 178(1) the paid-up share capital of Rs. 5 crore or more as the class or description of companies to whom the requirement of this clause shall be applicable.

It is felt that since there may be need for revising the limit under clause 178(1) from time to time, the provisions proposed in the clause may not be considered to be modified and the flexibility proposed in the Bill on this matter may be continued.

13.27 However, the Ministry have also suggested an alternate clause to clause 178(1) which is given as follows:

"178. (1) Every company having a paid up share capital of Rs. 5 crore or more or such other amount as may be prescribed by Central Government from time to time shall have whole-time key managerial personnel:

Provided that an individual shall not be the Chairman of the company as well as the Managing Director or Chief Executive Officer of the company at the same time.

Provided further that every company existing on or before the commencement of this Act shall comply with the requirements of this sub-section within one year from the date of commencement of this Act."

13.28 The Committee are of the view that the proposal originally contained in the Bill in clause 178 (1) regarding appointment of KMP may be retained with a view to providing flexibility to decide the threshold limit of companies which shall compulsorily have whole-time KMP. The other modifications proposed above in Clause 178(1) regarding appointment of KMP may be duly incorporated.

13.29 Clause 178(3) reads as under:

A whole-time key managerial personnel shall not hold office in more than one company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the company.

13.30 While submitting their written memorandum on this clause, PHDCCI suggested as follows:

It is not clear as to 'permission of the company' would mean permission of the authorised person or the Board of Directors or the general body of the company. Seeking permission of the general body of the company is not justified for this purpose.

Therefore, the words 'permission of the company' appearing in the proviso to Clause 178(3) should be replaced with 'permission of the Board of Directors or authorised person of the company'.

It is not clear if the term 'whole time key managerial personnel' would include a managing director on a whole time basis. The existing Companies Act does not define a whole-time managing director. Accordingly, it is also not clear if a managing director would be restricted from being a managing director in two companies, as is permitted in the present Act.

The Clause should also include transitional provisions for conforming to the new requirement if a managing director/manager holds office in more than one company at the same time.

13.31 While disagreeing with the above said suggestion, the Ministry in their written information explained the position as under:—

"Provisions of clause 178(3) prohibit appointment of a whole-time KMP in more than one company. Since provisions of clause 178 are proposed to be made applicable to a class or description of companies (*i.e.* bigger companies), companies not covered under such prescription are likely to have flexibility on the matter relating to appointment of managerial personnel in more than one company.

In view of this, there may not be any necessity for modification in the Bill on this matter."

13.32 The Committee while accepting the Ministry's viewpoint on this sub-clause, would suggest that the words 'permission of the company' included in the sub-clause may be suitably clarified.

13.33 In accordance with the suggestions made by the Committee to include secretarial audit for bigger companies delineation of functions and role of chief financial officer and company secretary, the Ministry have proposed to include three new sub-clauses 178A, 178B and 178C in clause 178, which are given as below:

"New sub-clause 178A—Provisions to be included in the Bill to mandate Secretarial audit for bigger companies

New Clause 178A—(1) Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed.

(2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice for auditing the secretarial and other records of the company.

(3) The Board of Directors, in their Report made in terms of sub-section (3) of section 120 of the Act, shall explain in full any qualification or observation or other remarks made by company secretary in practice in his report under sub-section(1).

(4) Where any default is made in complying with the provisions of this section,—

(a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;

(b) The company secretary in practice who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

New sub-clause 178B—Functions/Role of CFO to be provided.

New clause 178B: The chief financial officer shall be responsible for the proper maintenance of the books of account of the company, and shall ensure proper disclosure of all required financial information indicated in the prospectus or any other offer document, risk management, internal control mechanism, and also ensure compliance of the provisions of this Act relating to preparation and filing of annual accounts of the company.

New sub-clause 178C—Functions of Company Secretaries to be provided.

New Clause 178C—The Functions of Company Secretary shall include:—

(a) to convene Board and general meetings, to attend the board and general meetings and maintain the record of the minutes of these meetings;

(b) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of this Act;

(c) to assist and advise the board in the conduct of the affairs of the company;

(d) to assist and advise the board in ensuring good corporate governance and in complying with the corporate governance requirements and good practices;

(e) to ensure that the company complies with the applicable secretarial standards.

Explanation.—For the purpose of this clause, the term "Secretarial Standards" means Secretarial Standards issued by the Institute of Company Secretaries of India and approved by the Central Government."

13.34 The Committee would like the Ministry to suitably incorporate the new sub-clauses as proposed above in the Bill relating to secretarial audit, delineation of functions and role of chief financial officer and company secretary.

CHAPTER XIV

INSPECTION, INQUIRY AND INVESTIGATION

Clause 180—Conduct of inspection and inquiry

14.1 This clause seeks to provide the procedure to be adopted for inspection or inquiries to be made by the Registrar or Inspector.

14.2 Clause 180(1) reads as under:—

"Where a Registrar or inspector calls for the books of account and other books and papers under section 179, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection."

14.3 In this regard, it has been suggested as follows:—

Inspection of the records by the ROC should be time bound. Inspite of a provision to this effect in the Act, inspection is seldom being done by the Office of the Registrar of Companies. In order to carry out and implement the spirit of the law, it should be made obligatory to inspect the records of the company by ROC at least once in a year to imbibe more discipline in the corporate sector.

14.4 The reply of the Ministry of the above said suggestion is as follows:—

The provisions proposed in Clause 180 are broadly similar to provisions of existing Section 209A. The other powers of Registrar or inspecting officer have also been broadly retained in a manner similar to Section 209A of the existing Act.

Suggestion is noted for administrative action on the part of Ministry to encourage Registrar of Companies to conduct more number of inspections. There may, however, not be any necessity to modify provision of Clause 180 for this purpose.

In view of above, it is suggested that the Clause may be retained in the Bill as it is.

14.5 While broadly agreeing with the Ministry, the Committee would, however, recommend that inspection of records by ROC should be made time-bound and it should also be made obligatory to inspect the records of the company by ROC at least once in a year with a view to ensuring better compliance practices.

14.6 Clause 180 (3) reads as under:—

"Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of persons and examining them on oath; and

(*b*) inspection of any books, registers and other documents of the company at any place."

14.7 In accordance with the discussions held with the Committee for empowering the Registrar of Companies (ROCs), the Ministry have proposed to amend clause 180 (3) as follows:—

(3) "Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:——

(a) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place."

14.8 The Committee recommend that the modification proposed in (a) above to empower the Registrar or Inspector may be incorporated in the clause.

Clause 183—Investigation into affairs of company

14.9 This clause seeks to empower the Central Government to order an investigation into the affairs of a company either on the report of Registrar or on special resolution passed by a company or in public interest.

14.10 Clause 183 reads as under:—

"(*1*) Where the Central Government is of the opinion, for reasons to be recorded in writing, that it is necessary to investigate into the affairs of a company,—

(*a*) on the receipt of a report of the Registrar or inspector under section 181;

(*b*) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(*c*) in public interest, it may order an investigation into the affairs of the company.

(*2*) Where an order is passed by a Court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(*3*) For the purposes of this section, the Central Government may appoint one or more competent persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct."

14.11 *In the light of the discussions held with the Committee for giving statutory status to the Serious Frauds Investigation Office (SFIO) and the desire expressed by the Committee to strengthen SFIO for thorough investigation of corporate frauds of large scale, the Ministry have proposed an alternate clause to amend clause 183 as follows:—*

"183 Investigation into affairs of a company

*(1) and (2) ******

183 (3) For the purposes of this section, the Central Government may appoint one or more competent persons as inspectors, to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct:—

Provided that in case of investigation into affairs of a company assigned by the Central Government to the Serious Frauds Investigation Office, the appointment of inspectors shall be made by Director, Serious Frauds Investigation Office.

Explanation:—For the purposes of this section, the term 'Serious Fraud Investigation Office' means an office consisting of multi-disciplinary team headed by a Director and including experts from the field of accountancy, forensic auditing, taxation, information technology, capital markets, financial transactions etc established by the Central Government in terms of Government of India resolution vide *No. 45011/16/2003-Adm-I dated 2.7.2003 to investigate frauds:*

Provided that the Serious Fraud Investigation Office:—

(a) will function within the existing legal framework and carry out investigations under sections 179-200 of the Act and

(b) will only be assigned investigation into cases of frauds

Provided further that any investigation or other action ordered to be done or initiated by Serious Fraud Investigation Office under the Companies Act, 1956 shall continue to be proceeded with as if such investigation or other action has been ordered under the corresponding provisions of this Act."

14.12 While acknowledging the Ministry's acceptance of the Committee's suggestion to make provisions for the SFIO in the statute itself instead of leaving it to rule-making, the Committee desire that the modifications with regard to the role of SFIO for detailed investigation into cases of corporate fraud, as proposed in clause 183 (3), may be incorporated in the Bill.

Clause 188—Procedure, powers etc. of inspectors

14.13 This clause seeks to provide the duty of all officer and employees of the company and powers of the Inspector.

14.14 Clause 188(4) reads as under:—

"An inspector may examine on oath—

(*a*) any of the persons referred to in sub-section (*1*); and

(*b*) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally."

14.15 In accordance with the discussions held with the Committee, the Ministry in their written submission proposed to include a new clause 188(4)(A) in the Bill as under:—

"188(4) An inspector may examine on oath——

(a) any of the persons referred to in sub-section (1); and

(b) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally.

(4A) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Part shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:——

(a) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place."

14.16 Clause 188(7) reads as under:—

"Officers of the Central Government, any State Government or statutory authority shall provide reasonable assistance to the inspector for the purpose of the inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require."

14.17 In view of the suggestion made by the Committee, the Ministry proposed to amend the clause 188(7) as indicated below:—

"188(7) Officers of the Central Government, any State Government, Police authorities or statutory authorities shall provide immediate reasonable assistance to the inspector for the purpose of inspection, enquiry or investigation which the inspector may require."

14.18 Further, keeping in view the discussions held with the Committee and the suggestions made to strengthen the investigation/inspection process and the machinery, the Ministry proposed to add the following new sub clauses to Clause 188:—

"(i) New sub-clause 188(9)

Notwithstanding anything contained in this Act or in the Code of Criminal procedure, 1973 [2 of 1974] if, in the course of an investigation into the affairs of the company, an application is made to the competent Court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such Court may issue a letter of request to a Court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the Court in India which had issued such letter of request.

Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf:—

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

(ii) New sub-clause 188(10)

Upon receipt of a letter of request from a Court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the Court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act. The inspector shall submit the report to such Court within thirty days or such extended time as the court may allow for further action.

Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the Court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the Court or the Authority in country or place outside India which had issued the letter of request.

(iii) New sub-clause 188(A)- Protection of employees during investigation

New Clause 188A:(1) If

(a) during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 183, section 184 or section 189

or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, body or person, under section 187; or

(b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI,

such company, body or person proposes-

(i) to discharge, or

(ii) to punish, whether by dismissal, removal, reduction in rank or otherwise,

any employee, the company, body or person, as the case may be, shall send by post to the Tribunal previous intimation in writing of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

(2) If the company, other body corporate or person concerned does not receive within thirty days of the sending of the previous intimation of the action proposed against the employee, any notice of the objection from the Tribunal , then and only then, the company, other body corporate or person concerned may proceed to take against the employee the action proposed.

(3) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal , it may, within thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in the prescribed manner and on payment of the prescribed fee.

(4) The decision of the Appellate Tribunal on such appeal shall be final and be binding on the Tribunal and on the company, other body corporate or person concerned.

(5) For the removal of doubt, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force."

Clause 191—Freezing of assets on an inquiry and investigation of a company.

14.19 This clause seeks to provide that where in connection with inquiry or investigation into the affairs of the company or a reference by the Central Government or on complaint by any person that transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of company, its shareholders, creditors or in public interest then Tribunal may order freezing of such transfer, removal or disposal of assets for a maximum period of three years.

14.20 Clause 191 reads as under:—

"(*1*) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under

sections 180 and 183 or on any complaint made by any person in this behalf that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

(2) In case of any removal, transfer or disposal of funds, assets, properties of the company in contravention of the order of the Tribunal under sub-section (*1*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both."

14.21 On this Clause, CII in their written submission suggested that it would be useful to specify that only stakeholders having prescribed minimum shareholding of the company can make such complaints.

14.22 While submitting their written replies on this suggestion, the Ministry stated as under:—

"The clause provides that where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company or on any complaint made by any person that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

The satisfaction of Tribunal, therefore, would be required before any action under this clause would be taken."

14.23 While endorsing the fresh proposals made by the Ministry to strengthen the inspection/investigation process and its machinery, while enabling the freezing of company's assets during an enquiry/investigation and also providing for suitable protection of company's employees during the course of investigation, the Committee recommend that the alternate proposals made may be suitably incorporated in the Bill.

14.24 The Committee further recommend that with a view to discouraging frivolous or vexatious complaints, the Tribunal may take cognizance of a complaint under this clause from any person (other than Central Government), only when such person is either a shareholder with prescribed minimum shareholding or creditor or otherwise has a reasonable ground for such complaint. The same may be suitably incorporated in clause 191.

Clause 194—No suit or proceeding till submission of final report

14.25 Clause 194 reads as under:—

"No suit or other proceeding shall lie in any court, tribunal or other authority in respect of any action initiated by the Central Government for making an investigation under this Chapter or for the appointment of an inspector thereunder and no proceedings of an inspector shall be called in question or stayed by any court, tribunal or other authority on any ground whatsoever until the conclusion of the investigation and the submission of a report by the inspector."

14.26 ICSI while submitting their written memorandum suggested as follows:—

Section 194 seeks to provide that no suit or proceedings shall lie in any court or tribunal or other authority in respect of any action initiated by the Central Government for making an investigation or for appointment of any inspector in this regard and no proceedings of an inspection shall be called in question or stayed by any Court or Tribunal or any authority till such investigation report is submitted.

This section may be reconsidered as it may not be legally tenable particularly when the Central Government has ordered an investigation into the affairs of the company pursuant to its power under sub-section (1) of section 183.

14.27 The Ministry noted the said suggestion to be addressed appropriately with legislative vetting.

14.28 Further, PHDCCI in their written submission have suggested that the inspection and inspection report could become tools for harassment of honest companies. Hence, the Clause should be amended suitably.

14.29 The Ministry also noted the said suggestion to be addressed appropriately with legislative vetting.

14.30 In the light of suggestions received and the Ministry's replies thereon, the Committee recommend that the clause may be re-considered keeping in view its legal tenability and also for ensuring that investigation and inspection initiated under this Chapter do not become tools of harassment.

Clause 195—Actions to be taken in pursuance of inspector's report

14.31 This clause seeks to empower the Central Government to prosecute such person for the offence and cast duty on officers, employees or the company or body corporate to provide necessary assistance in connection with the prosecution.

14.32 Clause 195 reads as under:—

"(*1*) If, from an inspector's report, made under section 193, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under section 183 or

section 184 or section 189, been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

(*2*) If any company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report made under section 193 that it is expedient so to do by reason of any such circumstances as are referred to in section 184, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—

(*a*) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up, or

(*b*) an application under section 212, or

(*c*) both.

(*3*) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under section 183—

(*a*) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

(*b*) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained, the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.

(*4*) The Central Government shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (*3*)."

14.33 *Keeping in view the discussions held by the Committee with the Ministry on this issue and the concerns expressed regarding disgorgement/attachment of properties of directors who have indulged in frauds, the Ministry proposed to add a new sub-clause (5) to clause 195 as follows:—*

"Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, Key Managerial Personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, Key Managerial Personnel, officer or other person liable personally without any limitation of liability, subject to a minimum amount of such undue advantage or benefit."

14.34 While endorsing the new sub-clause (5) to Clause 195 proposed by the Ministry, at the behest of the Committee, to facilitate disgorgement of assets, property or cash in respect of KMP or any other officer of the company, who has taken undue advantage or benefit in an established or proven case of fraud involving the company as stated in the inspector's report, the Committee would like to point out that the exemption sought to be provided from this proposed new sub-clause by stipulating a minimum threshold amount of 'undue advantage or benefit may dilute the provision. It may, therefore, be excluded from the proposed formulation.

Clause 200—Penalty for furnishing false statement, mutilation, destruction of documents

14.35 This clause seeks to provide punishment for furnishing false statements, mutilation or destruction of documents during the course of inspection or investigation.

14.36 Clause 200 reads as under:

"Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation, —

(*a*) destroys, mutilates or falsifies, or is a party to the destruction, mutilation or falsification of, documents relating to the property, assets or affairs of the company or the body corporate;

(*b*) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(*c*) provides an explanation which is false or which he knows to be false, he shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees."

14.37 *In the light of discussions held with the Committee, the Ministry proposed to amend sub-clause (a) of Clause 200 as below:*

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(a) destroys, mutilates or falsifies or conceals or tampers or unauthorizedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(b) *** *** *** ***

*(c) provides an explanation which is false or which he knows to be false, he shall be punishable with imprisonment for a term which may extend to seven years and with fine which shall not be less than **fifty** thousand rupees but which may extend to **ten** lakh rupees.*

14.38 The Committee desire that the changes as proposed above relating to penalty for false statement, mutilation, unauthorized removal, concealment or tampering of documents during the course of inspection, inquiry or investigation may be duly incorporated.

CHAPTER XV

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

Clause 201—Power to compromise or make arrangements with creditors and members

15.1 This clause seeks to provide powers to Tribunal to make order on the application of the company or any creditor or member or in case of company being wound up, of liquidator for the proposed compromise or arrangements including debt restructuring, etc., between company, its creditors and members.

15.2 Clause 201(1) reads as under:

"Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them, or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods."

15.3 On this clause, PHDCCI in their written memorandum submitted to the Committee suggested as follows:

"The section needs to be redrafted to mean that if written consent is received from the requisite number of members or creditors, the requirement to hold a meeting could be dispensed with.

It may be noted that there would be a mismatch of time frame as regards representations from Competition Commission of India is concerned. As the Competition Act, 2002 stands today, a period of 210 days is allowed for CCI to respond.

Since, the requirement for the approval of a 'majority' in number, is sought to be deleted, obtaining assent/dissent to the scheme of arrangement by postal ballot should not pose difficulties. However, the section may be redrafted to provide that the approval may be sought either at a meeting or by postal ballot."

15.4 *The Ministry noted the above said suggestion to be addressed appropriately with legislative vetting.*

15.5 Clause 201(2) (c) (i) reads as under:

"Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—

(i) a creditor's responsibility statement."

15.6 Indian Merchants' Chamber, in their written memorandum on this clause suggested as follows:

Clause 201(2)(c)(i) refers to Creditor's responsibility statement. This needs clarification as to what this statement will constitute for the Company to be in a position to include in the application.

15.7 The Ministry noted the said suggestion to bring more clarity on these provisions.

15.8 The Committee agree with the suggestion to bring more clarity in the sub-clause with regard to what the creditor's responsibility statement mentioned in the sub-clause will constitute. The same may be suitably addressed.

15.9 Clause 201(3) reads as under:

"Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (*1*), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture holders of the company, either individually or by an advertisement, which shall be accompanied by a statement disclosing the details of the compromise or arrangement, the valuation report, if any, and explaining their effect on creditors, members and the debenture holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that where an advertisement is issued under this sub-section, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company."

15.10 Suggestions have been received from several institutions/experts on this clause wherein it has been stated as follows:

A notice convening such a meeting which is pursuant to an Order of the Tribunal should compulsorily be required to be sent individually at the address registered with the company and not through advertisement as such a provision is likely to be misused.

15.11 While agreeing with the suggestion, the Ministry proposed to amend the clause 201(3) as follows:

"Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of

creditors and to all the members or class of members and the debenture holders of the company, ***individually at the address registered with the company,*** *which shall be accompanied by a statement disclosing the details of the compromise or arrangement, the valuation report, if any, and explaining their effect on creditors, members and the debenture holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

Provided that ***where the notice for the meeting is also issued by way of an advertisement****, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company".*

15.12 The changes in the sub-clause proposed above requiring notices to be sent individually to creditors rather than through advertisements may be incorporated in the Bill.

15.13 Clause 201(4) reads as under:

"A notice under sub-section (*3*) shall provide that the persons to whom the notice is sent shall intimate in writing their consent to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement."

15.14 Suggestion as received on this clause is as follows:

As per sub-clause (4) of clause 201, the notice of meeting shall indicate that the persons to whom the notice is sent shall intimate in writing their consent to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

The significance of this provision is not clear, as the section requires that a meeting be held to seek approval of the members or creditors. Perhaps, the section needs to be redrafted to mean that if written consent is received from the requisite number of members or creditors, the requirement to hold a meeting could be dispensed with. (ICSI)

15.15 While noting the above said suggestions, accepted and endorsed by the Committee, the Ministry proposed to amend this clause as follows:

"(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may ***vote in the meeting either themselves or through proxies or through postal ballot*** *to the adoption of the compromise or arrangement within one month from the date of receipt of such notice."*

15.16 The Committee recommend that the changes in the sub-clause proposed above with regard to postal ballot for adoption of compromise/arrangement with creditors may be

suitably incorporated. It also needs to be clarified if written consent is received from the requisite number of members or creditors, the requirement to hold a meeting could be dispensed with, as the meeting proposed in the clause is, in effect, to obtain the approval of the members or creditors.

15.17 Clause 201(5) reads as under:

"A notice under sub-section (*3*) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (*1*) of section 7 of the Competition Act, 2002, if necessary, and such other authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within one month from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals."

15.18 Suggestions as received from various institution/experts on this clause are as follows:

1. In Section 201(5) the words "and such other authorities' may be substituted by the words "such Sectoral regulators".

As per the Competition Act, 2002 a period of sixty days is allowed to the Competition Commission of India to respond, therefore, a period of one month allowed for representation does not match with the Competition Act, 2002. The mis-match may accordingly be rectified. (ICSI)

2. The phrase "such other authorities which are likely to be affected" may be deleted. (CII and Bombay Chamber of Commerce and Industry)

15.19 The Ministry while accepting the above said suggestions to be addressed appropriately with legislative vetting, proposed to insert an alternate clause, which is given as under:

"201(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other ***sectoral regulators*** *or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within one month from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals."*

15.20 While endorsing the inclusion of the words 'sectoral regulators' in clause 201(5) to indicate the authorities to whom notice along with documents is to be sent under this clause, the Committee desire that mis-match, if any, with the Competition Act, 2002 in the time-period allowed for making representations in response to the notice served under this clause, should also be addressed.

15.21 Clause 201(7) reads as under:

"An order made by the Tribunal under sub-section (*6*) shall provide for all or any of the following matters, namely:—

(*a*) where the compromise or arrangement provides for conversion of preferential shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(*b*) the protection of any class of creditors;

(*c*) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 42;

(*d*) if the compromise or arrangement is agreed to by the creditors under sub-section (*6*), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

(*e*) such other matters as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement."

15.22 On this clause it has been suggested as follows:

In clause 201(7) a sub-clause similar to sub-clause (d) should be added as sub-clause (e) and should read:

(e) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Debt Recovery Tribunal under the recovery of debts due to Banks and Financial Institutions Act, 1993 shall abate.

15.23 The comments of the Ministry on this suggestion are as follows:

The provisions of Clause 201(7)(d) are relevant since rehabilitation of sick companies and compromise and arrangement are proposed to be adjudicated by the Tribunal as per the provisions of the Bill. The same logic may not be applicable to proceedings under the Debt Recovery Act, 1993 which are adjudicated by a different forum.

In view of above, it is suggested that the clause may be retained in the Bill as it is.

15.24 Further, while proposing to retain the clause, in the light of the discussions held with the Committee, the Ministry proposed to insert the following new proviso in the Bill relating to compliance to accounting standards while formulating compromise or arrangements under this chapter.

Following proviso may be inserted at the end of clauses 201(7) and 203(3):

"Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless the accounting treatment, if any, proposed in the scheme of compromise or arrangement

is not in violation of the accounting standards specified in section 119 or any other provision of the Act and a certificate to that effect by the company's auditor has been filed with the Tribunal."

15.25 The aforesaid proviso relating to compliance to accounting standards while formulating compromise or arrangements under this chapter may, therefore, be incorporated in the Bill at the end of both clause 201(7) and clause 203(3), dealing with merger and amalgamation of companies.

203—Merger and amalgamation of companies

15.26 This clause seeks to provide powers to Tribunal to order for holding meeting of the creditors or the members and to make orders on the proposed reconstruction, merger or amalgamation of companies.

15.27 Clause 203(2)(c) reads as under:

"a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties."

15.28 Keeping in view the discussions held with the Committee, on this clause, the Ministry proposed to amend this clause as under:

"(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders ***particularly the non-promoter shareholders laying*** *out in particular the share exchange ratio, specifying any special valuation difficulties."*

15.29 The changes proposed above regarding explanation for the effect of compromise on each class of shareholders may, therefore, be incorporated in clause 203(2)(c).

15.30 Clause 203(3) reads as under:

"The Tribunal, after satisfying itself that the procedure specified in sub-sections (*1*) and (*2*) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(*b*) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(*d*) dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(*f*) where there is an allotment of any foreign direct investment, such allotment to the transferor company and the transferee company at such percentage as may be specified in the order;

(*g*) the transfer of the employees of the transferor company to the transferee company;

(*h*) where the transferor company is a listed company and the transferee company is an unlisted company;

(*i*) the transferee company shall continue to be an unlisted company;

(*ii*) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal;

(*iii*) if the transferor company is not dissolved, it shall become an unlisted company and if it is left with a small portion of the assets, the public shareholders may decide to opt out of the company and provision shall be made for the payment of the value of shares and other benefits in accordance with a predetermined price formula or after a valuation is made;

(*i*) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(*j*) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out."

15.31 In a written memorandum submitted to the Committee, CII suggested as follows:

Clause (f) of this clause which provides for "allotment of any foreign direct investment" is not clear. It appears that the intent of this clause is to cover a situation of a foreign company merging into an Indian company and the resultant issue of shares of the Indian transferee company to the non-resident shareholders of the foreign company, which would become foreign direct investment in the Indian transferee company.

The Ministry noted the above said suggestion to be addressed appropriately with legislative vetting.

Clause 203(3)(h)(ii)and(iii).

15.32 On this clause, SEBI in their written memorandum suggested as follows:

An exit opportunity may be provided to the investors of listed companies consequent on merger of such listed companies with unlisted company as specified by SEBI under the SEBI Delisting Regulations, since this amounts to delisting.

15.33 In their written reply to above stated suggestion, the Ministry stated as follows:

"The objective behind introducing specific provisions for merger of listed companies with unlisted companies is to bring clarity on the matter in the main legislation for corporates i.e. Companies Act. Once the Bill is considered and passed by the Parliament, SEBI may also accordingly refer to these provisions and make suitable reference to them in SEBI (De-listing of Securities) Regulations. Since schemes for mergers and amalgamations are proposed to be approved by Tribunal as a single window authority after taking views of all concerned parties and regulators (including SEBI), there may not be any necessity of empowering SEBI on this matter in the Bill."

15.34 However, when the Committee pursued the matter, the Ministry in their fresh comments submitted to the Committee stated as follows:

"The Clause may be considered to be modified to bring reference to any regulation specified/ made by SEBI for giving a better opt out or exit mechanism to investors at the time of merger of a listed company with an unlisted company as provided in clause 203(h) of the Bill."

15.35 Besides, in accordance with the views expressed by the Committee on accounting standards and compliance thereof, the Ministry proposed to insert the following proviso at the end of clause 203(3):

"Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless the accounting treatment, if any, proposed in the scheme of compromise or arrangement is not in violation of the accounting standards specified in section 119 or any other provision of the Act and a certificate to that effect by the company's auditor has been filed with the Tribunal."

15.36 The proviso proposed above for adherence to specified accounting standards may thus be inserted at the end of clause 203(3). The clause may also be modified to bring reference to any regulation made by SEBI for giving a better opt-out or exit mechanism to investors at the time of merger of a listed company with an unlisted company as provided in clause 203 (h) of the Bill.

Clause 205—Amalgamation by mutual agreement

15.37 This clause seeks to provide the mode of merger or amalgamation between registered companies under the proposed legislation and companies incorporated in the jurisdictions of such countries, as notified from time to time by the Central Government, by mutual agreement.

15.38 Clause 205 reads as under:

"(*1*) The provisions of this Chapter shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

(*2*) A foreign company may merge or amalgamate into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger or amalgamation may

provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Indian Depository Receipts, or partly in cash and partly in Indian Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose."

15.39 Suggestions received from various quarters on this clause are given as under:

(i) It is necessary to incorporate suitable provisions in Clause 205 of the Companies Bill mandating that prior approval of Reserve Bank should be necessary in such cases. (RBI)

(ii) Definition of Foreign Company should be amended by deleting the words, "having a place of business in India". (Indian Merchants' Chamber)

(iii) Under Clause 205(2) of the Bill, a foreign company can merge into an Indian company and *vice versa*. However, the definition of foreign company under the Bill, contemplates that such a company has a place of business in India. This would imply that only those foreign companies which have a place of business in India can merge into an Indian company and *vice versa*. This may not have been the intent and should be corrected. It should be clarified in Clause 205(2) that the foreign companies, for the purposes of this clause, need not have a place of business in India. (CII)

15.40 In respect of the above suggestions, the written comments as received from the Ministry are given as under:

The views expressed are noted. The Bill seeks to recognize mergers of Indian companies with companies incorporated outside India but with a cautious approach keeping in view the objective of the protection of interests of Indian companies, their shareholders and other stakeholders. The provisions may be considered to be retained in the Bill without any change. Further, the suggestion for modification in the manner of usage of the term 'foreign company' in this clause is noted to be addressed appropriately with legislative vetting.

15.41 As agreed to by the Ministry, the suggestion for modification of the definition of 'foreign company' may be considered to permit foreign companies, which do not have a place of business in India to be the transferee company in a merger with an Indian company under this clause. It should also be clarified that prior approval of RBI should be necessary for the schemes of mergers and amalgamations provided for under this clause.

CHAPTER XVI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Clause 212—Application to Tribunal for relief in cases of oppression, etc.

16.1 Clause 212 seeks to provide the circumstances in which an application may be made to the Tribunal by any member of a company or by the Central Government for relief in cases of oppression and mismanagement in the affairs of the company.

16.2 Clause 212(1) reads as under:

"(*1*) Any member of a company who complains that—

(*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members; or

(*b*) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 215 for an order under this Chapter."

16.3 The Bombay Chamber of Commerce and Industry, in their Memorandum submitted to the Committee, have suggested adding the words or in a manner prejudicial to the interests of the company at the end of Clause 212(1) (a). The Ministry of Corporate Affairs have agreed to address the suggestion 'appropriately with legislative vetting'.

16.4 The Ministry, having agreed with the suggestion for incorporating the words, 'or in a manner prejudicial to the interest of the company' for forming a ground for making an application to the Tribunal for relief etc. in Clause 212(1)(a), the Committee expect that appropriate modification to this effect is made in the clause.

Clause 213—Powers of Tribunal

16.5 Clause 213 seeks to provide for powers of Tribunal to pass an order with a view to bring to an end the matters complained of oppression and mis-management. The clause provides

that a certified copy of order of Tribunal shall be filed with the Registrar. The Tribunal may make any interim order as it thinks just and equitable. Where Tribunal's order require alteration of articles, a certified copy of the same is to be filed with the Registrar.

16.6 Clause 213(1) reads as under:

"(*1*) If, on any application made under section 212, the Tribunal is of the opinion—

(*a*) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest; and

(*b*) that to wind up the company would unfairly prejudice such member or

members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."

16.7 In line with the suggestion made in respect of Clause 212 (1)(a), the Bombay Chamber of Commerce and Industry have also made the following suggestion in regard to Clause 213(1):

At, the end of clause 213(1)(a) add the words 'or in a manner prejudicial to the interests of the company'.

16.8 Asked to furnish their views in this regard, the Ministry of Corporate Affairs stated as under:-

The suggestion is noted to be addressed appropriately with legislative vetting.

16.9 Further, Clause 213(2)(d), (e) and (f) read as under:

"Without prejudice to the generality of the powers under sub-section (*1*), an order under that sub-section may provide for—

(d) restrictions on the transfer of the shares of the company.

(e) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement referred to in clause (e) or clause (f) shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned."

16.10 The Institute of Company Secretaries of India have made the following suggestions in regard to Clause 213(2)(d), (e) and (f):—

(i) The word 'allotment of shares' be also included here [Clause 213(d)].

(ii) The consent required under the proviso to sub-clause (2)(f) should be related to agreements referred to in sub-clause (f) only, not to the agreements referred to in sub-clause (e).

16.11 Asked to furnish their comments on the above suggestion, the Ministry stated as under:—

"These suggestions have been noted to be addressed appropriately with legislative vetting."

16.12 As a corollary to the acceptance of the suggestion for including matters prejudicial to the interests of the company for making an application to the Tribunal under Clause 212 (1)(a), the words 'or in a manner prejudicial to the interests of the company' are to be included in Clause 213(1) as well, which relates to the powers of the Tribunal to issue orders providing relief. The Ministry, having accepted the suggestion, the Committee trust that appropriate modification to this effect is made in the Clause.

16.13 The Committee also expect that, as agreed to, Clause 213 (2) (d) is appropriately modified for enabling the orders of the Tribunal to cover aspects relating to 'allotment of shares' as well in addition to 'restrictions on the transfer of the shares of the company'.

16.14 In terms of the proviso to sub-clause 2(f) of Clause 213, termination, setting aside or modification of the Tribunal's orders relating to agreements referred to in clause (e) or clause (f) would be possible only after obtaining the consent of the party concerned. As pointed out and agreed to by the Ministry, the process of obtaining the consent of the party concerned would apply only in case of agreements covered under Clause 213(2)(f) *i.e.* which do not involve the Managing Director, any other Director or Manager of a Company. The Committee, therefore, desire that the provisions of sub-clause 2 of clause 213 are re-looked into for carrying out the modifications required.

Clause 216—Class action

16.15 Clause 216 is a new clause and seeks to provide that any one or more members or one or more creditors may file an application before the Tribunal on behalf of the members and creditors if they are of the opinion that the management or control of the affairs of company are being conducted in a manner prejudicial to the interests of the company or its members or creditors to restrain the company from oppression or mis-management. The order passed by the Tribunal shall be binding on the company and all its members and creditors.

16.16 Clause 216(1) provides as under:—

"(1) Any one or more members or class of member or one or more creditors or any class of creditors may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company

or its members or creditors, file an application before the Tribunal on behalf of the members and creditors for seeking all or any of the following orders, namely:—

(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;

(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;

(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or creditors;

(d) to restrain the company and its directors from acting on such resolution;

(e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force; and

(f) to restrain the company from taking action contrary to any resolution passed by the members."

16.17 While the proposal to introduce the general 'class action suits' by creditors/depositors is perceived to be a progressive step, the Chambers of Commerce in particular have suggested putting in place adequate safeguards to prevent misuse of such measures. For instance, the Confederation of Indian Industry (CII) has suggested as follows in regard to the provisions on class action suits:—

While this is a progressive step, it does raise the risk of frivolous litigation and strike-suits against the company. The following safeguards be put in place to prevent misuse of such measures:

(a) The tribunal should have the power to decide whether the said suit is a class action suit or suit for personal grievance. It is recommended that merely because a plaintiff has filed a claim as a class action suit, it should not be so treated. The tribunal must apply its mind and determine whether the action is actually a class action suit or a minority protection claim in the garb of a class action suit.

(b) Public notice should be served on institution of the suit calling attention of all members of the class in order to make each member of the class aware of such a proceeding. This would prevent multiplicity of cases and also check fraudulent claims. It will also address to a certain degree the problems of res judicata.

(c) All similar suits prevalent in any jurisdiction should be consolidated into a single suit and the class members should be allowed to choose the lead applicant. In the event the members of the class are unable to come to a consensus, the tribunal should have the power to appoint a lead applicant who shall be in charge of the proceedings from the applicant's side. This would prevent chaos and allow streamlining of thoughts and views of all members. Further it would ensure that the action does not fail on account of lack of resources at the disposal of a small member.

(d) Members of a class should be allowed to opt out of the suit. This would address the issue of conflicting demands, interests and views of the members.

(e) Two class action suits for the same cause of action should not be allowed.

It is suggested that the scope of Clause 216 should be well defined and any class action should be subject to an admission process and also certain stipulation as to deposit of cost. This will deter actions on frivolous and flimsy grounds.

16.18 In a similar vein, the Bombay Chamber of Commerce and Industry has, in this regard suggested to the Committee as follows:—

A provision similar to clause 215(1) of the Bill should be inserted in clause 216 to provide that a minimum number of members holding at least prescribed voting power can only make an application under this Clause.

16.19 The views expressed by an expert in regard to Clause 216 are shown below:—

Clause 216 of the Bill in regard to class action is a good initiative but is limited to take action to restrain the management from taking steps prejudicial to interest of the company or members. Further, experience of pursuing class action in different countries world-wide suggest that at times these have proved to be counter productive to the interests of small investors. It is therefore necessary that experience of class-action world-wide is adequately studied in Indian context.

Clause 216 makes fraudulent class action punishable. Extending the same logic cases where class action is admitted or allowed by the court, cost thereof should be defrayed by the company or those responsible for oppressive acts.

16.20 When questioned on the Government's view on the necessity expressed for putting in place adequate safeguards so as to check frivolous suits in particular, the Ministry of Corporate Affairs, in reply informed the Committee, *inter alia*:—

"The suggestions are noted to be addressed appropriately with legislative vetting and the suggestion is noted in context of providing suitable mechanism in the clause to ensure that these provisions do not result into undue obstruction in the working of the company or otherwise are not misused for personal advantage respectively.

The provisions of clause 216 allow even an individual member or creditor to file an application before the Tribunal for class action and seek its intervention. Suggestions have been received (including from the Parliamentary Committee Secretariat) that if any restriction on minimum number of members who could take action for filing class action applications is not provided in the Bill, there would be likelihood for misuse of these provisions.

Hence it is being proposed that class action suits may be taken up by such number of members who are eligible to make applications for action against oppression or mis-management….."

16.21 The Ministry of Corporate Affairs have also proposed to modify Clause 216 (1), prescribing the number of members who would be eligible to make class action applications, which reads as under:—

"216. Class Action—

(1) Such number of member or members or creditor or creditors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or creditors, file an application before the Tribunal on behalf of the members and creditors for seeking all or any of the following orders, namely:—

……..

(2) (i) The requisite number of members provided in sub-section (1) shall be as under:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members;

(ii) the requisite number of creditors provided in sub-section (1) shall be one or more creditors to whom the company owes a sum of rupees one lakh or more."

16.22 On the view expressed on the necessity of studying the experience of pursuing class action in different countries and taking measures productive to the interest of small investors, the response, submitted to the Committee by Ministry reads as under:

Suggestions have also been received that provisions in the Bill in respect of class action may also specifically provide that the shareholders or creditors of the company may approach the Tribunal against wrongful or fraudulent conduct of the auditor of a company and the Tribunal may have power to make suitable order on receipt of such application, including for requiring the auditor to pay compensation/damages. These suggestions are being examined keeping in view the international practice in this regard.

16.23 Further, in regard to Clause 216 as proposed in the Bill, the Reserve Bank of India pointed out to the Committee that the proposal to include "Class Action Suit" in the Bill may affect the depositors' interest and, hence, should not be extended to the Banking Companies. Adding that the Banking Sector has well-defined grievance redressal machinery such as Banking Ombudsman Scheme, the Reserve Bank suggested that the following sub clause may be inserted after sub clause (3) of Clause 216 of the Bill:—

"(4) The provisions of this section shall not apply to the Banking companies as defined in Section 5(c) of Banking Regulation Act, 1949."

16.24 The Ministry of Corporate Affairs have agreed to address the *suggestion of the Reserve Bank appropriately with legislative vetting.*

16.25 Incorporation of the provisions enabling for filing class action suits in terms of Clause 216 is a progressive measure, which would be in the interest of investors. Nevertheless, while on the one hand, the Chambers of Commerce have emphasized the need for putting in place adequate safeguards to preclude filing of frivolous or vexatious class action suits etc., suggestions have also been made *inter-alia* to enable for defraying of expenses on such suits by the companies held responsible for oppressive acts, enlarging the scope of class action to cover fraudulent conduct of auditors of companies etc. While the revised Clause 216 proposed by the Ministry in response to the questioning of the Committee which *inter-alia* prescribes the minimum number of persons required for filing class action suits is expected to address the issue of possible misuse of the provisions by way of filing frivolous complaints etc. the concerns expressed on making the provisions productive to the interest of small investors have been proposed to be addressed separately. The Committee recommend that this exercise be carried out in right earnest *inter-alia* by studying the cross country experience on class action and the provisions proposed re-visited and reviewed so as to ensure that the measure of class action works out to be truly beneficial.

16.26 As agreed to, the Committee also expect that a proviso be added under Clause 216 excluding the banking sector from the purview of class action suits.

CHAPTER XVII

REGISTERED VALUERS

17.1 Chapter XVII contains new provisions relating to registered valuers for incorporation, which are covered under Clauses 218 to 223. Clause 218 seeks to provide that valuation in respect of property, stocks, shares, debentures, etc. will be valued by a registered valuer, Clause 219 provides the procedure for registration as valuer, Clause 220 provides powers to the Central Government for appointment of a committee of experts to recommend suitable names for the purpose of inclusion in the register of valuers, Clause 221 restricts a person to practice, describe or project himself as a registered valuer unless he is registered as a valuer, Clause 222 seeks to provide that a registered valuer or a person who has made an application for registration as a valuer is sentenced to a term of imprisonment for any offence or if found guilty of mis-conduct in his professional capacity, and Clause 223 provides the circumstances under which the name of a valuer may be removed from the register or restored in the register by the Central Government.

Clause 218—Valuation by Registered Valuers

17.2 Clause 218, as proposed in the Bill reads as under:—

"Where under any provision of this Act, valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill (hereinafter in this Chapter referred to as the assets) or net worth of a company or its assets, it shall be valued by a person registered as a valuer under this Chapter and appointed by the audit committee or in its absence by the Board of Directors of that company."

17.3 The Institute of Company Secretaries of India have made the following suggestion to the Committee on the provisions of Clause 218:—

1. The word 'or any other assets' be added after the word 'goodwill'.

2. The word 'liabilities' should be included after the word 'net worth of the Company'.

17.4 Questioned in this regard, the Ministry in response, informed as under:—

"The suggestions are noted to be addressed appropriately with legislative vetting."

17.5 The Ministry, having agreed to appropriately incorporate the words, 'or any other assets', and 'liabilities' for the purpose of valuation in terms of in Clause 218, as suggested, the Committee expect that necessary action would be taken to this end by legislative vetting.

17.6 Clauses 219 (1) and (2) read as under:—

"(1) The Central Government shall maintain a register to be called as the register of valuers in which it shall enter the names and addresses of persons registered under sub-section (2) as valuers.

(2) Any chartered accountant, cost and works accountant, Company Secretary or any other person possessing such qualifications, as may be prescribed, may apply to the Central Government in the prescribed form for being registered as a valuer under this section:

Provided that no company or body corporate shall be eligible to apply."

17.7 On Clause 219 (1) relating to register of valuers, the Institute of Company Secretaries of India have suggested as follows:—

The professional details of the person to be appointed as Registered Valuer must be included in the Register to be maintained by the Central Government and his professional credentials must be approved by the concerned Professional Institution.

17.8 When asked to furnish their comments on the suggestions, the Ministry informed as under:—

The suggestion is noted to be addressed appropriately with legislative vetting. Further the suggestion for requirement of professional credentials to be vouched by relevant Professional Institution would be covered in the provisions proposed under clause 220(2) which reads as under:

220(2): The committee appointed under sub-section (1) shall scrutinise the applications received under sub-section (2) of section 219 and recommend suitable names for the purpose of inclusion in the register of valuers.

17.9 The Chambers of Commerce in particular, have in their submissions made to the Committee questioned the rationale of limiting registration of valuers to professions such as Chartered Accountants, Company Secretaries etc. in terms of Clause 219(2). The suggestion made to the Committee in this regard by the Indian Merchants' Chamber reads as follows:—

Clause 219(2) should also include Registration of Firms/LLPs whose partners are qualified to do Valuation.

17.10 Further, the Bombay Chamber of Commerce and Industry, certain law firms and industry groups have suggested deleting the proviso to Clause 219(2), which prohibits a company or body corporate to apply for being a registered valuer.

17.11 The Submission made by the Confederation of Indian Industry (CII) in regard to clause 219(2) reads as follows:—

The exclusion of companies and body corporates from being appointed as registered valuers results in an exclusion of financial institutions and investment banks. This is a regressive step. Critically in M&As, banks, financial institutions or merchant banks render the fairness opinions with respect to consideration proposed to be paid, etc. and as such, are quite

competent and well-equipped to undertake the same. It is recommended that such exclusion be done away with, and specifically provide for registration of banks, financial institutions and merchant banks.

17.12 The suggestion made in this regard by the PHD Chamber of Commerce and Industry (PHDCCI), which is in a similar vein is as follows:—

This provision will prohibit financial institutions and investment banks, which are incorporated as companies, to act as registered valuers. These entities are recognized under various other regulations framed by RBI, SEBI, etc. to conduct valuation exercise. Therefore, companies and bodies corporate should not be prohibited from acting as registered valuers. Accordingly, it is suggested that the proviso to clause 219(2) may be deleted.

17.13 Further, the submission made to the Committee by the Federation of Indian Chambers of Commerce and Industry (FICCI) in this regard, reads as follows:—

It is suggested that a company or body corporate should be permitted to be registered as a valuer. Also, if one of the partners of a firm is registered as a valuer then the same should be made permissible. Partner who signs the registered valuation report shall only be required to be registered valuer.

17.14 With specific reference to the implication of Clause 219(2) on banks, the Indian Banks' Association (IBA) have submitted to the Committee as follows:—

For the purpose of valuation of the assets, the banks find that the individual valuers are not in a position to make an assessment of valuation of a large undertaking and in such a case it becomes necessary to engage a company or a corporate to do the work of valuation. It is, therefore, suggested that the prohibition against any company or a body corporate registered as a valuer may be deleted from the provisions of the Bill.

17.15 When asked to furnish their views on the issues raised in regard to Clause 219(2), the Ministry of Corporate Affairs, in reply, stated *inter-alia*:—

The Bill follows the provisions already existing in respect of other Acts pertaining to Professionals. Chartered Accountant Act, Cost and Works Accountant Act or Company Secretaries Act etc. prohibit practice of their members in body corporate form. These Acts allow such professionals to practice either as proprietorships or as partnership firms. [LLP form is now being considered to be allowed to them in view of enactment of LLP Act].

In view of above, there may not be any necessity of any modification in the Bill on this matter.

17.16 The Committee find credence in the reasoning extended by the Chambers of Commerce in particular for enlarging the scope of clause 219 which relates to registration of valuers to cover companies or bodies corporate. Presently in terms of RBI and SEBI regulations, entities including financial institutions and investment banks are recognized for conducting the exercise of valuation. Also, as pointed out by the IBA, individual valuers have been found wanting in assessing the value of large enterprises. The stance taken by

the Ministry for excluding such entities from registering as valuers is primarily based on the Acts regulating the professions of chartered accountants, company secretaries etc., which prohibit practice of their members in body corporate form. Considering the reasoning of the Chambers of Commerce, the Committee recommend that the provisions of clause 219 be re-visited with a view to entitling firms or bodies corporate having professionals such as chartered accountants, company Secretaries etc. as well to register for carrying out the exercise of valuation.

Clause 220—Appointment of Committee of experts

17.17 Clause 220(1) pertaining to appointment of a committee of experts to recommend suitable names for the purpose of inclusion in the register of valuers reads as under:—

> "The Central Government may, for the purposes of section 219, by an order, appoint a committee of experts consisting of such number of qualified persons holding such qualifications as may be prescribed."

17.18 In this regard, the Institute of Company Secretaries of India have made the following suggestion:—

> The composition of the expert committee may be specified in the Bill with nominee of each of the governing institutes.

17.19 Asked to furnish their comments on the above suggestion, the Ministry of Corporate Affairs have stated as under:—

"The suggestion is noted to be addressed appropriately with legislative vetting."

17.20 As agreed to, the Committee expect that the composition of the Expert Committee to be constituted in terms of Clause 220(1) for recognising and maintaining the register of valuers is suitably incorporated in the Bill.

Clause 221—Practice as registered valuers

17.21 Clause 221(1) which *inter-alia* restricts a person to practice, describe or project himself as a registered valuer unless he is registered as a valuer, reads as under:—

> "No person, either alone or in partnership with any other person, shall practise, describe or project himself as a registered valuer for the purposes of this Act or permit himself to be so described or projected unless he is registered as a valuer, or, as the case may be, he and all his partners are so registered under this Chapter."

17.22 In this regard, the suggestion received from the Indian Merchants' Chamber reads as follows:—

> In case a Firm/LLP even if one partner is qualified and registered as Valuer, the firm should be allowed to register and practice Valuation.
>
> In today's time of "One stop shop" and multi-disciplinary partnership, different partners will have different skill sets *e.g.* audit, Direct Taxation, Indirect Taxation, Financial, Company Secretary, Cost Accounting etc.

Hence, making it mandatory for all partners to be registered as Valuers before the firm can describe or project itself as Registered Valuers is very harsh and should be amended.

17.23 Asked for their views on the suggestion made, the Ministry responded by informing *inter alia*:—

"The suggestion is noted in context of the need for revising these provisions to take note of setting up of multi disciplinary firms of Chartered Accountants, Cost accountants, Advocates, Company Secretaries and valuers."

17.24 Clause 221(3) relating to charges leviable by registered valuers reads as under:—

"A registered valuer shall not charge at a rate exceeding the rate as may be prescribed in this behalf."

17.25 Pointing out that it would not be appropriate for the Government to prescribe the charges of valuers, the Indian Merchants' Chamber and FICCI have expressed the following view:—

"The charge/rate for Valuation should not be capped by Government as it will lead to unhealthy practices. This should be left to the Company and the Valuers."

17.26 When questioned on the appropriateness of the proposal seeking to enable the Central Government to prescribe the fee chargeable by valuers, the Ministry, in reply informed the Committee:—

"Since the Central Government is proposed to be the regulator for profession of valuers until a separate independent legal framework is available for them, the Central Government, as a regulator, may prescribe rules in connection with manner in which this profession should function. In view of this, the power proposed to be given to Central Government for prescribing fee to be charged by valuers appears to be justified.

In view of above, there may not be any necessity of any modification in the Bill on this matter."

17.27 The Ministry have proposed to review the provisions of clause 221, which *inter-alia* prohibit a non-registered valuer from practicing or projecting himself as a valuer in view of the fact that setting up multi-disciplinary firms of chartered accountants, company secretaries etc. as well as LLPs is now permitted. It, however, needs to be pointed out here that this exercise has to be undertaken also in the light of the Committee's recommendation for examining the scope for widening the purview of clause 219 on eligible valuers to include firms etc. having professionals such as chartered accountants, company secretaries etc. The Committee expect that appropriate action would be taken to this end. The Committee also desire that the rules regulating the valuers/profession of 'valuation' and the independent legal framework proposed for the profession are put in place expeditiously.

CHAPTER XVIII

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER

Clause 224—Power of Registrar to remove the name of a company from register

18.1 Clause 224 seeks *inter-alia* to provide the circumstances under which the Registrar shall send a notice to the company and all the directors of the company of his intention to remove the name of the company from the register.

18.2 Clause 224(1) reads as under:

Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation;

(b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1)of section 10 to this effect has not been filed within one hundred and eighty days of its incorporation; or

(c) a company is not carrying on any business or operation for a period of one year and has not made any application within such period for obtaining the status of a dormant company under section 413,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period specified in the notice.

18.3 On Clause 224(1), as proposed, the Institute of Company Secretaries of India (ICSI) have made the following suggestion to the Committee:—

"(i) The word 'of a period not less than 30 days' may be added after the words, 'he shall send a notice'.

(ii) Reference should be made to section 414 in place of section 413.

(iii) The words 'one year' after the words 'for a period' may be replaced by 'two financial years'."

18.4 While section 413 cited in clause 224(1)(c), as proposed in the Bill provides for appointing adjudicating officers for adjudging penalty, section 414, cited by the ICSI deals with dormant companies.

18.5 When asked to give their response on the suggestion made the Ministry have proposed *to address the issue appropriately with legislative vetting*.

18.6 Clause 224(2) reads as under:

"Without prejudice to the provisions of sub-section (*1*), a company by a special resolution or consent of seventy-five per cent. members in terms of share capital may also file an application in the prescribed manner to the Registrar for removing the name of the company from the register on all or any of the grounds specified in sub-section (*1*) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application."

18.7 The Institute of Company Secretaries of India have made the following suggestion regarding clause 224(2):—

"The words, 'paid-up' may be added after the words, 'in terms of'."

18.8 The Ministry of Corporate Affairs *have agreed to address this suggestion*.

18.9 The Ministry having agreed with the suggestion for stipulating a time frame of 30 days for responding to the notice of removal of the name of company by the Registrar in terms of Clause 224(1), the Committee desire that appropriate modification may be carried out to this effect in the clause. Provisions relating to dormant companies to whom the Registrar would be entitled to issue notice for removal of name in terms of clause 224(1)(c) are covered in section 414 and not in section 413 as indicated in the clause. Also, a company is deemed to be dormant, if no business is transacted in the preceding two financial years, and not one year as indicated in the clause. The Committee expect that the inaccuracies in clause 224(1)(c) are rectified. As also agreed to, the Committee expect that the words, 'paid-up' are added after the words, 'in terms of' in clause 224(2), which entitles the members of a company to approach the Registrar for changing the name of a company.

Clause 225—No applications under section 224 in certain situations

18.10 Clause 225 is a new clause and seeks to provide certain situations in which no application can be made by the company under sub-clause (2) of clause 224 for removing its name from the register.

18.11 Clause 225(1)(a) reads as under:

"An application under sub-section (2) of section 224 on behalf of a company shall not be made if, at any time in the previous three months, the company has changed its name."

18.12 The Institute of Company Secretaries of India have also made the following suggestion in this regard:—

"After the words, 'has changed its name', the words 'or shifted its registered office from one state to another', may be added."

18.13 Asked to furnish their comments on the above suggestion, the Ministry stated as under:—

"The suggestion is noted to be addressed appropriately with legislative vetting."

18.14 The Ministry having agreed with the suggestion for prohibiting making of an application for changing the name of a company in cases where the registered office is shifted from one State to another within the preceding three months of the application as well, the Committee desire that suitable modification to this effect is carried out in clause 225(1)(a).

CHAPTER XIX

REVIVAL AND REHABILITATION OF SICK COMPANIES

Clause 229—Determination of sickness

19.1 Clause 229 seeks to provide the manner in which a company be declared sick. In case a company fails to pay its debt, the creditor may file an application to the Tribunal for determination that the company be declared as a sick company. An applicant may at any time apply for stay of proceedings of winding up. The Tribunal may pass an order on the application. The company at its own may also file an application to the Tribunal for declaring it as a sick company. After filing application before the Tribunal, the company shall not dispose of its assets except as required in the normal course of business and the Board of Directors shall not take any steps likely to prejudice the interests of the creditors. The Tribunal shall determine whether the company is sick or not within sixty days.

19.2 Clause 229(1) and Clause 229(2) relating to determination of sickness read as under:

"(1) Where on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, nonrepayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.

(*2*) The applicant under sub-section (*1*) may, along with an application under that sub-section or at any stage of the proceedings thereafter, make an application for the stay of any proceedings for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with."

19.3 As regards, Clause 229(2), a law firm, have submitted as follows:—

"This right to seek a stay order on other proceedings be made available only after determination of the company as a sick company. (ii) Further, in light of the recommendations of the J.J. Irani Committee Report on Company Law, the stay period should be increased to cover the period up to the sanction of the plan, especially in relation to suits filed by the creditors of the company. (iii) Please also consider introducing an exemption under the Limitation Act, 1963 as available under winding up provisions, excluding the period during which the stay was applicable from the calculations of the limitation periods."

19.4 Questioned on the issues raised by the law firm in regard to Clause 229(2), the Ministry informed the Committee as under:—

"(i) It is felt that application for stay of proceedings is not prohibited subsequent to making of application for declaration as sick. There may, therefore, not be any necessity of making any modification in the clause.

(ii) Dr. Irani Committee on new Company Law had recommended that a limited standstill period is essential to provide an opportunity to genuine business to explore re-structuring. The unlimited standstill period may act against the time bound winding up proceedings being proposed in the Bill. It was in this context that a limited period of standstill/moratorium has been proposed in the Bill in clause 229.

(iii) The suggestion is noted to be addressed appropriately with legislative vetting."

19.5 Additional issues raised by the law firm in regard to Clause 229(2) are *inter-alia* delineated as below:—

"• No time period has been prescribed within which the reference must be made by the creditors.

- The period between the date of hearing set by the Tribunal and the date by which the draft scheme should be submitted to the creditors for their approval be at least 90 days.
- While enhancing the role of the creditors is important, the concerns of other stakeholders should also be considered.
- References from the Central Government, State Government, RBI, etc. which have been discontinued need to be reconsidered.
- The tribunal is not empowered to pass an order at its own discretion permitting the company to function without interference if it believed that the company could recover by itself. In the interest of justice and good equity, this power of the tribunal should be restored.
- Creditors have been bestowed with excessive powers. Lack of discretion with the Tribunal may allow the creditors to exert undue pressure on the companies.
- Failure to provide for a consensus between all stakeholders. Tribunal should be allowed to allow other stakeholders to put forth their opinions and consider the scheme in the light of all the propositions put forth.
- It may be advisable to restore with the Tribunal certain powers in relation to the aforesaid matters to allow the Tribunal to negate, if required in the interest of justice and good equity, the strong influence wielded by the creditors."

19.6 In this regard, the Ministry of Corporate Affairs have submitted to the Committee as follows:—

"The suggestion is noted to be addressed appropriately with legislative vetting."

Clause 230—Application for revival and rehabilitation

19.7 Clause 230 seeks to provide that any secured creditor of sick company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company. It further provides for certain conditions to be fulfilled in case the financial assets of the sick company had been acquired as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. An application shall be accompanied by audited financial statements of the company and a draft scheme of revival and rehabilitation of the company along with fee.

19.8 Clause 230(*1*) relating to application for revival and rehabilitation reads as under—

"On the determination of a company as a sick company by the Tribunal under section 229, any secured creditor of that company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company:

Provided that where the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (*1*) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of three-fourths of the secured creditors in value of the amount outstanding against financial assistance disbursed to the sick company."

19.9 Confederation of Indian Industry made the following suggestion regarding clause 230 (*1*):

"It is recommended that other stakeholders, and particularly, the other creditors should also be permitted to file an application for the revival and rehabilitation of the company."

19.10 In this regard, the Ministry have submitted to the Committee as under:—

Since genuine and serious efforts and involvement are required for revival of a sick company, the provisions of clause 230 provide for secured creditor(s) or the company to apply to Tribunal for determination of measures for revival or rehabilitation of the company. In case of sickness, secured creditors and the company (which may also include promoters or large group of shareholders as the case may be) have the key role to play. Allowing other stakeholders or non-serious stakeholders may make the proceedings delayed and unfocused resulting in waste of company's precious assets and resources.

Hence the suggestion may not be considered.

19.11 In regard to Clause 230, the Indian Banks' Association (IBA) have submitted their views, which are *inter-alia* as under:—

"(*i*) Once any financial asset is acquired by a securitization company or reconstruction company from any bank or financial institution (secured creditors) all the rights and liabilities of the bank stand transferred to and vest in such securitisation

company or reconstruction company. On such acquisition of assets the relationship of borrower and secured creditor between the company and the banks comes to an end. Hence the question of 75% in value of secured creditors giving their consent for any proposal for rehabilitation does not arise. The proviso, therefore, needs to be modified to say that any application for revival cannot be made without the consent of the concerned securitisation company or reconstruction company.

(*ii*) The experience of the banks and financial institutions in regard to the working of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) has not been satisfactory and there are many industrial companies who have abused the provisions of SICA to delay and defeat the recovery efforts of the banks and financial institutions."

19.12 Questioned on the issues raised by the IBA, the Ministry of Corporate Affairs in reply, have *inter-alia* stated as under:—

Once the financial assets have been bought by the securitisation or reconstruction company, such company steps into the shoes of the secured creditors. Therefore, no change may be considered in the provisions.

19.13 The Committee are in agreement with the intent of the provisions proposed under Clause 229 (Determination of sickness) and Clause 230 (Application for revival and rehabilitation) which provide for a greater control and say to the creditors over the assets of a sick company, and in approving a revival plan. However, issues of concern as well as infirmities have been pointed out in the provisions proposed by the Chambers of Commerce, law firms as well as the Indian Banks' Association. These include: absence of sufficient discretionary powers with the tribunal to decide on issues relating to the company and its stakeholders; necessity of stipulating a time frame of 90 days from the date of hearing for submitting the draft scheme for the approval of creditors; reinstating the presently applicable mechanism for making references by the Central Government, Reserve Bank etc.; unsatisfactory working of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA); undermining the interests of non-secured creditors etc. Though the Ministry have sought to address the concerns expressed and infirmities pointed out, no alternate provisions or details in this regard have been provided. A detailed and clear response on the issues raised in regard to the provisions of the clauses being absent, the Committee hope and trust that the provisions of Clauses 229 and 230 are revisited and revised with a view to enabling effective revival of sick industrial companies and being in the interest of all categories of stakeholders.

Clause 238—Scheme to be binding

19.14 This clause seeks to provide that on and from the date of the coming into operation of the sanctioned scheme, its provisions shall be binding on the sick company and the transferee company and also on the shareholders, creditors and guarantors of the said companies.

19.15 Clause 238 reads as under:—

"On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors of the said companies."

19.16 The Confederation of Indian Industry (CII) have made the following suggestion in regard to clause 238:—

"Binding effect of the sanctioned scheme on the employees of the company has not been included.

It is recommended that the binding effect of the scheme on the employees of the company should be reinstated especially if their interests are affected, prejudicially or otherwise."

19.17 Asked to furnish their comments on the above suggestion, the Ministry stated as under:—

"The suggestion is noted to be addressed appropriately with legislative vetting."

19.18 The Ministry, having agreed with the suggestion for including the aspect of binding effect of the sanctioned scheme on employees of the company so as to cover their interests as well, the Committee expect that suitable modification to this effect is made in the Clause.

Clause 240—Winding up of Company on report of company administrator

19.19 This is a new clause and seeks to provide that if the scheme is not approved by the creditors in the manner specified, the company administrator shall submit a report to the Tribunal and the Tribunal shall order for the winding up of the sick company.

19.20 Clause 240(*1*) reads as under:

"If the scheme is not approved by the creditors in the manner specified in sub-section (*2*) of section 237, the company administrator shall submit a report to the Tribunal and the Tribunal shall order for the winding up of the sick company."

19.21 The Institute of Company Secretaries of India made the following suggestion regarding clause 240(1):—

"After the words, 'report to the Tribunal', the words,'within 15 days' may be added."

19.22 Asked to furnish their comment on the above suggestion, the Ministry stated as under:—

"The suggestion is noted to be addressed appropriately with legislative vetting."

19.23 As agreed to, the Committee desire that after the words, 'report to the Tribunal', the words, 'within 15 days' be added for stipulating the time frame by appropriately modifying the clause.

CHAPTER XX

WINDING UP

PART I

WINDING UP BY THE TRIBUNAL

Clause 247—Petition for winding up

20.1 Clause 247 which seeks to authorize the persons or authority who can file or present a petition to the Tribunal for winding up of a company reads as under:

"(*1*) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(*a*) the company,

(*b*) any creditor or creditors, including any contingent or prospective creditor or creditors,

(*c*) any contributory or contributories,

(*d*) all or any of the persons specified in clauses (*a*), (*b*) and (*c*) together,

(*e*) the Registrar,

(*f*) any person authorised by the Central Government in that behalf, or

(*g*) in a case falling under clause (*d*) of sub-section (*1*) of section 246, by the Central Government or a State Government.

(*2*) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (*b*) of sub-section (*1*).

(*3*) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(*4*) The Registrar shall be entitled to present a petition for winding up under sub-section (*1*) on any of the grounds specified in sub-section (*1*) of section 246, except on the ground specified in clause (*d*) of that sub-section:

Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 183 that the company is unable to pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided also that the Central Government shall not accord its sanction under the preceding proviso, unless the company concerned has been given a reasonable opportunity of making representations.

(*5*) A petition filed by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and manner as may be prescribed.

(*6*) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a *prima facie* case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable."

20.2 The suggestions made by the ICSI, in regard to sub-clause 1(*b*) and 1(*g*) of Clause 247 are as under:

The words, 'contingent or prospective' [247(1)(b)] be deleted. The clause needs correction as the words 'clause (d)' appearing between 'under' and 'of' should be substituted with the words 'clause (c)' (247(1)(g)].

20.3 The Institute have also made the following suggestion in regard to Clause 247(4):—

"The power under sub-section (*4*) be confined to 246(*1*) (*a*) (*c*), (*e*), (*f*) only."

20.4 Regarding sub-clause 1(*g*) of Clause 247, the Bombay Chamber of Commerce and Industry too have made following suggestion:

"In clause 247(1)(g) the cross reference should be to clause (*c*) of sub-section (*1*) of Section 246."

20.5 Clause 246 provides the circumstances under which a company may be wound up by the Tribunal. The clause further seeks to define the circumstances when a company is deemed to be unable to pay its debts. The sub-clause (*1*) of clause 246 reads as under:—

"(*1*) A company may be wound up by the Tribunal,—

(a) if the company is unable to pay its debts;

(b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(*c*) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(*d*) if the Tribunal has ordered the winding up of the company under Chapter XIX;

(*e*) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(*f*) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(*g*) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up."

20.6 On the suggestions made, the Ministry in their written reply, have stated as under:

"The provisions of section 439(1)(b) of existing Act allow presentation of a petition by a contingent or prospective creditor. Hence these provisions may be retained in the Bill.

The suggestion on [247(1)(g)] and 247(4) are noted to be addressed appropriately with legislative vetting."

20.7 As assured, the Committee expect that the incorrectly drawn reference to Clause (*d*) of sub-section (*1*) of Section 246 in Clause 247 (*1*)(*g*) is substituted with the correct sub-section, *i.e.* clause (*c*) of sub-section (*1*) of Section 246, where the Central Government would be required to file the winding up petition *i.e.* in cases where a company may have acted against the interest of integrity and sovereignty of the country. As pointed out, the power of the Registrar to file winding up petition is to be confined to circumstances enumerated under Clause 246(1)(*a*)(*c*) and (*f*) only. Clause 246(*1*)(*b*) and (*g*) fall within the prerogative of the company and the Tribunal respectively where the Registrar would have no role. The Committee expect that necessary modifications for rectifying the inaccuracies would be carried out in clause 247(*4*).

Clause 249—Directions for filing statement of affairs

20.8 The provisions of this Clause which seek to empower the Tribunal to direct the company to file its objection when a petition is made by a person other than a company are as under:

"(*1*) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a *prima facie* case for winding up of the company is made out, by an order direct the company to file its objections along with a

statement of its affairs in such form and manner as may be prescribed within thirty days of the order:

Provided that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(*2*) A company, which fails to file the statement of affairs as referred to in sub-section (*1*), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be punishable as per the provision of sub-section (*4*).

(*3*) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (*d*) of sub-section (*1*) of section 248, shall, within sixty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

(*4*) Where a contravention of this section occurs, the directors and other officers of the company who are responsible for such contravention shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both."

20.9 The suggestion made by the ICSI on this Clause is as under:

"The second proviso may be provided in clause 249 (*1*) for giving extension of time upto a further period of not exceeding 30 days in special circumstances."

20.10 In their response to a question posed in this regard, the Ministry have submitted as under:

"The suggestion is noted to be addressed appropriately with legislative vetting."

20.11 As assured, the Committee expect that necessary modification will be carried out in Clause 249 to enable the Tribunal to grant additional time of 30 days to a company to file its objections on cases of winding up in situations of contingency or special circumstances.

Clause 250—Company Liquidators and their appointments

20.12 This Clause reads as follows:

"250(*1*) For the purposes of winding up of a company by the Tribunal, there shall be a Company Liquidator who shall be appointed by the Tribunal at the time of the passing of the order of winding up.

(*2*) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost and works accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries,

cost and works accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters and such other qualifications as may be prescribed.

(*3*) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (*2*) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence:

Provided that the Central Government before removing him or it from panel shall give him or it a reasonable opportunity of being heard.

(*4*) The terms and conditions of appointment of a liquidator and the fee payable to him shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification and size of the company.

(*5*) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his or its appointment.

(*6*) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (*c*) of sub-section (*1*) of section 248, as the Company Liquidator for the conduct of the proceedings for the winding up of the company."

20.13 In regard to Clause 250, a law firm has made the following suggestion:

"Currently, the Company Liquidator is personally liable for any mistakes committed in his role as a company liquidator. This imposition should be reconsidered as otherwise company liquidators would not be able to freely perform their obligations and this would make the system very rigid and slow."

20.14 On Sub-Clause (5) of this Clause, the ICSI have suggested as follows:—

"The liquidator may be required to file the declaration within 15 days from the date of appointment."

20.15 Expressing their views on the above suggestions, the Ministry informed the Committee:

"The provisions of the Bill provide for personal liability in case of winding up only in situation of frauds. Attention in this regard is drawn to provisions of clauses 312-316 of the Bill (penalty for frauds by officers, liability where proper accounts not kept, liability for fraudulent conduct of business, power of tribunal to assess damages against delinquent directors etc. and liability under sections 314 and 315 to extend to partners or directors in firms or companies). Since such personal liability in cases of fraud is necessary to be retained in the Bill, the suggestion may not be considered. The suggestion for replacing the words 'cost and works accountants' with the words 'cost accountants' may be considered.

The suggestion is to provide filing of declaration relating to independence within a prescribed time period. The suggestion to prescribe a period of 15 days in this regard may be considered for brining clarity."

20.16 The Committee note that the suggestion made for prescribing a time frame of 15 days for the company liquidator to file the declaration relating to independence has been accepted. The Committee desire that appropriate modifications to this effect are carried out in the Clause.

Clause 262—Committee of inspection

20.17 This Clause reads as under:

"262(*1*) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, a committee of inspection for the company to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

(*2*) A committee of inspection appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(*3*) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the committee of inspection.

(*4*) The committee of inspection shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.

(*5*) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the committee shall be such as may be prescribed.

(*6*) The meeting of committee of inspection shall be chaired by the Company Liquidator."

20.18 The following suggestion has been received from the ICSI, on the above Clause:

"Heading for the clause may be reworded as 'Advisory Committee' instead of 'Committee of Inspection'. In sub-clause (*1*) of clause 262, the words 'of inspection' may be deleted. In sub-clauses (*2*), (*3*), (*4*) and (*6*) 'a committee of inspection' may be replaced by 'an Advisory Committee'."

20.19 *The Ministry have agreed to address the suggestion appropriately with legislative vetting.*

20.20 As the Committee of Inspection would be discharging the function of advising the company liquidator, the Ministry have expressed agreement with the suggestion for terming the same as Advisory Committee instead of Committee of inspection. The Committee desire that necessary changes to this effect may be incorporated in the Clause.

Clause 264—Power of Tribunal on application for stay of winding up

20.21 This Clause which seeks to empower the Tribunal to stay the proceedings of winding up reads as under:

"(*1*) The Tribunal may, at any time after making a winding up order on an application of creditors or any other person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit:

Provided that an order under this sub-section shall be made by the Tribunal only on an application made to it enclosing a scheme for rehabilitation after three-fourth of secured creditors and one-half of unsecured creditors in value of the company have resolved at a meeting convened by each class of creditors by giving their consent in writing to the scheme.

(*2*) The Tribunal may, while passing the order under sub-section (*1*), require the applicant to furnish such security as to costs as it considers fit.

(*3*) Where an order under sub-section (*1*) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.

(*4*) Without prejudice to the provisions of sub-section (*1*), the Tribunal may at any time after making a winding up order, on receipt of application of Company Liquidator, make an order staying the winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.

(*5*) The Tribunal may, before making an order, on any application under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(*6*) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company."

20.22 The ICSI have suggested the following modification in this clause:

(*i*) A coma may be added after the words 'winding up order'.

(*ii*) The words, 'promoter shareholders' be added after the words, 'on an application of' in sub-clause (1) of clause 264.

(*iii*) Further in proviso to 264(1), all the words, which provide for resolution by three-fourth of secured creditors and one half of unsecured creditors, for stay of winding up, appearing after the words, 'a scheme for rehabilitation' may be deleted.

20.23 The justification provided for this deletion proposed is as follows:—

Taking approval from 3/4th creditors may be practically difficult (there may be many creditors scattered at different places, mind set of creditors is different, difficult to convince etc.)

20.24 Questioned on their views on the suggestions made, the Ministry, have stated as follows:

(i) The suggestion is of drafting nature and may be considered.

(ii) The provisions of clause 264. (1) read as under:—

The Tribunal may, at any time after making a winding up order on an application of creditors or any other person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit.

It is felt that the words 'any other person' are wide enough to allow any person to apply before Tribunal and this would include even 'promoter shareholders'. Hence the provisions proposed in the Bill are considered adequate and suggestion may not be considered. However, the suggestion to provide that the words 'or any other person', appearing in this clause may be substituted with the words 'or any other interested or concerned person' or other suitable word(s)/term(s).

The suggestion is noted to be addressed appropriately with legislative vetting.

20.25 The Ministry, having agreed in principle to make it explicitly clear that promoter shareholders too would be entitled to make an application in terms of the provision by substituting the words, 'or any other person' with 'or any other interested or concerned person', the Committee expect that appropriate changes to this effect are carried out.

Clause 265—Powers and duties of Company Liquidator

20.26 The provisions of this Clause which seek to provide the powers exercisable by the company liquidator in order to carry on the business of the company to sell the movable and immovable property etc., are as under:

"(*1*) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up by the Tribunal, shall have the power—

(*a*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose, to use, when necessary, the company's seal;

(*c*) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

(*d*) to sell the whole of the undertaking of the company as a going concern;

(*e*) to raise on the security of the assets of the company, any money required;

(*f*) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(*g*) to invite and settle claim of creditors and distribute sale proceeds in accordance with priorities established by this Act;

(*h*) to inspect the records and returns of the company on the files of the Registrar or any other authority;

(*i*) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(*j*) to draw, accept, make and endorse any bill of exchange, *hundi* or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, *hundi*, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(*k*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the Company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

(*l*) to obtain any professional assistance, and for protection of the assets of the company appoint an agent to do any business which the Company Liquidator is unable to do himself;

(*m*) to do all such other acts and things as may be necessary for the winding up of the company and distribution of its assets; and

(*n*) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

(*2*) The exercise of powers by the Company Liquidator under sub-section (*1*) shall be subject to the overall control of the Tribunal.

(*3*) Notwithstanding the provisions of sub-section (*1*), the Company Liquidator shall perform such duties as the Tribunal may specify in this behalf.

20.27 On this Clause, the ICSI have suggested as follows:

"(i) 265(1)(a): The words, 'either through himself or through agents' may be added after the words, 'business of the company'.

(ii) 265(1)(e):The words, 'any money required' should be moved between the words 'to raise and' on the security of the assets'.

(iii) 265(1)(g): The clause may be reworded as, 'to invited and settle various claims of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established by this Act.

(iv) 265(1)(j): The words, 'Negotiable instruments including cheque' may be added after the words, 'and endorse any'. The words,'the bill, *hundi* or note' may be replaced by 'such documents'.

(v) 265(1)(l): The words, 'from any person or appoint any professional, in discharge of his duties, obligations and responsibilities' may be added after the words, 'to obtain any professional assistance'.

(vi) 265(1)(m): The sub-clause (m) may be reworded as, '(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary:—

(i) for winding up of the company;

(ii) distribution of assets; and

(iii) in discharge of his duties and obligations and functions as Company Liquidator.'

(vii) 265(3): The word, 'other' may be added between the word, 'such' and 'duties'.

20.28 Asked to offer their comments on the above suggestion, the Ministry, in their written submission, have stated as follows:

"(i) Attention is drawn to clause 265 of the Bill which provides as under:—

"(1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up by the Tribunal, shall have the power—

(i) to obtain any professional assistance, and for protection of the assets of the company appoint an agent to do any business which the Company Liquidator is unable to do himself;

(ii) It is felt that in view of above provisions already provided in the Bill, there may not be any necessity of modification in the Bill. Other suggestions have been noted to be addressed appropriately with legislative vetting.

20.29 The Committee expect that drafting changes in sub-clause (1)(a),(e)(g)(j)(l)(m) and sub-clause (3) of Clause 265 which provides for power and duties of company liquidator, that have been agreed to on the basis of the suggestions made are carried out.

Clause 266—Provision for professional assistance to Company Liquidator

20.30 This Clause reads as under:

"(*1*) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals, as may be necessary, to assist him in the performance of his duties and functions under the Act.

(*2*) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment."

20.31 The ICSI, have made following suggestion on this Clause:

"The terms and conditions should be clear at time of appointment of professional by the company liquidator. Therefore the words, 'on such terms and conditions' may be added after the words, 'or such other professionals'."

20.32 Responding to the above suggestion, the Ministry in their written submission, stated as follows:

"The suggestion is noted to be addressed appropriately with legislative vetting."

20.33 With regard to Clause 266 which provides for professional assistance to Company Liquidator to enable him to perform his duties, the Committee recommend that such modifications, as may be necessary for indicating that the terms and conditions of appointment of the professionals too need to be finalised before hand, are, as assured by the Ministry carried out.

Clause 274—Power to summon persons suspected of having property of Company etc.

20.34 The provisions of this Clause are stated as under:

"(*1*) The Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(*2*) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may, in the former case, reduce his answers to writing and require him to sign them.

(*3*) The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.

(*4*) The Tribunal may direct the liquidator to file before it a report in respect of property, debt, etc., of the company in possession of other persons.

(*5*) If Tribunal finds that—

(*a*) a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such

manner as the Tribunal may consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

(*b*) a person is possessing any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Tribunal may consider just.

(*6*) If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.

(*7*) Every order made under sub-section (*5*) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.

(*8*) Any person making any payment or delivery in pursuance of an order made under sub-section (*5*) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property."

20.35 On this Clause, the ICSI have made the following suggestions:

Clause 274(2)—

"The words, 'or on affidavit' may be added after the words, 'on written interrogatories', as it is felt that 'affidavit' be made lawful for examining any officer."

Clause 274 (5)(b)—

" 'a person is possessing' may be replaced with 'a person is in possession of'."

20.36 *The Ministry, while expressing their views, have stated that the suggestion is of a drafting nature and may be considered.*

20.37 The Ministry, having agreed with the suggestion for carrying out the drafting modifications suggested in regard to summoning of persons suspected of having property of company desire that the same are carried out.

Clause 275—Power to order examination of promoters, directors etc.

20.38 This Clause provides for following:

"(*1*) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(*2*) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.

(*3*) The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.

(*4*) A person ordered to be examined under this section—

(*a*) shall, before his examination, be furnished at his own cost with a copy of the Company Liquidator's report; and

(*b*) may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 393, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.

(*5*) If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.

(*6*) If the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (*5*), the Tribunal may order payment to the applicant of such costs as it may think fit.

(*7*) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection by any creditor or contributory at all reasonable times.

(*8*) The Tribunal may, if it thinks fit, adjourn the examination from time to time.

(*9*) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.

(*10*) The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (9).

20.39 In this regard, the following suggestion has been received from the Institute of Company Secretaries of India:

Clause 275(1)—

"The words, 'in the promotion or formation of the company', or by any officer of the company 'in relation to', be replaced with, 'in the promotion, formation, business or conduct of affairs of the company in relation to'."

20.40 The justification made in this regard is as follows:—

"Fraud may be committed after formation of the company, during its management. Hence, it is suggested to include management also. Further, there is no need to give 'by any officer of company' when already 'any person' is mentioned which is very wide."

Clause 275 (7)—

"The words, 'a copy be supplied to him' may be added after the words, 'the person examined'."

20.41 *This suggestion has been accepted by the Ministry for being addressed appropriately with legislative vetting.*

20.42 The Committee desire that the modifications in respect of sub-clauses (1) and (7) of Clause 275, which empowers the Tribunal to order examination of promoters, directors etc. in instances relating to fraud etc. that have been agreed to are carried out.

Clause 276—Arrest of person trying to quit India or abscond

20.43 The provisions of this Clause are stated as under:

"At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

(*a*) the contributory to be arrested and kept in custody until such time as the Tribunal may order; and

(*b*) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order."

20.44 While suggesting changes, the ICSI have pointed out that the following modification is needed in this Clause:

Clause 276(a)—

"The words, 'to be arrested and kept in custody' may be deleted and in its place the words, 'may be detained' should be added."

20.45 The Ministry have stated as follows in this regard:

"The suggestion is noted to be addressed appropriately with legislative vetting."

20.46 The suggestion made for replacing the words, 'to be arrested and kept in custody' with the words, 'may be detained' in Clause 276 which provides for arrest of person trying to quit India or abscond being agreed to, the Committee recommend that appropriate changes to this effect are carried out.

PART II

VOLUNTARY WINDING UP

Clause 279—Circumstances in which company may be wound up voluntarily

20.47 The provisions of this Clause read as under:

"A company may be wound up voluntarily,—

(*a*) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

(*b*) if the company passes a special resolution that the company be wound up voluntarily."

20.48 Following suggestion has been received from the ICSI, on this Clause:

"Sub clause (b) is adequate enough to take care of all the relevant situations. This sub-clause has been enlarged to cover the genuine circumstances, as an independent clause. Therefore the clause 279(a) may be deleted and clause 279(b) may be redrafted."

20.49 The Ministry, in their written submission have stated as follows in this regard:

"The suggestion is noted to be addressed appropriately with legislative vetting."

Clause 281—Meeting of creditors

20.50 This Clause reads as under:

"(*1*) The company shall also along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 279.

(*2*) The Board of Directors of the company shall—

(*a*) cause to be presented a full statement of the position of the company's affairs together with a list of creditors of the company, if any, copy of declaration under section 280 and the estimated amount of the claims before such meeting; and

(*b*) appoint one of the directors to preside at the meeting.

(*3*) Where two-thirds in value of creditors of the company are of the opinion that—

(*a*) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or

(*b*) the company will not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it will be in interest of all parties if the company is wound up under the supervision of the Tribunal, the company shall within fourteen days thereafter file an application before the Tribunal.

(*4*) Notice of any resolution passed at a creditors' meeting in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.

(*5*) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and any director or directors who are in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both."

20.51 The ICSI have made the following suggestion on this Clause:

"When a company is facing a voluntary winding up, it is desirable that the member and the creditors should sit together face to face in order to thrash out issues affecting their interests. Nothing wrong in holding a joint meeting of members and creditors.

This process will not only create an atmosphere of harmony between the members and the creditors but would also save considerable time and cost.

In this light, the clause need to be redrafted."

20.52 Asked to furnish their comments, the Ministry stated following:

"The suggestion is noted to be addressed appropriately with legislative vetting."

Clause 284—Effect of Voluntary winding up

20.53 This Clause seeks to provide as follows:

"In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as required for the beneficial winding up of its business."

20.54 The suggestion proposed by the ICSI, on this Clause reads as under:

"Proviso in section 487 of the Companies Act, 1956 appears to be relevant, and therefore suggested to be added in clause 284. Therefore following proviso may be added : 'Provided that the corporate state and corporate powers of the company shall continue until it is dissolved'."

20.55 *This suggestion has been accepted by the Ministry for being addressed appropriately with legislative vetting.*

Clause 285—Appointment of company liquidator

20.56 The sub clause (4) of Clause 285 reads as under:

"On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment."

20.57 On this sub-clause, the ICSI have forwarded following suggestion:

"The words, 'within one week of appointment' may be added after the words, 'a declaration in the prescribed form'."

20.58 While furnishing their comments on the above suggestion, the Ministry have stated as follows:

"The suggestion which seeks to provide a time limit in the Clause is noted."

20.59 Part II of Chapter XX of the Bill deals with voluntary winding up by a Company. The suggestions in regard to the provisions under this part include (i) deletion of sub clause (a) of clause 279 (circumstances in which company may be wound up voluntarily), (ii) adding an enabling proviso for holding of joint meeting of members and creditors in Clause 281 (meeting of creditors), (iii) adding a proviso in clause 284 for continued corporate state and corporate powers of the company till its dissolution (effect of voluntary winding up), and (iv) fixing the period for filing a declaration by company liquidator in clause 285 (appointment of company liquidator). The suggestions having been accepted by the Ministry for being addressed, the Committee expect that the redrafting/reframing of the Clauses to address the issues raised is undertaken.

PART IV

OFFICIAL LIQUIDATOR

Clause 337(1)—Sale of assets and recovery of debts due to Company

20.60 The sub clause (1) of Clause 337 reads as under:

"The Official Liquidator shall expeditiously dispose of all the assets within sixty days of his appointment."

20.61 Following suggestion made by the ICSI has been accepted by the Ministry to be addressed appropriately with legislative vetting.

"The words 'whether movable or immovable' should be added after the words 'all the assets'."

Clause 338—Settlement of claims of creditors by Official Liquidator

20.62 Clause 338 reads as under:

"(1) The Official Liquidator within thirty days shall call upon the creditors of the company to prove their claims in the manner prescribed within thirty days of the receipt of such call.

(2) The Official Liquidator shall prepare a list of claims of creditors in the manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected for reasons to be recorded in writing."

20.63 The ICSI have suggested the following amendment in this Clause:

"The words, 'of his appointment' should be added after the words 'within thirty days'."

20.64 *When questioned in this regard, the Ministry, in their written submission informed that the suggestion will be addressed appropriately with legislative vetting.*

20.65 The Committee desire that, as assured necessary modifications are carried out in Clause 337(1) and Clause 338 respectively for stipulating that the disposable assets would be either 'movable or immovable' assets; and the 30 day time period for the official liquidator to call upon the creditors would commence from the date of his appointment.

CHAPTER XXI

COMPANIES INCORPORATED OUTSIDE INDIA

Clause 342—Documents, etc. to be delivered to Registrar by Foreign Companies

21.1 Sub clause (1) of Clause 342 reads as under:

"(*1*) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

(*a*) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(*d*) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(*e*) the full address of the office of the company in India which is to be deemed its principal place of business in India."

21.2 A written suggestion submitted by the ICSI in this regard states:

"Instead of thirty days, a period of ninety days shall be provided."

21.3 *The Ministry informed the Committee that the suggestion has been noted to be addressed appropriately with legislative vetting.*

21.4 As agreed to by the Ministry, the Committee expect that the appropriateness of prescribing a time period of 90 days instead of 30 days as proposed for enabling a foreign company to deliver the requisite documents to the Registrar is examined and necessary modifications to this effect carried out in Clause 342.

Clause 347—Fee for registration of documents

21.5 The provision of Clause 347 relating to fee for registration of documents, reads as under:

"There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee and with additional fee, if any, as may be prescribed."

21.6 While submitting their suggestions for amendment, the Institute of Company Secretaries of India, have stated that after the words, 'such fee', the words, 'and with additional fee, if any' may be deleted. *This suggestion has been accepted by the Ministry to be addressed appropriately with legislative vetting.*

21.7 The Ministry having agreed with the suggestion for deleting the words 'and with additional fee' in Clause 347, the Committee expect that appropriate modification to this effect is made in the Clause.

Clause 349—Dating of prospectus and particulars to be contained therein

21.8 Clause 349(1) reads as under:

"(*1*) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and

(*a*) contains particulars with respect to the following matters, namely:—

(*i*) the instrument constituting or defining the constitution of the company;

(*ii*) the enactments or provisions by or under which the incorporation of the company was effected;

(*iii*) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language;

(*iv*) the date on which and the country in which the company would be or was incorporated; and

(*v*) whether the company has established a place of business in India and, if so, the address of its principal office in India; and

(*b*) states the matters specified under section 23:

Provided that sub-clauses (*i*), (*ii*) and (*iii*) of clause (*a*) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business."

21.9 In their written memorandum, the Confederation of Indian Industry have suggested as follows in regard to provisions of this Clause:

"This exception be restored as it seems to have been accidentally omitted, especially as under the Notes on Clauses, the exception is still available."

21.10 Another suggestion received from the ICSI, reads as under:

"After the words, 'English language' in sub clause 1(iii) of Clause 349, the words 'can be inspected' may be added."

21.11 Asked to furnish their comments in this regard, the Ministry, in their written submission, stated as under:

"The exceptions have been provided in sub-clause (4).

In view of above, there may not be any necessity of any modification in the Bill on this matter.

The second suggestion is noted to be addressed appropriately with legislative vetting."

21.12 The Ministry have agreed with the suggestion for adding the words 'can be inspected' after the word 'English language'. The Committee, therefore, expect that suitable modification is made in the Clause.

Clause 352—Offer of Indian depository receipts

21.13 This Clause reads as under:

"Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

(*a*) the offer of Indian Depository Receipts;

(*b*) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(*c*) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and

(*d*) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India."

21.14 On this Clause, a suggestion received by the Committee from the SEBI, states as below:

"The clause may be modified stating the eligibility norms for issue of IDRs to the public, vetting of offer document, listing of IDRs and dealings of IDRs in stock exchanges etc. shall be as specified by regulations made by SEBI."

21.15 Asked whether the Ministry are in agreement with the above suggestion, the Ministry, in their written submission, replied as under:

"The Bill has proposed the structure presently available under section 605A of the existing Act. SEBI has been adequately given powers to prescribe detailed procedural requirements under rules made by Central Government under section 605A of existing Act. Similar position is proposed to be retained in the Bill.

In view of above, there may not be any necessity of any modification in the Bill on this matter."

21.16 The Ministry has, in this regard also submitted as follows for consideration of the Committee:

"The provisions (section 605A) in respect of offer of IDRs were inserted in the Companies Act, 1956 in the year 2000. Such provisions of the Act give statutory recognition to the nature of the security, namely Indian Depository Receipt (IDR). The detailed provisions for listing of IDRs have been provided for as a part of the rules notified by the Government (MCA) subsequently, in which SEBI has also been suitably empowered to prescribe various additional issue and disclosure related requirements. SEBI has prescribed detailed regulations on Issue of IDRs in Chapter X of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 in view of powers available to it under Companies (Issue of IDRs) Rules, 2004. Since this mechanism has been working well under the existing Act and no difficulty in coordination has so far been experienced and is also not anticipated, it is suggested to continue this mechanism in the Companies Bill as well in a similar manner."

21.17 The Committee are of the view that it would be essential to ensure that no scope is left for ambiguity or possible friction in regard to the provisions relating to 'offer of Indian Depository Receipts (IDRs)'. While the Ministry have contended that retaining the existing arrangement in regard to IDRs as applicable since the year 2000 under the Companies Act, 1956 in Clause 352 would be appropriate and not lead to any difficulty, SEBI's emphasis has been on modifying the clause so as to specify that IDRs would be governed by regulations made by SEBI. Presently, the regulatory framework for issue of IDRs is provided under the 'Issue of Capital and Disclosure Requirements Regulations' of SEBI. Considering the divergence in the views expressed by SEBI and the Ministry of Corporate Affairs, the Committee feel it to be essential to review the provisions of clause 352 as proposed, by holding consultations with the Ministry of Finance as well as SEBI and keeping in view the existing system of jurisdiction on the capital market and its instruments. The Committee expect that this course of action would be adopted in finalizing the provisions of Clause 352.

CHAPTER XXV

NIDHIS

Clause 367—Power to modify Act in its application to nidhis

22.1 This Clause reads as under:

"(*1*) In this section, 'Nidhi' means a company which has been incorporated with the object of cultivating the habit of thrift and savings amongst its Members, receiving deposits from, and lending to, its Members only, for their mutual benefit, and which the Central Government has, by notification, declared to be a Nidhi.

(*2*) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi.

(*3*) A copy of every notification issued under sub-section (*1*) shall, as soon as may be after it is issued, be laid before each House of Parliament.

(*4*) A copy of every notification proposed to be issued under sub-section (*2*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses."

22.2 The ICSI have suggested as follows with regard to provisions of this Clause:

"Nidhis need to have same recognition and status like other separate identifiable companies *viz.*, producer company, companies with charitable objects and there is no need for the Central Government to notify Nidhi Company separately. Further, such a Nidhi Company should be regulated by rules as may be prescribed by the Central Government. The words to any 'Nidhi' at the end in sub-clause (2) may be replaced by 'to any Nidhi or Nidhis of any class or description' as may be specified in that notification. The sub-clause (4) may be renumbered as sub-clause(3)."

22.3 Another suggestion received from the Reserve Bank of India states as follows:

"Nidhi companies should continue to be regulated by the Government and not by RBI."

22.4 When the Committee desired to know the justification for this suggestion, whereby RBI is absolved of any responsibility with regard to Nidhis, which also collect a large sum of money from public, the Governor, RBI stated as follows during the course of oral evidence held on 31 May, 2010:

> "RBI regulates banks, RBI regulates non-banking finance companies, and RBI regulates certain financial markets. RBI does not regulate chit funds, Nidhis or MFIs. It is not because that is a good system, I am not sure if we have the legal backing for that, we will check on that, but whether we have the administrative reach to regulate lakhs of these MFIs and Nidhis. That does not mean that they should not be regulated by a certain other agency of the Government or the Government itself. What happens in a Nidhi is typically a Member is enrolled on TAP at the time of taking a deposit or giving a loan. Like in a cooperative, a Member can easily be enrolled on TAP. So, a Nidhi system can easily undermine that we are trying to put in that no company, other than a company authorised by RBI can collect deposits. So, Nidhi can keep collecting deposits and undermine that regulation. So, there is a potential danger there and a big issue. So, we will examine that and get back to you about whether we can or we should regulate Nidhis. But what I am saying is that RBI cannot do everything. There are institutions with systemic implications such as banks, such as deposit taking NBFCs and I think we should be focussing on them. MFIs, Nidhis should be regulated, it is for consideration whether RBI should be loaded with that."

22.5 In a subsequent note (post evidence) furnished the RBI has further clarified the position, which is stated as under:

> "Nidhis by virtue of being companies registered under Companies Act come under the purview of Ministry of Corporate Affairs (MCA). Being financial institutions and covered under the definition of NBFCs in terms of section 451(f) of RBI Act, Nidhis also come under the purview of RBI. However the nature of business of Nidhis is different from other NBFCs, say a loan company, in that their business revolves around the principle of mutual benefit and hence public funds other than that of Members are not involved in their business."
>
> Sabhanayagam Committee on Nidhis, constituted by the Central Government in March, 2000 had recommended that RBI's role with respect of Nidhis be only advisory in the matters related to prudential norms.

Extant NBFC instructions as applicable to Nidhis and potential Nidhis

Nidhis (Mutual Benefit Financial Companies) notified under Section 620A of Companies Act, 1956 are under the regulation of MCA, GoI and RBI has exempted them from the RBI Act core provisions (Section 451A , 451B and 451C) *vide* notification No DFC(COC) No. 99 dated. March 06, 1997. However, till November 22, 2007, certain provisions of NBFC Deposits Acceptance Directions, 1998, such as ceiling of interest rate on deposits, furnishing of receipt to depositors, register of deposits etc. were applicable to Nidhis and potential Nidhis though they were exempted from provisions related to credit rating, SLR etc. After MCA started regulating Nidhis comprehensively since 2001, including prescribing the deposits rate, both Nidhis and potential Nidhis whose applications were not rejected by GoI are exempted from NBFC Deposit Directions *vide* circular dated November 22, 2007 thereby to avoid dual regulation.

> In view of the foregoing, it is not felt feasible to bring Nidhis under RBI regulation as all operations take place within the Members of the group and they do not impact the financial system significantly. More importantly, the structural and functional operations of Nidhis

are such that there are sufficient incentives for Members themselves for monitoring the activities of Nidhis since the funds utilized by such companies belong to them which therefore be presumed, would be utilized responsibly for their benefits. This does not require RBI regulation since RBI would like to step in only when larger public interest or financial stability issues are involved. Further MCA has a well established machinery for regulation and supervision of such companies under the Companies Act provisions which has stood the test of time. Comprehensive regulatory and supervisory norms have also been issued by MCA in the matter.

Thus though RBI is vested with the powers to issue Directions to Nidhi companies, it is felt that such Directions are best issued by GoI. Further since RBI does not regulate them, the question of taking action or direct regulation or oversight does not arise but the RBI can as recommended by the Sabhanayagam Committee, always play advisory role to the GoI in matters related to prudential norms etc. of Nidhis."

22.6 In their post evidence submission made to the Committee for consideration, the RBI has further suggested as follows with regard to regulation of Nidhis:

"Central Government should regulate the activities of Nidhis by putting restrictions on enrolment of Members and putting other prudential guidelines."

22.7 Justification for the above suggestion has been given as follows:

"Unless there are restrictions on enrolment of Members, Nidhis may render the provisions of clause 66 of the Bill, which prohibits acceptance of deposits by companies from public, futile, by enrolling Members on tap on payment of a small amount as membership fee (of one rupee or so). If a person can become a Member of a Nidhi at anytime by paying a small amount as membership fee, Nidhis would, in fact, be carrying on the business of NBFC, namely, accepting deposits from, and lending to, public. In the interest of proper control, regulation of Nidhis should be exclusively with Central Government."

22.8 *Asked to express their views on the above suggestions, the Ministry, in their written submission stated that the suggestion of the ICSI is noted to be addressed appropriately with legislative vetting.*

22.9 *Further the Ministry have informed that suggestion of RBI has been noted. The Bill seeks to retain the position existing in the present Act.*

22.10 Having agreed with the suggestion for giving identifiable recognition to 'Nidhis', and also enabling notifications relating to the provisions of the Companies Act that may apply to Nidhis in terms of Clause 367 (2) to a specific class or category of Nidhis, the Committee desire that this issue be pursued. Concerns have been expressed on aspects relating to regulation of Nidhis, which is not clearly laid out in the provisions proposed. The RBI has emphasized on ensuring effective regulation of Nidhis by the Central Government with the role of the Bank restricted to being of an advisory nature, as recommended by the Sabhanayagam Committee. The Committee express agreement with the contention of RBI for ensuring effective regulation of Nidhis by the Central Government *inter-alia* by placing a restriction on enrolment of Members. The Committee, accordingly, desire that clause 367 be reviewed to clearly lay out the role of the Central Government in regulating Nidhis. The Committee also emphasise that the regulatory mechanism now applicable to Nidhis in terms of the notifications issued by the Ministry of Corporate Affairs is firmed up *inter-alia* on the basis of advice from the Reserve Bank.

CHAPTER XXVI

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

23.1 In terms of the provisions under Clause 368 to 395 (Chapter XXVI) the Bill seeks to establish the National Company Law Tribunal (NCLT) to administer various provisions of company law and adjudicate disputes between companies and their stakeholders. The Bill also seeks to establish an Appellate Tribunal (NCLAT) to hear appeals against order made by the NCLT. Provisions under Chapter XXVII (Clause 396 to 406) provide for establishment of special courts to try offences.

23.2 **Clause 369** relating to constitution of the National Company Law Tribunal reads as under:

"The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a tribunal to be known as the 'National Company Law Tribunal' consisting of a President and such number of judicial and technical Members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force."

23.3 Further, the composition and powers of the Company Law Tribunal proposed in the Bill are similar to those introduced in 2002 in the Companies Act, 1956.

23.4 Clause 370,373,374 and 378 of the Bill relating to qualification of president and Members of the Tribunal, their selection, term of office and removal of Members, read as under:

"**370.**(*1*) The President shall be a person who is or has been a Judge of a High Court for five years.

(*2*) A person shall not be qualified for appointment as a Judicial Member unless he—

(*a*) has for atleast ten years been a Member of the Indian Legal Service or the Indian Corporate Law Service, or held any equivalent post in the Central Government or a State Government, out of which atleast three years of service in the pay-scale which is not less than the pay-scale of the Joint Secretary to the Government of India;

or

(*b*) has for atleast ten years held a judicial office in the territory of India; or

(*c*) has for atleast ten years been an advocate of a High Court.

Explanation.—For the purposes of clauses (*b*) and (*c*),—

(*i*) in computing the period during which a person has held a judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of any other tribunal or any post under the Central Government or any State Government, requiring special knowledge of law;

(*ii*) in computing the period during which a person has been an advocate of a High Court, there shall be included any period, after he became an advocate, during which the person has held any judicial office or the office of a Member of any other tribunal any post under the Central Government or any State Government, requiring special knowledge of law.

(*3*) A person shall not be qualified for appointment as a Technical Member unless he—

(*a*) has for at least ten years been a Member of the Indian Corporate Law Service, (Accounts Branch) or held any equivalent post in the Central Government or a State Government, out of which at least three years of service in the pay-scale which is not less than the pay-scale of the Joint Secretary to the Government of India; or

(*b*) is or has been a Joint Secretary to the Government of India under the Central Staffing Scheme, or has held any other post under the Central Government or a State Government carrying pay-scale which is not less than the pay-scale of the Joint Secretary to the Government of India, for at least three years and has adequate knowledge of and experience in dealing with matters relating to companies; or

(*c*) is or has been in practice as a Chartered Accountant for at least twenty years; or

(*d*) is or has been in practice as a Cost Accountant for at least twenty years; or

(*e*) is or has been in practice as a Company Secretary for at least twenty years; or

(*f*) is a person of ability, integrity and standing having special knowledge and experience, for not less than twenty years, in law, finance, banking management, industrial administration, economics, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

373. (*1*) The President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.

(*2*) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(*a*) Chief Justice of India or his nominee; Chairperson,

(b) Secretary in the Ministry of Corporate Affairs; Member,

(c) Secretary in the Ministry of Law and Justice; Member, and

(d) two other Secretaries to the Government of India to be nominated by the Central Government; Members.

(*3*) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

(*4*) The Selection Committee shall determine its procedure for recommending persons under sub-section (*2*).

(*5*) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

374. (*1*) A Member of the Tribunal shall hold office as such until he attains,—

(*a*) in the case of the President, the age of sixty-seven years; and

(*b*) in the case of any other Member, the age of sixty-five years.

(*2*) A Member of the Appellate Tribunal shall hold office as such until he attains,—

(*a*) in the case of the Chairperson, the age of seventy years; and

(*b*) in the case of any other Member, the age of sixty-seven years.

378. (*1*) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, the Chairperson or any Member, who—

(*a*) has been adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*c*) has become physically or mentally incapable of acting as such President, Chairperson or Member; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, Chairperson or Member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (*b*) to (*e*) without giving him a reasonable opportunity of being heard.

(*2*) Without prejudice to the provisions of sub-section (*1*), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a

reference made to him by the Central Government in which such President, Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(*3*) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (*2*)."

23.5 The constitutional validity of the amendment of 2002 seeking to set up the NCLT and its appellate tribunal was examined by the Supreme Court. In regard to the provisions pertaining to NCLT in the Bill, the Indian Banks' Association (IBA) had, in their memorandum submitted to the Committee stated *inter-alia*:

"Chapter XXVI contains provisions relating to National Company Law Tribunals and Appellate Tribunal. Similar provisions contained in the Companies Act, 1956 introduced by the Companies (Second Amendment) Act, 2002 are challenged on the ground that establishment of such Tribunals is violative of the basic structure of the Constitution regarding independence of the Judiciary… we trust that the proposed setting up of National Company Law Tribunals are in conformity with the constitutional provisions and will stand the test of constitutional validity."

23.6 The judgement of the Supreme Court in the matter was delivered in May, 2010. The Court has, in the judgement, *inter alia* upheld the legislative competence of Parliament to create the NCLT and the NCLAT.

23.7 Responding to a query posed on the issue by the Committee, the Secretary, Ministry of Corporate Affairs, while tendering evidence stated as follows:

"This was the 2002 amendment when NCLT had come. It has been placed in the Parliament and this amendment is also part of this Bill. It has gone to the Madras High Court and then it has come to the Supreme Court and the Supreme Court, about a month back, has given the judgement where they have modified certain things and it is coming through NCLT and NCLAT."

23.8 In this regard, the Ministry of Corporate Affairs have also in a written communication, informed the Committee, *inter alia* :

"The Companies Bill, 2009 seeks to continue with the legislative policy approved by the Parliament and inserted in the existing Companies Act through Companies (Second Amendment) Act, 2002 i.e. for setting up a specialized Tribunal in the form of a National Company Law Tribunal (NCLT) to handle matters relating to (i) rehabilitation and revival of companies; (ii) winding-up of companies; and (iii) prevention of oppression and mismanagement etc. alongwith its appellate body i.e. National Company Law Appellate Tribunal (NCLAT);

The provisions inserted in the existing Act through Companies (Second Amendment) Act, 2002 have been retained in the Companies Bill, 2009 in a similar manner except with the modifications in a few provisions which were found to be necessary in view of developments taking place and commitments made by the Central Government during hearing of the NCLT matter before Hon'ble Supreme Court;

The Ministry has already initiated examination of various issues involved in the Judgement in consultation with Ministry of Law and Justice."

23.9 In a subsequent reply furnished to the Committee the Ministry of Corporate Affairs have proposed revision of Clauses 370,373, 374 and 378 in the light of Supreme Court judgement which is stated as under:

"The changes made are broadly in accordance with the said Judgement but suggest slight modifications on some matters, without loosing the spirit of the Judgement, keeping in view practical and implementation aspects involved in the administration of such provisions. The revised provisions of Clauses 370,373, 374 and 378 are as under:

370.*(1) The President shall be a person who is or has been a Judge of a High Court for five years.*

(2) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is or has been a Judge of High Court;

or

(b) has been a District Judge for at least five years; or

(c) has, for at least ten years been a lawyer or an advocate of a High Court or the Supreme Court.

(3) A person shall not be qualified for appointment as a Technical Member unless he—

(a) is or has been in practice as a Chartered Accountant for at least fifteen years; or

(b) is or has been in practice as a Cost Accountant for at least fifteen years;

or

(c) is or has been in practice as a Company Secretary for at least fifteen years;

or

(d) is a person of ability, integrity and standing having special knowledge and experience, for not less than fifteen years, in law, finance, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or

(e) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947); or

(f) has for at least twenty years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least two years shall be in the rank Director or above in that service.

373*. (1) The President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.*

(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(a) Chief Justice of India or his nominee; Chairperson (with a casting vote)

(b) A senior Judge of the Supreme Court or Chief Justice of High Court; Member

(c) Secretary in the Ministry of Corporate Affairs; Member,

(d) Secretary in the Ministry of Law and Justice; Member,

(3) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

(4) The Selection Committee shall determine its procedure for recommending persons under sub-section (2).

(5) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

***374**. (1) The President and every other Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment.*

(2) A Member of the Tribunal shall hold office as such until he attains,—

(a) in the case of the President, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years:

Provided that a Member who has not completed 50 years of age shall not be eligible for appointment as Member:

Provided further that the member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

(3) The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

(4) A Member of the Appellate Tribunal shall hold office as such until he attains,—

(a) in the case of the Chairperson, the age of seventy years:

(b) in the case of any other Member, the age of sixty-seven years.

Provided that the member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

***378**. (1) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, the Chairperson or any Member, who—*

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President, Chairperson or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, Chairperson or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

(2) Without prejudice to the provisions of sub-section(1), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(3) The Central Government may, with the concurrence of the Chief Justice of India, suspend from office the President or Member of the Tribunal in respect of whom reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (2)."

23.10 The legal challenge to the setting up of NCLT and NCLAT as proposed by amending the Companies Act, 1956 in 2002 having been disposed of, it is imperative to take early action for setting up the tribunals. The provisions relating to NCLT as contained in the Bill seek to continue with the legislative policy approved in 2002 whereby the NCLT is to play a pivotal role in administering various provisions of Company Law including matters relating to rehabilitation and revival of companies, winding-up of companies and adjudicating disputes between companies and their stakeholders. As effective administration of the company law hinges on the early setting up of NCLT, as indicated in the submissions of the Ministry of Corporate Affairs, the Committee would expect that early and effective measures are taken for making such changes as may be required in the relevant provisions in the light of the Supreme Court judgement in consultation with the Ministry of Law and Justice for constituting and operationalising the NCLT and its appellate tribunal.

CHAPTER XXVIII

MISCELLANEOUS

Clause 409—Punishment where no specific penalty or punishment is provided

24.1 This Clause reads as under:—

"If a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues."

24.2 The ICSI have suggested that the word continuing offence should be defined.

24.3 The Ministry, in their written submission have agreed to this suggestion and stated that it will be addressed appropriately with legislative vetting.

Clause 410—Punishment in case of repeated defaults

24.4 This Clause reads as under:

"In case a company or any officer who is in default repeats the default, he shall be punishable with imprisonment as provided, but in case of defaults for which fine is provided either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such default."

24.5 A suggestion received from the ICSI, on this clause, is as below:

"The punishment in respect of repeated default should be imposed if the same is repeated within a particular time period, which can be limited to a period of 3 years. Commission of the default after a period of 3 years should be treated a first time offence."

This clause may be redrafted accordingly.

24.6 In their written reply, furnished to the Committee, the Ministry has stated as under:

"The suggestion is noted to be addressed appropriately with legislative vetting."

Clause 411—Punishment for wrongful withholding of property

24.7 The provisions of this clause are as under:

"(*1*) If any officer or employee of a company—

(*a*) wrongfully obtains possession of any property, including cash of the company; or

(*b*) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any creditor or contributory thereof, be punishable with fine which shall be not less than one lakh rupees but which may extend to five lakh rupees.

(*2*) The Court trying an offence under sub-section (*1*) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to undergo imprisonment for a term which may extend to two years."

24.8 On this Clause, the ICSI have suggested the following:

The power to complain should also vest with a Member of a Company and who has information regarding wrongful withholding of property and/or cash.

The refund of property cash should not only be restricted only to the property amount that has been wrongfully obtained/withheld/misapplied but should also include the benefits that have been derived from such property/cash that has been wrongfully obtained/withheld/misapplied.

24.9 When asked as to whether the Ministry agree with the above view, they replied as under:

The suggestion is noted to be addressed appropriately with legislative vetting.

Clause 421—Power to modify certain provisions of act in their application to private company, one person company and small company

24.10 This Clause reads as under:

"(*1*) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of Chapters III, IV, VII and IX to XIII of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to private company, One Person Company and small company or any of them.

(*2*) A copy of every notification proposed to be issued under sub-section (*1*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses

agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses."

24.11 Following suggestion has been received from CII, on this Clause:

"(i) This Clause of the Bill provides that Central Government by notification will state provisions of the Bill, which will not be applicable to private companies, one person companies and small companies. Since it would be possible to identify these clauses at the time of passing of the Bill, they should be incorporated in the Act itself and not by notification. This Clause should also include Chapter XII since some exemptions would be necessary for private, one person and small companies from certain provisions contained in this Chapter for example Restrictions on powers of Board (Clause 160).

(ii) The dormant Companies should also be included in clause 421."

24.12 Expressing their views on the above suggestion, the Ministry stated as follows:

"(i) Chapter XII is also covered in clause 421. Provisions of clause 421 propose to provide flexibility and a more suitable application of provisions of the Bill to small companies, private companies and one person companies. Issue of rules and notifications is more appropriate method for meeting such an objective.

Hence no change is considered necessary on the matter.

(ii) The suggestion for inclusion of dormant Companies is noted to be addressed appropriately with legislative vetting."

24.13 Further, they have suggested redrafting of sub-clause (1) of this Clause, stated as below:

"Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of Chapters III, IV, VII and IX to XIII of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to private company, One Person Company, small company ***or dormant company*** *or any of them."*

24.14 The Committee observe that a number of suggestions have been received with regard to Clause 409 which makes provision for punishment, where no specific punishment has been provided, Clauses 410, 411 and 412 providing for punishment in case of repeated defaults, wrongful withholding of property and improper use of 'Limited', 'Private Limited' or "OPC Limited" respectively. They, further, observe from the reply furnished by the Ministry, that all the suggestions *viz*. definition of 'continuing offence' in Clause 409, limiting the period of repeated offence to 3 years in Clause 410, empowering a Member of a Company to complain against wrongful possession or withholding of property including cash in Clause 411 have all been stated to be addressed appropriately. The Committee desire that the aforesaid suggestions, accepted by the Ministry, may be suitably incorporated in the respective Clauses.

24.15 With regard to Clause 421, which provides exceptions for application of Act in respect of private, one person and small company, the Ministry have proposed for an alternative Clause incorporating the suggestion for inclusion of 'Dormant Company' as well under this Clause. While recommending that the modification proposed above may be incorporated, the Committee would like to point out (as already observed in overview—Part I) that the scattered references made to different forms of companies, namely, small company, OPC and private company do not clearly indicate the exemption or concession regime applicable to them. The Committee would, therefore, recommend that the exemptions available to different forms of companies specified in the Bill should be provided for and clearly stated in the respective provisions/Clauses and not to be notified later. It would also be better, if the exemptions available are shown separately in a consolidated manner for each form by way of a schedule or so, to be appended to the main Act.

Clause 422—Prohibition of association or partnership of persons exceeding certain number

24.16 This Clause reads as under:

"(*1*) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

(*2*) Nothing in sub-section (*1*) shall apply to—

(*a*) a Hindu undivided family carrying on any business; or

(*b*) an association or partnership, if it is formed by professionals who are governed by special Acts.

(*3*) Every member of an association or partnership carrying on business in contravention of sub-section (*1*) shall be personally liable for all liabilities incurred in such business and shall be punishable with fine which may extend to one lakh rupees."

24.17 In this regard, a suggestion received states following:

"Making exception only in cases of 'professionals' is incorrect and is inconsistent with the LLP Act."

24.18 The corresponding Section 11 of the existing Companies Act reads as under:

"INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Certain companies, associations and partnerships to be registered as companies under Act.

Prohibition of associations and partnerships exceeding certain number.—(1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian Law.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to [ten thousand rupees]."

24.19 Expressing their views on the above suggestion, the Ministry in a written submission stated as below:

"Presently, as per section 11 of the Companies Act, 1956, maximum number of partners in a firm can be twenty. The Companies Bill, 2009, in clause 422, provides for relaxation regarding limiting the number of persons in associations or partnerships, etc., to a maximum of one hundred, with no ceiling as to associations, or partnerships, formed by professionals regulated by Special Acts. It is felt that there is no inconsistency on this matter with LLP Act, 2008. Therefore, no modification may be considered in the provision."

24.20 In a subsequent reply, the Ministry have sought to bring greater clarity to Sub-Section (1) of Clause 422 by proposing modification as under:

"Clause 422 (1): No association or partnership consisting of more than:

(a) ten persons shall be formed for the purpose of carrying on the business of banking; or

(b) twenty persons shall be formed for the purpose of carrying on any other business.

that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force."

24.21 The Committee note that Section 11 of the Companies Act 1956 prescribes prohibition of associations and partnerships exceeding certain number (ten for banking business and twenty for others) and stipulates that beyond that limit it has to be registered as a company under Companies Act. The Committee further note that with a view to encouraging the company form of business and help small businesses/ventures to grow and organize themselves better as a registered company, Clause 422 (1) of the Bill provides for relaxation of this limit to a maximum of one hundred, with no ceiling for associations or partnerships, formed by professionals regulated by special Acts including the Limited Liability Partnership Act, 2008. The Committee are however surprised that for no justifiable reasons the Ministry have subsequently modified their position and have suggested an alternate sub-clause, which restores the current position as obtaining in Section 11 of the existing Act.

24.22 The relaxation provided in the sub-clause *vis-à-vis* the existing section has thus been withdrawn by the Ministry. As the Committee apprehend that this provision may not be in sync with the Limited Liability Partnership Act, which does not have an upper limit for membership similar to a public company, the Committee would recommend that the provision made in Clause 422 of the Bill may be maintained with appropriate clarification regarding formation of LLPs.

Clause 423—Repeal of certain enactments and savings

24.23 Clause 423 reads as under:

"(*1*)The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed:

Provided further that until the constitution of the Tribunal and the Appellate Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and Court shall continue to apply as if the Companies Act, 1956 has not been repealed."

'Producer Company' has been defined in Section 581A (k&l) of the existing Act as follows :

(k) "producer" means any person engaged in any activity connected with or relatable to any primary produce.

(l) "producer company" means a body corporate having objects or activities specified in Section 581B and registered as producer company under this Act.

24.24 A suggestion received from the Reserve Bank of India states as follows:

The concept of Producer company may be clarified in the Bill and it should be extended to multi State Cooperative Banks.

24.25 However, the RBI in a post evidence reply stated as below:

As concept of producer company has been extended to Multi State Cooperative Societies, we do not propose to suggest any change.

24.26 Another suggestion on this issue states that the Clauses and Provisions related to the producer companies in Companies Act, 1956 should be incorporated in the draft Companies Bill, 2009.

24.27 Questioned on the Ministry's views on the above suggestions, following written reply was furnished:

(i) Irani Committee in Chapter III of its Report made following recommendations on the matter:-

"9.1 The administration and management of 'Producer Companies' is not in tune with general framework for companies with liabilities limited by shares/guarantees. The shareholding of a 'Producer Company' imposed restrictions on its transferability, thereby preventing the shareholders from exercising their exit options through a market determined structure. It was also not feasible to make this structure amenable to a competitive market for corporate control.

9.2 If it is felt that producer companies are unable to function within the framework and liability structure of limited liability companies. The Corporate Governance regime applicable to companies could not be properly imposed on this form. Government may consider introduction of a separate Act to deal with the regulation of such 'Producer Companies'. Part IX A in the present Companies Act, which has hardly been resorted to and is more likely to create disputes of interpretation and may, therefore, be excluded from the Companies Act."

(ii) Keeping in view the above recommendations of Irani Committee, the specific provisions of Part IX A of the existing Act have not been retained in the new Bill and a transitional provision has been made for continuation of that Part of the existing Act for Producer Companies till a decision on a new Special Act for Producer Companies is enacted.

(iii) Accordingly the provisions of clause 423(1) of the Bill provide for transitional provisions for Producer Companies registered under the existing Act.

Suggestion for bringing back in the Bill specific provisions provided in Part IX A of the Companies Act, 1956 may be considered."

24.28 As the administration of 'Producer Companies' is not in tune with the general framework prescribed for companies, with liabilities limited by shares/guarantees, the Committee would agree with Ministry's viewpoint on the proposals made in the Bill, providing for transitional provisions for Producer Companies registered under the existing Act, till such time a new special Act for Producer Companies is enacted. The Committee, would therefore, await fresh legislative proposals from the Government on this subject.

New Delhi
26 *August*, 2010
04 *Bhadra* 1932 *(Saka)*

YASHWANT SINHA
Chairman
Standing Committee on Finance

TWENTY-FIRST REPORT

STANDING COMMITTEE ON FINANCE
(2009-2010)

(FIFTEENTH LOK SABHA)

THE COMPANIES BILL, 2009
(MINISTRY OF CORPORATE AFFAIRS)

Volume II—ANNEXURES, APPENDICES AND BILL

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200-Penalty for furnishing false statements or tampering with records during investigation.—Concealment and tampering of record also to be covered as suggested by SFIO.

201-Power to make compromise or arrangements—Mandatory Notices to be sent individually to members or creditors. Voting through postal ballot may be additional option for members or creditors.

201-Clarity to provide that only concerned sectoral regulator may be consulted by Tribunal.

201-Drafting clarity to provide that while meeting is must, voting through postal ballot may also be done.

203-Mergers and amalgamation—Disclosure regarding effect of merger on minority shareholders to be provided.

216-Class Actions—A minimum limit of members or creditors eligible for taking action being suggested.

402-Compounding of certain offences—Tribunal to be allowed to compound offences which do not mandatorily involve imprisonment.

421-(Power to modify certain provisions of the Act for certain companies)—(Dormant companies to be covered).

422 (1)-Maximum number of persons for formation of association or partnership**.**

426-Bill to provide for requirement of laying regulations made by SEBI before each House of Parliament.

Unregistered Companies and Part IX (conversion of firms into companies of existing Act).

Convergence of Indian Accounting Standards with IFRS.

ANNEXURE II

CLAUSES/SUB-CLAUSES IN WHICH COMMITTEE'S SUGGESTIONS HAVE BEEN ACCEPTED IN PRINCIPLE BY MINISTRY AND NO SPECIFIC ALTERNATE FORMULATIONS HAVE BEEN PROPOSED

Clause Number and title

2(1)(k)—'Body Corporate' or 'Corporation'

2(1)(z)—Contributory

2(1)(za)—Control or Controlling interest.

2(1)(zn)—Expert

2(1)(zp)— Financial Statement

2(1)(zq)— **F**inancial year

2(1)(zy)—"interested director"

2(1)(zz)—issued capital

2(1)(zza)—'key managerial personnel'

2(1)(zzd)—Managing Director

2(1)(zzl)—Paid up Share Capital.

2(1)(zzp)—Private Company

2(1)(zzq)—Promoter

2(1) (zzs)—Public Company

2(1) (zzv)—"red herring prospectus"

2(1)(zzy)—"related party"

2(1)(zzz)—Relative

2(1)(zzza)—"remuneration"

2(1)(zzzi)—Subsidiary Company

3 (1)-first proviso—Formation of Company

3(1)(a) and 165 : formation of companies

4(1); 4(1)(a); 4(5); 4(6); 4(7)—Formation of Companies with Charitable Objects, etc.

5(1)(d)(i)—Memorandum

6(5)—Articles

7(1)(b); 7(1)(d)—Incorporation of Companies

Section 9 of the Companies Act 1956—Effect of Memorandum and Articles

11(1); 11(2); 11(3)(c)—Registered office of Company

12(4): Alteration of Memorandum

13(1): Alteration of Articles

15(1)(b)—Rectification of Name of Company

19(2) : Service of documents

23(1)(b); 23(1)(b)(iii); 23(1)(c): Matters to be stated in Prospectus

24(3)—Offer of invitation for subscription of securities

28(2)—Issue of application forms for securities

32, 68 and 216: Group Action by affected persons, class action suits etc

34—Allotment of Securities by Company

35—Securities to be dealt with in Stock Exchanges.

41—Voting Rights

42—Variation of Share holders' rights.

46 (2)—Application of premium received on issue of shares

49—Issue and redemption of Preference Shares

53(2): Rectification of register of members

54—Publication of authorized, subscribed and Paid up capital

56(1)—Further issue of share capital

61—Power of company to purchase its own securities

63—Prohibition for buy back in certain circumstances

64(3)—Debentures

66—Prohibition on acceptance of deposits from public

67—Repayment of deposits

69—Duty to register charges, etc.

74—Company to report satisfaction of charge

76—Company's register of charges

82(1)(i); 82(1) 1st proviso; 82(2)—Annual Return

85—Annual general meeting

91(4)—Explanatory statement to be annexed with notice

97—Voting through electronic means

103—Ordinary and special resolutions

107(3): Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.

110; 110(3); 110 (6)—Declaration of Dividend

112(2); 112(3)—Investor Education and Protection Fund

113—Amount lying in previous fund to become part of fund under this Act

115(b)-Punishment for Failure to distribute Dividend in thirty days

117: Financial Statement

120; 120(3) (f); 120(4):-Financial Statement, Board Report, etc.

121—Right of member to copies of audited Balance Sheet

123(3); 123 (4); 123 (5); 123 (9): Appointment of auditors

124,124(2); 124(3); 124 (3) (d) (ii); Eligibility, qualifications and disqualifications of auditors.

125(2) : Remuneration of auditors

126(1); 126(2); 126(3)(e); 126(3)(i); 126(6)—Powers and duties of auditors and auditing standards

130—Punishment for contravention

131(8)(b): Central Government to specify audit of items of cost in respect of certain companies.

132(1); 132 (1)(b); 132(2); 132 (3); 132(5); 132(5)(a); 132 (5) (b)(ii); 132 (5) (b)(iii); 132(6): Company to have Board of directors

133(5)Proviso; 133(6); 133(7)—Appointment of Directors

141(1): Right of persons other than retiring directors to stand for directorship

142(4)—Appointment of Additional Director, Alternate Director and Nominee Director

143(2); 143(3)—Appointment of Director to be voted individually

145 (1); 145(2) Disqualifications for appointment of directors

146-Number of Directorships

147(2) : Duties of directors

148(1)(c); 148(1)(d)—Vacation of office of Directors

149(1); 149(3): Resignation of director

150-Removal of Director

151 (1)—Register of Directors and Key Managerial Personnel and their shareholding

154 (1); 154 (2); 154 (3): Meetings of Board

155(3)—Quorum for Meetings of Board

156 (1)—Passing of resolution by circulation.

158; 158 (12)—Committees of Board

159(2): Powers of Board

160—Restrictions on powers of Board

163; 163(1)—Loan to Directors etc-

164; 164 (1); 164 (2); 164 (3); 164 (7); 164(10); 164(10)(a)(iii) Loan and Investment by Company

165—Investments of Company to be held in its own name

167 (1)—Register of contracts or arrangements in which Directors are interested

New Clause: Protection to employees during investigation

173—Prohibition on insider trading of securities

174; 174 (4); 175(1); 176(1)(b); 178 (3) Proviso; 178 (3);178 (5):—Appointment and Remuneration to Managerial Personnel and remuneration of other directors

179: Power to call for information, inspect books and conduct inquiries

191—Freezing of assets on an inquiry and investigation of a company.

194-No suit or proceeding till submission of final report

201(2); 201(2) (c) (i); 201(3); 201(4); 201(5); 201(6); 201 (10): Power to compromise or make arrangements with creditors and members

203; 203(3); 203(3)(h)—Merger and amalgamation of companies.

204—Merger or amalgamation of certain companies.

205—Amalgamation by mutual agreement

205 (2)—Amalgamation by mutual agreement

212—Application to Tribunal for relief in cases of oppression, etc

213(2)(d)—Powers of Tribunal

216—Class action

218—Valuation by Registered Valuers

219(1)—Registration of Valuers

219 (2)—Registration of Valuers

219 (3) (a)—Registration of Valuers

220(1)—Appointment of Committee of experts.

221(1): Practise as registered valuers

224(1)—Power of Registrar to remove name of a company from register

224(1)(c)—Power of Registrar to remove name of a company from register

224(2)—Power of Registrar to remove name of a company from register

225(1)(a)—No application under Section 224 in certain circumstances

229—Determination of sickness

234(1)—Appointment of administrator

238—Scheme to be binding

240(1)—Winding up of Company on report of company administrator

247(1)(g); 247(4): Petition for winding up

248(1)(b)—Power of Tribunal

249(1)—Directions for filing Statement of Affairs

250(2): 250(5): Company Liquidators and their appointment

255(e): Jurisdiction of Tribunal

257(1); 257(2); 257(3): Directions of Tribunal on Report of Company Liquidator

262(1)—Committee of Inspection

264(1)—Power of Tribunal on application for Stay of winding up

265(1) (e); 265(1) (g); 265(1) (j); 265(1)(l); 265(1)(m); 265(3): Powers and duties of Company Liquidator

266(1)—Provision for professional assistance to company liquidator

274(2); 274(5)(b)—Power to summon persons suspected of having property of company, etc.-

275(1) and 275(7)—Power to order examination to promoters, directors, etc.

276(a)—Arrest of persons trying to quit India or abscond-

279(b)—Circumstances in which Company may be wound up voluntarily

281—Meeting of Creditors

284—Effect of voluntary winding up

285(4)—Appointment of company liquidator

337(1)—Sale of Assets and Recovery of Debts due to company

338(1)—Settlement of claims of creditors by official liquidator

342(1)—Document, etc. to be delivered to Registrar by foreign company

347—Fee for registration of document

349(1) (iii): Dating of Prospectus and particulars to be contained in

366 (3)—Power of Central Government to direct company to furnish information or statistics

367 (1); 367(2); 367(3); 367(4) :—Power to modify Act in application to Nidhis

368—Definitions

370(3)(c)(d)(e) and (f)—Qualifications of President and members of Tribunal

372 (3)—Qualifications of Chairperson and members of Appellate Tribunal

380—Benches of Tribunal

401—Compounding Offences

402—Composition of certain offences

409—Punishment where no specific penalty or punishment is provided

410—Punishment in case of repeated default

411—Punishment for wrongful withholding of property

412—Punishment for improper use of limited, private limited or OPC limited

421: Power to modify certain provisions of Act in their application to private company, One Person Company and small company.

426—Power of Central Government to make rules

ANNEXURE III

LIST OF ORGANIZATIONS/EXPERTS WHO HAVE GIVEN SUGGESTIONS ON THE COMPANIES BILL, 2009

Chambers of Commerce

1. Bombay Chamber of Commerce and Industry
2. Confederation of Indian Industries (CII)
3. Federation of Indian Chambers of Commerce and Industries (FICCI)
4. PHD Chambers of Commerce and Industry
5. Indian Merchants' Chamber
6. The Madras Chamber

Professional Bodies

7. The Institute of Company Secretaries of India (ICSI)
8. The Institute of Cost and Works Accountants of India (ICWAI)
9. The Institute of Chartered Accountants of India

Regulatory Bodies

10. The Securities and Exchange Board of India (SEBI)
11. The Reserve Bank of India (RBI)

Government/Ministries

12. Comptroller and Auditor General of India (C and AG)
13. Ministry of Finance (Department of Economic Affairs–Capital Markets Division)
14. Department of Consumer Affairs
15. Telecom Regulatory Authority of India

Investors Association

16. Shri Prithvi Haldia–Director, Prime Investors Protection and League
17. Shri Virendra Jain, President, Midas Touch Investors Association
18. Dr. L.C. Gupta, Director and Member Secretary, Society for Capital Market Research and Development

Trade Unions/Corporate Lawyers

19. Bharatiya Mazdoor Sangh
20. Indian National Trade Union Congress
21. Amarchand and Mangaldas and Suresh A. Shroff and Co.

Individual/Experts

22. Shri J.J. Irani-Director, Tata Sons Limited
23. Shri Bharat Vasani, Group General Counsel, Tata Sons Limited
24. Dr. Ashok Haldia—Former Secretary, ICAI and Member, Appellate Tribunal set up for ICAI, ICSI and ICWAI
25. Shri Vinod Dhall-Former Secretary, Ministry of Corporate Affairs
26. Shri V. Shanmugavel, President, The Association of Practicing Cost and Management Accountants
27. Shri V Sithapathy, Hon. Secretary Insurance Brokers Association of India.
28. Ms. Preeti Malhotra-Executive Director-Spice Investments and Finance Advisors Pvt. Ltd.
29. Shri M.R. Umerji-Chief Advisor Legal, Indian Bank's Association
30. Dr. J. Robet Donald-Director-International Human Rights Association (IHRA)
31. Shri K.R. Sampath, Advocate and Solicitor to Supreme Court of England & Wales
32. Sa-Dhan—The Association of Community Development Finance Institutions
33. Shri Tumuluru Krishna Murty, Secretary (Brooke Bond India Limited (Retd.)
34. Vigil Juris-Advocates, Solicitors and Notary
35. Shri B.M Shah, Expert on Corporate Law
36. Shri D.K. Gupta, Senior Citizen
37. Shri P.S. Hariharan, Company Secretary
38. Shri S. Thirumalai, B.Com FCA, CAIIB
39. Shri N.L.N. Murthy, Retired Corporate Executive
40. Shri Ashish Panday, Retired Corporate Executive
41. Shri Manan C. Bhavsar, Company Secretary
42. Shri S.L. Shetty, EPW Research Foundation
43. Dr. B.L. Tekriwal, Expert on Corporate Law
44. Dr. Anil Deo G. MBBS, an individual representation
45. Shri Ranjeet Verma and Associate, Company Secretary
46. Shri Abu Fateh, an individual representation
47. Shri Dipak Rachchha, F.C.S, Company Secretary

48. Shri R.Srinivasan, B.Sc.,B.L.ACS, Company Secretary
49. Shri Indranil Deb, Proprietor-Mobius Strip Capital Advisors
50. Shri N.Krishnaraj, B. Com., ACS., Company Secretary
51. Ms. Shakira Jain, Company Secretary
52. Shri Bipin S. Acharya, Practicing Company Secretary
53. Shri V. Siva Kumar, Company Secretary
54. Shri Shravan Kumar Vishnoi, Practicing Company Secretary
55. Shri R.Sivasubramanian. B.Sc., ACS, Company Secretary
56. Shri P.R. Singh, Company Secretary,
57. Shri V. Ramachandran, Company Secretary
58. Shri Ajit Singh, Corporate Executive
59. Shri LVV Iyer–LVV Iyer & Associates, Corporate Lawyer
60. Shri A. Viadyanathan, Expert on Corporate Law
61. Shri Santokh Singh, Ex MP
62. Shri Sachin Gupta, Company Executive
63. Shri Gautam Mody, New Trade Union Initiative
64. Shri Ripudaman Pratap Singh, Corporate Executive
65. Er. Yogesh R. Chandak, Corporate Executive
66. Shri Kishor K. Koticha, Corporate Executive
67. Shri Suresh A.Khanholkar, Corporate Executive
68. Shri Himmat Joshi, Corporate Executive
69. Shri S. Ganesh, Company Secretary
70. Ms. Bhawna Sharma, Student C.S./Ms. Grima Sharma, Student C.S.
71. Shri M.Ravi Prakash, Advocate
72. Shri Anil K. Kher, Sr. Advocate
73. Shri Bichitra Nanda Muni, Advocate
74. Shri K.K. Gupta, Associate Member of ICSI
75. Shri V.M. Raste, Convener, Corporate Watch India
76. Shri Anil Dayakar, Corporate Executive
77. Shri Abhirup, Corporate Executive
78. Shri Jitendra Awasthi, Corporate Executive
79. Shri Bharat Kumar Sajnani/Shri Hemant Kumar Sajnani, Company Secretary
80. Shri Jyoti Kumar, Corporate Executive

81. Ms. Sweta Srivastava, Corporate Executive
82. Ms. Lucky Lalwani, Corporate Executive
83. Shri Sachin Guha, Company Secretary
84. Shri Gautam Panda, Global Harvest
85. Shri Sohan S. Jain, Company Secretary
86. Shri Satya Narain Agrawal, Company Secretary
87. Shri Din Dayal Ojha, Corporate Executive
88. Shri A.K. Paul, Corporate Executive
89. Shri R. Suryanarayanan, Company Law Advisor
90. Shri Atul Gupta, Company Secretary
91. Shri P.K. Nayar, Corporate Law Advocate
92. Shri Saibaranjan Baksi, Corporate Law Advocate
93. Dr. Vijay Kumar Adwant, Expert on Corporate Law
94. Ms. Neelima Tripathi—Advocate, High Court and Supreme Court of India
95. Shri Parag. P. Tripathi—Senior Advocate, Supreme Court of India
96. R. and R. Natural Resources (P.) Ltd.
97. Shri K.L. Makhija, Company Secretary
98. Shri K.N. Memani, Company Secretary
99. Shri A.N. Kanodia, Company Secretary
100. Shri Anup Majumdar, Company Secretary
101. Cerg Advisory Private Limited

ANNEXURE IV

GLOSSARY OF ABBREVIATIONS

1. ICSI : Institute of Company Secretaries of India
2. ICWAI : Institute of Cost and Works Accountants of India
3. ICAI : Institute of Chartered Accountants of India
4. SEBI : Securities and Exchange Board of India
5. CII : Confederation of Indian Industry
6. FICCI : Federation of Indian Chambers of Commerce and Industry
7. PHDCCI: Punjab Haryana and Delhi Chambers of Commerce and Industry
8. IBA : Indian Banks' Association

APPENDIX I

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 29th September, 2009 from 1500 hrs. to 1715 hrs.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Dr. Baliram (Lalganj)
3. Shri Bhakta Charan Das
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Shri Rayapati Sambasiva Rao
9. Shri Manicka Tagore
10. Dr. M. Thambidurai
11. Shri M. Sreenivasulu Reddy
12. Shri N. Dharam Singh

Rajya Sabha

13. Shri Raashid Alvi
14. Dr. K.V.P. Ramachandra Rao
15. Shri Vijay Jawaharlal Darda
16. Shri S.S. Ahluwalia
17. Shri Mahendra Mohan
18. Shri S. Anbalagan
19. Dr. Mahendra Prasad
20. Shri Y.P. Trivedi

SECRETARIAT

1. Shri R.C. Ahuja	—	*Additional Secretary*
2. Shri A.K. Singh	—	*Joint Secretary*
3. Shri T.G. Chandrasekhar	—	*Additional Director*
4. Shri R.K. Suryanarayanan	—	*Deputy Secretary*

WITNESSES

Ministry of Corporate Affairs

1. Shri R. Bandyopadhyay, Secretary
2. Shri P.D. Sudhakar, Additional Secretary
3. Shri Avinash K.Srivastava, Joint Secretary
4. Shri Jitesh Khosla, OSD to Indian Institute of Corporate Affairs
5. Shri Diwan Chand, Director (Inspection & Investigation)

2. The Committee heard the representatives of the Ministry of Corporate Affairs in connection with examination of the Companies Bill, 2009. Members sought clarifications from the witnesses on issues related to key features of the Bill, enhanced disclosure norms in the Bill for better corporate governance, powers of shareholders, incorporation of the recommendations of JJ Irani and Shroff Committee report in the Bill, winding up of companies, maintaining of identity of large investors, powers and duties of auditors and auditing standards etc. The Chairman directed the witnesses to send written replies in response to questions for which information was not readily available.

3. A verbatim record of proceedings was kept.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 20th October, 2009 from 1130 hrs. to 1620 hrs.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Bhakta Charan Das
4. Shri Khagen Das
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Shri M. Sreenivasulu Reddy
9. Shri N. Dharam Singh
10. Shri Manicka Tagore
11. Dr. M. Thambidurai

Rajya Sabha

12. Shri Raashid Alvi
13. Dr. K.V.P. Ramachandra Rao
14. Shri S.S. Ahluwalia
15. Shri Moinul Hassan
16. Shri S. Anbalagan
17. Dr. Mahendra Prasad
18. Shri Rajeev Chandrasekhar

SPECIAL INVITEE

19. Shri Rahul Bajaj, MP

SECRETARIAT

1. Shri R.C. Ahuja	—	*Additional Secretary*
2. Shri A.K. Singh	—	*Joint Secretary*
3. Shri T.G. Chandrasekhar	—	*Additional Director*
4. Shri R.K. Suryanarayanan	—	*Deputy Secretary*

Part I

(1130 hrs. to 1330 hrs.)

WITNESSES

Ministry of Corporate Affairs

1. Shri R. Bandyopadhyay, Secretary
2. Shri Avinash K.Srivastava, Joint Secretary
3. Smt. Renuka Kumar, Joint Secretary
4. Shri Jitesh Khosla, OSD to Indian Institute of Corporate Affairs
5. Shri Diwan Chand, Director (Inspection and Investigation)

2. The Secretary, Ministry of Corporate Affairs and other representatives of the Ministry resumed the briefing on the Companies Bill, 2009. The major issues discussed during the briefing included provisions for better corporate governance with enhanced disclosure norms, enhancing accountability of the management, that is, key managerial personnel, appointment and role of Independent Directors and synchronization of the related provisions with the regulations of SEBI, role of Audit Committees, accountability of Auditors and enforcement with regard to fraudulent action. The Chairman directed the representatives of Ministry of Corporate Affairs to furnish written replies to the points raised by Members at an early date.

A verbatim record of the proceedings was kept.

The witnesses then withdrew.

Part II

(1450 hrs. to 1620 hrs.)

XX XX XX XX

MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, the 11th November, 2009 from 1430 hrs. to 1700 hrs.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Bhartruhari Mahtab
5. Shri Rayapati Sambasiva Rao
6. Shri M. Sreenivasulu Reddy
7. Shri N. Dharam Singh
8. Shri Sarvey Sathyanarayana
9. Shri Anjankumar M. Yadav

Rajya Sabha

10. Shri Raashid Alvi
11. Shri S.S. Ahluwalia
12. Shri Moinul Hassan
13. Shri Mahendra Mohan
14. Shri S. Anbalagan
15. Dr. Mahendra Prasad
16. Shri Y.P. Trivedi

SPECIAL INVITEE

17. Shri Rahul Bajaj, MP

SECRETARIAT

1. Shri R.C. Ahuja — *Additional Secretary*
2. Shri A.K. Singh — *Joint Secretary*
3. Shri T.G. Chandrasekhar — *Additional Director*
4. Shri R.K. Suryanarayanan — *Deputy Secretary*

Part I

(1430 to 1530 hours)

WITNESSES

Ministry of Corporate Affairs

1. Shri R. Bandyopadhyay, Secretary
2. Shri Avinash K. Srivastava, Joint Secretary
3. Smt. Renuka Kumar, Joint Secretary
4. Shri Jitesh Khosla, OSD to Indian Institute of Corporate Affairs
5. Shri Diwan Chand, Director (Inspection & Investigation)

2. The Committee resumed the briefing by the representatives of the Ministry of Corporate Affairs on the Companies Bill, 2009.The major issues discussed during the briefing included the offences reported in the case of Satyam Computer Services Limited, details of the investigations conducted so far in this case and follow-up steps taken by the Ministry to strengthen the existing legal provisions such as powers of investigation of similar cases, role of Directors/ Independent Directors, enhancing accountability of Management and Auditors and empowerment of shareholders etc..

3. The Chairman directed the representatives of Ministry of Corporate Affairs to furnish written replies to the points raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part II

(1530 to 1700 hrs.)

XX XX XX XX

The Committee adjourned at 1700 hours.

MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 21st January, 2010 from 1430 hrs. to 1645 hrs.

PRESENT

Dr. Murli Manohar Joshi—*Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Bhartruhari Mahtab
5. Shri Gurudas Dasgupta
6. Shri Mangni Lal Mandal
7. Shri M. Sreenivasulu Reddy
8. Shri N. Dharam Singh
9. Shri Sarvey Sathyanarayana
10. Shri Anjankumar M. Yadav

Rajya Sabha

11. Shri Raashid Alvi
12. Shri S.S. Ahluwalia
13. Shri S. Anbalagan

SECRETARIAT

1. Shri R.C. Ahuja — *Additional Secretary*
2. Shri A.K. Singh — *Joint Secretary*
3. Shri T.G. Chandrasekhar — *Additional Director*
4. Shri R.K. Suryanarayanan — *Deputy Secretary*

Part I

(1430 to 1530 hours)

WITNESSES

Federation of Indian Chambers of Commerce and Industry (FICCI)

1. Shri Harsh Pati Singhania-President, FICCI
2. Shri Sidharth Birla—Chairman, FICCI's Corporate Law Committee and Xpro India Ltd.
3. Shri Shardul Shroff—Managing Partner, Amarchand Mangaldas Suresh A. Shroff and Company
4. Ms. Preeti Malhotra—Group President, Corporate Affairs & Company Secretary, Spice Communications

2. The Committee heard the views of the representatives of Federation of Indian Chambers of Commerce and Industry (FICCI) in connection with examination of the Companies Bill, 2009. The major issues discussed with the representatives included harmonization of the Bill with the other legislations, role and definition of the term 'promoter', rise in corporate delinquency, formulation of law in the interest of good corporate governance, mechanism to prevent misuse of public funds, role and responsibilities of independent directors etc. The Chairman directed the representatives to furnish written replies on the points raised by the Members at an early date.

A verbatim record of proceedings was kept.

The witnesses then withdrew.

Part II

(1545 to 1645 hours)

WITNESSES

Confederation of Indian Industry (CII)

1. Dr. J.J. Irani—Past President, CII, and Director Tata Sons Ltd.
2. Shri Bharat Vasani—Group General Counsel, Tata Sons Ltd.
3. Ms. S.S. Kudtarkar—Assistant General Counsel, Tata Services Ltd.
4. Shri Pramod Rao—Senior General Manager, ICICI Bank Ltd.
5. Shri Marut Sengupta—Senior Director, CII

2. The Committee heard the representatives of Confederation of Indian Industry (CII) in connection with examination of the Companies Bill, 2009. The major issues discussed with the representatives included, role and appointment of Independent Directors, regulating the non-banking financial companies, Independence of Audit and regulating the Auditors, Ceiling on Managerial remuneration, differential voting rights of shareholders, concept of one person company etc. The Chairman directed the representatives to furnish written replies on the points raised by the Members at an early date.

A verbatim record of proceedings was kept.

The witnesses then withdrew.

MINUTES OF THE EIGHTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, the 24th May, 2010 from 1500 hrs. to 1800 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Bhakta Charan Das
4. Shri Gurudas Dasgupta
5. Shri Khagen Das
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Shri Rayapati Sambasiva Rao
9. Shri N. Dharam Singh

Rajya Sabha

10. Dr. K.V.P. Ramachandra Rao
11. Shri S.S. Ahluwalia
12. Shri Moinul Hassan
13. Shri Mahendra Mohan

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Additional Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Smt. B. Visala — *Deputy Secretary*

WITNESSES

The Institute of Company Secretaries of India (ICSI)

1. Ms. Preeti Malhotra (Past President) Council Member and Chairperson, Corporate Laws and Governance Committee, ICSI
2. Shri Sanjay Grover, Council Member, ICSI

3. Shri V.K. Aggarwal, Principal Advisor, ICSI
4. Shri Mahendra Kapoor Gupta, Joint Director, ICSI
5. Ms. Sonia Baijal, Deputy Director, ICSI

The Institute of Cost and Works Accountants of India (ICWAI)

1. Shri B.M. Sharma, Vice President
2. Shri Chandra Wadhwa, Past President & Central Council Member
3. Shri Kunal Banerjee, Past President & Central Council Member
4. Shri A.N. Raman, Central Council Member
5. Shri J.P. Singh, Director (Technical)
6. Dr. Vikas Shukla, Joint Director (CC&PR)

The Institute of Chartered Accountants of India (ICAI)

1. CA. Amarjit Chopra, President, ICAI
2. CA. G. Ramaswamy, Vice-President, ICAI
3. CA. S. Santhanakrishnan, Chairman, CL&CG Committee
4. Shri T. Karthikeyan, Secretary, ICAI
5. Prof. Gourav Vallabh, Secretary, CL&CGC

2. At the outset, Members welcomed and wished the Chairman on his assuming charge as Chairman of the Standing Committee on Finance. The Chairman then took stock of the work done by the Committee so far and sought the views of the Members on the future agenda of the Committee. It was decided to give priority to the Bills referred to the Committee for examination and report, including the voluminous Companies Bill, 2009.

3. Subsequently, the Committee proceeded to take oral evidence of the representatives of the Institute of Company Secretaries of India (ICSI), Institute of Cost and Works Accountants of India (ICWAI) and Institute of Chartered Accountants of India (ICAI) and heard their suggestions in connection with examination of the Companies Bill, 2009. The representatives of the above Institutes made a power point presentation on their suggestions on the various provisions of the Companies Bill, 2009. Major issues discussed included appointment of Independent Directors and enunciation of their duties, responsibilities and liabilities, Secretarial Audit, role of the National Advisory Committee on Accounting Standards, appointment and removal of auditors and ensuring their independence, Class Action Suits, making cost audit mandatory, etc. The Chairman directed the representatives of the Institutes to furnish written replies to the points raised by members during the evidence for which information was not readily available.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, the 31st May, 2010 from 1100 hrs. to 1720 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Bhakta Charan Das
4. Shri Gurudas Dasgupta
5. Shri Khagen Das
6. Shri Nishikant Dubey
7. Shri Bhartruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri Rayapati Sambasiva Rao
10. Shri Y.S. Jagan Mohan Reddy
11. Dr. M. Thambidurai

Rajya Sabha

12. Shri Raashid Alvi
13. Shri Vijay Jawaharlal Darda
14. Shri S.S. Ahluwalia
15. Shri Moinul Hassan
16. Shri S. Anbalagan
17. Dr. Mahendra Prasad

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Additional Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Smt. B. Visala — *Deputy Secretary*

Part I
(1100 to 1230 hrs.)

WITNESSES

Reserve Bank of India (RBI)

1. Dr. D. Subba Rao, Governor, RBI
2. Shri Susobhan Singh, DGM, EA to Governor

2. The Committee heard the views of the representatives of the Reserve Bank of India (RBI) in connection with the examination of the Companies Bill, 2009. The major issues discussed broadly related to, Regulation of private banks particularly foreign banks, synchronisation of provisions of proposed Companies Bill, 2009 with the provisions of the Banking Regulation Act, 1949 by amending the proposed Clause 1(4), amalgamation between banking companies under proposed Clause 205 of the Companies Bill, 2009, disclosure of details of loans given by the company in its financial statement under proposed Clause 164(3), regulation of Nidhi Companies, implementation of recommendations made by Joint Parliamentary Committee on Stock Market Scam of 1992 and 2001, inclusion of producer companies under proposed Clause 423, etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part II
(1245 to 1400 hrs.)

WITNESSES

Securities and Exchange Board of India (SEBI)

1. Shri C. B. Bhave, Chairman
2. Shri J. Ranganayakulu, Executive Director (Law)
3. Shri Praveen Trivedi, Regional Manager
4. Shri Surya Kanta Sharma, Assistant General Manager

3. The Committee heard the suggestions of the representatives of the Securities and Exchange Board of India (SEBI) in connection with the examination of the Companies Bill, 2009. The major issues discussed during the meeting broadly related to, harmony between the provisions of SEBI Act, 1992 and the provisions proposed in the Companies Bill, 2009, empowering SEBI in respect of matters concerning listed companies, aspects of Corporate Governance, acceptance of public deposits under proposed Clause 66, investor protection measures, etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part III
(1430 to 1720 hrs.)

XX XX XX XX

MINUTES OF THE TWENTIETH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 15th June, 2010 from 1100 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri Sudip Bandyopadhyay
3. Shri C.M. Chang
4. Shri Harishchandra Chavan
5. Shri Gurudas Dasgupta
6. Shri Khagen Das
7. Shri Mangani Lal Mandal
8. Shri Rayapati Sambasiva Rao
9. Dr. M. Thambidurai

Rajya Sabha

10. Shri Raashid Alvi
11. Dr. K.V.P. Ramachandra Rao
12. Shri Vijay Jawaharlal Darda
13. Shri Moinul Hassan
14. Shri Mahendra Mohan
15. Shri S. Anbalagan
16. Dr. Mahendra Prasad
17. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
3. Smt. B. Visala — *Deputy Secretary*

Part I

(1100 to 1230 hrs.)

WITNESSES

1. Dr. Ashok Haldia, Director, PTC India Financial Services Ltd.
2. Shri Pradip N. Kapadia, Vigil Juris, Advocates and Solicitors
3. Shri M.R. Umarji, Chief Advisor—Legal, Indian Banks Association (IBA)
4. Shri Virendra Jain, President, Midas Touch Investors Association
5. Shri L.V.V.Iyer, Partner, LVV Iyer and Associates

2. The Committee heard the views of the experts on their suggestions submitted to the Committee on the Companies Bill, 2009.The major issues discussed with the experts included auditor-auditee relationship, independence of audit and regulating the Auditors, role and accountability of promoters, role and appointment of independent directors, issues relating to corporate governance and internal control mechanism, rise in corporate delinquency and measures to check the same, definition of the term 'relatives' with reference to Company Directors and process of alteration to the memorandum of companies, etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part II

(1330 to 1430 hrs.)

WITNESSES

Ministry of Corporate Affairs

1. Shri R. Bandyopadhyay, Secretary
2. Shri P.D. Sudhakar, Special Secretary
3. Shri Avinash K. Srivastava, Joint Secretary
4. Smt. Renuka Kumar, Joint Secretary
5. Shri Jitesh Khosla, OSD to Indian Institute of Corporate Affairs

3. The Committee heard the representatives of the Ministry of Corporate Affairs in connection with examination of the Companies Bill, 2009. The major issues discussed with the representatives included, the need for good corporate governance practices and corporate social responsibilities, increase in corporate delinquency and adequacy of proposals to check the same, jurisdictional clarity with regard to role of SEBI as capital markets regulator, extent to which JPC recommendations have been incorporated in the Bill, clarity as to corporate governance norms, practices, etc.The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

MINUTES OF THE TWENTY-FIRST SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, the 7th July, 2010 from 1100 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri Sudip Bandyopadhyay
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Khagen Das
6. Shri Nishikant Dubey
7. Shri Bhartruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri G.M. Siddeshwara
10. Shri Rayapati Sambasiva Rao
11. Shri N. Dharam Singh
12. Shri Manicka Tagore
13. Dr. M. Thambidurai

Rajya Sabha

14. Shri Raashid Alvi
15. Shri S.S. Ahluwalia
16. Shri Moinul Hassan
17. Shri Mahendra Mohan
18. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Additional Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Smt. B. Visala — *Deputy Secretary*

Part I

(1100 to 1230 hrs.)

WITNESSES

Ministry of Corporate Affairs

1.	Shri R. Bandyopadhyay	—	Secretary
2.	Shri P.D. Sudhakar	—	Special Secretary
3.	Smt. Renuka Kumar	—	Joint Secretary

2. The Committee heard the views of the representatives of the Ministry of Corporate Affairs on the Companies Bill, 2009.The major issues discussed with the representatives included harmonization between different financial institutions, steps for better corporate governance and corporate social responsibility, mechanism of proxies and their effect on the Corporate governance, Penalty structure in the Bill, rotation of auditors and auditing firms, appointment functions and liabilities of independent directors etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part II

(1415 to 1430 hrs.)

XX XX XX XX

MINUTES OF THE TWENTY-FIFTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 26th August, 2010 from 1500 hrs. to 1600 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Khagen Das
5. Shri Bhartruhari Mahtab
6. Shri G.M. Siddeshwara
7. Shri Rayapati Sambasiva Rao
8. Shri Magunta Sreenivasulu Reddy
9. Shri Y.S. Jagan Mohan Reddy
10. Shri N. Dharam Singh

Rajya Sabha

11. Shri Moinul Hassan

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Additional Director*
3. Shri R.K. Suryanarayanan — *Deputy Secretary*
4. Smt. B. Visala — *Deputy Secretary*

2. The Committee took up the following draft Reports for consideration and adoption:—

(i) Draft Report on the Companies Bill, 2009;
(ii) Draft Report on the Coinage Bill, 2009;
(iii) Draft Report on the Company Secretaries (Amendment) Bill, 2010;
(iv) Draft Report on the Chartered Accountants (Amendment) Bill, 2010; and
(iv) Draft Report on the Cost and Works Accountants (Amendment) Bill, 2010.

3. The Committee adopted the draft reports at (i) with the modifications/amendments as shown in Annexure and (ii) and (iv) above with minor modifications. The Committee adopted the remaining draft reports without any change.

4. The Committee authorized the Chairman to finalise the Reports in the light of the modifications suggested and present all the reports to Parliament in the current session.

The Committee adjourned at 1600 hours.

ANNEXURE

MODIFICATIONS/AMENDMENTS MADE IN THE 21ST REPORT ON THE COMPANIES BILL, 2009

Page No.	Para No.	Line	Amendments/Modifications
1	2	3	4
116	4.5	4	*To be added after the last word in the para* "in line with the corresponding provision in the existing Act."
187	9.59	3	*The word 'bigger' to be deleted before 'companies'"*
213	10.67	8	*Replace—* "While broadly agreeing with this view, the Committee recommend that the Ministry may consider the suggestion in a holistic manner, keeping in view the present economic environment." *With—* "However, keeping in view the significance of cost control for industry, the Committee recommend that the Ministry may consider the above suggestion positively for appropriate coverage of corporate sector for mandatory maintenance of cost records. Further, the appointment of Cost Auditor should be made by the shareholders of the company in their annual general meeting, as in the case of statutory auditors, instead of the Board of Directors as proposed in Clause 131 (3) of the Bill."
262	12.53	Last line	*Add— sub-clause (e) of clause 160(1) relating to contribution to charitable and other funds*
264	12.60	12	*New sub-para starting as—* "The Committee further recommend that the Ministry should also stipulate a cap on contribution to charitable and other funds as donation as proposed

1	2	3	4
			in sub-clause 160(1)(e). Any contribution under this sub-clause, regardless of percentage, should be required to be made only with the consent of the shareholders of the company by a special resolution. It also needs to be stipulated in the sub-clause that the contribution should be made only to '*bonafide*' charitable institutions, that is, those institutions which have neither attracted any restraints from any regulatory authorities, including the Revenue Department of Government, in the past nor have defaulted in filing the requisite annual returns and statements with the Government."

As Introduced in Lok Sabha

Bill No. 59 of 2009

THE COMPANIES BILL, 2009

———————

ARRANGEMENT OF CLAUSES

———————

CHAPTER I

Preliminary

Clauses

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Incorporation of Companies

CHAPTER III

Prospectus and Allotment of Securities

CHAPTER IV

Share Capital and Debentures

CHAPTER VII

MANAGEMENT AND ADMINISTRATION

CHAPTER VIII

Declaration and Payment of Dividend

CHAPTER IX

Accounts of Companies

CHAPTER X

Audit and Auditors

CHAPTER XI

Appointment and Qualifications of Directors

CHAPTER XIII

Appointment and Remuneration of Managerial Personnel

CHAPTER XIV

Inspection, Inquiry and Investigation

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Compromises, Arrangements and Amalgamations

CHAPTER XVI

Prevention of Oppression and Mismanagement

CHAPTER XVII

Registered Valuers

CHAPTER XVIII

Removal of Names of Companies from the Register

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CHAPTER XXI

Companies Incorporated Outside India

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Registration Offices and fees

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COMPANIES TO FURNISH INFORMATION OR STATISTICS

CHAPTER XXV

NIDHIS

CHAPTER XXVI

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

CHAPTER XXVII

Special Courts

CHAPTER XXVIII

Miscellaneous Clauses

As Introduced in Lok Sabha

Bill No. 59 2009

THE COMPANIES BILL, 2009

A

BILL

to consolidate and amend the law relating to companies.

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

CHAPTER I

Preliminary

Short title, extent, commencement and application.

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

(*2*) It extends to the whole of India.

(*3*) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions and any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.

(*4*) The provisions of this Act shall apply to—

(*a*) companies incorporated under this Act or under any previous company law; and

(*b*) any company or body corporate governed by any special Act, in the absence of any corresponding provisions therein.

Definitions.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;

(*b*) "accounting standards" means such accounting standards as the Central Government may notify under section 119, in consultation with the National Advisory Committee on Accounting and Auditing Standards constituted under section 118;

(*c*) "alter" or "alteration" includes the making of additions, omissions and substitutions;

(*d*) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under section 371;

(*e*) "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;

(*f*) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence or of any other company.

Explanation.—For the purposes of this clause, "significant influence" means control of at the least twenty-six per cent. of total voting power, or of business decisions under an agreement;

(*g*) "auditing standards" means such auditing standards as the Central Government may notify under sub-section (*10*) of section 126, in consultation with the National Advisory Committee on Accounting and Auditing Standards constituted under section 118;

(*h*) "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

(*i*) "banking company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

(*j*) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;

(*k*) "body corporate" or "corporation" includes a company incorporated outside India, but does not include—

(*i*) a co-operative society registered under any law relating to co-operative societies; and

(*ii*) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification published in the Official Gazette, specify in this behalf;

(*l*) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

(*m*) "books of account" includes records maintained in respect of—

(*i*) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(*ii*) all sales and purchases of goods and services by the company;

(*iii*) the assets and liabilities of the company; and

(*iv*) in the case of a company which belongs to any class of companies specified under section 131, such items of cost as may be prescribed under that section;

(*n*) "branch office", in relation to a company, means any establishment described as such by the company;

(*o*) "called-up capital" means such part of the subscribed capital, which has been called for payment;

(*p*) "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

(*q*) "chartered accountant" means a chartered accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 and who holds a valid certificate of practice under sub-section (*1*) of section 6 of that Act; 38 of 1949.

(*r*) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;

(*s*) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;

(*t*) "company" means a company incorporated under this Act or under any previous company law;

(*u*) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

(*v*) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(*w*) "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by the Tribunal, company or creditors, as the case may be, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (*2*) of section 250;

(*x*) "Company Secretary" or "Secretary" means a Company Secretary as defined in clause (*c*) of sub-section (*1*) of section 2 of the Company Secretaries Act, 1980 and who is appointed by a company to perform the functions of a Company Secretary under this Act;

56 of 1980.

(*y*) "Company Secretary in practice" means a Company Secretary who is deemed to be in practice under sub-section (*2*) of section 2 of the Company Secretaries Act, 1980;

56 of 1980.

(*z*) "contributory" means a person liable to contribute towards the payment of a company's debts in the event of its being wound up;

(*za*) "controlling interest" means the largest voting power a member may exercise in a general meeting of a company, whether directly or indirectly, and either alone or in association with his relatives, bodies corporate or firms controlled by such person or his relatives;

(*zb*) "cost accountant" means a cost accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (*1*) of section 6 of that Act;

23 of 1959.

(*zc*) "Court" means—

(*i*) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court under sub-clause (*ii*);

(*ii*) the District Court, in cases where the Central Government has, by notification, empowered any District Court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(*iii*) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(*iv*) the special court established under section 396;

(*v*) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(*zd*) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

(*ze*) "deemed director" means a person under whose advice, instructions or directions, the Board of Directors is accustomed to act, but does not include a person who has been engaged by the company to advise it in a professional capacity;

(*zf*) "deposit" means a deposit accepted by a company under section 66 and includes a deposit existing on the commencement of this Act;

(*zg*) "depository" means a depository as defined in clause (*e*) of sub-section (*1*) of Section 2 of the Depositories Act, 1996; 22 of 1996.

(*zh*) "derivative" means the derivative as defined in clause (*aa*) of section 2 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(*zi*) "director" means a director appointed to the Board of a company, and includes a deemed director;

(*zj*) "Director-General" means the Director-General of Registration appointed under sub-section (*2*) of section 358;

(*zk*) "dividend" includes any interim dividend;

(*zl*) "document" includes summons; notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

(*zm*) "employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or subscribe for, the shares of the company at a future date at a pre-determined price;

(*zn*) "expert" includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost and Works Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

(*zo*) "financial institution" includes a scheduled bank;

(*zp*) "financial statement" in relation to a company, includes—

(*i*) a balance sheet as at the end of the financial year;

(*ii*) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(*iii*) cash flow statement for the financial year; and

(*iv*) any explanatory note attached to, or forming part of, any document referred to in sub-clause (*i*) or sub-clause (*ii*);

(*zq*) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body of such a Government company;

(*zv*) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

(*zw*) "independent director" means an independent director as defined under sub-section (5) of section 132;

(*zx*) "Indian Depository Receipt (IDR)" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

(*zy*) "interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

(*zz*) "issued capital" means such capital as the company issues from time to time for subscription by the public;

(*zza*) "key managerial personnel", in relation to a company, means—

(*i*) the Managing Director, the Chief Executive Officer or the Manager and where there is no Managing Director or Manager, a whole-time director or directors;

(*ii*) the Company Secretary; and

(*iii*) the Chief Financial Officer;

(*zzb*) "listed company" means a company which has any of its securities listed on any recognised stock exchange;

(*zzc*) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other

person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(*zzd*) "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with the management of the whole, or substantially the whole, of the affairs of the company;

(*zze*) "member", in relation to a company, means—

(*i*) any subscriber to the memorandum of the company and whose name is entered in the register of members of the company;

(*ii*) every other person who agrees in writing to become a member of the company by virtue of his holding equity or preference shares in the company and whose name is entered in the register of members of the company;

(*iii*) every person holding equity or preference shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(*zzf*) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

(*zzg*) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and share premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(*zzh*) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(*zzi*) "officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means all or any of the following officers of a company, namely:—

(*i*) whole-time director or directors;

(*ii*) other key managerial personnel;

(*iii*) where there is no key managerial personnel such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(*iv*) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(*v*) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act other than a person who gives advice to the Board in a professional capacity;

(*vi*) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(*vii*) in respect of the issue or transfer of any shares of a company, the share transfer agents, bankers, registrars and merchant bankers to the issue or transfer;

(*zzj*) "Official Liquidator" means an Official Liquidator appointed under section 334;

(*zzk*) "One Person Company" means a company which has only one person as a member;

(*zzl*) "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued, but does not include any other amount received in respect of such shares, by whatever name called;

(*zzm*) "postal ballot" means voting by post or through any electronic communication;

(*zzn*) "prescribed" means prescribed by rules made under this Act;

(*zzo*) "previous company law" means any of the laws specified below:—

(*i*) any Act or Acts relating to companies in force before the Indian, Companies Act, 1866; 10 of 1866.

(*ii*) the Indian Companies Act, 1866; 10 of 1866.

(*iii*) the Indian Companies Act, 1882; 6 of 1882.

(*iv*) the Indian Companies Act, 1913; 7 of 1913.

(*v*) the Registration of Transferred Companies Ordinance, 1942; 54 of 1942.

(*vi*) the Companies Act, 1956; and 1 of 1956.

(*vii*) any law corresponding to any of the Acts or the Ordinance aforesaid and in force—

(*A*) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or 7 of 1913.

(*B*) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned; 62 of 1956. 25 of 1968.

(*viii*) the Portuguese Commercial Code, in so far as it relates to "*sociedades anonimas*"; and

(*ix*) the Registration of Companies Act (Sikkim) 1961;

(*zzp*) "private company" means a company which, by its articles,—

(*i*) restricts the right to transfer its shares;

(*ii*) limits the number of its members to fifty:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(*A*) persons who are in the employment of the company; and

(*B*) persons who, having been formerly in the employment of the company, were members of the company while in that

employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(*iii*) prohibits any invitation to the public to subscribe for any securities of the company;

(*zzq*) "promoter" means a person who has—

(*a*) been named as such in a prospectus; or

(*b*) control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise:

Provided that nothing in sub-clause (*b*) shall apply to a person who is acting in a professional capacity;

(*zzr*) "prospectus" means any document described or issued as a prospectus and includes a red herring or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities, but does not include any memorandum or other document containing information about the prospectus or the matters included therein issued prior to the issue of the prospectus and any document which shows on the face of it that it is not a prospectus;

(*zzs*) "public company" means a company which is not a private company or such private company which is a subsidiary of a company which is not a private company;

(*zzt*) "public financial institution" means any financial institution—

(*i*) which is established or constituted by or under any Central or State Act; or

(*ii*) in which not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or any State Government or both by the Central Government and any State Government or Governments or by the State Governments,

and which is notified by the Central Government as such under this Act;

(*zzu*) "recognised stock exchange" means a recognised stock exchange as defined in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(*zzv*) "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities or class of securities included therein;

(*zzw*) "register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

(*zzx*) "Registrar" means any officer having the duty of registering companies under this Act;

(*zzy*) "related party" with reference to a company means—

(*i*) a relative of a director or key managerial personnel;

(*ii*) a firm, in which a director, manager or his relative is a partner;

(*iii*) a private company in which a director or manager is a member or director;

(*iv*) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent of its paid-up share capital;

(*v*) any body corporate whose Board of Directors, managing director, or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(*vi*) any person under whose advice, directions or instructions a director or manager is accustomed to act;

(*vii*) any company which is—

(*A*) a holding, subsidiary or an associate company of such company; or

(*B*) a subsidiary of a holding company to which it is also a subsidiary:

Provided that nothing in sub-clauses (*v*) and (*vi*) shall apply to the advice, directions or instructions given in a professional capacity;

(*zzz*) "relative", with reference to any individual, means the spouse, brother, sister and all lineal ascendants and descendants of such individual related to him either by marriage or adoption;

(*zzza*) "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961; 43 of 1961.

(*zzzb*) "scheduled bank" means the scheduled bank as defined in clause (*e*) of section 2 of the Reserve Bank of India Act, 1934; 2 of 1934.

(*zzzc*) "securities" means the securities as defined in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(*zzzd*) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(*zzze*) "share" means a share in the share capital of a company and includes stock;

(*zzzf*) "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for' subscription in one or more issues over a certain period without the issue of a further prospectus;

(*zzzg*) "small company" means a company, other than a public company,—

(*i*) whose paid-up share capital does not exceed such amount as may be prescribed and the prescribed amount shall not be more than five crore rupees; or

(*ii*) whose turnover as per its last profit and loss account does not exceed such amount as may be prescribed and the prescribed amount shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(*A*) a holding company or a subsidiary company;

(*B*) a company registered under section 4; or

(*C*) a company or body corporate governed by any special Act;

(*zzzh*) "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company;

(*zzzi*) "subsidiary company" or "subsidiary", in relation to any other company (hereinafter referred to as the holding company), means a company in which the holding company—

(*i*) controls the composition of the Board of Directors; or

(*ii*) exercises or controls more than one-half of the total voting power.

Explanation—For the purposes of this clause, a company shall be deemed to be a subsidiary company of the holding

company even if the control referred to in sub-clause (*i*) or sub-clause (*ii*) is of another subsidiary company of the holding company.

(*zzzj*) "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(*zzzk*) "total voting power" means the total number of votes that may be cast at a meeting of the company if all the members thereof cast their votes either personally or by means of postal ballot;

(*zzzl*) "Tribunal" means the National Company Law Tribunal constituted under section 369;

(*zzzm*) "unlimited company" means a company not having any limit on the liability of its members;

(*zzzn*) "voting right" means the right of a member of a company to vote in any meeting of the company;

(*zzzo*) "whole-time director" includes a director in the whole-time employment of the company.

(*2*) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in that Act. 42 of 1956. 15 of 1992. 22 of 1996.

CHAPTER II

INCORPORATION OF COMPANIES

Formation of company.

3. (1) A company may be formed for any lawful purpose by any—

(*a*) seven or more persons, where the company to be formed is to be a public company, or

(*b*) two or more persons, where the company to be formed is to be a private company, or

(*c*) one person, where the company to be formed is to be a One Person Company,

by subscribing their names or his name to a memorandum in the manner prescribed and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of a One Person Company shall indicate the name of the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company:

Provided further that it shall be the duty of the member of a One Person Company to intimate the Registrar the change, if any, in the name of the person referred to in the preceding proviso and indicated in the memorandum within such time and in such form as may be prescribed, and any such change shall not be deemed to be an alteration of the memorandum.

(2) A company formed under sub-section (*1*) may be either—

(*a*) a company limited by shares, or

(*b*) a company limited by guarantee, or

(*c*) an unlimited company.

Formation of companies with charitable objects, etc.

4. (*1*) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(*a*) has for its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity or any such other object;

(*b*) shall apply its profits, if any, or other income in promoting its objects; and

(*c*) prohibits the payment of any dividend to its members,

the Central Government may, by licence issued in the manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" or the letters and word "OPC Limited", and thereupon the Registrar shall, on application, register accordingly such person or association of persons as a company under this section.

(*2*) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(*3*) A firm may be a member of the company registered under this section.

(*4*) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(*5*) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (*a*) of sub-section (*1*) and with the restrictions and prohibitions as mentioned respectively in clauses (*b*) and (*c*) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" or the letters and word "OPC Limited" from its name and thereupon the Registrar shall, on application, register accordingly such company under this section and all the provisions of this section shall apply to that company.

(*6*) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited" or the letters and word "OPC Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (*7*), on application, register the company accordingly:

Provided that no such order shall be made under this sub-section unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(*7*) Where a licence is revoked under sub-section (*6*), the Central Government may, if it is satisfied that it is essential in the public interest, order that the company be wound up under this Act or amalgamated with another company registered under this section.

(*8*) Where a licence is revoked under sub-section (*6*) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, notified in the Official Gazette, provide for such amalgamation to form a single company with such constitution, properties, powers,

rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(*9*) If on the winding up or dissolution of a company registered under this section, there remain, after the satisfaction of its debts and liabilities, any assets, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 244.

(*10*) A company registered under this section can amalgamate only with another company registered under this section and having similar objects.

(*11*) Where a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors of the company and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both.

Memorandum.

5. (*1*) The memorandum of a company shall state—

(*a*) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company, or the last letters and word "OPC Limited" in the case of a One Person limited company:

Provided that nothing in this clause shall apply to a company registered under section 4;

(*b*) the State in which the registered office of the company is to be situated;

(*c*) the objects for which the company is proposed to be incorporated and any matter considered necessary for furtherance thereof;

(*d*) the liability of members of the company, whether limited or unlimited, and also state,—

(*i*) in the case of a company limited by shares, the liability of its members is limited to the amount unpaid, if any, on the face value of the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(*A*) to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member and for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and

(*B*) to the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves;

(*e*) in the case of a company having a share capital,—

(*i*) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(*ii*) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

(*2*) The name stated in the memorandum shall not—

(*a*) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(*b*) be such that its use by the company—

(*i*) will constitute an offence under any law for the time being in force; or

(*ii*) is undesirable in the opinion of the Central Government.

(*3*) Without prejudice to the provisions of sub-section (*2*), a company shall not be registered with a name which contains—

(*a*) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central or any State Government under any law for the time being in force; or

(*b*) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

(*4*) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(*a*) the name of the proposed company; or

(*b*) the name to which the company proposes to change its name.

(*5*) Upon receipt of an application under sub-section (*4*), the Registrar may, if he is satisfied that the name to be reserved is not the one which may be rejected on any ground referred to in sub-section (*2*), reserve the name for a period of sixty days from the date of the application, and on payment of such additional fee as may be prescribed, for a further period of sixty days.

(*6*) The memorandum of a company shall be in such form, as may be prescribed.

Articles.

6. (*1*) The articles of a company shall contain regulations for the company.

(*2*) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.

(*3*) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures which are more restrictive than those applicable in the case of a special resolution are met or complied with.

(*4*) The provisions for entrenchment referred to in sub-section (*3*) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(*5*) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions.

(*6*) The Central Government may prescribe model articles for different types of companies.

(*7*) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

Incorporation of companies.

7. (*1*) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

(*a*) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) a declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary, who is engaged in the formation of the company, or by a person named in the articles as a Director, Manager or Secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(*c*) an affidavit from each of the subscribers to the memorandum and from persons named as first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company registered under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(*d*) the name of the State where the registered office of the company is proposed to be situated on incorporation and the address for correspondence till its registered office is established;

(*e*) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a company, such particulars as may be prescribed;

(*f*) the particulars of the persons mentioned in the articles as first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

(*g*) the particulars of the interests of the persons mentioned in the articles as first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(*2*) If the Registrar is satisfied that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with, he shall register all the documents and information referred to in sub-section (*1*) in the register and issue a Certificate of lncorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(*3*) On and from the date mentioned in the Certificate of Incorporation issued under sub-section (*2*), the Registrar shall allot to the company a "Corporate Identity Number", which shall be a distinct identity for the company and which shall also be included in the certificate.

(*4*) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (*1*) till its dissolution under this Act.

(*5*) Where any person deliberately furnishes any false or incorrect particulars of any information or suppresses any material information, in any of the documents filed with the Registrar in relation to the registration of a company, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees, or with both.

(*6*) Without prejudice to the provisions of sub-section (*5*), where the Tribunal, on an application made to it at any time after the incorporation of a company, is satisfied that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as first directors of the company, the persons making declaration under clause (*b*) of sub-section (*1*) shall each be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(*7*) Without prejudice to the provisions of sub-section (*6*), the Tribunal may, if it is satisfied that the situation so warrants,—

(*a*) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(*b*) direct that liability of the members shall be unlimited; or

(*c*) direct removal of the name of the company from the register; or

(*d*) pass an order for the winding up of the company:

Provided that before making any order under this sub-section,—

(*i*) the company shall be given a reasonable opportunity of being heard in the matter; and

(*ii*) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, ifany, contracted or payment of any liability.

Effect of registration.

8. From the date of incorporation mentioned in the Certificate of Incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

Effect of memorandum and articles.

9. (*1*) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(*2*) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Commencement of business, etc.

10. (*1*) A public company having a share capital shall not commence any business or exercise any borrowing powers unless—

(*a*) a declaration is filed by a director or subscriber in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him; and

(*b*) the company has filed with the Registrar a verification of its registered office in the manner as may be prescribed.

(*2*) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(*3*) Where no declaration has been filed with the Registrar under clause (*a*) of sub-section (*1*) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (*2*), initiate action for the removal of the name of the company from the register under Chapter XVIII.

Registered office of company.

11. (*1*) A company shall, on and from the date of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(*2*) The company shall furnish to the Registrar verification of its registered office within fifteen days of its incorporation in such manner as may be prescribed.

(*3*) Every company shall—

(*a*) paint or affix its name and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(*b*) have its name engraved in legible characters on its seal;

(*c*) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, e-mail and website addresses printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

(*d*) have its name printed on *hundies*, promissory notes, bills of exchange and such other documents as may be prescribed.

(*4*) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

(*5*) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—

(*a*) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(*b*) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company.

(*6*) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

Alteration of memorandum.

12. (*1*) A company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

(*2*) Any change in the name of a company shall be subject to the provisions of sub-sections (*2*) and (*3*) of section 5 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word "Private" or letters "OPC", consequent on the conversion of anyone class of companies to another class in accordance with the provisions of this Act.

(*3*) When any change in the name of a company is made under sub-section (*2*), the Registrar shall enter the new name in the register in place of the old name and issue a fresh Certificate of Incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(*4*) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application made in this behalf.

(*5*) The Central Government shall dispose of the application under sub-section (*4*) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(*6*) A company shall, in relation to any alteration of its memorandum, file with the Registrar—

(*a*) the special resolution passed by the company under sub-section (*1*);

(*b*) the approval of the Central Government under sub-section (*2*), if the alteration involves any change in the name of the company;

(*c*) certified copy of the order of the Central Government made under sub-section (*5*), if the alteration involves a transfer of the registered office from one State to another.

(*7*) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to shall issue a fresh Certificate of Incorporation indicating the alteration.

(*8*) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(9) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Alteration of articles.

13. (*1*) Subject to the provisions of this Act and to the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—

(*a*) a private company into a public company or a One Person Company, or

(*b*) a public company into a private company or a One Person Company, or

(*c*) a One Person Company into a public company or a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

Provided further that any alteration having the effect of conversion of a public company into a private company or a One Person Company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

(*2*) Every alteration of the articles under this section and a copy of any order of the Tribunal approving the alteration as per sub-section (*1*) shall be filed with the Registrar, together with a printed copy of the altered articles, within fifteen days in such manner as may be prescribed, who shall register the same.

(*3*) Any alteration of the articles registered under sub-section (*2*) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

Alteration of memorandum and articles to be noted in every copy.

14. (*1*) Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

(*2*) Where a company makes any default in complying with the provisions of this section, the company shall be liable to a penalty, for each such default, of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

Rectification of name of company.

15. (*1*) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—

(*a*) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose. 47 of 1999

(*2*) Where a company changes its name or obtains a new name under sub-section (*1*), it shall within a period of fifteen days give notice of such change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the Certificate of Incorporation and the memorandum.

(*3*) If a company makes default in complying with any direction given under sub-section (*1*), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

Copies of memorandum, articles, etc., to be given to members.

16. (*1*) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fee as may be prescribed, a copy each of the following documents, namely:—

(*a*) the memorandum,

(*b*) the articles, and

(*c*) every agreement and every resolution referred to in sub-section (*1*) of section 106, if and in so far as they have not been embodied in the memorandum or articles.

(*2*) Where a company makes any default in complying with the provisions of this section, the company shall be liable for each default, to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

Re-registration of companies already registered.

17. (*1*) A company of any class registered under this Act may re-register itself as a company of the same class or other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

(*2*) Where the registration is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (*1*), issue a Certification of Incorporation in the same manner as its first registration.

(*3*) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before re-registration and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

Subsidiary company not to hold shares in its holding company.

18. (*1*) No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub-section shall apply to a case—

(*a*) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(*b*) where the subsidiary company holds such shares as a trustee; or

(*c*) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (*a*) or clause (*b*) of the said proviso.

(*2*) The reference in this section to shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

Service of documents.

19. (*1*) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by post under a certificate of posting or by registered post or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or disks or any other similar device.

(*2*) A document may be served on Registrar or any member by sending it to him by registered post or by delivering at his office or address, by such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for which he will pay such fee as may be determined by the company in its annual general meeting.

Authentication of documents, proceedings and contracts.

20. Save as otherwise provided in this Act,—

(*a*) a document or proceeding requiring authentication by a company, or

(*b*) contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.

21. (*1*) A bill of exchange, *hundi* or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf or on account of, the company by any person acting under its authority, express or implied.

Execution of bills of exchange, etc.

(*2*) A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in India or outside.

(*3*) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

CHAPTER III

Prospectus and allotment of securities

22. The provisions contained in this Chapter and Chapter IV,—

Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

(*a*) in so far as they relate to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed on any stock exchange in India; shall, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations;

(*b*) in any other case, shall be administered by the Central Government.

Explanation — For the removal of doubts, it is hereby declared that all powers relating to all other matters including those relating to prospectus, return of allotment, issue of shares and redemption of preference shares shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

23. (*1*) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

Matters to be stated in prospectus.

(*a*) state the following information, namely:—

(*i*) names and addresses of the registered office of the company, Company Secretary, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(*ii*) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(*iii*) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the issue in the prescribed manner;

(*iv*) details about underwriting of the issue;

(*v*) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(*vi*) the authority for the issue and the details of the resolution passed therefor;

(*vii*) procedure and time schedule for allotment and issue of certificates;

(*viii*) capital structure of the company in the prescribed manner;

(*ix*) such particulars and terms of the present issue as may be prescribed;

(*x*) main objects and present business of the company and its location, schedule of implementation of the project and future prospects;

(*xi*) particulars of management perception of risk factors;

(*xii*) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash, option to subscribe for securities to be dealt with in a depository; and

(*xiii*) details of directors, proposed directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed;

(*b*) set out the following reports for the purposes of the financial information, namely:—

(*i*) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(*ii*) reports relating to profits and losses for each of the five financial years immediately preceding the financial year

of the issue of prospectus including such reports of the subsidiaries and in such manner as may be prescribed;

(*iii*) reports made by the auditors upon the profits and losses of the business of the company for each of the five financial years, immediately precedings issue and assets and liabilities of its business on the last date before the issue of prospectus in the prescribed manner; and

(*iv*) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

(*c*) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act and the Securities and Exchange Board of India Act, 1992; and

15 of 1992.

(*d*) state such other matters and set out such other reports, as may be prescribed:

Provided that nothing in this sub-section shall apply to the issue of a prospectus or form of application for shares and debentures to the existing members or debenture holders of a company, irrespective of whether any such member or debenture holder has a right to renounce the offer in favour of any other person.

Explanation—The date indicated in the prospectus shall be deemed to be the date of its publication.

(*2*) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(*3*) A prospectus issued under sub-section (*1*) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

(*4*) Every prospectus issued under sub-section (*1*) shall, on the face of it,—

(*a*) state that a copy has been delivered for registration to the Registrar as required under sub-section (*2*); and

(*b*) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(*5*) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

(*6*) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (*2*).

(*7*) Where a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Offer or invitation for subscription of securities.

24. (*1*) A company may, without prejudice to the provisions of section 23, make an offer or invitation to a section of the public, whether selected as members or debenture holders of the company or as clients of the persons issuing the prospectus or in any other manner, to subscribe for such securities as are mentioned in the offer or invitation, irrespective of whether such securities are included in a prospectus and referred to therein as being reserved for such offer or invitation.

(*2*) No offer or invitation shall be treated as made to a section of the public by virtue of sub-section (*1*), if the offer or invitation can properly be regarded in all the circumstances—

(*a*) as not being calculated to result, directly or indirectly, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or

(*b*) otherwise as being a domestic concern of the persons making and receiving the offer or invitation:

Provided that nothing contained in this sub-section shall apply to a case where the offer or invitation to subscribe for the securities is made to fifty persons or more:

Provided further that nothing in the preceding proviso shall apply to such public financial institutions or non-banking financial companies as may be notified in the Official Gazette by the Central Government from time to time.

(*3*) A company making an offer or invitation under this section shall allot its securities within seventy days from the date of receipt of the application money for such securities and if the company is not ab Ie to allot the securities within that period, it shall repay the application money within eight days from the date of completion of seventy days.

(*4*) The Securities and Exchange Board shall, in consultation with the Reserve Bank of India, make regulations in respect of an offer or invitation made to the public by a public financial institution or non-banking financial company referred to in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934.

2 of 1934.

(*5*) A statement indicating the salient features of the offer or invitation made under this section shall, on or before the date of such offer or invitation, be delivered to the Registrar for registration and the provisions of sub-sections (*4*) to (*7*) of section 23 shall apply *mutatis mutandis* to such offer or invitation.

Advertisement of prospectus.

25. Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital, of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

Shelf prospectus.

26. (*1*) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(*2*) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants

and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(*3*) Where an information memorandum is filed, every time an offer of securities is made under sub-section (*2*), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Red herring prospectus.

27. (*1*) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(*2*) A company proposing to issue a red herring prospectus under sub-section (*1*) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(*3*) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(*4*) Upon the closing of the offer of securities under this section, the prospectus also stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and, in the case of a listed company, with the Registrar and the Securities and Exchange Board.

Issue of application forms for securities.

28. (*1*) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(*a*) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities, or

(*b*) in relation to securities which were not offered to the public.

(*2*) A copy of the abridged prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

(*3*) Where a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

29. Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees:

Criminal liability for mis-statements in prospectus.

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe and did up to the time of issue of the prospectus believe that the statement was true or the inclusion or omission was necessary.

30. (*1*) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

Civil liability for mis-statements in prospectus.

(*a*) is a director of the company at the time of the issue of the prospectus,

(*b*) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time,

(*c*) is a promoter of the company,

(*d*) has authorised the issue of the prospectus, and

(*e*) is an expert referred to in sub-section (3) of section 23,

shall, without prejudice to any punishment to which any person may be liable under section 31, be liable to pay compensation to every person who has sustained such loss or damage.

(*2*) No person shall be liable under sub-section (*1*), if he proves—

(*a*) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*b*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(*3*) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud

the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (*1*) shall be personally responsible, without any limitation of liability, for all or any of the losses or damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Punishment for fradulently inducing persons to invest money.

31. Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into—

(*a*) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting, securities; or

(*b*) any agreement the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to fifty lakh rupees.

Action by affected persons.

32. A suit may be filed or any other action may be taken under section 30 or section 31 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Punishment for personation for acquisition, etc., of securities.

33. (*1*) Any person who—

(*a*) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(*b*) makes or abets making of multiple applications to the company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(*c*) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to fifty lakh rupees.

(*2*) The provisions of sub-section (*1*) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(*3*) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities still in possession of, such person.

(*4*) The amount received through disgorgement or disposal of securities under sub-section (*3*) shall be credited to the Investor Education and Protection Fund.

Allotment of securities by company.

34. (*1*) No allotment of any securities of a company offered to the public for subscription for the first time after its incorporation shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company, whether in cash or by cheque or other instrument.

(*2*) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security.

(*3*) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of one hundred and twenty days from the date of issue of the prospectus, the amount received under sub-section (*1*) shall be returned within such time and in such manner as may be prescribed.

(*4*) Whenever a company having a share capital makes any allotment of shares, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(*5*) Nothing in this section shall apply to a private company.

(*6*) In case of any default under sub-section (*3*) or sub-section (*4*), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for every day during which default continues but not exceeding one lakh rupees.

Securities to be dealt with in Stock Exchanges.

35. (*1*) Every company intending to offer securities to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchange or exchanges for permission for the securities to be dealt with in such stock exchange or exchanges.

(*2*) Where a prospectus states that an application under sub-section (*1*) has been made, such prospectus shall also state the name or names of the stock exchange, and any allotment whenever made on an application in pursuance of such prospectus shall be void if the permission has not been granted by such stock exchange or stock exchanges before the expiry of ten weeks from the date of closure of the subscription list:

Provided that where an appeal against the decision of any recognised stock exchange, refusing permission for the securities to be dealt with in that stock exchange, has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal. 42 of 1956.

(*3*) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(*a*) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus, or

(*b*) for the repayment of monies within the prescribed time, received from applicants in pursuance of the prospectus, where securities have not been permitted to be so dealt with or where the company is for any other reason unable to allot securities.

(*4*) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(*5*) lf a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and the officer who is in default shall be punishable with imprisonment for a term which extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

(*6*) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

Global Depository Receipt.

36. A company may, after passing a special resolution in its general meeting, issue depository receipts to be dealt with in depository mode in any foreign country in such manner, and subject to such conditions, as may be prescribed.

CHAPTER IV

SHARE CAPITAL AND DEBENTURES

Kinds of share capital.

37. (*1*) The share capital of the company limited by shares shall be of two kinds, namely:—

(*a*) equity share capital, and

(*b*) preference share capital.

(*2*) Equity share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which has no limits for participation, either with respect to dividends or with respect to capital, in distribution of profits or otherwise.

(*3*) Preference share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(*a*) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(*b*) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up.

Nature of shares or debentures.

38. The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Numbering of shares.

39. Every share in a company having a share capital shall be distinguished by its distinctive number:

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

Certificate of shares.

40. (*1*) A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares.

(*2*) A duplicate of a certificate of shares may be issued, if such certificate—

(*a*) is proved to have been lost or destroyed; or

(*b*) has been defaced, mutilated or torn and is surrendered to the company.

(*3*) Notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.

(*4*) Where a share is held in depository form, the record of the depository is the *prima facie* evidence of the interest of the beneficial owner.

(*5*) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares and every officer of the company who is in default shall be punishable with imprisonment which may extend to three years and with fine which shall not be less than three lakh rupees but which may extend to twenty-five lakh rupees.

(*6*) Without prejudice to any liability under the Depositories Act, 1996, where any depository with an intention to defraud a person has transferred shares, it shall be punishable with fine which shall not be less than three lakh rupees but which may extend to twenty-five lakh rupees.

Voting rights.

41. (*1*) Subject to the provisions of sub-section (*2*) of section 44,—

(*a*) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company, and

(*b*) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

(*2*) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares, any resolution for the winding up of the company or for the repayment or reduction of its preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided that in respect of a resolution on a matter affecting both the equity shareholders and the preference shareholders, the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

Provided further that where the dividends payable in respect of a class of preference shares are in arrears for a period of three years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before a meeting of the company.

42. (*1*) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,— Variation of shareholders' rights.

(*a*) if provision with respect to such variation is contained in the memorandum or articles of the company, or

(*b*) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

(*2*) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

(*3*) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

(*4*) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

43. Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class. Calls on shares of same class to be made on uniform basis.

Explanation—For the purposes of this section, shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

44. (*1*) A company may, if so authorised by its articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. Company to accept unpaid share cpaital, although not called up.

(*2*) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (*1*) until that amount has been called up.

Payment of dividend in proportion to amount paid-up.

45. A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Application of premium received on issue of shares.

46. (*1*) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "Securities Premium Account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the share premium account were the paid-up share capital of the company.

(*2*) Notwithstanding anything contained in sub-section (*1*), the share premium account may be applied by the company—

(*a*) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(*b*) in writing off the preliminary expenses of the company;

(*c*) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(*d*) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(*e*) for the purchase of its own shares or other securities under section 61.

Prohibition on issue of shares at discount.

47. (*1*) Except as provided in section 48, a company shall not issue shares at a discount.

(*2*) Any share issued by a company at a discounted price shall be void.

(*3*) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Issue of sweat equity shares.

48. (*1*) Notwithstanding anything contained in section 47, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

(*a*) the issue is authorised by a special resolution passed by the company;

(*b*) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(*c*) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

(*d*) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

(*2*) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Issue and redemption of preference shares.

49. (*1*) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.

(*2*) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed:

Provided that a company may issue preference shares for a period exceeding twenty years for such infrastructural projects as may be prescribed, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders:

Provided further that—

(*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve fund, to be called the Capital

Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and

(*d*) the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's Securities Premium Account, before such shares are redeemed.

(*3*) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

Transfer and transmission of securities.

50. (*1*) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within such period from the date of execution, as may be prescribed, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the

prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(*2*) Nothing in sub-section (*1*) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

(*3*) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(*4*) Every company shall, unless prohibited by any provision of law or any order of Court, tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(*a*) within two months after incorporation, in the case of subscribers to the memorandum;

(*b*) within two months from the date of allotment, in the case of any allotment of any of its shares;

(*c*) within one month from the date of receipt by the company of the instrument of transfer under sub-section (*1*) or, as the case may be, of the intimation of transmission under sub-section (*2*), in the case of a transfer or transmission of securities;

(*d*) within six months from the date of allotment in the case of any allotment of debenture.

(*5*) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not himself a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(*6*) Where any default is made in complying with the provisions of sub-sections (*1*) to (*5*) of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(*7*) Where the transfer of securities is in contravention of any of the provisions of the Securities and Exchange Board of India Act,

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1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register of records concerned.

Punishment for personation of shareholder.

51. Where any person deceitfully personates the owner of any share or interest and thereby obtains or attempts to obtain any-such share or interest or any coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Refusal of registration and appeal against refusal.

52. (*1*) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within one month from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(*2*) The transferee may appeal to the Tribunal against the refusal within one month from the date of receipt of the notice or in case no notice has been sent by the company, within four months from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(*3*) If a public company without sufficient cause refuses to register the transfer of shares within one month from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within two months of such refusal or where no intimation has been received from the company, within three months of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(*4*) The Tribunal, while dealing with an application preferred under sub-section (*1*) or an appeal made under sub-section (*2*) or sub-section (*3*), may, after hearing the parties, either reject the application or dismiss the appeal, or by order—

(*a*) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(*b*) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(*5*) Where any person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Rectification of register of members.

53. (*1*) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(*2*) The Tribunal may, after hearing the parties to the appeal under sub-section (*1*), by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within ten days of the receipt of the order or direct rectification of the register and in the latter case direct the company to pay damages, if any, sustained by the party aggrieved or the records of a depository.

(*3*) If any default is made in complying with the order of the Tribunal under this section, the company and every officer who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Publication of authorised, subscribed and paid-up capital.

54. (*1*) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.

(*2*) If any default is made in complying with the requirements of sub-section (*1*), the company shall be liable to a penalty often thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees, for each default.

Power of limited company to alter its share capital.

55. (*1*) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(*a*) increase its share capital by such amount as it thinks expedient by issuing new shares;

(*b*) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

(*c*) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(*2*) The cancellation of shares under sub-section (*1*) shall not be deemed to be a reduction of share capital.

Further issue of share capital.

56. (*1*) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(*a*) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the share capital paid-up on those shares by circulating an offer for sale subject to such terms and conditions relating to the time within which the offer has to be accepted, the renunciation of such offer and such other matters as may be prescribed;

(*b*) to employees under a scheme of employees' stock option, subject to such conditions as may be prescribed; or

(*c*) if it is authorised by a special resolution, to persons other than those mentioned in clause (*a*) or clause (*b*), either for cash or for a consideration, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(*2*) Nothing in this section shall apply to the increase of the subscribed capital of a public company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(3) Notwithstanding anything contained in sub-section (*2*), where any debentures have been issued, or loan has been obtained from any Government, by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion:

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

(*4*) In determining the terms and conditions of conversion under sub-section (*3*), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(*5*) Where the Government has, by an order made under sub-section (*3*), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (*3*) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

Notice to be given to Registrar for alteration of share capital.

57. (*1*) Where—

(*a*) a company alters its share capital in any manner specified in sub-section (*1*) of section 55;

(*b*) an order made by the Government under sub-section (*3*) read with sub-section (*5*) of section 56 has the effect of increasing the authorised capital of a company; or

(*c*) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within thirty days of such alteration or increase, as the case may be, along with an altered memorandum.

(*2*) Where a company and any officer of the company who is in default contravenes the provisions of sub-section (*1*), it or he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Unlimited company to provide for reserve share capital on re-registration.

58. An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reduction of share capital.

59. (*1*) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

(*a*) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(*b*) either with or without extinguishing or reducing liability on any of its shares,—

(*i*) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(*ii*) pay off any paid-up share capital which is in excess of the wants of the company,

and alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either

before or after the commencement of this Act, or the interest payable thereon.

(*2*) The Tribunal shall give notice of every application made to it under sub-section (*1*) to the Central Government and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(*3*) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction on such terms and conditions as it deems fit.

(*4*) The order of confirmation of the reduction by the Tribunal under sub-section (*3*) shall be published by the company in such manner as the Tribunal may direct.

(*5*) The company shall deliver a certified copy of the order of the Tribunal under sub- section (3) and of a minute approved by the Tribunal showing—

(*a*) the amount of share capital,

(*b*) the number of shares into which it is to be divided,

(*c*) the amount of each share, and

(*d*) the amount, if any, at the date of registration deemed to be paid-up on each share,

to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(*6*) Nothing in this section shall apply to buy-back of its own securities by a company under section 61.

(*7*) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount

paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

(*8*) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of sub-section (*2*) of section 246, to pay the amount of his debt or claim,—

(*a*) every person, who was a member of the company at the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(*b*) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(*9*) Nothing in sub-section (*8*) shall affect the rights of the contributories among themselves.

(*10*) If any officer of the company—

(*a*) knowingly conceals the name of any creditor entitled to object to the reduction;

(*b*) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(*c*) abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be punishable with imprisonment which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(*11*) Where a company fails to comply with the provisions of sub-sections (*4*) and (*5*), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

60. (*1*) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

Restrictions on purchase by company or giving of loans by it for purchase of its shares.

(*2*) No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company:

Provided that nothing in this sub-section shall apply to—

(*a*) the lending of money by a banking company in the ordinary course of its business;

(*b*) the provision by a company of money in accordance with any scheme for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees to be held by or for the benefit of the employees of the company; or

(*c*) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

(*3*) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

(*4*) Where a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

61. (*1*) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (*2*), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

Power of company to purchase its own securities.

(*a*) its free reserves,

(*b*) the securities premium account, or

(*c*) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(*2*) No company shall purchase its own shares or other specified securities under sub-section (*1*), unless—

(*a*) the buy-back is authorised by its articles;

(*b*) a special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where—

(*i*) the buy-back is for less than ten per cent. of the total paid-up equity capital and free reserves of the company; and

(*ii*) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(*c*) the buy-back is for less than twenty-five per cent. of the total paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year;

(*d*) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

(*e*) all the shares or other specified securities for buy-back are fully paid-up;

(*f*) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

(*g*) the buy-back in respect of shares or other specified securities other than those specified in clause (*f*) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the preceding offer of buy-back, if any.

(*3*) The notice of the meeting at which the special resolution is proposed to be passed under clause (*b*) of sub-section (*2*) shall be accompanied by an explanatory statement stating—

(*a*) a full and complete disclosure of all material facts;

(*b*) the necessity for the buy-back;

(*c*) the class of shares or securities intended to be purchased under the buy-back;

(*d*) the amount to be invested under the buy-back; and

(*e*) the time limit for completion of buy-back.

(*4*) Every buy-back shall be completed within one year from the date of passing of the special resolution under clause (*b*), or as the case may be, the resolution passed by the Board under item (*ii*) of the proviso to that clause, of sub-section (*2*).

(*5*) The buy-back under sub-section (*1*) may be—

(*a*) from the existing shareholders or security holders on a proportionate basis;

(*b*) from the open market;

(*c*) from odd lots, where the lot of shares or securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange; or

(*d*) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(*6*) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (*b*) of sub-section (*2*) or a resolution under item (*ii*) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(*7*) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

(*8*) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (*a*) of sub-section (*1*) of section 56 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(*9*) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

(*10*) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:

Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(*11*) Where a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (*f*) of sub-section (*2*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.—For the purposes of this section and section 63, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

62. Where a company purchases its own shares out of free reserves, a sum equal to the nominal value of the shares so purchased shall be transferred to the Capital Redemption Reserve Account and details of such transfer shall be disclosed in the balance sheet.

Transfer of certain sums to Capital Redemption Reserve Account.

63. No company shall directly or indirectly purchase its own shares or other specified securities—

Prohibition for buy-back in certain circumstances.

(*a*) through any subsidiary company including its own subsidiary companies;

(*b*) through any investment company or group of investment companies; or

(*c*) if a default is made by the company in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

64. (*1*) A company may issue debentures either with an option to convert such debentures into shares at the time of redemption or otherwise.

Debentures.

(*2*) No company shall issue any debentures carrying any voting rights.

(*3*) All secured debentures may be issued only by such class of companies and subject to such terms and conditions as may be prescribed.

(*4*) Where debentures are issued by a company under this section, the company shall create a Debenture Redemption Reserve Account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

(*5*) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

(*6*) A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances and rules may be made in this behalf.

(*7*) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture holders secured

by a trust deed, shall be void insofar as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion:

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

(*8*) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(*9*) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture holders.

(*10*) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

(*11*) Where any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

(*12*) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(*13*) The Central Government may prescribe by rules, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture holders to inspect the trust deed and to obtain copies thereof and such other matters.

65. (*1*) Every holder of shares or debentures of a company may, at any time, nominate, in the prescribed manner, any person to whom his shares or debentures shall vest in the event of his death.

Nomination of shares or debentures.

(*2*) Where the shares or debentures of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the shares or debentures shall vest in the event of death of all the joint holders.

(*3*) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the shares or debentures of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares or debentures of the company, the nominee shall, on the death of the holder of shares or debentures or, as the case may be, on the death of the joint holders, become entitled to all the rights in the shares or debentures, of the holder or, as the case may be, of all the joint holders, in relation to such shares, or debentures, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(*4*) Where the nominee is a minor, it shall be lawful for the holder of the shares or debentures, making the nomination to appoint, in the prescribed manner, any person to become entitled to the shares or debentures of the company, in the event of the death of the nominee during his minority.

CHAPTER V

Acceptance of deposits by companies

66. (*1*) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except as provided under this Chapter:

Prohibition on acceptance of deposits from public.

Provided that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

2 of 1934.

(*2*) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security or for the repayment of such deposits with interest, as

may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(*a*) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(*b*) filing a copy of the circular along with such statement with the Registrar thirty days before the date of issue of the circular;

(*c*) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, in a Deposit Repayment Reserve Account;

(*d*) providing such deposit insurance in such manner and to such extent as may be prescribed;

(*e*) certifying that the company has not defaulted in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(*f*) providing such security for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the company property or assets.

(*3*) Every deposit accepted by a company under sub-section (*2*) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(*4*) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (*3*), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Repayment of deposits, etc., accepted before commencement of this Act.

67. (*1*) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

(*a*) file, within a period of three months from such commencement or from the date on which such payments, are

due, with the Registrar a statement of all the deposits accepted by the company and sums unpaid on such amount with the interest payable thereon alongwith the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(*b*) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

(*2*) The Tribunal may an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

(*3*) Where a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (*1*) or such further time as may be allowed by the Tribunal under sub-section (*2*), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Damages for fraud.

68. (*1*) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 67 within the time specified in sub-section (*1*) of that section or such further time as may be allowed by the Tribunal under sub-section (*2*) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (*3*) of that section, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

(*2*) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

CHAPTER VI

Registration of Charges

Duty to register charges, etc.

69. (*1*) It shall be the duty of every company creating a charge within India or outside, on its property or assets or any of its undertakings, whether tangible or otherwise, and charges etc. situated in India or outside, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fee and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fee as may be prescribed.

(*2*) Where a charge is registered with the Registrar under sub-section (*1*), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(*3*) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (*1*) and a certificate of registration of such charge is given by the Registrar under sub-section (*2*).

(*4*) Nothing in sub-section (*3*) shall prejudice any contract or obligation for the repayment of the money secured by a charge.

Application for registration of charge.

70. Where a company fails to register the charge within the period specified in section 69, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, in such form and manner as may be prescribed and the Registrar may, on such application, within fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fee and additional fee as may be prescribed:

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fee or additional fee paid by him to the Registrar for the purpose of registration of charge.

71. The provisions of section 69 relating to registration of charges shall, so far as may be, apply to—

Section 69 to apply in certain matters.

(*a*) a company acquiring any property subject to a charge within the meaning of that section; or

(*b*) any modification in the terms and conditions of any charge registered under that section.

72. Where any charge on any property or assets of a company or any of its undertakings is registered under section 69, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Date of notice of charge.

73. (*1*) The Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.

Register of charges to be kept by Registrar.

(*2*) A register kept in pursuance of this section shall be open to inspection by any person on payment of such fee as may be prescribed for each inspection.

74. (*1*) A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within thirty days from the date of such payment or satisfaction and the provisions of sub-section (*1*) of section 69 shall, as far as may be, apply to an intimation given under this section.

Company to report satisfaction of charge.

(*2*) The Registrar shall, on receipt of intimation under sub-section (*1*), cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar, and if no cause is shown, by such holder of the charge the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 73 and shall inform the company that he has done so.

75. (*1*) If any person obtains an order for the appointment of a receiver for, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within such time as may be prescribed, give notice of such appointment to the company and the Registrar alongwith a copy of the order or instrument and the Registrar shall, on payment of the prescribed fee, register particulars of the receiver, person or instrument.

Intimation of appointment of receiver or manager.

(*2*) Any person appointed under sub-section (*1*) shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.

Company's register of charges.

76. (*1*) Every company shall keep at its registered office a register of charges in such form and in such manner as may be prescribed, which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

(*2*) The register of charges kept under sub-section (*1*) shall be open for inspection during business hours—

(*a*) by any member without any payment of fee; or

(*b*) by any other person on payment of such fee as may be prescribed, subject to such reasonable restrictions as the company may, by its articles, impose.

Punishment for contravention.

77. Where any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

CHAPTER VII

Management and administration

Register of members, etc.

78. (*1*) Every company shall keep and maintain following registers in such form and in such manner as may be prescribed, namely:—

(*a*) register of members indicating separately equity and preference shares held by each member and residing in India and outside;

(*b*) register of debenture holders; and

(*c*) register of any other security holders.

(*2*) Every register maintained under sub-section (*1*) shall include an index of the names included therein.

(*3*) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act. 22 of 1996.

(*4*) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part

of the register referred to in sub-section (*1*), called "foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.

(*5*) A company shall file with the Registrar—

(*a*) particulars of the situation of the place where such register of members, etc., is kept; and

(*b*) in the event of any change in the situation of such place or of its discontinuance, particulars of such change or discontinuance within thirty days from the date of such change or discontinuance.

(*6*) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees, for each such default.

Declaration in respect of beneficial interest in any share.

79. (*1*) Where the name of a person is entered in the register of members of a company as the holder of shares or class of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares or class of shares.

(*2*) Every person who holds or acquires a beneficial interest in a share or class of shares of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(*3*) Where any change occurs in the beneficial interest in such shares or class of shares, the person referred to in sub-section (*1*) and the beneficial owner specified in sub-section (*2*) shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(*4*) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fee as may be prescribed, or with such additional fee, as may be prescribed, within the time specified under section 364.

(*5*) Where a company, required to file a return under sub-section (*4*), fails to do so before the expiry of the time specified under section 364 with additional fee, the company and every officer who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees for every day during which the default continues.

(*6*) Any instrument created by the ostensible owner of any share or class of shares, in respect of which a declaration is required to be made under this section, shall not be enforceable by the beneficial owner or any person claiming through him unless such declaration is made.

(*7*) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment stand discharged.

Investigation of beneficial ownership of shares in certain cases.

80. Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 187 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

Power to close register of members or debenture holders or other security holders.

81. (*1*) A company may, after giving not less than seven days' previous notice in such manner as may be prescribed, close the register of members or the register of debenture holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at anyone time.

(*2*) If the register of members or of debenture holders or of other security holders is closed without giving the notice as provided in sub-section (*1*), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day during which the register is kept closed but not exceeding one lakh rupees.

Annual return.

82. (*1*) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(*a*) its registered office, principal businessactivities, particulars of its holding, subsidiary and associate companies;

(*b*) its shares, debentures and other securities and shareholding pattern;

(*c*) its indebtedness;

(*d*) its members and debenture holders along with changes therein since the close of the last financial year;

(*e*) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;

(*f*) meetings of members or a class thereof, Board and its various committees along with attendance details;

(*g*) remuneration of directors and key managerial personnel;

(*h*) penalties or punishments imposed on the company, its directors or officers and details of compounding of offences;

(*i*) matters related to certification of compliances, disclosures; and

(*j*) such other matters as may be prescribed,

and signed both by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice:

Provided that the annual return, filed by a company having such paid-up capital and turnover as may be prescribed, or a company whose shares are listed on a recognised stock exchange, shall also be signed by a Company Secretary in whole-time practice certifying that the annual return states the facts correctly and adequately and that the company has complied with all the provisions of this Act, in the prescribed form:

Provided further that in relation to a One Person Company and small company, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

(*2*) An extract of the annual return in such form as may be prescribed shall form part of the Board's Report.

(*3*) Every company shall, within thirty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within thirty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, file with the Registrar a copy of the annual return with such fee as may be prescribed, or with such additional fee as may be prescribed, within the time as specified, under section 364.

(*4*) If a company fails to file its annual return under sub-section (*3*) before the expiry of the period specified under section 364 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(*5*) Where a Company Secretary in whole-time practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Place of keeping and inspection of registers, returns, etc.

83. (*1*) The registers required to be kept and maintained by a company under section 78 and copies of the annual return filed under section 82 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.

(*2*) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of the returns shall be open for inspection by any member, debenture holder, other security holder or beneficial owner, during business hours without payment of any fee and by any other person on payment of such fee as may be prescribed.

(*3*) Any such member, debenture holder, other security holder or beneficial owner or any other person may—

(*a*) take extracts from any register, or index or return without payment of any fee; or

(*b*) require a copy of any such register or entries therein or return on payment of such fee as may be prescribed.

(*4*) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

(*5*) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to

a penalty of one thousand rupees for every day during which the refusal or default continues but not exceeding one lakh rupees.

Registers, etc., to be evidence.

84. The registers, their indices and copies of annual returns maintained under sections 78 and 83 shall be *prima facie* evidence of any matter directed or authorised to be inserted therein by or under this Act.

Annual general meeting.

85. (*1*) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

(*2*) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Power of Tribunal to call annual general meeting.

86. (*1*) If any default is made in holding the annual general meeting of a company under section 85, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(*2*) A general meeting held in pursuance of sub-section (*1*) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

Power of Tribunal to call meetings of members, etc.

87. (*1*) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting,—

(*a*) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(*b*) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(*2*) Any meeting called, held and conducted in accordance with any order made under sub-section (*1*) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Punishment for default in complying with provisions of sections 85 to 87.

88. If any default is made in holding a meeting of the company in accordance with section 85 or section 86 or section 87 or in complying with any directions of the Central Government or the Tribunal, as the case may be, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Calling of extraordinary general meeting.

89. (*1*) The Board may on its own whenever it deems fit call an extraordinary general meeting in regard to any matter.

(*2*) The Board shall at the requisition made by,—

(*a*) in the case of a company having a share capital, such number of members as hold on the date of the receipt of the

requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(*b*) in the case of a company not having a share capital, such number of members as have on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,

call an extraordinary general meeting of the company within the period specified in sub-section (*4*).

(*3*) The requisition made under sub-section (*2*) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

(*4*) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition in the manner prescribed.

(*5*) The manner in which an extraordinary general meeting shall be called by the Board shall, as nearly as may be, apply to the calling of such meeting by the requisitionists under sub-section (*4*).

(*6*) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (*4*) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under sub-section (*1*) of section 175 payable to such of the directors who were in default in calling the meeting.

Notice of meeting.

90. (*1*) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent of the members entitled to vote at such meeting.

(*2*) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

(*3*) The notice of every meeting of the company shall be given to—

(*a*) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

(*b*) the auditor or auditors of the company; and

(*c*) every director of the company.

(*4*) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

Explanatory statement to be annexed with notice.

91. (*1*) A statement setting out all the material facts concerning each item of special business to be transacted at a general meeting, including, in particular, the nature of the concern or interest, if any, of every director and the manager, if any, and of every other key managerial personnel shall be annexed to the notice calling such meeting.

(*2*) For the purposes of sub-section (*1*),—

(*a*) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(*i*) the consideration of accounts, balance sheet and the reports of the Board of Directors and auditors;

(*ii*) the declaration of any dividend;

(*iii*) the appointment of Directors in place of those retiring;

(*iv*) the appointment of, and the fixing of the remuneration of, the auditors; and

(*b*) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be set out in the statement.

(*3*) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under sub-section (*1*).

(*4*) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (*1*), being made by a director, manager, if any, or other key managerial personnel, any benefit which accrues to such director, manager or other key managerial personnel or his relatives, either directly or indirectly, the director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

(*5*) Where any default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the director, manager or other key managerial personnel or any of his relatives, whichever is more.

Quorum for meetings.

92. (*1*) Unless the articles of the company provide for a larger number, five members personally present in the case of public company and two members personally present in the case of a private company, shall be the quorum for a meeting of the company.

(*2*) If within half-an-hour from the time appointed for holding a meeting of the company, the quorum is not there,—

(*a*) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(*b*) the meeting, if called by requisitionists under section 89, shall stand cancelled:

Provided that in case of an adjournment or of a change of day, time or place of meeting under clause (*a*), the company shall give not less than three days' notice to the members either individually or by press announcement.

(*3*) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of meetings.

93. (*1*) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

(*2*) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this

Act and the Chairman elected on a show of hands under sub-section (*1*) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting

Proxies.

94. Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf in writing or by electronic mode in such manner and subject to such conditions as may be prescribed:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

Restriction on voting rights.

95. (*1*) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(*2*) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

(*3*) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

Voting by show of hands.

96. (*1*) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 98 or the voting is carried out electronically, be decided on a show of hands.

(*2*) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (*1*) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Voting through electronic means.

97. Unless the articles provide otherwise, a member may exercise his vote at a meeting by electronic means in the manner as may be prescribed.

Demand for poll.

98. (*1*) Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf,—

(*a*) in the case a company having a share capital, by the members present in person or by proxy and having not less than

one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up; and

(*b*) in the case of any other company, by any member or members present in person or by proxy and having not less than one-tenth of the total voting power.

(*2*) The demand for a poll may be withdrawn at any time by the persons who made the demand.

(*3*) A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.

(*4*) A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than forty-eight hours from the time when the demand was made, as the Chairman of the meeting may direct.

(*5*) Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

(*6*) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

(*7*) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Postal ballot.

99. (*1*) Notwithstanding anything contained in this Act, a company—

(*a*) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(*b*) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot in such manner as may be prescribed, instead of transacting such business at a general meeting.

(*2*) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

Circulation of members' resolution.

100. (*1*) A company shall, on requisition in writing of such number of members, as required in section 89,—

(*a*) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and

(*b*) circulate to members any statement with respect to the matters referred to in any proposed resolution or any business to be dealt with at that meeting.

(*2*) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company,—

(*i*) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(*ii*) in the case of any other requisition, not less than two weeks before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(*3*) The company shall not be bound to circulate any statement as required by clause (*b*) of sub-section (*1*), if on the application either of the company or of any other person who claims to be aggrieved, the Central Government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(*4*) An order made under sub-section (*3*) may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

(*5*) If any default is made in complying with the provisions of this section, the company and its every officer who is in default shall be liable to a penalty of twenty-five thousand rupees.

101. (*1*) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

Representation of the President and Governors in meetings.

(*2*) A person appointed to act under sub-section (*1*) shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

102. (*1*) A body corporate, whether a company within the meaning of this Act or not, may,—

Representation of corporations at meeting of companies and of creditors.

(*a*) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(*b*) if it is a creditor, including a holder of debentures, of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(*2*) A person authorised by resolution under sub-section (*1*) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

103. (*1*) A resolution shall be an ordinary resolution if it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, etc., so entitled and voting.

Ordinary and special resolutions.

(*2*) A resolution shall be a special resolution when—

(*a*) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(*b*) the notice required under this Act has been duly given; and

(*c*) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Resolutions requiring special notice.

104. Where, by any provision contained in this Act or in the articles, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members as may be prescribed and the company shall give its members notice of the resolution in such manner as may be prescribed.

Resolutions passed at adjourned meeting.

105. Where a resolution is passed at an adjourned meeting of—

(*a*) a company,

(*b*) the holders of any class of shares in a company, or

(*c*) the Board of Directors of a company,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Resolutions and agreements to be filed.

106. (*1*) A copy of every resolution or any agreement, in respect of such matters as may be prescribed, together with the explanatory statement under section 91, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in the manner as may be prescribed, with such fee as may be prescribed or with such additional fee as may be prescribed within the time specified, under section 364.

(2) If a company fails to file the resolution or the agreement under sub-section (*1*) before the expiry of the period specified under section 364 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer who is in default, including liquidator of the company, if any, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

107. (*1*) Every company shall cause to be prepared, signed and kept minutes of the proceedings of every general meeting, including any meeting called by the requisitionists under section 89, and of proceedings of every meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, within such time and in such manner as may be prescribed.

Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.

(*2*) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(*3*) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(*4*) in the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—

(*a*) the names of the directors present at the meeting; and

(*b*) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

(*5*) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—

(*a*) is or could reasonably be regarded as defamatory of any person;

(*b*) is irrelevant or immaterial to the proceedings; or

(*c*) is detrimental to the interests of the company.

(*6*) The Chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (*5*).

(*7*) Minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(*8*) Where minutes have been kept in accordance with sub-section (*1*) and the rules made thereunder, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

(*9*) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised

at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

(*10*) Every company shall observe such secretarial standards as may be prescribed with respect to general and Board meetings.

(*11*) If any default is made in complying with the provisions of this section and the rules made thereunder in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

Inspection of minute-books of general meeting.

108. (*1*) The books containing the minutes of the proceedings of any general meeting of a company, shall—

(*a*) be kept at the registered office of the company, and

(*b*) be open, during business hours,to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

(*2*) Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred to in sub-section (*1*).

(*3*) If any inspection under sub-section (*1*) is refused, or if any copy required under sub-section (*2*) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be.

(*4*) In the case of any such refusal or default, the Central Government may, without prejudice to any action being taken under sub-section (*3*), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

Report on general meeting.

109. (*1*) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

(*2*) The company shall file with the Registrar a copy of the report referred to in sub-section (*1*) within thirty days of the

conclusion of the annual general meeting with such fee as may be prescribed, or with such additional fee as may be prescribed, within the time as specified, under section 364.

(*3*) If the company fails to file the report under sub-section (*2*) before the expiry of the period specified under section 364 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

CHAPTER VIII

Declaration and payment of dividend

Declaration of dividend.

110. (*1*) No dividend shall be declared or paid by a company for any financial year except—

(*a*) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(*b*) out of money provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that if owing to inadequacy or absence of profits in any financial year, the company proposes to declare dividend out of the accumulated profits earned by it in the previous financial year or years and transferred by it to the reserves, such declaration shall be made by a resolution passed at a meeting of the Board with the consent of all the directors and the approval of the financial institutions whose term loans are subsisting, and thereafter in accordance with a special resolution passed by the shareholders at an annual general meeting.

(*2*) For the purposes of clause (*a*) of sub-section (*1*), depreciation shall be provided in any one of the following manners, namely:—

(*a*) the amount of depreciation on assets as shown by the books of the company at the end of each financial year at the rate prescribed in the rules made in this behalf;

(*b*) as regards any other depreciable asset for which no rate of depreciation has been laid down under this Act, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by a special order in any particular case:

Provided that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.

(*3*) The Board of Directors of a company may declare interim dividend during any financial year out of the profits of the company for part of the year.

(*4*) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

(*5*) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be made by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

(*6*) A company which fails to comply with the provisions of section 67 shall not, so long as such failure continues, declare any dividend on its equity shares.

Unpaid Dividend Account.

111. (*1*) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the dale of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

(*2*) If any default is made in transferring the total amount referred to in sub-section (*1*) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(*3*) Any person claiming to be entitled to any money transferred under sub-section (*1*) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

(*4*) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (*1*) of section 112 and the company shall send a statement in the prescribed form of the details of such transfer to the authority or committee which administers the said Fund and that authority or committee shall issue a receipt to the company as evidence of such transfer.

(*5*) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees which may extend to five lakh rupees.

Investor Education and Protection Fund.

112. (*1*) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the Fund).

(*2*) There shall be credited to the Fund—

(*a*) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

(*b*) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(*c*) the amount in the Unpaid Dividend Accounts of companies transferred to the Fund under sub-section (*4*) of section 111;

(*d*) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (*5*) of section 205A of the Companies Act, 1956, as

1 of 1956.

it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act; 21 of 1999.

(*e*) the amount lying in the Investor Education and Protection Fund under section 205(C) of the Companies Act, 1956; 1 of 1956.

(*f*) the interest or other income received out of investments made from the Fund;

(*g*) the amount received under sub-section (*4*) of section 33; and

(*h*) such other amount as may be prescribed.

(*3*) The Fund shall be utilised for the refund in respect of unclaimed dividends, the application monies due for refund and interest thereon, and promotion of investors' education, awareness and protection in accordance with such rules as may be prescribed.

(*4*) The Central Government shall constitute, by notification, an authority consisting of a Chairperson, such number of members, not exceeding seven, as the Central Government may appoint and an Administrator who shall be the Chief Executive Officer.

(*5*) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of lndia (hereinafter referred to as the Comptroller and Auditor-General).

(*6*) It shall be competent for the authority constituted under sub-section (*4*) to spend money out of the Fund for carrying out the objects for which the Fund is established.

(*7*) The accounts of the Fund shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General together with the audit report thereon shall be forwarded annually to the Central Government by the authority.

(8) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General to be laid before each House of Parliament.

(9) Any person claiming to be entitled to the amount referred in clauses (*c*) and (*d*) of sub-section (*1*) may apply to the authority for payment of the money claimed.

1 of 1956

113. The amount lying in the Investor Education and Protection Fund established under section 205C of the Companies Act, 1956 shall stand credited to the Investor Education and Protection Fund established under sub-section (*1*) of section 112.

Amount lying in previous Fund to become part of Fund under this Act.

114. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

Right to dividend, rights shares and bonus shares to be held in abeyance pending registration and transfer of shares.

(*a*) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 111 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(*b*) keep in abeyance in relation to such shares, any offer of rights shares under clause (*a*) of sub-section (*1*) of section 56 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (*5*) of section 110.

115. Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Punishment for failure to distribute dividends within thirty days.

Provided that no offence under this section shall be deemed to have been committed in the following cases, namely:—

(*a*) where the dividend could not be paid by reason of the operation of any law;

(*b*) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;

(*c*) where there is a dispute regarding the right to receive the dividend;

(*d*) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(*e*) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

CHAPTER IX

ACCOUNTS OF COMPANIES

Books of account, etc., to be kept by company.

116. (*1*) Every company shall prepare and keep at its registered office books of account and other relevant books and papers which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

(*2*) Where a company has a branch office within India or outside, it shall be deemed to have complied with the provisions of sub section (*1*), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (*1*).

(*3*) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

Provided that the inspection in respect of any subsidiary of the company shall be done only by any person authorised in this behalf by a resolution of the Board of Directors.

(*4*) Where an inspection is made under sub-section (*3*), the officers and other employees ofthe company shall give to the person making

such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(*5*) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under section 183 or section 184, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(*6*) Where any company contravenes the provisions of this section, the managing director, the whole-time director-in-charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Financial statement.

117. (*1*) The financial statement shall give a true and fair view of the state of affairs of the company or companies as at the end of the financial year, comply with the accounting standards notified under section 119 and shall be in such form as may be prescribed.

(*2*) At every annual general meeting of a company held in pursuance of section 85, the Board of Directors of the company shall lay before such meeting a financial statement for the financial year.

(*3*) Where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of all the subsidiaries in the same form and manner as that of its own which shall also be. laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*).

(*4*) Where the financial statements of a company do not comply with the accounting standards referred to in sub-section (*1*), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(*5*) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any

such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(*6*) Where any company contravenes the provisions of this section, the managing director, the whole-time director-in-charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any note or document annexed or attached thereto, giving information required to be given by this Act and allowed by this Act to be given in the form of such note or document.

Constitution of National Advisory Committee on Accounting and Auditing Standards.

118. (*1*) The Central Government may, by notification, constitute an advisory committee to be called the National Advisory Committee on Accounting and Auditing Standards (hereinafter referred to as the Advisory Committee) to advise the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be.

(*2*) The Advisory Committee shall consist of the following members, namely:—

(*a*) a Chairperson who shall be a person of eminence and well versed in accountancy, finance, business administration, business law, economics or similar disciplines, to be nominated by the Central Government;

(*b*) one representative of the Central Government to be nominated by it;

(*c*) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 or his nominee; 54 of 1963.

(*d*) one representative of the Reserve Bank of India to be nominated by it;

(*e*) one representative of the Securities and Exchange Board to be nominated by it;

(*f*) one representative of the Comptroller and Auditor-General of India to be nominated by him;

(*g*) one member each to be nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

38 of 1949.

23 of 1959
56 of 1980.

(*h*) a person who is or has been a professor in accountancy, finance or business management in any University or deemed University to be nominated by the Central Government; and

(*i*) two representatives of the Chambers of Commerce and Industry, to be nominated by the Central Government.

(*3*) The members of the Advisory Committee nominated by the Central Government shall hold office for such term as may be determined by it at the time of their appointment and any vacancy in the membership of the Committee shall be filled by the Central Government in the same manner as that for the member in whose vacancy it is proposed to be filled.

(*4*) The members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as may be prescribed.

(*5*) The Advisory Committee shall, after consulting the Institute of Chartered Accountants of India, submit its recommendations to the Central Government on matters relating to accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be.

Central Government to notify accounting standards.

119. The Central Government may, after consultation with the Advisory Committee, by notification, lay down accounting standards for adoption by companies or class of companies.

Financial Statement, Board's report, etc.

120. (*1*) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the Chairman where he is authorised by the Board or by two directors out of which one shall be Managing Director or Chief Executive Officer, or, in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon:

Provided that such financial statements shall be authenticated in such manner as may be prescribed.

(*2*) The auditors' report shall be attached to every financial statement.

(*3*) There shall be annexed to every financial statement laid before a company in general meeting, a report by its Board of Directors, which shall include—

(*a*) the extract of the annual return as provided under-sub-section (*2*) of section 82,

(*b*) number of meetings of the Board,

(*c*) Directors' Responsibility Statement,

(*d*) declaration by independent directors where they are required to be appointed under sub-section (*3*) of section 132,

(*e*) Report of the Committee on directors' remuneration,

(*f*) explanations or comments by the Board on every qualification, reservation or adverse remark made by the auditor in his report,

(*g*) particulars of loans, guarantees or investments under sub-section (*2*) of section 164, and

(*h*) particulars of contracts or arrangements under sub-section (*1*) of section 166.

(*4*) The Directors' Responsibility Statement referred to in sub-section (*3*) shall state that—

(*a*) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(*b*) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(*c*) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(*d*) the directors had prepared the annual accounts on a going concern basis; and

(*e*) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company

and that such internal financial controls have been complied with.

(*5*) The Board's report and any annexures thereto under sub-section (*3*) shall be signed by its Chairman if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(*6*) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

(*a*) any notes or documents which are required to be attached to the financial statement in pursuance of section 117;

(*b*) the auditors report; and

(*c*) the Board's report referred to in sub-section (*3*).

(*7*) Where a company fails to comply with the provisions of this section, it shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees, or with both.

Right of member to copies of audited balance sheet.

121. (*1*) A copy of the financial statement, auditor's report and every other document required by law to be annexed or attached to the financial statement, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture holder of any debentures issued by the company, and to all the persons other than such member or trustee, being the person so entitled, twenty-one days before the date of the meeting:

Provided that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

(*2*) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (*1*) at its registered office during business hours.

(*3*) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

Copy of financial statement to be filed with Registrar.

122. (*1*) A copy of the financial statement along with all the documents which are required to be annexed or attached to such financial statement under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fee or additional fee as may be prescribed within the time specified under section 364:

Provided that where the financial statement under sub-section (*1*) is not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statement along with the required documents under sub-section (*1*) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statement is filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statement adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fee or such additional fee as may be prescribed within the time specified under section 364.

(*2*) Where the annual general meeting of a company for any year has not been held, the financial statement along with the documents required to be annexed or attached under sub-section (*1*), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fee or additional fee as may be prescribed within the time specified, under section 364.

(*3*) If a company fails to file the copy of the financial statement under sub-section (*1*) or sub-section (*2*), as the case may be, before the expiry of the period specified in section 364, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees, and the managing director or the managing director and the Chief Financial Officer, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

CHAPTER X

AUDIT AND AUDITORS

Appointment of auditors.

123. (*1*) Subject to the provisions of this Chapter, every company shall, at each annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of the next annual general meeting:

Provided that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided further that the company shall inform the auditor concerned of his appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation—For the purposes of this Chapter, "appointment" includes re-appointment.

(*2*) Notwithstanding anything contained in sub-section (*1*), in the case of a Government company or any other company owned and controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor General of lndia shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the adoption of accounts of that financial year.

(*3*) Notwithstanding anything contained in sub-section (*1*), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall at an extraordinary general meeting appoint such auditor. The said auditor shall hold office till the conclusion of the first annual general meeting.

(4) Notwithstanding anything contained in sub-section (*1*) or sub-section (*2*), in the case of a Government Company, the first auditor shall be appointed by the Comptroller and Auditor General of India within thirty days from the date of registration of the company and in case the Comptroller and Auditor General of India

does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within next thirty days. In the case of failure of the Board to appoint such auditor within next thirty days, it shall inform the Central Government or the State Government concerned and the Central Government or the State Government concerned, as the case may be, shall appoint such auditor, who shall hold office till the appointment of an auditor under sub-section (*2*).

(*5*) Any casual vacancy in the office of an auditor shall,—

(*i*) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General of India, be filled by the Board of Directors, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the approval of the Board;

(*ii*) in case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General of India, be filled within thirty days, failing which by the Board.

(*6*) Subject to the provisions of sub-section (*1*) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

(*a*) he is not disqualified for re-appointment;

(*b*) he has not given the company a notice in writing of his unwillingness to be re-appointed; and

(*c*) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(*7*) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(*8*) Where a company constitutes an Audit Committee as required under section 158, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such Committee.

(*9*) The auditor appointed under this section may be removed from his office before the expiry of his term only by a special resolution of the company:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(*10*) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal, if it is satisfied that the auditor of a company has acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Eligibility qualifications and disqualifications of auditors.

124. (*1*) A person shall be eligible for appointment as an auditor of a company only if he is a Chartered Accountant in practice.

(*2*) Where a firm is appointed as an auditor of a company, only the partners who are Chartered Accountants in practice shall be authorised by the firm to act and sign on behalf of the firm.

(*3*) None of the following persons shall be eligible for appointment as an auditor of a company, namely:—

(*a*) a body corporate;

(*b*) an officer or employee of the company;

(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(*d*) a person who, or his relative or partner—

(*i*) is holding any security of the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of value in terms of such percentage as may be prescribed;

(*ii*) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company; or

(*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(*e*) a person or a firm who has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(*f*) a person whose relative is in the employment of the company as a director or key managerial personnel;

(*g*) a person who is in employment elsewhere or a person or firm who holds appointment as an auditor in companies exceeding such number as may be prescribed on the date of his appointment.

(*4*) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (*3*) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Remuneration of auditors.

125. (*1*) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.

(*2*) The "remuneration" under sub-section (*1*) in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and anything given to him otherwise than in cash, but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Powers and duties of auditors and auditing standards.

126. (*1*) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place in India, and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and shall inquire into such matters as may be prescribed:

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries.

(*2*) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement or other document which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (*11*) and to the best of his information and knowledge, the said accounts, financial statement or other document give a true and fair view of the state of the company's affairs as at the end of its financial year and such other matters as may be prescribed.

(*3*) The auditor's report shall also state—

(*a*) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;

(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(*c*) whether the report on the accounts of any branch office of the company audited under sub-section (*8*) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(*e*) whether, in his opinion, the financial statements comply with the accounting standards and the auditing standards;

(*f*) the observations or comments of the auditors which have any adverse effect on the functioning of the company;

(*g*) whether any director is disqualified from being appointed as a director under sub-section (*2*) of section 145;

(*h*) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(*i*) in case of listed companies, whether the company has complied with the internal financial controls and directions issued by the Board; and

(*j*) such other matters as may be prescribed.

(*4*) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

(*5*) In the case of a Government company, the auditor appointed by the Comptroller and Auditor General of lndia under sub-section (*2*) of section 123 shall submit a copy of his audit report to the Comptroller and Auditor General of India which shall, among other things, include the directions, if any, issued by the Comptroller and Auditor General of India in respect of the accounting standards, the variance, if any, from the accounting standards notified by the Government, the action taken on such directions and the impact thereof on the company's accounts.

(6) The Comptroller and Auditor General of lndia shall within sixty days from the date of receipt of the audit report under

sub-section (*5*) have a right to—

(*a*) comment upon or supplement such audit report, and

(*b*) conduct any supplementary audit of the company's accounts by himself or by such person or persons as he may authorise in this behalf and such person or persons shall have the same rights and obligations as the auditor who has submitted the report:

Provided that any comments given by the Comptroller and Auditor-General on the report of the supplementary audit conducted by him shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

(*7*) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of lndia may, in case of any company covered under sub-section (*2*) of section 123, if he so deems necessary, by an order, cause test audit to be conducted of the accounts of such company. The provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit 56 of 1971.

(*8*) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (hereafter in this section referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 123, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

(*9*) Every auditor shall comply with the auditing standards.

(*10*) The Central Government may, after consultation with the National Advisory Committee on Accounting and Auditing Standards, by notification, lay down auditing standards:

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of

Chartered Accountants of India shall be deemed to be the auditing standards.

(*11*) The Central Government may, after consultation with the Advisory Committee, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

Auditor not to render certain services.

127. An auditor appointed under this Act shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services, namely:—

(*a*) accounting and book keeping services;

(*b*) internal audit;

(*c*) design and implementation of any financial information system;

(*d*) actuarial services;

(*e*) investment advisory services;

(*f*) investment banking services;

(*g*) rendering of outsourced financial services; and

(*h*) management services.

Auditor to sign audit reports, etc.

128. Only the person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company, and the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Auditors to attend general meeting.

129. All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which Concerns him as the auditor.

Punishment for contravention.

130. (*1*) Where any of the provisions of sections 123 to 129 is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and any officer who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(*2*) Where an auditor of a company contravenes any of the provisions of section 126 or section 127 or section 128 he shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:

Provided that where it is proved that an auditor has knowingly or wilfully contravened any of the provisions of the aforesaid sections, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees, or with both.

(*3*) Where an auditor has been convicted under sub-section (*2*), he shall be liable to—

(*i*) refund the remuneration received by him to the company; and

(*ii*) pay for damages to the company or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

Central Government to specify audit of items of cost in respect of certain companies.

131. (*1*) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production, processing, manufacturing, mining or infrastructural activities, as may be specified therein, direct that particulars relating to the utilisation of material or labour or to such other items of cost as may be prescribed shall also be included in the books of account kept by such class of companies:

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(*2*) If the Central Government is of the opinion, in relation to any company covered by an order under sub-section (*1*), that it is necessary to do so, it may, by order, direct that the audit of cost records of such company shall be conducted in the manner specified therein.

(*3*) Where a company includes the particulars relating to items of cost in the books of account in pursuance of a resolution passed by the company, the audit of cost records as contained in the books of account of the company shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:

Provided that no person appointed under section 123 as an auditor of the company shall be appointed for conducting the audit of cost records.

(*4*) An audit conducted under this section shall be in addition to the audit conducted under section 126.

(*5*) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the Cost Accountant in practice to the Board of Directors of the company.

(*6*) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (*2*) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

(*7*) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (*6*), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

(*8*) Where any default is made in complying with the provisions of this section,—

(*a*) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;

(*b*) the cost auditor who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

CHAPTER XI

Appointment and qualifications of directors

Company to have Board of Directors.

132. (*1*) Every company shall have a Board of Directors consisting of only individuals as directors and shall have—

(*a*) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(*b*) a maximum of twelve directors, excluding the directors nominated by the lending institutions.

(*2*) One of the directors shall at least be a person ordinarily resident in India.

Explanation.—For the purposes of this sub-section, "ordinarily resident in India" means a person who stays in India for a total period of not less than one hundred and eighty-two days in a calendar year.

(*3*) Every listed public company having such amount of paid-up share capital as may be prescribed shall have at the least one-third of the total number of directors as independent directors. The Central Government may prescribe the minimum number of independent directors in case of other public companies and subsidiaries of any public company.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

(*4*) Every company existing on or before the commencement of this Act shall comply with the requirements of the provisions of sub-section (*3*) within one year from the date of commencement of this Act.

(*5*) "Independent director", in relation to a company, means a non-executive director of the company, other than a nominee director,—

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

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

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

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

(*iii*) is or has been an employee or a partner, in any of the three financial years immediately preceding the financial

year in which he is proposed to be appointed, of—

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

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

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

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

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

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

(*6*) An independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit-related commission and stock options as may be approved by the members.

Appointment of Directors.

133. (*1*) Where no provision is made in the articles of a company for the appointment of the first directors, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed in accordance with the provisions of this section.

(*2*) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

(*3*) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number (DIN) under section 135:

Provided that a person may be appointed as a director, if an application for the allotment of a DIN has been made to the Central Government under section 134 and the same is pending with the

Central Government and he may hold the office of a director till such time that person is allotted DIN.

(*4*) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his DIN and a declaration that he is not disqualified to become a director under this Act.

(*5*) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as such director and such consent shall be filed with the Registrar within such time and in such manner as may be prescribed:

Provided that in the case of appointment of an independent director, the Board shall also give a report in the general meeting that in its opinion he fulfils the conditions specified in this Act for such an appointment.

(*6*) Unless the articles provide for the retirement of all the directors at every annual general meeting, not exceeding one-third of the total number of directors of a public company shall be liable to retire, and out of the remaining, one-third shall retire by rotation at every annual general meeting in accordance with such procedure and principles as may be prescribed and such retiring directors shall be entitled to be re-appointed.

(*7*) Where a company fails to re-appoint a retiring director or to appoint any person as a director in place of the retiring director at any general meeting, such appointment shall be made at any adjourned meeting within such time and in accordance with such procedure as may be prescribed.

Explanation.—For the purposes of this Chapter, "appointment" of a director includes his re-appointment.

Application for allotment of Director Identification Number.

134. Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fee as may be prescribed.

Allotment of Director Identiication Number.

135. The Central Government shall, within one month from the receipt of the application under section 134, allot a Director Identification Number to an applicant in such manner as may be prescribed.

Prohibition to obtain more than one Director Identification Number.

136. No individual, who has already been allotted a Director Identification Number under section 135, shall apply for, obtain or possess another Director Identification Number.

137. Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

Director to intimate Director Identification Number.

138. (*1*) Every company shall, within fifteen days of the receipt of intimation under section 137, furnish the Director Identification Number (DIN) of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fee as may be prescribed or with such additional fee as may be prescribed within the time specified under section 364 and every such intimation shall be furnished in such form and manner as may be prescribed.

Company to inform Director Identification Number to Registrar.

(2) Where a company fails to furnish DIN under sub-section (*1*), before the expiry of the period specified under section 364 with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term of six months or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both.

139. Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Obligation to indicate Director Identification Number.

140. If any individual or director, contravenes any of the provisions of sections 133, 136 and 137, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day during which the contravention continues.

Punishment for contravention.

141. (*1*) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of such sum of money as may be prescribed and the amount so deposited shall be

Right of persons other than retiring directors to stand for directorship.

refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total votes cast.

(*2*) The company shall inform its members of the candidature of a person for the office of director under sub-section (*1*) in the manner as may be prescribed.

Appointment of additional director, alternate director and nominee director.

142. (*1*) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

(*2*) The Board of Directors may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

Provided that a person who is proposed to be appointed as an alternate director for an independent director should be qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

(*3*) Subject to the articles, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or State Government by virtue of its shareholding in a Government company.

(*4*) In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the

articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Appointment of directors to be voted individually.

143. (*1*) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

(*2*) A resolution moved in contravention of sub-section (*1*) shall be void, whether or not any objection was taken when it was moved.

(*3*) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated a nomination for his appointment.

Option to adopt principle of proportional representation for appointment of directors.

144. Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (*4*) of section 142.

Disqualifications for appointment of director.

145. (*1*) A person shall not be eligible for appointment as a director of a company, if—

(*a*) he has been found to be of unsound mind by a court of competent jurisdiction and the said finding is in force;

(*b*) he is an undischarged insolvent;

(*c*) he has applied to be adjudicated as an insolvent and his application is pending;

(*d*) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;

(*e*) an order disqualifying him for appointment as a director has been passed by a Court or Tribunal and the order is in force;

(*f*) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and

six months have elapsed from the last day fixed for the payment of the call;

(*g*) he has been convicted of the offence dealing with related party transactions at any time during the last preceding five years; or

(*h*) he has not obtained Director Identification Number.

(*2*) No person who is or has been a director of a company which—

(*a*) has not filed financial statements or annual returns for any continuous period of three financial years; or

(*b*) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other public company for a period of five years from the date on which the said company fails to do so:

Provided that in the case of a sick company under revival and rehabilitation pursuant to Chapter XIX, nothing contained in this section shall apply to a person proposed to be appointed as a director for any default specified in clause (*b*) and committed prior to his appointment.

(*3*) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (*1*) and (*2*):

Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall not take effect—

(*i*) for thirty days from the date of conviction or order of disqualification;

(*ii*) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(*iii*) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

146. (*1*) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than fifteen public limited companies at the same time. Number of directorships.

(*2*) Where a person accepts an appointment as a director in contravention of sub-section (*1*), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day during which the contravention continues.

147. (*1*) Subject to the provisions of this Act, a director of a company shall act in accordance with the company's articles. Duties of directors.

(*2*) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company.

(*3*) A director of a company shall exercise his duties with due and reasonable care, skill and diligence.

(*4*) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(*5*) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.

(*6*) A director of a company shall not assign his office and any assignment so made shall be void.

(*7*) Any director who contravenes the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees:

Provided that if he is found guilty of making any undue gain either to himself or to his relatives, partners or associates he shall also be liable to pay an amount equal to that gain to the company.

148. (*1*) The office of a director shall become vacant in case— Vacation of office of director.

(*a*) he incurs any of the disqualifications specified in section 145;

(*b*) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(*c*) he acts in contravention of the provisions relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(*d*) he fails to disclose his interest in any contract or arrangement;

(*e*) he becomes disqualified by an order of a Court or tribunal;

(*f*) he is removed in pursuance of the provisions of this Act;

(*g*) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(*2*) If a person, who after knowing that the office of director held by him has become vacant on account of any disqualification specified in sub-section (*1*), acts as a director, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(*3*) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (*1*), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(*4*) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (*1*).

Resignation of director.

149. (*1*) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and intimate the Registrar in such manner and in such form as may be prescribed and shall also place the fact of such resignation in the subsequent general meeting held by the company:

Provided that a director may also forward a copy of his resignation to the Registrar in the manner as may be prescribed.

(*2*) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

(*3*) Where as a result of any vacancy in the Board, the number of directors is reduced below the quorum fixed for a meeting of the Board, the continuing director or director(s) shall be deemed to constitute the quorum.

(*4*) Where all the directors of a company resign from their offices, or vacate their offices under section 148, the promoter or, in his absence, the Central Government shall appoint the required number

of directors who shall hold office till the directors are appointed by the company in general meeting.

Removal of directors.

150. (*1*) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 213, before the expiry of period of his office after giving him a reasonable opportunity of being heard and following such procedure as may be prescribed.

(*2*) Special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(*3*) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(*4*) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place by the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (*2*).

(*5*) A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed.

(*6*) If the vacancy is not filled under sub-section (*4*), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(*7*) Nothing in this section shall be taken—

(*a*) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with the termination as director; or

(*b*) as derogating from any power to remove a director under other provisions of this Act.

Register of directors and key managerial personnel and their shareholding.

151. (*1*) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary or associate companies.

(*2*) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.

Members' right to inspect.

152. (*1*) The registers kept under sub-section (*1*) of section 151 shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof shall, on a request by the members, be provided to them free of cost within thirty days.

(*2*) The registers kept under section 151 shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.

(*3*) If any inspection as provided in sub-section (*1*) is refused, or if any copy required under that sub-section is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

Punishment.

153. Where a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every director or employee who is responsible for such contravention shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

Meetings of Board.

154. (*1*) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

(*2*) The participation of directors in a meeting of the Board may be either in person or through video conferencing or such other electronic means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other electronic means.

(*3*) A meeting of the Board shall be called by giving not less than seven days' notice in writing or by electronic means to every director at his address registered with the company:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and will be final only on ratification thereof by at least one independent director.

(*4*) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

Quorum for meetings of Board.

155. (*1*) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other electronic means shall also be counted for the purposes of quorum under this sub-section.

(*2*) Where at any time, the number of interested directors exceeds, or is equal to, two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Explanation.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (*2*) of section 162.

(*3*) Where a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a public holiday, till the next succeeding day, which is not a public holiday, at the same time and place.

Explanation.—For the purposes of this section,—

(*i*) any fraction of a number shall be rounded off as one;

(ii) "total strength" shall not include directors whose places are vacant.

Passing of resolution by circulation.

156. (*1*) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their usual addresses in India, and has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

(*2*) A resolution under sub-section (*1*) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Defects in appointment of directors not to invalidate actions taken.

157. No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

Committees of Board.

158. (*1*) The Board of Directors of every listed company and such other class or description of companies, as may be prescribed, shall constitute an Audit Committee and a Remuneration Committee of the Board.

(*2*) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and at least one director having knowledge of financial management, audit or accounts.

(*3*) The Chairman of an Audit Committee shall be an independent director.

(*4*) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-sections (*2*) and (*3*).

(*5*) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include, among other things, the recommendation for appointment of auditors of the company, examination of the financial statements

and the auditors' report thereon, transactions of the company with related parties, valuation of undertakings or assets of the company, wherever it is necessary, evaluation of internal financial controls and related matters.

(*6*) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review financial statements before their submission to the Board.

(*7*) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (*5*) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

(*8*) The auditors of a company and the key managerial personnel shall have a right to attend the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

(*9*) The Board's report under sub-section (*3*) of section 120 shall disclose composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

(*10*) The Remuneration Committee shall consist of non-executive directors as may be appointed by the Board out of which at least one shall be an independent director.

(*11*) The Remuneration Committee shall determine the company's policies relating to the remuneration of the directors, including the remuneration and other perquisites of the directors, key managerial personnel and such other employees as may be decided by the Board.

(*12*) The Board of Directors of a company having a combined membership of the shareholders, debenture holders and other security holders of more than one thousand at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairman who shall be a non-executive director and such other members of the Board as may be decided by the Board.

(*13*) Stakeholders Relationship Committee shall consider and resolve the grievances of stakeholders.

(*14*) The chairman of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him shall attend the general meetings of the company.

(*15*) In case of any contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Powers of Board.

159. (*1*) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do so:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

(*2*) No resolution passed by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution had not been passed.

(*3*) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

(*a*) to make calls on shareholders in respect of money unpaid on their shares;

(*b*) to authorise buy-back of securities under section 61;

(*c*) to issue securities, including debentures, whether in India or outside;

(*d*) to borrow monies including arrangement with its bankers for overdraft, cash credit or other account;

(*e*) to invest the funds of the company;

(*f*) to grant loans or give guarantee or provide security in respect of loans;

(*g*) to approve financial statement and the director's report;

(*h*) to diversify the business of the company;

(*i*) to approve amalgamation, merger or reconstruction;

(*j*) to take over a company or acquire a controlling or substantial stake in another company:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (*d*) to (*f*) on such conditions as it may specify.

(*4*) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.

Restrictions on powers of Board.

160. (*1*) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

(*a*) to sell, lease or otherwise dispose of the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—

(*i*) the word "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

(*ii*) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(*b*) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(*c*) to borrow money exceeding the aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;

(*d*) to remit, or give time for the repayment of, any debt due from a director;

(*e*) to contribute to charitable and other funds as donation in any financial year an amount in excess of five per cent. of its average net profits for the three immediately preceding financial years.

(*2*) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (*c*) or clause (*e*) of sub-section (*1*) shall specify the total amount up to which monies may be borrowed by the Board of Directors under clause (*c*) or, as the case may be, contributed to charitable and other funds in any financial year under clause (*e*).

(*3*) Nothing contained in clause (*a*) of sub-section (*1*) shall affect—

(*a*) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(*b*) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(*4*) Any special resolution passed by the company consenting to the transaction as is referred to in clause (*a*) of sub-section (*1*) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

(*5*) No debt incurred by the company in excess of the limit imposed by clause (*c*) of sub-section (*1*) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Prohibitions and restrictions regarding political contributions.

161. (*1*) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly—

(*a*) to any political party, or

(*b*) to any person for a political purpose:

Provided that the amount or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed five per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(*2*) Without prejudice to the generality of the provisions of sub-section (*1*),—

(*a*) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(*b*) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(*i*) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(*ii*) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(*3*) Every company shall disclose in its profit and loss account any amount or amount contributed by it to any political party or to any person for a political purpose during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(*4*) Where a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

43 of 1951.

Disclosure interest director.

162. (*1*) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after the change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

(*2*) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(*a*) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(*b*) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the next first meeting of the Board held after he becomes so concerned or interested.

(*3*) A contract or arrangement entered into by the company without disclosure under sub-section (*2*) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(*4*) Where a director contravenes the provisions of sub-section (*1*), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(5) Every director who contravenes the provisions of sub-section (*2*) shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand

rupees but which may extend to one lakh rupees, or with both.

(6) Nothing in this section—

(*a*) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(*b*) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

Loan to directors, etc.

163. (*1*) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom he is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

(*a*) the giving of any loan to a managing or whole-time director—

(*i*) as a part of the conditions of service extended by the company to all its employees; or

(*ii*) pursuant to any scheme approved by the members by a special resolution;

(*b*) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

(*2*) Where any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (*1*), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Loan and investment by company.

164. (*1*) No company shall directly or indirectly—

(*a*) give any loan to any person or other body corporate;

(*b*) give any guarantee or provide security in connection with a loan to any other body corporate or person; or

(*c*) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent of its paid-up share capital and free reserves or one hundred per cent of its free reserves, whichever is more.

(*2*) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (*1*) exceeds the limits specified in sub-section (*1*), prior approval by means of a special resolution passed at a general meeting shall be necessary.

(*3*) The company shall disclose to the members in the financial statements the full particulars of the loans given and the purpose for which the loan is proposed to be utilised by the recipient of the loan.

(*4*) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (*1*), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

(*5*) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit. Such a company shall furnish in its financial statement the details of the loan or deposits. 15 of 1992.

(*6*) No loan shall be given under this section at a rate of interest lower than the prevailing bank rate being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934. 2 of 1934.

(*7*) No company which is in default in the repayment of any deposits accepted before the commencement of this Act or payment of interest thereon even after such commencement, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

(*8*) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(*9*) The register referred to in sub-section (*8*) shall be kept at the registered office of the company and—

(*a*) shall be open to inspection at such office; and

(*b*) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fee as may be prescribed.

(*10*) Nothing contained in this section shall apply—

(*a*) to a loan made, guarantee given or security provided by—

(*i*) a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies providing infrastructural facilities;

(*ii*) a holding company to its wholly-owned subsidiary; or

(*iii*) a private company unless it is a subsidiary of a public company;

(*b*) to any acquisition—

(*i*) made by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities;

2 of 1934.

(*ii*) made by a holding company by way of subscription, purchase or otherwise, the securities of its wholly owned subsidiary; or

(*iii*) of shares allotted in pursuance of sub-section (*1*) of section 56.

(*11*) Where a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years or

with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Investment of company to be held in its own name.

165. (*1*) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if and in so far as it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(*2*) Nothing in this section shall be deemed to prevent a company from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(*3*) Where in pursuance of sub-section (*2*), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to the inspection by any member or debenture holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(*4*) Where a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Related party transactions.

166. (*1*) Except with the consent of the Board of Directors of a public company accorded by a resolution passed at a meeting of the Board and subject to such conditions as may be prescribed, no such company shall enter into any contract or arrangement with a related party with respect to—

(*a*) sale, purchase or supply of any goods or materials;

(*b*) selling or otherwise disposing of, or buying, property of any kind;

(*c*) leasing of property of any kind;

(*d*) availing or rendering of any services;

(*e*) appointment of any agents for purchase or sale of goods, materials, services or property;

(*f*) appointment to any office or place of profit in the company or its subsidiary company; and

(*g*) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation.—For the purposes of this sub-section, arm's length transaction means a transaction between two related parties that is conducted on terms as if they were unrelated, so that there is no question of a conflict of interest.

(*2*) Every contract or arrangement entered into under sub-section (*1*) shall be referred to in the report of the directors to the shareholders along with the justification for entering into such contract or arrangement.

(*3*) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (*1*) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(*4*) Without prejudice to anything contained in sub-section (*3*), it shall be open to the company to proceed against a director or other employee who had authorised for entering into such contract or arrangement in contravention of the provisions of this section for recovery of any loss or damage sustained by it as a result of such contract or arrangement.

(*5*) Any director or other employee of a public company, who had authorised the contract or arrangement in violation of the provisions of this section shall,—

(*i*) in case of public company whose shares are not listed in any stock exchange, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees; and

(*ii*) in case of listed public company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, "office or place of profit" means any office or place—

(*a*) in case the office or place is held by a director, if the director holding it obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fee, commission, perquisites, the right to occupy any rent-free premises as a place of residence, or otherwise;

(*b*) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it obtains from the company anything by way of remuneration, whether as salary, fee, commission, perquisites, the right to occupy any rent-free premises as a place of residence, or otherwise.

Register of contracts or arrangements in which directors are interested.

167. (*1*) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (*2*) of section 162 applies, including such particulars and in such manner as may be prescribed.

(*2*) Every director, including a deemed director, or key managerial personnel shall, within thirty days of his appointment, or relinquishment of, his office, as the case may be, disclose to the company the particulars specified in sub-section (*1*) of section 162 relating to his concern or interest in the other associations which are required to be included in the register under sub-section (*1*).

(*3*) Every director, including a deemed director, shall give notice in writing to the company at a meeting of the Board, of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of this section.

(*4*) The register kept pursuant to sub-section (*1*) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fee as may be prescribed.

(*5*) The registers to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(*6*) Nothing in sub-section (*1*) shall apply to any contract or arrangement—

(*a*) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(*b*) by a banking company for the collection of bills in the ordinary course of its business.

(*7*) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

Contract of employment with managing or whole-time directors.

168. (*1*) Every company shall keep at its registered office,—

(*a*) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or

(*b*) where such a contract is not in writing, a written memorandum setting out its terms.

(*2*) Copies of the contract or the memorandum kept under sub-section (*1*) shall be open to inspection by any member of the company without payment of fee.

(*3*) If any default is made in complying with the provisions of sub-section (*1*) or sub-section (*2*), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.

(*4*) The provisions of this section shall not apply to a private company.

Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.

169. (*1*) No director of a company shall, in connection with—

(*a*) the transfer of the whole or any part of any undertaking or property of the company, or

(*b*) the transfer to any person of all or any of the shares in a company being a transfer resulting from—

(*i*) an offer made to the general body of shareholders;

(ii) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;

(*iii*) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

(*iv*) any other offer which is conditional on acceptance to a given extent,

receive any payment by way of compensation for loss of office or as consideration for if retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(*2*) Nothing in sub-section (*1*) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.

(*3*) If the payment under sub-section (*1*) or sub-section (*2*) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

(*4*) Where a director of a company receives payment of any amount in contravention of sub-section (*1*) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

(*5*) Where any director contravenes any of the provisions of this section, he shall be punishable with fine which shall not be less

than twenty-five thousand rupees but which may extend to one lakh rupees.

(*6*) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any payment received under this section or any other like payments made to a director.

Restriction on non-cash transactions involving directors.

170. (*1*) No company shall enter into an arrangement by which—

(*a*) a director of the company or its holding company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(*b*) the company acquires or is to acquire assets for consideration other than cash, from such a director or person so connected,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(*2*) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (*1*) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(*3*) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—

(*a*) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or

(*b*) any rights are acquired *bona fide* for value and without notice of the contravention of the provisions of this section by any other person.

Contract by One Person Company.

171. (*1*) Where a One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after the entering into the contract:

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

(*2*) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (*1*) within fifteen days of the date of approval by the Board of Directors with such fee as may be prescribed, or with such additional fee as may be prescribed within the time specified, under section 364.

(*3*) Where the company fails to inform the Registrar under sub-section (*2*) before the expiry of the period specified under section 364 with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Prohibition on forward dealings in securities of company by a key managerial personnel.

172. (*1*) No director of a company or any of its key managerial personnel shall buy—

(*a*) a right to call for delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures,

(*b*) a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures, or

(*c*) a right, as he may elect, to call for delivery at a specified price and within a specified time, or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(*2*) Where a director or any key managerial personnel contravenes the provisions of sub-section (*1*), he shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

(*3*) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (*1*), he shall, without prejudice to any punishment which may be imposed under sub-section (*2*), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition.

Explanation.—For the purposes of this section, relevant shares and relevant debentures mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial person or shares and debentures of its holding and subsidiary companies.

Prohibition on insider trading of securities.

173. (*1*) No director or key managerial personnel shall either on his own behalf or on behalf of any other person, deal in securities of a company, or counsel, procure or communicate, directly or indirectly, about any non-public price-sensitive information to any person:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section, "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(*2*) If any director or key managerial personnel contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to one crore rupees, or with both.

CHAPTER XIII

Appointment and remuneration of managerial personnel

Appointment of managing director, whole-time director or manager.

174. (*1*) No company shall appoint or employ at the same time a managing director and manager.

(*2*) No company shall appoint or re-appoint any person as its managing director whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

(*3*) No company shall appoint any firm, body corporate or other association as its manager.

(*4*) No company shall appoint or continue the employment of any person as its key managerial personnel who—

(*a*) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution;

(*b*) is an undischarged insolvent or has at any time been adjudged an insolvent;

(*c*) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(*d*) has at any time been convicted by a court of an offence involving moral turpitude.

(*5*) A managing director, whole-time director or manager shall be appointed by the Board of Directors at a meeting with the consent of all the directors present at such meeting, which shall be subject to approval by a special resolution at the next general meeting of the company:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, if any, of a director or directors in such appointments, if any.

(*6*) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be Invalid.

Remuneration of managerial personnel.

175. (*1*) A managing or whole-time director or a manager of a company may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company, computed in the manner prescribed, or partly by monthly payment and partly by the percentage of net profits.

(*2*) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

(*3*) Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

(*4*) Every person who contravenes the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Remuneration payable to directors.

176. (*1*) A director who is neither a whole-time director nor a managing director of a company may be paid remuneration in the form of—

(*a*) fee for attending meetings of the Board or Committees thereof in accordance with the articles; and

(*b*) profit-related commission with the prior approval of members by a special resolution.

(*2*) If any director draws or receives directly or indirectly by way of remuneration any sum in excess of the amount under sub-section (*1*), he shall refund such sum to the company within thirty days.

Compensation for loss of office of managing or whole-time director or manager.

177. (*1*) Payment may be made by a company to a managing or whole-time director or manager, but not to any other director by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

(*2*) No payment shall be made under sub-section (*1*) in the following cases, namely:—

(*a*) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(*b*) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(*c*) where the office of the director is vacated under sub-section (*1*) of section 148;

(*d*) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;

(*e*) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

(*f*) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(*3*) Any payment made to a managing or whole-time director or manager in pursuance of sub-section (*1*) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

(*4*) Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

Appointment of key managerial personnel.

178. (*1*) Every company belonging to such class or description of companies as may be prescribed shall have whole-time key managerial personnel.

(*2*) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(*3*) A whole-time key managerial personnel shall not hold office in more than one company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the company.

(*4*) If the office of any key managerial personnel is vacated, the resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(*5*) Where a company fails to comply with any of the provisions of this section, it shall be liable to a penalty of one lakh rupees and every director and key managerial personnel who is in default shall be liable to a penalty of twenty-five thousand rupees, for each such default.

CHAPTER XIV

INSPECTION, INQUIRY AND INVESTIGATION

Power to call for information, inspect books and conduct inquiries.

179. (*1*) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

(*a*) to furnish in writing such information or explanation; or

(*b*) to produce such documents, within such reasonable time, as may be specified in the notice.

(*2*) On the receipt of a notice under sub-section (*1*), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(*3*) If no information or explanation is furnished to the Registrar within the time specified under sub-section (*1*) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or does not disclose a full and fair statement of the information required or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company with regard to compliance with the provisions of this Act, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(*4*) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or

explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that circumstances so warrant, direct the Registrar or a competent inspector appointed by it for the purpose to carry out the inquiry under this sub-section.

(*5*) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

(*6*) Where a company fails to furnish any information called for under this section within the time or extended time provided for the purpose, the company shall be punishable with a fine of five hundred rupees per day during the period for which the default continues and shall also be liable to a further fine of rupees one lakh for each offence.

Conduct of inspection and inquiry.

180. (*1*) Where a Registrar or inspector calls for the books of account and other books and papers under section 179, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, informations or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.

(*2*) The Registrar or inspector, making an inspection or inquiry under section 179 may, during the course of such inspection or inquiry, as the case may be,—

(*a*) make or cause to be made copies of books of account and other books and papers, or

(*b*) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

(*3*) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of persons and examining them on oath; and

(*b*) inspection of any books, registers and other documents of the company at any place.

(*4*) Where any default is made in complying with the directions issued by the Registrar or the inspector in exercise of the powers under the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer who is in default shall be punishable with imprisonment which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

(*5*) Where a director or other officer of the company has been convicted of an offence under this section, he shall, on and from the date of his conviction, be deemed to have vacated his office as such and shall be disqualified from holding the office of a director or any other employee in the company or any other company for a period of five years from such date.

Report on inspection made.

181. The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 179 and other books and papers of the company under section 180, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

Search and seizure.

182. (*1*) Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the managing director or manager thereof, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the special court for the seizure of such books and papers,—

(*a*) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept, and

(*b*) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

(*2*) The Registrar or inspector shall return the books and papers seized under sub-section (*1*), as soon as may be, and in any case not later than the one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized:

Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again:

Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

(*3*) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply *mutatis mutandis* to every search and seizure made under this section. 2 of 1974.

Investigation into affairs of company.

183. (*1*) Where the Central Government is of the opinion, for reasons to be recorded in writing, that it is necessary to investigate into the affairs of a company,—

(*a*) on the receipt of a report of the Registrar or inspector under section 181;

(*b*) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(*c*) in public interest, it may order an investigation into the affairs of the company.

(*2*) Where an order is passed by a Court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(*3*) For the purposes of this section, the Central Government may appoint one or more competent persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

Investigation into company's affairs in other cases.

184. The Tribunal may,—

(*a*) on an application made by—

(*i*) not less than one hundred members or members holding not less than one-tenth of the total voting power in the case of a company having a share capital; or

(*ii*) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital,

and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for

seeking an order for conducting an investigation into the affairs of the company; or

(*b*) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(*i*) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose;

(*ii*) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(*iii*) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

Security for payment of costs and expenses of investigation.

185. (*1*) Where an investigation is ordered by the Central Government in pursuance of sub-section (*1*) of section 183, or in pursuance of an order made by the Tribunal under section 184, the Central Government may before appointing an inspector require the company or the applicants to give security for such amount not exceeding twenty-five lakh rupees as it may think fit, for payment of the costs and expenses of the investigation.

(*2*) After the completion of any investigation, the costs and expenses of such investigation shall be worked out and a notice shall be served on the company concerned for payment of the said amount within a certain period specified in the notice and if the amount is not paid within the time specified by the Central Government or such extension of time as may be given by it, the amount shall be a charge on the property and assets of the company and shall be recoverable as such under this Act.

Firm, body corporate or association not to be appointed as inspector.

186. No firm, body corporate or other association shall be appointed as an inspector.

Investigation of ownership of company.

187. (*1*) Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons—

(*a*) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(*b*) who are or have been able to control or to materially influence the policy of the company.

(*2*) Without prejudice to its powers under sub-section (*1*), the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceedings before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (*1*).

(*3*) While appointing an inspector under sub-section (*1*), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(*4*) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

Procedure, powers, etc., of inspectors.

188. (*1*) It shall be the duty of all officers and other employees and agents of a company which is under investigation under this Chapter, and where the affairs of any other body corporate or a person are investigated under section 189, of all officers and other employees including ex-employees and agents of such body corporate or a person—

(*a*) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

(*b*) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(*2*) The inspector may require any body corporate, other than a body corporate referred to in sub-section (*1*), to furnish such information to, or produce such books and papers before, him or any person authorised hy him in this behalf as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(*3*) The inspector shall not keep in his custody any books and papers produced under sub-section (*1*) or sub-section (*2*) for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced:

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.

(*4*) An inspector may examine on oath—

(*a*) any of the persons referred to in sub-section (*1*); and

(*b*) with the prior approval of the Central Government, any other person,

in relation to the affairs of the company, or other body corpor-ate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally.

(*5*) Notes of any examination under sub-section (*4*) shall be taken down in Writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(*6*) If any person fails without reasonable cause or refuses—

(*a*) to produce to an inspector or any person authorised by him in this behalf any book or paper which it is his duty under sub-section (*1*) or sub-section (*2*) to produce;

(*b*) to furnish any information which is his duty under sub-section (*2*) to furnish;

(*c*) to appear before the inspector personally when required to do so under sub-section (*4*) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(*d*) to sign the notes of any examination referred to in sub-section (*5*),

he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(*7*) Officers of the Central Government, any State Government or statutory authority shall provide reasonable assistance to the inspector for the purpose of the inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.

(*8*) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State. The Central Government may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.

Power of inspectors to conduct investigation into affairs of related companies, etc.

189. If an inspector appointed under section 183 or section 184 or section 187 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—

(*a*) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(*b*) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

(*c*) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(*d*) any person who is or has at any relevant time been the company's managing director or manager or employee,

he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body

corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed:

Provided that the Central Government shall, before according approval under this section give the body corporate or person a reasonable opportunity to show cause why such approval shall not be given.

Seizure of documents by inspector.

190. (*1*) Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—

(*a*) enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and

(*b*) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books, papers at its cost for the purposes of his investigation.

(*2*) The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

Provided that the inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.

(*3*) The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply *mutatis mutandis* to every search or seizure made under this section.

Freezing of assets on an inquiry and investigation of a company.

191. (*1*) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under sections 180 and 183 or on any complaint made by any person in this behalf that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal

or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

(*2*) In case of any removal, transfer or disposal of funds, assets, properties of the company in contravention of the order of the Tribunal under sub-section (*1*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Imposition of restrictions upon securities.

192. (*1*) Where it appears to the Tribunal, in connection with any investigation under section 187 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

(*2*) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (*1*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Inspector's report.

193. (*1*) An inspector appointed under this Chapter may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

(*2*) Every report made under sub-section (*1*) shall be in writing or printed as the Central Government may direct.

(*3*) The Central Government—

(*a*) shall forward a copy of final report, other than an interim report, made by any inspector, to the company at its registered office and also to any body corporate or person dealt with in the report by virtue of section 189;

(*b*) may, if it thinks fit, furnish a copy of the final report, on request and on payment of the prescribed fee, to any person—

(*i*) who is a member of the company or other body corporate dealt with in the report under section 183 or section 189; or

(*ii*) whose interest as a creditor of the company or other body corporate appears to the Central Government to be affected;

(*c*) shall, where the inspectors are appointed under section 183 in pursuance of an order of a Court or the Tribunal, forward a copy of any report to that Court or the Tribunal;

(*d*) shall, where the inspectors are appointed in pursuance of the provisions of section 184, furnish a copy of the final report to the Tribunal or to the applicants who requested investigation;

(*e*) may also cause the final report to be published.

(*4*) The report of any inspector appointed under this Chapter and authenticated in such manner, as may be prescribed, shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

No suit or proceeding till submission of final report.

194. No suit or other proceeding shall lie in any court, tribunal or other authority in respect of any action initiated by the Central Government for making an investigation under this Chapter or for the appointment of an inspector thereunder and no proceedings of an inspector shall be called in question or stayed by any court, tribunal or other authority on any ground whatsoever until the conclusion of the investigation and the submission of a report by the inspector.

Actions to be taken in pursuance of inspector's report.

195. (*1*) If, from an inspector's report, made under section 193, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under section 183 or section 184 or section 189, been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

(*2*) If any company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report made under section 193 that it is expedient so to do by reason of any such circumstances as are referred to in

section 184, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—

(*a*) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up, or

(*b*) an application under section 212, or

(*c*) both.

(*3*) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under section 183—

(*a*) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

(*b*) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,

the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.

(*4*) The Central Government shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (*3*).

Expenses of investigation.

196. (*1*) The expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter other than expenses of inspection under section 185 shall be defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely—

(*a*) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 195, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(*b*) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value

of any sums or property recovered by it as a result of such proceedings;

(*c*) unless, as a result of the investigation, a prosecution is instituted under section 195,—

(*i*) any company, body corporate, managing director or manager dealt with by the report of the inspector, and

(*ii*) the applicants for the investigation, where the inspector was appointed under section 184,

to such extent as the Central Government may direct.

(*2*) Any amount for which a company or body corporate is liable under clause (*b*) of sub-section (*1*) shall be a first charge on the sums or property mentioned in that clause.

Voluntary winding up of company, etc., not to stop investigation proceedings.

197. An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

(*a*) an application has been made under section 212;

(*b*) the company has passed a special resolution for voluntary winding up; or

(*c*) any other proceeding for the winding up of the company is pending before the Tribunal:

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (*c*), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit:

Provided further that nothing in the winding up order shall absolve any director or other employee ofthe company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.

Legal advisers and bankers not to disclose.

198. Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

(*a*) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(*b*) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

Investigation, etc., of foreign companies.

199. The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.

Penalty for furnishing false statement, mutilation, destrution of documents.

200. Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(*a*) destroys, mutilates or falsifies, or is a party to the destruction, mutilation or falsification of, documents relating to the property, assets or affairs of the company or the body corporate;

(*b*) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(*c*) provides an explanation which is false or which he knows to be false,

he shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

CAHPTER XV

Compromises, arrangements and amalgamations

Power to compromise or make arrangements with creditors and members.

201. (*1*) Where a compromise or arrangement is proposed—

(*a*) between a company and its creditors or any class of them, or

(*b*) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(*2*) The company or any other person, by whom an application is made under sub-section (*1*), shall disclose to the Tribunal by affidavit—

(*a*) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(*b*) reduction of share capital of the company, if any, included in the compromise or arrangement;

(*c*) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of tile secured creditors in value, including—

(*i*) a creditor's responsibility statement,

(*ii*) safeguards for the protection of other secured and unsecured creditors,

(*iii*) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board,

(*iv*) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect, and

(*v*) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(*3*) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (*1*), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture holders of the company, either individually or by an advertisement, which shall be accompanied by a statement disclosing the details of the compromise or arrangement, the valuation report, if any, and explaining their effect on creditors, members and the debenture holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that where an advertisement is issued under this sub-section, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(*4*) A notice under sub-section (*3*) shall provide that the persons to whom the notice is sent shall intimate in writing their consent to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(*5*) A notice under sub-section (*3*) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (*1*) of section 7 of the Competition Act, 2002, if necessary, and such other authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within one month from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals. 12 of 2003.

(*6*) Where, at a meeting held in pursuance of sub-section (*1*), a majority representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, present and voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

(*7*) An order made by the Tribunal under sub-section (*6*) shall provide for all or any of the following matters, namely:—

(*a*) where the compromise or arrangement provides for conversion of preferential shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(*b*) the protection of any class of creditors;

(*c*) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 42;

(*d*) if the compromise or arrangement is agreed to by the creditors under sub-section (*6*), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate; 1 of 1986.

(*e*) such other matters as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

(*8*) The order of the Tribunal shall be filed with the Registrar by the Company within thirty days of the receipt of the order.

(*9*) No compromise or arrangement under this section shall include any buy-back of securities as is provided under section 61.

(*10*) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover of offer shall be as per the guidelines issued by the Securities and Exchange Board.

Explanation.—For the purposes of this section, "takeover offer" means an offer to acquire all the shares in a company or where there is more than one class of shares, all the shares of one or more classes, other than shares that at the date of the offer are already held by the offeror, and the terms of the offer are the same in relation to all the shares to which the offer relates or where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.

(*11*) An aggrieved party may make an application to the Tribunal in the even of any grievances with respect to the takeover offer of companies other than listed companies in such a manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 59 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

Power of Tribunal to enforce compromise or arrangement.

202. (*1*) Where the Tribunal makes an order under section 201 sanctioning a compromise or an arrangement in respect of a company, it—

(*a*) shall have power to supervise the implementation of the compromise or arrangement; and

(*b*) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(*2*) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 201 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 248.

(*3*) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

Merger and amalgamation of companies.

203. (*1*) Where an application is made to the Tribunal under section 201 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(*b*) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (*3*) to (*6*) of section 201 shall apply *mutatis mutandis*.

(*2*) Where an order has been made by the Tribunal under sub-section (*1*), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(*a*) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(*b*) confirmation that a copy of the draft scheme has been filed with the Registrar;

(*c*) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(*d*) the report of the expert with regard to valuation, if any;

(*e*) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme;

(*f*) approval of the draft of the proposed terms by an ordinary resolution of the transferor company or, as the case may be, each of the transferor companies, in the case of merger by formation of a new company.

(*3*) The Tribunal, after satisfying itself that the procedure specified in sub-sections (*1*) and (*2*) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(*b*) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(*d*) dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(*f*) where there is an allotment of any foreign direct investment, such allotment to the transferor company and the transferee company at such percentage as may be specified in the order;

(*g*) the transfer of the employees of the transferor company to the transferee company;

(*h*) where the transferor company is a listed company and the transferee company is an unlisted company,—

(*i*) the transferee company shall continue to be an unlisted company;

(*ii*) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal;

(*iii*) if the transferor company is not dissolved, it shall become an unlisted company and if it is left with a small portion of the assets, the public shareholders may decide to opt out of the company and provision shall be made for the payment of the value of shares and other benefits in accordance with a pre-determined price formula or after a valuation is made;

(*i*) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(*j*) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out.

(*4*) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(*5*) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

(*6*) Where any default is made in complying with the provisions of this section, the transferor company or the transferee company or both shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such companies who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.—For the purposes of this section,—

(*i*) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

(*ii*) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;

(*iii*) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and

(*iv*) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

Merger or amalgamation of certain companies.

204. (*1*) Notwithstanding the provisions of section 203, a scheme of merger or amalgamation may be entered into between two small companies or between a holding company and its wholly-owned subsidiary company, subject to the following, namely:—

(*a*) a notice of the proposed scheme inviting comments or objections, if any, from any persons affected by the scheme within thirty days is issued by both the transferor and the transferee company;

(*b*) the objections received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting by passing a special resolution; and

(*c*) the scheme is approved by three-fourths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(*2*) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Registrar and the Official Liquidator.

(*3*) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or comments to the scheme, the Registrar shall register the same and issue a confirmation thereof to the companies.

(*4*) If the Official Liquidator has any objections or comments, he may communicate the same in writing to the Registrar within a period of thirty days:

Provided that if no such communication is made by the Official Liquidator, it shall be presumed that he has no objection to the scheme.

(*5*) If the Registrar after receiving the comments of the Official Liquidator or for any reason is of the opinion that such a scheme is not in public interest or in interest of the creditors, he may file an application before the Tribunal within ninety days of the receipt of the scheme under sub-section (*2*) stating his objections and requesting that Tribunal may consider the scheme under section 203.

(*6*) On receipt of an application from the Registrar or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 203, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

Provided that if the Registrar or the Official Liquidator does not have any objections to the scheme or they do not file any application under this section before the Tribunal, it shall be deemed that they have no objection to the scheme.

(*7*) A copy of the order under sub-section (*6*) shall be communicated to the Registrar and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies.

(*8*) The registration of the scheme shall be deemed to have the effect of dissolution of the transferor company without process of winding up.

(*9*) The registration of the scheme shall have the following effects, namely:—

(*a*) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the

property of the transferee company and the liabilities become the liabilities of the transferee company;

(*b*) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(*c*) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and

(*d*) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

(*10*) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fee due on revised capital:

Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

Amalgamation by mutual agreement.

205. (*1*) The provisions of this Chapter shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

(*2*) A foreign company may merge or amalgamate into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger or amalgamation may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Indian Depository Receipts, or partly in cash and partly in Indian Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

206. (*1*) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after the making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four

months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(*2*) Where a notice under sub-section (*1*) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(*3*) Where a notice has been given by the transferee company under sub-section (*1*) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—

(*a*) thereupon register the transferee company as the holder of those shares, and

(*b*) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

(*4*) Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

(*5*) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—

(*a*) in sub-section (*1*), for the words "the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,", the words "the shares affected" shall be substituted; and

(*b*) in sub-section (*3*), the words "together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company" shall be omitted.

Explanation.—For the purposes of this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Purchase of minority shareholding.

207. (*1*) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

(*2*) The acquirer, person or group of persons under sub-section (*1*) may offer to the minority shareholders of equity shares of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

(*3*) Without prejudice to the provisions of sub-sections (*1*) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (*2*).

(*4*) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (*2*) or sub-section (*3*), as the case may be, in a separate bank account to be operated by the transferor company for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days.

(*5*) In the event of a purchase under this section, whether wholly or partially, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and as

an agent for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(*6*) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (*4*) by the majority in advance to the minority by dispatch of such payment.

(*7*) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

(*8*) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five per cent, or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a *pro rata* basis.

Explanation.—For the purposes of this section, the expressions "acquirer" and "person acting in concert" shall have the meanings respectively assigned to them in clause (*b*) and clause (*e*) of sub-regulation (*1*) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Power of Central Government to provide for amalgamation of companies in public interest.

208. (*1*) Where the Central Government is satisfied that it is essential in public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

(*2*) The order under sub-section (*1*) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(*3*) Every member or creditor including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

(*4*) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (*3*) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(*5*) No order shall be made under this section unless—

(*a*) a copy of the proposed order has been sent in draft to each of the companies concerned;

(*b*) the time for preferring an appeal under sub-section (*4*) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and

(*c*) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(*6*) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

Registration of offer of schemes involving transfer of shares.

209. (*1*) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under this Chapter,—

(*a*) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed;

(*b*) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and

(*c*) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered:

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (*a*) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

(*2*) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (*1*).

(*3*) The director who issues a circular which has not been presented for registration and registered under clause (*c*) of sub-section (*1*), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Preservation of books and papers of amalgamated company.

210. The books and papers of a company, which has been amalgamated with, or whose shares have been acquired by another company under this Chapter, shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Liability of officers in repsect of offences committed prior to merger, amalgamation, etc.

211. Notwithstanding anything contained in any other Act, the liability in respect of offences committed under this Act by the officers in default of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

CHAPTER XVI

Prevention of Oppression and Mismanagement

Application to Tribunal for relief in cases of oppression, etc.

212. (*1*) Any member of a company who complains that—

(*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members; or

(*b*) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply· under section 215 for an order under this Chapter.

(*2*) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

Powers of Tribunal.

213. (*1*) If, on any application made under section 212, the Tribunal is of the opinion—

(*a*) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest; and

(*b*) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(*2*) Without prejudice to the generality of the powers under sub-section (*1*), an order under that sub-section may provide for—

(*a*) the regulation of the conduct of the affairs of the company in future;

(*b*) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(*c*) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(*d*) restrictions on the transfer of the shares of the company;

(*e*) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(*f*) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (*e*):

Provided that no such agreement referred to in clause (*e*) or clause (*f*) shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(*g*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(*h*) removal of the managing director, manager or any of the directors of the company;

(*i*) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (*h*);

(*j*) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(*k*) imposition of costs as may be deemed fit by the Tribunal;

(*l*) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(*3*) A certified copy of the order of the Tribunal under sub-section (*1*) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(*4*) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating

the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(*5*) Where an order of the Tribunal under sub-section (*1*) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(*6*) Subject to the provisions of sub-section (*1*), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(*7*) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles shall, within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(*8*) Where any default is made in complying with the provisions of sub-section (*5*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Consequence of termination or modification of certain agreement.

214. (*1*) Where an order made under section 213 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,—

(*a*) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(*b*) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company:

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on

the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

(*2*) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (*b*) of sub-section (*1*), and every other director who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

Right to apply under section 212.

215. (*1*) The following members of a company shall have the right to apply under section 212, namely:—

(*a*) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(*b*) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (*a*) or clause (*b*) so as to enable the members to apply under section 212.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(*2*) Where members of a company are entitled to make an application under sub-section (*1*), anyone or more of them having obtained the consent in writing of the rest, may make the application on behalf, and for the benefit, of all of them.

Class action.

216. (*1*) Any one or more members or class of members or one or more creditors or any class of creditors may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or creditors, file an application before the Tribunal on behalf of the members and creditors for seeking all or any of the following orders, namely:—

(*a*) to restrain the company from committing an act which is *ultra vires* the articles or memorandum of the company;

(*b*) to restrain the company from committing breach of any provision of the company's memorandum or articles;

(*c*) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misstatement to the members or creditors;

(*d*) to restrain the company and its directors from acting on such resolution;

(*e*) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;

(*f*) to restrain the company from taking action contrary to any resolution passed by the members.

(*2*) Any order passed by the Tribunal shall be binding on the company and all its members and creditors.

(*3*) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Application of certain provisions to proceedings under section 212 or 216.

217. The provisions of sections 312 to 316(both inclusive) shall apply *mutatis mutandis* in relation to a fraudulent application made to the Tribunal under section 212 or section 216.

CHAPTER XVII

Registered Valuers

Valuation by registered valuers.

218. Where under any provision of this Act, valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill (hereinafter in this Chapter referred to as the assets) or net worth of a company or its assets, it shall be valued by a person registered as a valuer under this Chapter and appointed by the audit committee or in its absence by the Board of Directors of that company.

Registration of valuers.

219. (*1*) The Central Government shall maintain a register to be called as the register of valuers in which it shall enter the names and addresses of persons registered under sub-section (*2*) as valuers.

(*2*) Any chartered accountant, cost and works accountant, Company Secretary or any other person possessing such qualifications, as may be prescribed, may apply to the Central Government in the prescribed form for being registered as a valuer under this section:

Provided that no company or body corporate shall be eligible to apply.

(*3*) Every application under sub-section (*2*) shall be accompanied by such fee as may be prescribed, containing a declaration to the effect that the applicant shall—

(*a*) make an impartial and true valuation of any assets which may be required to be valued;

(*b*) make the valuation in accordance with such rules as may be prescribed; and

(*c*) shall not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during the valuation of the assets.

Appointment of committee of experts.

220. (*1*) The Central Government may, for the purposes of section 219, by an order, appoint a committee of experts consisting of such number of qualified persons holding such qualifications as may be prescribed.

(*2*) The committee appointed under sub-section (*1*) shall scrutinise the applications received under sub-section (*2*) of section 219 and recommend suitable names for the purpose of inclusion in the register of valuers.

Practice as registered valuers.

221. (*1*) No person, either alone or in partnership with any other person, shall practise, describe or project himself as a registered valuer for the purposes of this Act or permit himself to be so described or projected unless he is registered as a valuer, or, as the case may be, he and all his partners are so registered under this Chapter.

(*2*) The report of valuation of any assets by a registered valuer shall be submitted in the prescribed form and be verified in the prescribed manner.

(*3*) A registered valuer shall not charge at a rate exceeding the rate as may be prescribed in this behalf.

Furnishing of particulars in certain cases.

222. Where any person who is registered as a valuer under section 219 or who has made an application for registration as a valuer under that section is, at any time thereafter,—

(*a*) sentenced to a term of imprisonment for any offence; or

(*b*) in a case where he is a member of any association or institute having as its object the control, supervision, regulation or encouragement of the profession of Chartered Accountant, Cost and Works Accountants or Company Secretaries or such other profession as the Central Government may specify in this behalf by notification, found guilty of misconduct in his professional capacity, by such association or institute,

he shall immediately after such conviction or finding intimate the particulars thereof to the Central Government.

Removal and restoration of names of valuers from register.

223. (*1*) The Central Government may remove the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit,—

(*a*) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(*b*) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Central Government, renders his name unfit to be kept in the register.

(*2*) The Central Government may on application and on sufficient cause being shown, restore in the register the name of any person removed therefrom.

(*3*) Without prejudice to the provisions of sub-sections (*1*) and (*2*), the Central Government shall, once in three years, review the performance of all the registered valuers and may remove the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make, that his performance is such that his name should not remain on the register of valuers.

(*4*) The inquiry to be made under this section shall be made by such officer and he shall, for the purpose of such inquiry, have such powers, as may be prescribed.

CHAPTER XVIII

Removal of Name of Companies from the Register

Power of Registrar to remove name of a company from register.

224. (*1*) Where the Registrar has reasonable cause to believe that—

(*a*) a company has failed to commence its business within one year of its incorporation;

(*b*) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (*1*) of section 10 to this effect has not been filed within one hundred and eighty days of its incorporation; or

(*c*) a company is not carrying on any business or operation for a period of one year and has not made any application within such period for obtaining the status of a dormant company under section 413,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period specified in the notice.

(*2*) Without prejudice to the provisions of sub-section (*1*), a company by a special resolution or consent of seventy-five per cent. members in terms of share capital may also file an application in the prescribed manner to the Registrar for removing the name of the company from the register on all or any of the grounds specified in sub-section (*1*) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(*3*) Nothing in sub-section (*2*) shall apply to a company registered under section 4.

(*4*) A notice issued under sub-section (*1*) or sub-section (*2*) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(*5*) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(*6*) The Registrar, before passing an order under sub-section (*5*), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register.

(*7*) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (*5*), shall continue and may be enforced as if the company had not been dissolved.

(*8*) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off the register.

No application under section 224 in certain situations.

225. (*1*) An application under sub-section (*2*) of section 224 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(*a*) has changed its name;

(*b*) has traded or otherwise carried on business;

(*c*) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(*d*) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(*e*) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(*f*) is being wound up under Chapter XX, whether voluntarily or by the Tribunal.

(*2*) If a company files an application under sub-section (*2*) of section 224 in violation of sub-section (*1*), it shall be punishable with fine which may extend to one lakh rupees.

(*3*) An application filed under sub-section (*2*) of section 224 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (*1*) are brought to his notice.

Effect of a company notified as dissolved.

226. Where a company stands dissolved under section 224, it shall on and from the date mentioned in the notice under sub-section (*5*) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

Fraudulent application for removal of name.

227. (*1*) Where it is found that an application by a company under sub-section (*2*) of section 224 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved, be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved.

(*2*) Without prejudice to any action under sub-section (*1*), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section(*2*) of Section 224.

Appeal to Tribunal

228. (*1*) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 224, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned.

(*2*) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register and shall issue a fresh Certificate of incorporation.

(*3*) If a company, or any member or creditor thereof feels aggrieved by the company having its name struck off the register, the Tribunal on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (*5*) of section 224 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the

register, order the name of the company to be restored to the register, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off the register.

CHAPTER XIX

Revival and Rehabilitation of Sick Companies

Determination of sickness.

229. (*1*) Where on a demand by the secured creditors of a company representing fifty per cent or more of its outstanding amount of debt, the company has failed to pay the debt within thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.

(*2*) The applicant under sub-section (*1*) may, along with an application under that sub-section or at any stage of the proceedings thereafter, make an application for the stay of any proceedings for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with.

(*3*) The Tribunal may pass an order in respect of an application under sub-section (*2*) which shall be operative for a period of one hundred and twenty days.

(*4*) The company referred to in sub-section (*1*) may also file an application to the Tribunal on one or more of the grounds specified in that sub-section.

(*5*) Where an application under sub-section (*1*) or sub-section (*4*) has been filed,—

(*a*) the company shall not dispose of or otherwise enter into any obligations with regard to, its properties or assets except as required in the normal course of business;

(*b*) the Board of Directors shall not take any steps likely to prejudice the interests of the creditors.

(*6*) The Tribunal shall, within sixty days of the receipt of an application under sub-section (*1*) or sub-section (*4*), determine whether the company is a sick company or not:

Provided that no such determination shall be made in respect of an application under sub-section (*1*) unless the company has been given notice of the application and a reasonable opportunity to reply to the notice within thirty days of the receipt thereof.

Application for revival and rehabilitation.

230. (*1*) On the determination of a company as a sick company by the Tribunal under section 229, any secured creditor of that company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company:

Provided that where the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (*1*) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of three-fourths of the secured creditors in value of the amount outstanding against financial assistance disbursed to the sick company. 54 of 2002.

(*2*) An application under sub-section (*1*) shall be accompanied by—

(*a*) audited financial statements of the company relating to the immediately preceding financial year;

(*b*) such particulars and documents, duly authenticated in such manner, along with such fee as may be prescribed; and

(*c*) a draft scheme of revival and rehabilitation of the company in such manner as may be prescribed:

Provided that where the sick company has no draft scheme of revival and rehabilitation to offer, it shall file a declaration to that effect along with the application.

(*3*) An application under sub-section (*1*) shall be made to the Tribunal within sixty days from the date of determination of the company as a sick company by the Tribunal under section 229.

Appointment of interim administrator.

231. (*1*) On the receipt of an application under section 230, the Tribunal shall, not later than seven days from such receipt,—

(*a*) fix a date for hearing not later than ninety days from date of the receipt;

(*b*) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 232 to be held not later than forty-five days from receipt of the order of the Tribunal appointing him to consider whether on the basis of the particulars and documents furnished with the

application made under section 230, the draft scheme, if any, filed along with such application or otherwise and any other material available, it is possible to revive and rehabilitate the sick company and such other matters, which the interim administrator may consider necessary for the purpose and to submit his report to the Tribunal within sixty days from the date of the order:

Provided that where no draft scheme is filed by the company and a declaration has been made to that effect by the Board of Directors, the Tribunal may direct the interim administrator to take over the management of the company; and

(*c*) issue such other directions to the interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the sick company and for its proper management.

(*2*) Where an interim administrator has been directed to take over the management of the company, the directors and the management of the company shall extend all possible assistance and cooperation to the interim administrator to manage the affairs of the company.

Committee of creditors.

232. (*1*) The interim administrator shall appoint a committee of creditors with such number of members as he may determine, but not exceeding seven, and as far as possible a representative each of every class of creditors should be represented in the committee.

(*2*) The holding of the meeting of the committee of creditors and the procedure to be followed at such meetings, including the appointment of its Chairman, shall be decided by the interim administrator.

(*3*) The interin administrator may direct any promoter, director or any key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as may be considered necessary by the interim administrator.

Order of Tribunal.

233. On the date of hearing fixed by the Tribunal and on consideration of the report of the interim administrator filed under sub-section (*1*) of section 231, if the Tribunal is satisfied that the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that—

(*a*) it is not possible to revive and rehabilitate such company, the Tribunal shall record such opinion and order that the proceedings for the winding up of the company be initiated; or

(*b*) by adopting certain measures the sick company may be revived and rehabilitated, the Tribunal shall appoint a company administrator for the company and cause such administrator to prepare a scheme of revival and rehabilitation of the sick company:

Provided that the Tribunal may, if it so thinks fit, appoint an interim administrator as the company administrator.

Appointment of administrator.

234. (*1*) The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a panel maintained by the Central Government consisting of the names of advocates, company secretaries, chartered accountants, cost and works accountants and such other professionals as may, by notification, be specified by the Central Government.

(*2*) The terms and conditions of the appointment of interim and company administrator shall be such as may be ordered by the Tribunal.

(*3*) The Tribunal may direct the company administrator to take over the assets or management of the company and for the purpose of assisting him in the management of the company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.

Powers and duties of company administrator.

235. (*1*) The company administrator shall perform such functions as the Tribunal may direct.

(*2*) Without prejudice to the provisions of sub-section (*1*), the company administrator may cause to be prepared with respect to the company—

(*a*) a complete inventory of—

(*i*) all assets and liabilities of whatever nature;

(*ii*) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;

(*b*) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

(*c*) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio;

(*d*) an estimate of the reserve price, lease rent or share exchange ratio;

(*e*) *pro forma* accounts of the company, where no up-to-date audited accounts are available; and

(f) a list of workmen of the company and their dues referred to under sub-section (*3*) of section 300.

Scheme of revival and rehabilitation.

236. (*1*) The company administrator shall prepare or cause to be prepared a scheme of revival and rehabilitation of the sick company after considering the draft scheme filed along with the application under section 230.

(2) A scheme prepared in relation to any sick company under sub-section (*1*) may provide for any one or more of the following measures, namely:—

(*a*) the financial reconstruction of such sick company;

(b) the proper management of such sick company by any change in, or by taking over, the management of such sick company;

(c) the amalgamation of—

(*i*) a sick company with any other company; or

(*ii*) any other company with the sick company;

(*d*) takeover of the sick company by a solvent company;

(*e*) the sale or lease of a part or whole of any asset or business of such sick company;

(*f*) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(*g*) such other preventive, ameliorative and remedial measures as may be appropriate;

(*h*) repayment or rescheduling or restructuring of the debts or obligations of the company to any of its creditors or class of creditors;

(*i*) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (*a*) to (*h*).

Sanction of scheme.

237. (*1*) The scheme prepared by the company administrator under section 236 shall be placed before the creditors of the sick company in a meeting convened for their approval by the company administrator within the period of sixty days from his appointment, which may be extended by the Tribunal up to a period not exceeding one hundred twenty days.

(*2*) The company administrator shall convene separate meetings of secured and unsecured creditors of the sick company and if the scheme is approved by the unsecured creditors representing one-fourth in value of the amount awed by the company to such creditors and the secured creditors, representing three-fourths in value of the amount outstanding against financial assistance disbursed by such creditors to the sick company, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme:

Provided that where the scheme relates to amalgamation of the sick company with any other company, such scheme shall, in addition to the approval of the creditors of the sick company under this sub-section, be laid before the general meeting of both the companies for approval by their respective shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of that company.

(*3*) On the receipt of the scheme under sub-section (*2*), the Tribunal shall within sixty days therefrom, after satisfying that the scheme had been validly approved in accordance with this section, pass an order sanctioning such scheme.

(*4*) Where a sanctioned scheme provides for the transfer of any property or liability of the sick company to any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick company.

(*5*) The sanction accorded by the Tribunal under sub-section (*3*) shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof shall in all legal proceedings be admitted as evidence.

(*6*) A copy of the sanctioned scheme referred to in sub-section (*3*) shall be filed with the Registrar by the sick company within a period of thirty days from the date of receipt of a copy thereof.

Scheme to be binding.

238. On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors of the said companies.

Implementation of the scheme.

239. (*1*) The Tribunal shall, for the purpose of effective implementation of the scheme, have power to enforce, modify or terminate any contract or agreement or any obligation pursuant to such agreement or contract entered into by the company with any other person.

(*2*) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, authorise the company administrator appointed under section 234 to implement a sanctioned scheme till its successful implementation on such terms and conditions as may be specified in the order and may for that purpose require him to file periodic reports on the implementation of the sanctioned scheme.

(*3*) Where the whole or substantial assets of the undertaking of the sick company are sold under a sanctioned scheme, the sale proceeds shall be applied towards implementation of the scheme in such manner as the Tribunal may direct.

(*4*) Where it is difficult to implement the scheme for any reason or the scheme fails due to non-implementation of obligations under the scheme by the parties concerned, the company administrator authorised to implement the scheme and where there is no such administrator, the company, the secured creditors, or the transferee company in a case of amalgamation, may make an application before the Tribunal for modification of the scheme or to declare the scheme as failed and that the company may be wound up.

(*5*) The Tribunal shall, within thirty days of presentation of an application under sub-section (*4*), pass an order for modification of the scheme or, as the case may be, declaring the scheme as failed and pass an order for the winding up of the company if three-fourths in value of the secured creditors consent to the modification of the scheme or winding up of the company.

(*6*) where an application under sub-section (*4*) has been made before the Tribunal and such application is pending before it, such application shall abate, if the secured creditors representing not less than three-fourths in value of the amount outstanding against financial assistance disbursed to the sick company have taken any measures to recover their secured debt under sub-section (*4*) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

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Winding up of company on report of company administrator.

240. (*1*) If the scheme is not approved by the creditors in the manner specified in sub-section (*2*) of section 237, the company administrator shall submit a report to the Tribunal and the Tribunal shall order for the winding up of the sick company.

(*2*) On the passing of an order under sub-section (*1*), the Tribunal shall conduct the proceedings for winding up of the sick company in accordance with the provisions of Chapter XX.

Power of Tribunal to assess damages against delinquent directors, etc.

241. (*1*) If, in the course of the scrutiny or implementation of any scheme or proposal including the draft scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick company or its undertaking, including any past or present director, manager or officer or employee of the sick company,—

(*a*) has misapplied or retained, or become liable or accountable for, any money or property of the sick company; or

(*b*) has been guilty of any misfeasance, malfeasance or nonfeasance or breach of trust in relation to the sick company, it may, by order, direct him to repay or restore the money or property, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance, malfeasance, nonfeasance or breach of trust as the Tribunal thinks just and proper:

Provided that such direction by the Tribunal shall be without prejudice to any other legal action that may be taken against the person.

(*2*) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than the purposes of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall, by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, for a maximum period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director, by whatever name called, or to disqualify the said director, promoter, manager from being appointed as a director in any company registered under this Act for a maximum period of six years.

(*3*) No order shall be made by the Tribunal under this section against any person unless such person has been given a reasonable opportunity of being heard.

Punishment for certain offences.

242. Whoever violates the provisions of this Chapter or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence before the Tribunal or the Appellate Tribunal, or attempts to tamper the records of reference or appeal filed under this Act, he shall be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to ten lakh rupees.

Bar of jurisdiction.

243. No appeal shall lie in any court or other authority and no civil court shall have any jurisdiction in respect of any matter in respect of which the Tribunal or the Appellate Tribunal is empowered by or under this Chapter and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Chapter.

Rehabilitation and Insolvency Fund.

244. (*1*) There shall be formed for the purposes of rehabilitation, revival and liquidation of sick companies, a Fund to be called the Rehabilitation and Insolvency Fund.

(*2*) There shall be credited to the Fund—

(*a*) the amount given as grants by the Central Government for the purposes of this Fund;

(*b*) the amount given to the Fund from any other source;

(*c*) the income from investment of the amount in the Fund; and

(*d*) the amount deposited by the companies as contribution to the Fund.

(*3*) A company which bas contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX, make an application to the Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of the company or meeting the incidental costs during proceedings.

(*4*) The Fund shall be managed by an independent administrator to be appointed by the Central Government in the manner as may be prescribed.

CHAPTER XX

WINDING UP

Modes of winding up.

245. (1) The winding up of a company may be either—

(*a*) by the Tribunal, or

(*b*) voluntary.

(*2*) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (*1*)

PART I

Winding up by the Tribunal

Circumstances in which a company may be wound up by Tribunal.

246. (*1*) A company may be wound up by the Tribunal,—

(*a*) if the company is unable to pay its debts;

(*b*) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(*c*) if the company has acted against the interests of the sovereignty and integrity of lndia, the security of the State, friendly relations with foreign States, public order, decency or morality;

(*d*) if the Tribunal has ordered the winding up of the company under Chapter XIX;

(*e*) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(*f*) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(*g*) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

(*2*) A company shall be deemed to be unable to pay its debts,—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;

(*b*) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(*c*) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

Petition for winding up.

247. (*1*) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(*a*) the company,

(*b*) any creditor or creditors, including any contingent or prospective creditor or creditors,

(*c*) any contributory or contributories,

(*d*) all or any of the persons specified in clauses (*a*), (*b*) and (*c*) together,

(*e*) the Registrar,

(*f*) any person authorised by the Central Government in that behalf, or

(*g*) in a case falling under clause (*d*) of sub-section (*1*) of section 246, by the Central Government or a State Government.

(*2*) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (*b*) of sub-section (*1*).

(*3*) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(*4*) The Registrar shall be entitled to present a petition for winding up under sub-section (*1*) on any of the grounds specified in sub-section (*1*) of section 246, except on the ground specified in clause (*d*) of that sub-section:

Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 183 that the company is unable to pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided also that the Central Government shall not accord its sanction under the preceding proviso, unless the company concerned has been given a reasonable opportunity of making representations.

(*5*) A petition filed by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and manner as may be prescribed.

(*6*) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a *prima facie* case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.

Powers of Tribunal.

248. (*1*) The Tribunal may, on receipt of a petition for winding up under section 247 pass any of the following orders, namely:—

(*a*) dismiss it, with or without costs;

(*b*) make any interim order as it thinks fit;

(*c*) appoint a provisional liquidator of the company till the making of a winding up order;

(*d*) make an order for the winding up of the company with or without costs; or

(*e*) any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (*c*) the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(*2*) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Directions or filing statement of affairs.

249. (*1*) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a *prima facie* case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs in such form and manner as may be prescribed within thirty days of the order:

Provided that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(*2*) A company, which fails to file the statement of affairs as referred to in 30 sub-section (*1*), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be punishable as per the provision of sub-section (*4*).

(*3*) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (*d*) of sub-section (*1*) of section 248, shall, within sixty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

(*4*) Where a contravention of this section occurs, the directors and other officers of the company who are responsible for such contravention shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

Company Liquidators and their appointments.

250. (*1*) For the purposes of winding up of a company by the Tribunal, there shall be a Company Liquidator who shall be appointed by the Tribunal at the time of the passing of the order of winding up.

(*2*) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost and works accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost and works accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters and such other qualifications as may be prescribed.

(*3*) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (*2*) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence:

Provided that the Central Government before removing him or it from panel shall give him or it a reasonable opportunity of being heard.

(*4*) The terms and conditions of appointment of a liquidator and the fee payable to him shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification and size of the company.

(*5*) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his or its appointment.

(*6*) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (*c*) of sub-section (*1*) of section 248, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

251. (*1*) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:— Removal and replacement of liquidator.

(*a*) misconduct;

(*b*) fraud or misfeasance;

(*c*) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(*d*) inability to act as liquidator; and

(*e*) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(*2*) In the event of death, resignation or removal of the liquidator under this section, the Tribunal may transfer the work assigned to him to another Company Liquidator for reasons to be recorded in writing.

(*3*) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(*4*) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of hearing to the liquidator.

252. (*1*) Where the Tribunal makes an order for the winding up of a company, it shall, within a period not exceeding fifteen days from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator and the Registrar. Winding up order to be communicated to Registrar.

(*2*) On receipt of the copy of the winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made.

(*3*) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.

253. The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories. Effect of winding up order.

Stay of suits, etc. on winding up order.

254. (*1*) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(*2*) Nothing in sub-section (*1*) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Jurisdiction of Tribunal.

255. The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

(*a*) any suit or proceeding by or against the company;

(*b*) any claim made by or against the company, including claims by or against any of its branches in India;

(*c*) any application made under section 204;

(*d*) any scheme submitted under section 237;

(*e*) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the company,

whether such suit or proceeding has been instituted, or such claim or question has arisen or arises or such application has been made or such scheme has been submitted, before or after the winding up order is made.

Submission of report by Company Liquidator.

256. (*1*) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such Liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—

(*a*) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company:

Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;

(*b*) amount of capital issued, subscribed and paid up;

(*c*) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts,

and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

(*d*) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(*e*) guarantees, if any, extended by the company;

(*f*) list of contributories and dues, if any, payable by them and details of any unpaid call;

(*g*) details of trade marks and intellectual properties, if any, owned by the company;

(*h*) details of subsisting contracts, joint ventures and collaborations, if any;

(*i*) details of holding and subsidiary companies, if any;

(*j*) details of legal cases filed by or against the company; and

(*k*) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

(*2*) The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matter which, in his opinion, it is desirable to bring to the notice of the Tribunal.

(*3*) The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.

(*4*) The Company Liquidator may also, if he thinks fit, make any further report or reports.

(*5*) Any person describing himself in writing to be a creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance with this section and take copies thereof or extracts therefrom on payment of the prescribed fee.

Directions of Tribunal on report of Company Liquidator.

257. (*1*) The Tribunal shall, on consideration of report of Company Liquidator, fix a time limit within which the entire proceedings shall be completed and, the company dissolved:

Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted

to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company dissolved.

(*2*) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories, order sale of the company as a going concern or its assets or part thereof:

Provided that the Tribunal may, where it considers fit, appoint a Sale Committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

(*3*) Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 183, and on consideration of the report of such investigation it may pass order and give directions under sections 314 to 317.

(*4*) The Tribunal may order such steps, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

(*5*) The Tribunal may pass such other order or give such other directions as it considers fit.

Custody of company's properties.

258. (*1*) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator shall, on the order of the Tribunal, forthwith take into his custody or under his control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.

(*2*) Notwithstanding anything contained in sub-section (*1*), all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.

(*3*) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is *prima facie* entitled.

259. (*1*) The promoters, directors, officers and employees, past and present, of the company shall extend full co-operation to the Company Liquidator in discharge of his functions and duties.

Directors, officers and employees to co-operate with Company Liquidator.

(*2*) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (*1*), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees for every day during which the default continues, or with both.

260. (*1*) As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause rectification of register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be applied for the discharge of its liability:

Settlement of list of contributories and application of assets.

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

(*2*) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

(*3*) While settling the list of contributories, the Tribunal shall include every present and past member who shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

(*a*) a past member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up;

(*b*) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(*c*) no past member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(*d*) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding

the amount, if any, unpaid on the shares in respect of which he is liable as such member; and

(*e*) in the case of a company limited by guarantee, no contribution shall be required from any past or present member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up but if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

Obligations of directors and managers.

261. In the case of a limited company, any director or manager, whether past or present, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that—

(*a*) a past director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(*b*) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and

(*c*) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Committee of inspections.

262. (*1*) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, a committee of inspection for the company to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

(*2*) A committee of inspection appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(*3*) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding

up for enabling the Tribunal to determine the persons who may be members of the committee of inspection.

(*4*) The committee of inspection shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.

(*5*) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the committee shall be such as may be prescribed.

(*6*) The meeting of committee of inspection shall be chaired by the Company Liquidator.

Submission of periodical reports to the Tribunal.

263. (*1*) The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and in such manner as may be prescribed.

(*2*) The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

Power of Tribunal on application for stay of winding up.

264. (*1*) The Tribunal may, at anytime after making a winding up order on an application of creditors or any other person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit:

Provided that an order under this sub-section shall be made by the Tribunal only on an application made to it enclosing a scheme for rehabilitation after three-fourth of secured creditors and one-half of unsecured creditors in value of the company have resolved at a meeting convened by each class of creditors by giving their consent in writing to the scheme.

(*2*) The Tribunal may, while passing the order under sub-section (*1*), require the applicant to furnish such security as to costs as it considers fit.

(*3*) Where an order under sub-section (*1*) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.

(*4*) Without prejudice to the provisions of sub-section (*1*), the Tribunal may at any time after making a winding up order, on receipt of application of Company Liquidator, make an order staying the

winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.

(*5*) The Tribunal may, before making an order, on any application under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(*6*) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company.

Powers and duties of Company Liquidator.

265. (*1*) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up by the Tribunal, shall have the power—

(*a*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose, to use, when necessary, the company's seal;

(*c*) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

(*d*) to sell the whole of the undertaking of the company as a going concern;

(*e*) to raise on the security of the assets of the company, any money required;

(*f*) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(*g*) to invite and settle claim of creditors and distribute sale proceeds in accordance with priorities established by this Act;

(*h*) to inspect the records and returns of the company on the files of the Registrar or any other authority;

(*i*) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(*j*) to draw, accept, make and endorse any bill of exchange, *hundi* or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, *hundi*, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(*k*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

(*l*) to obtain any professional assistance, and for protection of the assets of the company appoint an agent to do any business which the Company Liquidator is unable to do himself;

(*m*) to do all such other acts and things as may be necessary for the winding up of the company and distribution of its assets; and

(*n*) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

(*2*) The exercise of powers by the Company Liquidator under sub-section (*1*) shall be subject to the overall control of the Tribunal.

(*3*) Notwithstanding the provisions of sub-section (*1*), the Company Liquidator shall perform such duties as the Tribunal may specify in this behalf.

Provision for professional assistance to Company Liquidator.

266. (*1*) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals, as may be necessary, to assist him in the performance of his duties and functions under the Act.

(*2*) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

Exercise and control of Company Liquidator's powers.

267. (*1*) Subject to the provisions of this Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(*2*) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(*3*) The Company Liquidator—

(*a*) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and

(*b*) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value ofthe creditors or contributories, as the case may be.

(*4*) Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just in the circumstances.

Books to be kept by Company Liquidator.

268. (*1*) The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(*2*) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

Audit of Company Liquidator's accounts.

269. (*1*) The Company Liquidator shall maintain proper and regular books of account including accounts of receipts and payments made by him in such form and in such manner as may be prescribed.

(*2*) The Company Liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which shall be verified by a declaration in the prescribed form and manner.

(*3*) The Tribunal shall cause the accounts to be audited in such manner as it thinks fit, and for the purpose of the audit, the Company Liquidator shall furnish the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at any time, require the production of, and inspect, any books of account kept by the Company Liquidator.

(*4*) When the accounts of the company have been audited, one copy thereof shall be filed by the Company Liquidator with the

Tribunal, and the other copy shall be delivered to the Registrar and it shall be open to inspection by any creditor, contributory or person interested.

(*5*) Where an account referred to in sub-section (*4*) relates to a Government company, the Company Liquidator shall forward a copy thereof—

(*a*) to the Central Government, if that Government is a member of the Government company; or

(*b*) to any State Government, if that Government is a member of the Government company; or

(*c*) to the Central Government and any State Government, if both the Governments are members of the Government company.

(*6*) The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and every contributory:

Provided that the Tribunal may dispense with the compliance of the provisions of this sub-section in any case it deems fit.

Payment of debts by contributory and extent of set-off.

270. (*1*) The Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(*2*) The Tribunal, in making an order, under sub-section (*1*), may,—

(*a*) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(*b*) in the case of a limited company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

(*3*) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Tribunal to make calls.

271. The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(*a*) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and

(*b*) make an order for payment of any calls so made.

Adjustment of rights of contributories.

272. The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Power to order costs.

273. The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *inter se* as the Tribunal thinks just.

Power to summon persons suspected of having property of company, etc.

274. (*1*) The Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(*2*) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may, in the former case, reduce his answers to writing and require him to sign them.

(*3*) The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.

(*4*) The Tribunal may direct the liquidator to file before it a report in respect of property, debt, etc., of the company in possession of other persons.

(*5*) If Tribunal finds that—

(*a*) a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

(*b*) a person is possessing any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Tribunal may consider just.

(*6*) If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.

(*7*) Every order made under sub-section (*5*) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.

(*8*) Any person making any payment or delivery in pursuance of an order made under sub-section (*5*) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

Power to order examination of promoters, directors, etc.

275. (*1*) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(*2*) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.

(*3*) The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.

(*4*) A person ordered to be examined under this section—

(*a*) shall, before his examination, be furnished at his own cost with a copy of the Company Liquidator's report; and

(*b*) may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 393, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.

(*5*) If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.

(*6*) lf the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (*5*), the Tribunal may order payment to the applicant of such costs as it may think fit.

(*7*) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection by any creditor or contributory at all reasonable times.

(*8*) The Tribunal may, if it thinks fit, adjourn the examination from time to time.

(*9*) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.

(*10*) The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (*9*).

Arrest of person trying to quit India or abscond.

276. At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

(*a*) the contributory to be arrested and kept in custody until such time as the Tribunal may order; and

(*b*) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

Dissolution of company by Tribunal.

277. (*1*) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.

(*2*) The Tribunal shall on an application filed by the Company Liquidator under sub-section (*1*) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(*3*) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

(*4*) If the Company Liquidator makes a default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Appeals from orders made before commencement of Act.

278. Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement.

PART II

Voluntary winding up

Circumstances in which company may be wound up voluntarily.

279. A company may be wound up voluntarily,—

(*a*) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

(*b*) if the company passes a special resolution that the company be wound up voluntarily.

Declaration of solvency in case of proposal to wind up voluntarily.

280. (*1*) Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that

they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

(*2*) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless—

(*a*) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date;

(*b*) it contains a declaration that the company is not being wound up to defraud any person or persons;

(*c*) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the company's assets and liabilities on that date; and

(*d*) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

(*3*) Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (*1*).

(*4*) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Meeting of creditors.

281. (*1*) The company shall also along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such

meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 279.

(*2*) The Board of Directors of the company shall—

(*a*) cause to be presented a full statement of the position of the company's affairs together with a list of creditors of the company, if any, copy of declaration under section 280 and the estimated amount of the claims before such meeting; and

(*b*) appoint one of the directors to preside at the meeting.

(*3*) Where two-thirds in value of creditors of the company are of the opinion that—

(*a*) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or

(*b*) the company will not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it will be in interest of all parties if the company is wound up under the supervision of the Tribunal, the company shall within fourteen days thereafter file an application before the Tribunal.

(*4*) Notice of any resolution passed at a creditors' meeting in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.

(*5*) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and any director or directors who are in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both.

Publication of resolution to wind up voluntarily.

282. (*1*) Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (*3*) of section 281 is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in some newspaper circulating in the district where the registered office or the principal office of the company is situate.

(*2*) If any default is made in complying with sub-section (*1*), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues.

Commencement of voluntary winding up.

283. A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up under section 279.

Effect of voluntary winding up.

284. In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as required for the beneficial winding up of its business.

Appointment of Company Liquidator.

285. (*1*) The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.

(*2*) Where the creditors have passed a resolution for winding up the company under sub-section (*3*) of section 281, the appointment of Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company:

Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator.

(*3*) The creditors while approving the appointment of Company Liquidator appointed by the company or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution with regard to the fee of the Company Liquidator.

(*4*) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.

Power to remove and fill vacancy of Company Liquidator.

286. (*1*) A Company Liquidator appointed under section 285 may be removed by the company where his appointment has been made by the company and, by the creditors, where the appointment is approved or made by such creditors.

(*2*) Where a Company Liquidator is sought to be removed under this section, he shall be given a notice in writing stating the grounds of removal from his office by the company or the creditors, as the case may be.

(*3*) Where three-fourth members of the company or three-fourth of creditors in value, as the case may be, after consideration of the reply, if any, filed by the Company Liquidator, in their meeting decide to remove the Company Liquidator, he shall vacate his office.

(*4*) If a vacancy occurs by death, resignation, removal or otherwise in the office of any Company Liquidator appointed under section 285, the company or the creditors, as the case may be, fill the vacancy in the manner specified in that section.

Notice of appointment of Company Liquidator to be given to Registrar.

287. (*1*) The company shall give notice to the Registrar of the appointment of a Company Liquidator along with the name and particulars of the Company Liquidator, of every vacancy occurring in the office of Company Liquidator, and of the name of the Company Liquidator appointed to fill every such vacancy within ten days of such appointment or the occurrence of such vacancy.

(*2*) Where any default is made in complying with the provisions of this section, 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 such default continues.

Cesser of Board's powers on appointment of Company Liquidator.

288. On the appointment of a Company Liquidator, all the powers of the Board of Directors and of the managing or whole-time directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment of the Company Liquidator to the Registrar.

Powers and duties of Company Liquidator in voluntary winding up.

289. (*1*) The Company Liquidator shall perform such functions and discharge such duties as determined from time to time by the company or the creditors, as the case may be.

(*2*) The Company Liquidator shall settle the list of contributories, which shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

(*3*) The Company Liquidator shall call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may consider necessary.

(*4*) The Company Liquidator shall maintain regular and proper books of account in such form and in such manner as may be prescribed and the members and creditors and any officer authorised by the Central Government may inspect such books of account.

(*5*) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(*6*) The Company Liquidator shall observe due care and diligence in the discharge of his duties.

(*7*) If the Company Liquidator fails to comply with the provisions of this section he shall be punishable with fine which may extend to ten lakh rupees.

Appointment of Committees.

290. Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 281, such creditors may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

Company Liquidator to submit report on progress of winding up.

291. (*1*) The Company Liquidator shall report quarterly on the progress of winding up of the company in such form and in such manner as may be prescribed to the members and creditors and shall also call a meeting of the members and the creditors as and when necessary but at least one meeting each of creditors and members in every quarter and apprise them of the progress of the winding up of the company in such form and such manner as may be prescribed.

(*2*) If the Company Liquidator fails to comply with the provisions of sub-section (*1*), he shall be punishable, in respect to each such failure, with fine which may extend to ten lakh rupees.

Report of Company Liquidator to Tribunal for examination of persons.

292. (*1*) Where a report is received from the Company Liquidator that a fraud has been committed by any person in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 183 and on consideration of the report of such investigation, the Tribunal may pass such order and give such directions under this Chapter as it may consider necessary including the direction that such person shall attend before the Tribunal on a day appointed by it for that purpose and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof or otherwise.

(*2*) The provisions of section 275 shall apply *mutatis mutandis* in relation to any examination directed under sub-section (*1*).

Final meeting and dissolution of company.

293. (*1*) As soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation therefor.

(*2*) The meeting referred to in sub-section (*1*) shall be called by the Company Liquidator in such form and in such manner as may be prescribed.

(*3*) If the majority of the members of the company after considering the report of the Company Liquidator are satisfied that

the company shall be wound up, they may pass a resolution for its dissolution.

(*4*) Within two weeks after the meeting, the Company Liquidator shall—

(*a*) send to the Registrar—

(*i*) a copy of the final winding up accounts of the company and shall make a return in respect of each meeting and of the date thereof, and

(*ii*) copies of the resolutions passed in the meetings; and

(*b*) file an application along with his report under sub-section (*1*) in such manner as may be prescribed before the Tribunal for passing an order of dissolution of the company.

(*5*) If the Tribunal is satisfied, after considering the report of the Company Liquidator that the process of winding up has been fair and just, the Tribunal shall pass an order dissolving the company within sixty days of the receipt of the application under sub-section (*4*).

(*6*) The Company Liquidator shall file a copy of the order under sub-section (*5*) with the Registrar within thirty days.

(*7*) The Registrar, on receiving the copy of the order passed by the Tribunal under sub-section (*5*), shall forth with publish a notice in the Official Gazette that the company is dissolved.

(*8*) Where the Company Liquidator fails to comply with the provisions of this section, he shall be punishable with fine which may extend to one lakh rupees.

Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company.

294. (*1*) Where a company (the transferor company) is proposed to be, or is in the course of being, wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to another company (the transferee company); the Company Liquidator of the transferor company may, with the sanction of a special resolution of the company conferring on him either a general authority or an authority in respect of any particular arrangement,—

(*a*) receive, by way of compensation wholly or in part for the transfer or sale, shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or

(*b*) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares,

policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company:

Provided that no such arrangement shall be entered into without the consent of the secured creditors.

(*2*) Any transfer, sale or other arrangement in pursuance of this section shall be binding on the members of the transferor company.

(*3*) Any member of the transferor company who did not vote in favour of the special resolution and expresses his dissent therefrom in writing addressed to the Company Liquidator and left at the registered office of the company within seven days after the passing of the resolution, may require the liquidator either—

(*a*) to abstain from carrying the resolution into effect; or

(*b*) to purchase his interest at a price to be determined by agreement or the registered valuer.

(*4*) If the Company Liquidator elects to purchase the member's interest, the purchase money, raised by him in such manner as may be determined by a special resolution, shall be paid before the company is dissolved.

Distribution of property of company.

295. Subject to the provisions of this Act as to overriding preferential payments under section 301, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Arrangement when binding on company and creditors.

296. (*1*) Any arrangement other than the arrangement referred to in section 294 entered into between the company which is about to be, or is in the course of being wound up and its creditors shall be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths in value of the total amount due to all the creditors of the company.

(*2*) Any creditor or contributory may, within three weeks from the completion of the arrangement, apply to the Tribunal and the Tribunal may thereupon amend, vary, confirm or set aside the arrangement.

Power to apply to Tribunal to have questions determined, etc.

297. (*1*) The Company Liquidator or any contributory or creditor may apply to the Tribunal—

(*a*) to determine any question arising in the course of the winding up of a company; or

(*b*) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.

(*2*) The Company Liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(*3*) The Tribunal, if satisfied on an application under sub-section (*1*) or sub-section (*2*) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may allow the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks fit.

(*4*) A copy of an order staying the proceedings in the winding up, made under this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

Costs of voluntary winding up.

298. All costs, charges and expenses properly incurred in the winding up, including the fee of the Company Liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

PART III

Provisions applicable to every mode of winding up

Debts of all descriptions to be admitted to proof.

299. In every winding up, subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company.

Application of insolvency rules in winding up of insolvent companies.

300. (*1*) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

(*a*) debts provable;

(*b*) the valuation of annuities and future and contingent liabilities; and

(*c*) the respective rights of secured and unsecured creditors, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts, opts to realise his security,—

(*i*) the liquidator shall be entitled to represent the workmen and enforce such charge;

(*ii*) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(*iii*) so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 301.

(2) All persons who in any such case would be entitled to prove and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor, instead of relinquishing his security and proving his debts, proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator, including a provisional liquidator, if any, for the preservation of the security before its realisation by the secured creditor.

Explanation.—For the purposes of this sub-section, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(*3*) For the purposes of this section, section 301 and section 302,—

(*a*) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947; 14 of 1947.

(*b*) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(*i*) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of

commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;

14 of 1947.

(*ii*) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(*iii*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

8 of 1923.

(*iv*) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(*c*) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

Overriding preferential payments.

301. (*1*) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,—

(*a*) workmen's dues, and

(*b*) debts due to secured creditors to the extent such debts rank under clause (*iii*) of the proviso to sub-section (*1*) of section

300 *pari passu* with such dues, shall be paid in priority to all other debts.

(*2*) The debts payable under sub-section (*1*) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Preferential payments.

302. (*1*) In a winding up, subject to the provisions of section 301, there shall be paid in priority to all other debts,—

(*a*) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;

(*b*) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be prescribed;

(*c*) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;

(*d*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force; 34 of 1948.

(*e*) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company: 8 of 1923.

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such

weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(*f*) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(*g*) the expenses of any investigation held in pursuance of sections 184 and 187, in so far as they are payable by the company;

(*2*) Where any payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through him, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.

(*3*) The debts enumerated in this section shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(*4*) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (*d*) of sub-section (*1*), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(*5*) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(*6*) For the purposes of this section,—

(*a*) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(*b*) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(*c*) the expression "employee" does not include a workman; and

(*d*) the expression "relevant date" means—

(*i*) in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and

(*ii*) in any other case, the date of the passing of the resolution for the voluntary winding up of the company.

Fraudulent preference.

303. (*1*) Where a company has given preference to a person who is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to six months of making winding up application, the Tribunal, if satisfied, may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

(*2*) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods,

payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Transfers not in good faith to be void.

304. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator.

Certain transfers to be void.

305. Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void.

Liabilities and rights of certain persons fraudulently preferred.

306. (*1*) Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 303 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(*2*) The value of the interest of the person preferred shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(*3*) On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(*4*) The provisions of sub-section (3) shall apply *mutatis mutandis* in relation to transactions other than payment of money.

Effect of floating charge.

307. Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may be notified by the Central Government in this behalf in the Official Gazette.

Disclaimer of onerous property.

308. (*1*) Where any part of the property of a company which is being wound up consists of—

(*a*) land of any tenure, burdened with onerous covenants;

(*b*) shares or stocks in companies;

(*c*) any other property which is unsaleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or

(*d*) unprofitable contracts, the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property:

Provided that where the Company Liquidator had not become aware of the existence of any such property within one month from the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

(*2*) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights, interest or liabilities of any other person.

(*3*) The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose

such terms as a condition of granting leave, and make such other order in the matter as the Tribunal considers just.

(*4*) The Company Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the Company Liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Tribunal, give notice to the applicant that he intends to apply to the Tribunal for leave to disclaim, and in case the property is a contract, if the Company Liquidator after such an application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(*5*) The Tribunal may, on the application of any person who is, as against the Company Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Tribunal considers just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(*6*) The Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Tribunal considers just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person

at that date, and in either event as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, free and discharged from all estates, encumbrances and interests created therein by the company.

(*7*) Any person affected by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of such effect, and may accordingly prove the amount as a debt in the winding up.

Transfers, etc., after commencement of winding up to be void.

309. (*1*) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(*2*) In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void.

Certain attachments, executions, etc., in winding up by Tribunal to be void.

310. (*1*) Where any company is being wound up by the Tribunal,—

(*a*) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(*b*) any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement, shall be void.

(*2*) Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

Offences by officers of companies in liquidation.

311. (*1*) If any person, being a past or present officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

(*a*) does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(*b*) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;

(*c*) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

(*d*) within the twelve months immediately before the commencement of the winding up or at any time thereafter,—

(*i*) conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;

(*ii*) fraudulently removes any part of the property of the company to the value of one thousand rupees or more;

(*iii*) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;

(*iv*) makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;

(*v*) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;

(*vi*) by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(*vii*) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*viii*) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of is in the ordinary course of the business of the company;

(*e*) makes any material omission in any statement relating to the affairs of the company;

(*f*) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof;

(*g*) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(*h*) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or

(*i*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees:

Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

(*2*) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (*viii*) of clause (*d*) of sub-section (*1*), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.

Explanation.—For the purposes of this section, the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

312. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,— Penalty for frauds by officers.

(*a*) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;

(*b*) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

313. (*1*) Where a company is being wound up and if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees. Liability where proper accounts not kept.

(*2*) For the purposes of sub-section (*1*), it shall be deemed that proper books of account have not been kept in the case of any company,—

(*a*) if such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and

(*b*) where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and

the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.

Liability for fraudulent conduct of business.

314. (*1*) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any past or present director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:

Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.

(*2*) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and in particular,

(*a*) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(*b*) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(*3*) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (*1*), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

(*4*) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

Explanation.—For the purposes of this section,—

(*a*) the expression "assignee" includes any person to whom or in whose favour by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(*b*) the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Power of Tribunal to assess damages against delinquent directors, etc.

315. (*1*) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, Company Liquidator or officer of the company—

(*a*) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(*b*) has been guilty of any misfeasance or breach of trust in relation to the company, the Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, made within the period specified in that behalf in sub-section (*2*), inquire into the conduct of the person, director, manager, Company Liquidator or officer aforesaid, and order him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal considers just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal considers just.

(*2*) An application under sub-section (*1*) shall be made within five years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(*3*) This section shall apply, notwithstanding that the matter is one for which the person concerned may be punishable under this Act or any other law for the time being in force.

Liability under sections 314 and 315 to extend to partners or directors in firms or companies.

316. Where a declaration under section 314 or an order under section 315 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 314, or pass an order under section 315, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

Prosecution of delinquent officers and members of company.

317. (*1*) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or *suo motu*, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.

(*2*) If it appears to the Company Liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.

(*3*) Where any report is made under sub-section (*2*) to the Registrar, he,—

(*a*) if he thinks fit, may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;

(*b*) if he considers that the case is one in which a prosecution ought to be instituted, shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution:

Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.

(*4*) If it appears to the Tribunal in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (*2*), the Tribunal may, on the application of any person interested in the winding up or *suo motu*, direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect

as though the report had been made in pursuance of the provisions of sub-section (*2*).

(*5*) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present to give all assistance in connection with the prosecution which he is reasonably able to give.

Explanation.—For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(*6*) If any person fails or neglects to give assistance required by sub-section (*5*), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Company Liquidator to exercise certain powers subject to sanction.

318. (*1*) The Company Liquidator may—

(*a*) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and

(*b*) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up,—

(*i*) pay any class of creditors in full;

(*ii*) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or

(*iii*) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(*2*) Notwithstanding anything contained in sub-section (*1*), in the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such

circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in sub-clause (*ii*) or sub-clause (*iii*) of clause (*b*) of sub-section (*1*) without the sanction of the Tribunal.

(*3*) Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.

Statement that a company is in liquidation.

319. (*1*) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a company is a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(*2*) lf any default is made in complying with the provisions of this section, the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the default, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

Books and papers of company to be evidence.

320. Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

Inspection of books and papers by creditors and contributories.

321. (*1*) At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.

(*2*) Nothing in sub-section (*1*) shall be taken as excluding or restricting any rights conferred by any law for the time being in force—

(*a*) on the Central Government or a State Government,

(*b*) on any authority or officer thereof, or

(*c*) on any person acting under the authority of any such Government or of any such authority or officer.

322. (*1*) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:— Disposal of books and papers of company.

(*a*) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and

(*b*) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors directs.

(*2*) After the expiry of five years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(*3*) The Central Government may, by rules,—

(*a*) prevent for such period as the Central Government thinks proper the destruction of the books and papers of a company which has been wound up and of its Company Liquidator; and

(*b*) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (*a*) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.

(*4*) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

323. (*1*) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,— Information as to pending liquidations.

(*a*) in the case of a winding up by the Tribunal, with the Tribunal; and

(*b*) in the case of a voluntary winding up, with the Registrar:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 269 apply.

(*2*) When the statement is filed with the Tribunal under clause (*a*) of sub-section (*1*), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(*3*) Where a statement referred to in sub-section (*1*) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—

(*a*) to the Central Government, if that Government is a member of the Government company;

(*b*) to any State Government, if that Government is a member of the Government company; or

(*c*) to the Central Government and any State Government, if both the Governments are members of the Government company.

(*4*) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (*1*), and to receive a copy thereof or an extract therefrom.

(*5*) Any person fraudulently stating himself to be a creditor or contributory under sub-section (*4*) shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable, accordingly. 45 of 1860.

(6) If a Company Liquidator fails to comply with any of requirements of this section, he shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(*7*) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (*1*) audited by a person who is not qualified to act as an auditor of the company, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

Official Liquidator to make payments into public account of India.

324. Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the moneys received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

325. (*1*) Every Company Liquidator of a company shall, in such manner and at such times as may be prescribed, deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf:

Company Liquidator to deposit into scheduled bank.

Provided that if the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.

(*2*) If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—

(*a*) pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Registrar;

(*b*) be liable to pay any expenses occasioned by reason of his default; and

(*c*) also be liable to have all or such part of his remuneration, as the Tribunal may consider just, disallowed, or may also be removed from his office.

326. Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.

Liquidator not to deposit monies into private banking account.

327. (*1*) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—

Company Liquidation Dividend and Undistributed Assets Account.

(*a*) dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared, or

(*b*) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable, the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.

(*2*) The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(*3*) The liquidator shall, when making any payment referred to in sub-sections (*1*) and (*2*), furnish to such officer as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(*4*) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it under sub-sections (*1*) and (*2*), and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.

(*5*) Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement in pursuance of sub-section (*1*) of section 323, indicate the sum of money which is payable under sub-sections (*1*) and (*2*) of this section during the six months preceding the date to which the said statement is prepared, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.

(*6*) Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law apply to the Tribunal for an order for payment thereof, and the Tribunal, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due:

Provided that before making such an order, the Tribunal shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(*7*) Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government, but a claim to any money so transferred may be preferred under sub-section (*6*) and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.

(*8*) Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—

(*a*) pay interest on the amount so retained at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Registrar:

Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;

(*b*) be liable to pay any expenses occasioned by reason of his default; and

(*c*) where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just, to be disallowed, and to be removed from his office by the Tribunal.

Liquidator to make returns, etc.

328. (*1*) If any Company Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.

(*2*) Any order under sub-section (*1*) may provide that all costs of and incidental to the application shall be borne by the Company Liquidator.

(*3*) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid.

Meetings to ascertain wishes of creditors or contributories.

329. (*1*) In all matters relating to the winding up of a company, the Tribunal may—

(*a*) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;

(*b*) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Tribunal may direct; and

(*c*) appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.

(*2*) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(*3*) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

Court, Tribunal or person, etc., before whom affidavit may be sworn.

330. (*1*) Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—

(*a*) in India before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; and

(*b*) in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.

(*2*) All tribunals, judges, Justices, commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter.

Powers of Tribunal to declare dissolution of company void.

331. (*1*) Where a company has been dissolved, whether in pursuance of this Chapter or of section 203 or otherwise, the Tribunal may at any time within two years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

(*2*) It shall be the duty of the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if such person fails so to do, he shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

Commencement of winding up by Tribunal.

332. (*1*) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(*2*) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

Exclusion of certain time in computing period of limitation.

36 of 1963.

333. Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up ofthe company to a period of one year immediately following the date of the winding up order shall be excluded.

PART IV

Official Liquidators

Appointment of Official Liquidator.

334. (*1*) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators as it may consider necessary and may also appoint Joint, Deputy or Assistant Official Liquidators to assist him in discharge of his functions.

(*2*) The liquidators appointed under sub-section (*1*) shall be whole-time officers of the Central Government.

(*3*) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator, Assistant Official Liquidator shall be paid by the Central Government.

Powers and functions of Official Liquidator.

335. (*1*) The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Official Liquidator may—

(*a*) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act;

(*b*) conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings; and

(*c*) maintain such statistics, information and records as may be prescribed relating to companies under winding up.

Summary procedure for liquidation.

336. (*1*) Where the company to be wound up under this Chapter has assets of book value not exceeding one crore rupees, the Tribunal may order it to be wound up by summary procedure provided under this part.

(*2*) Where an order under sub-section (*1*) is made the Tribunal shall appoint the Official Liquidator as the liquidator of the company.

(*3*) The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.

(*4*) The Official Liquidator shall, within thirty days of appointment, submit a report to the Tribunal in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.

(*5*) On receipt of the report under sub-section (*4*), if the Tribunal is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.

(*6*) After considering the investigation report under sub-section (*5*), the Tribunal may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

Sale of assets and recovery of debts due to company.

337. (*1*) The Official Liquidator shall expeditiously dispose of all the assets within sixty days of his appointment.

(*2*) The Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributories, as the case may be, to deposit within thirty days with him the amount payable to the company.

(*3*) Where any debtor does not deposit the amount under sub-section (*2*), the Tribunal may pass such orders as it thinks fit.

(*4*) The amount recovered by the Official Liquidator shall be deposited in accordance with the provisions of section 324.

Settlement of claims of creditors by Official Liquidator.

338. (*1*) The Official Liquidator within thirty days shall call upon the creditors of the company to prove their claims in the manner prescribed within thirty days of the receipt of such call.

(*2*) The Official Liquidator shall prepare a list of claims of creditors in the manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected for reasons to be recorded in writing.

Appeal by creditor.

339. (*1*) Any creditor aggrieved by the decision of the Official Liquidator under section 338 may file an application before the Tribunal within thirty days.

(*2*) The Tribunal may after calling the report from the Official Liquidator either dismiss the application or modify the decision of the Official Liquidator.

(*3*) The Official Liquidator shall make payment to the creditors whose claims have been accepted.

Order of dissolution of company.

340. (*1*) The Official Liquidator shall submit a final report to the Tribunal when he is satisfied that the company is finally wound up:

(*2*) The Tribunal on receipt of such report shall order that the company be dissolved.

(*3*) Where an order is made under sub-section (*2*) by the Tribunal, the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

CHAPTER XXI

Companies Incorporated Outside India

Application of Act to foreign companies.

341. Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Documents, etc., to be delivered to Registrar by foreign companies.

342. (*1*) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

(*a*) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(*d*) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(*e*) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(*2*) Every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (*1*) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act. 1 of 1956.

(*3*) Where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

Accounts of foreign company

343. (*1*) Every foreign company shall, in every calendar year,—

(*a*) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents, including, in particular, documents relating to every subsidiary company of the foreign company, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting; and

(*b*) deliver a copy of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (*a*) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

(*2*) If any such document as is mentioned in sub-section (*1*) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

(*3*) Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (*1*), a copy of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to In sub-section (*1*) is made out.

Display of name, etc., of foreign company.

344. Every foreign company shall—

(*a*) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of

the language or one of the languages in general use in the locality in which the office or place is situate;

(*b*) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and

(*c*) if the liability of the members of the company is limited, cause notice of that fact—

(*i*) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(*ii*) to be conspicuously exhibited on the outside of every office or place where it carries on business in India in legible English characters and also in the legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Service on foreign company.

345. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 342 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Debentures, annual return, registration of charges, books of account and their inspection.

346. (*1*) The provisions of section 64 shall apply *mutatis mutandis* to a foreign company.

(*2*) The provisions of section 82 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

(*3*) The provisions of section 116 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(*4*) The provisions of Chapter VI shall apply *mutatis mutandis* to charges on properties which are created or acquired by any foreign company.

(*5*) The provisions of Chapter XIV shall apply *mutatis mutandis* to the Indian business of a foreign company as they apply to a company incorporated in India.

Fee for registration of documents.

347. There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee and with additional fee, if any, as may be prescribed.

Interpretation.

348. For the purposes of this Chapter,—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "director", in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and

(*c*) the expression "place of business" includes a share transfer or share registration office.

Dating of prospectus and particulars to be contained therein.

349. (*1*) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and

(*a*) contains particulars with respect to the following matters, namely:—

(*i*) the instrument constituting or defining the constitution of the company;

(*ii*) the enactments or provisions by or under which the incorporation of the company was effected;

(*iii*) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language;

(*iv*) the date on which and the country in which the company would be or was incorporated; and

(*v*) whether the company has established a place of business in India and, if so, the address of its principal office in India; and

(b) states the matters specified under section 23:

Provided that sub-clauses (*i*), (*ii*) and (*iii*) of clause (*a*) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(*2*) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (*1*), or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

(*3*) No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (*1*), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 350:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter Into an underwriting agreement with respect to securities.

(*4*) This section shall not apply—

(*a*) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and

(*b*) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(*5*) Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

Provisions as to expert's consent and allotment.

350. (*1*) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,—

(*a*) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery

of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(*b*) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 28 and 35, so far as applicable.

(2) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus.

351. No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 350 and such documents as may be prescribed.

Offer of Indian Depository Receipts.

352. Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

(*a*) the offer of Indian Depository Receipts;

(*b*) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(*c*) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and

(*d*) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

353. (*1*) The provisions of sections 29 to 31 (both inclusive) shall apply to the issue of a prospectus by a company incorporated outside India under section 35I as they apply to prospectus issued by an Indian company.

Application of sections 29 to 31 and Chapter XX.

(*2*) The provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India.

354. Without prejudice to the provisions of section 353, where a foreign company fails to comply with any of the provisions of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Punishment for contravention.

355. Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

CHAPTER XXII

Government Companies

356. (*1*) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

Annual reports on Government companies.

(*a*) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General and the audit report are placed under the proviso to sub-section (*6*) of section 126; and

(*b*) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon or supplement to the audit report, made by the Comptroller and Auditor-General.

(*2*) Where in addition to the Central Government, any State Government is also a member of a Government company, that State

Government shall cause a copy of the annual report prepared under sub-section (*1*) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to under sub-section (*1*).

(*3*) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(*a*) prepared within the time specified in sub-section (*1*); and

(*b*) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature with a copy of the audit report and comments upon or supplement to the audit report referred to under sub-section (*1*).

(*4*) The provisions of this section shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

Power to modify act in its application to Government companies.

357. (*1*) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations, as may be specified in that notification, to any Government company.

(*2*) A copy of every notification proposed to be issued under sub-section (*1*) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if; before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

CHAPTER XXIII

Registration Offices and Fees

Registration offices.

358. (*1*) For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish

such number of offices at such places as it thinks fit, specifying their jurisdiction.

(*2*) The Central Government may appoint a Director General of Registration, such number of Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies under this Act, and the powers and duties that may be exercisable by such officers shall be such as may be prescribed.

(*3*) The terms and conditions of service, including the salaries payable to persons appointed under sub-section (*2*), shall be such as may be prescribed.

(*4*) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

Admissibility of certain documents as evidence.

359. Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

Provisions relating to filing of applications, documents, inspection, etc., in electronic form.

21 of 2000.

360. (*1*) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000 the Central Government may make rules so as to require from such date as may be prescribed in the rules that—

(*a*) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(*b*) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(*c*) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(*d*) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

(*e*) such fees, charges or other sums payable under this Act or rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

(*f*) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue Certificate of Incorporation, register such document, issue such certificate, record notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or rules made thereunder or perform duties or discharge functions or exercise powers under this Act or rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

(*2*) The Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (*1*) through the electronic form.

Electronic form to be exclusive, alternative or in addition.

361. The Central Government may also provide in the rules made under section 360 that the electronic form for the purposes specified in that section shall be exclusive, or in the alternative or in addition to the physical form, therefor.

Provision of value added services through electronic form.

362. The Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed.

21 of 2000.

363. All the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 360.

Application of provisions of Information Technology Act, 2000.

364. (*1*) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Fee for filing, etc.

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed.

(*2*) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (*1*) before the expiry of the period specified in the proviso to that sub-section with additional fee, the company and its officers who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the action or liability provided under this Act for such failure or default.

365. All fees, charges, and other sums received by any Registrar, Additional, Joint, Deputy, or Assistant Registrar, or any other officer of the Central Government in pursuance of any provision of this Act shall be paid into the public account of India in the Reserve Bank of lndia.

Fees, etc., to be credited into public account.

CHAPTER XXIV

Companies to Furnish Information or Statistics

366. (*1*) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

Power of Central Government to direct companies to furnish information or statistics.

(*2*) Every order under sub-section (*1*) shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(*3*) For the purpose of satisfying itself that any Information or statistics furnished by a company in pursuance of any order under sub-section (*1*) is correct and complete, the Central Government may by order require such company to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

(*4*) If any company fails to comply with an order made under sub-section (*1*) or sub-section (*3*), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(*5*) Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

CHAPTER XXV

NIDHIS

Power to modify Act in its application to Nidhis.

367. (*1*) In this section, "Nidhi" means a company which has been incorporated with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which the Central Government has, by notification, declared to be a Nidhi.

(*2*) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi.

(*3*) A copy of every notification issued under sub-section (*1*) shall, as soon as may be after it is issued, be laid before each House of Parliament.

(*4*) A copy of every notification proposed to be issued under sub-section (*2*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the

notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

CHAPTER XXVI

National Company Law Tribunal and Appellate Tribunal

368. In this Chapter, unless the context otherwise requires,— Definitions.

(*a*) "Chairperson" means the Chairperson of the Appellate Tribunal;

(*b*) "Judicial Member" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be;

(*c*) "Member" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal, and includes the President or the Chairperson, as the case may be;

(*d*) "President" means the President of the Tribunal;

(*e*) "Technical Member" means a Member of the Tribunal or the Appellate. Tribunal appointed as such.

369. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a tribunal to be known as the "National Company Law Tribunal" consisting of a President and such number of judicial and technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force. Constitution of National Company Law Tribunal.

370. (*1*) The President shall be a person who is or has been a Judge of a High Court for five years. Qualification of President and members of Tribunal.

(*2*) A person shall not be qualified for appointment as a Judicial Member unless he—

(*a*) has for at least ten years been a member of the Indian Legal Service or the Indian Corporate Law Service, or held any equivalent post in the Central Government or a State Government, out of which at least three years of service in the pay-scale which is not less than the pay-scale of the Joint Secretary to the Government of India; or

(*b*) has for at least ten years held a judicial office in the territory of India; or

(*c*) has for at least ten years been an advocate of a High Court.

Explanation.— For the purposes of clauses (*b*) and (*c*),—

(*i*) in computing the period during which a person has held a judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of any other tribunal or any post under the Central Government or any State Government, requiring special knowledge of law;

(*ii*) in computing the period during which a person has been an advocate of a High Court, there shall be included any period, after he became an advocate, during which the person has held any judicial office or the office of a member of any other tribunal or any post under the Central Government or any State Government, requiring special knowledge of law.

(*3*) A person shall not be qualified for appointment as a Technical Member unless he—

(*a*) has for at least ten years been a member of the Indian Corporate Law Service, (Accounts Branch) or held any equivalent post in the Central Government or a State Government, out of which at least three years of service in the pay-scale which is not less than the pay-scale of the Joint Secretary to the Government of India; or

(*b*) is or has been a Joint Secretary to the Government of India under the Central Staffing Scheme, or has held any other post under the Central Government or a State Government carrying pay-scale which is not less than the pay-scale of the Joint Secretary to the Government of India, for at least three years and has adequate knowledge of and experience in dealing with matters relating to companies; or

(*c*) is or has been in practice as a Chartered Accountant for at least twenty years; or

(*d*) is or has been in practice as a Cost Accountant for at least twenty years; or

(*e*) is or has been in practice as a Company Secretary for at least twenty years; or

(*f*) is a person of ability, integrity and standing having special knowledge and experience, for not less than twenty years, in

law, finance, banking management, industrial administration, economics, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

Constitution of Appellate Tribunal.

371. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the "National Company Law Appellate Tribunal" consisting of a Chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal.

Qualifications of Chairperson and Members of Appellate Tribunal.

372. (*1*) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(*2*) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal, for five years.

(*3*) A Technical Member shall be a person of ability, integrity and standing having special knowledge and experience, for not less than twenty-five years, in law, finance, banking management, industrial administration, economics, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

Selection of Members of Tribunal and Appellate Tribunal.

373. (*1*) The President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.

(*2*) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(*a*) Chief Justice of lndia or his nominee; Chairperson,

(*b*) Secretary in the Ministry of Corporate Affairs; Member,

(*c*) Secretary in the Ministry of Law and Justice; Member, and

(*d*) two other Secretaries to the Government of India to be nominated by the Central Government; Members.

(*3*) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

(*4*) The Selection Committee shall determine its procedure for recommending persons under sub-section (*2*).

(*5*) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

Term of office of President, Chairperson and other Members.

374. (*1*) A Member of the Tribunal shall hold office as such until he attains—

(*a*) in the case of the President, the age of sixty-seven years;

(*b*) in the case of any other Member, the age of sixty-five years.

(*2*) A Member of the Appellate Tribunal shall hold office as such until he attains,—

(*a*) in the case of the Chairperson, the age of seventy years;

(*b*) in the case of any other Member, the age of sixty-seven years.

Salary, allowances and other terms and conditions of service of Members.

375. The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowance nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

Acting President and Chairperson of Tribunal and Appellate Tribunal.

376. (*1*) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(*2*) When the President or the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

Resignation of Members.

377. The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, the Chairperson or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

378. (*1*) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, the Chairperson or any Member, who— Removal of Members.

(*a*) has been adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*c*) has become physically or mentally incapable of acting as such President, Chairperson or Member; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, Chairperson or Member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (*b*) to (*e*) without giving him a reasonable opportunity of being heard.

(*2*) Without prejudice to the provisions of sub-section (*1*), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(*3*) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (*2*).

379. (*1*) The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal. Staff of Tribunal and Appellate Tribunal.

(*2*) The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairman or any other Member to whom powers for exercising such superintendence and control are delegated by him.

(*3*) The salaries and allowances and other conditions of service of the officers and other employees of the Tribunal and the Appellate Tribunal shall be such as may be prescribed.

Benches of Tribunal.

380. (*1*) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(*2*) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(*3*) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

(*4*) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, of which at least one of them shall necessarily be a Judicial Member.

(*5*) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

Orders of Tribunal.

381. (*1*) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders therein as it thinks fit.

(*2*) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(*3*) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

Appeal from orders of Tribunal.

382. (*1*) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(*2*) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(*3*) Every appeal under sub-section (*1*) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(*4*) On the receipt of an appeal under sub-section (*1*), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, contouring, modifying or setting aside the order appealed against.

(*5*) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Expeditious disposal by Tribunal and Appellate Tribunal.

383. Every proceeding presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of the proceeding or appeal within three months from the date of commencement of the proceeding before the Tribunal or the filing of the appeal before the Appellate Tribunal.

Appeal to Supreme Court.

384. Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Procedure before Tribunal and Appellate Tribunal.

385. (*1*) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(*2*) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office; 1 of 1872.

(*e*) issuing commissions for the examination of witnesses or documents;

(*f*) dismissing a representation for default or deciding it *ex parte*;

(*g*) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(*h*) any other matter which may be prescribed by the Central Government.

(*3*) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for

execution of its to orders to the court within the local limits of whose jurisdiction,—

(*a*) in the case of an order against a company, the registered office of the company is situate; or

(*b*) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(*4*) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Tribunal and the Appellate Tribunal shall be deemed to be civil courts for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Power to punish for contempt.

386. The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, subject to the modifications that—

70 of 1971.

(*a*) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(*b*) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, by notification. specify in this behalf.

Delegation of powers.

387. The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

Members, officers, etc., to be public servants.

388. The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection of action taken in good faith.

389. No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employee or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or

damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

Power to seek assistance of Chief Metropolitan Megistrate, etc.

390. (*1*) The Tribunal may, in any proceeding relating to a sick company or winding up of any other company, in order to take into custody or under its control all property, books of account or other documents, request, in writing the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such sick on other company, are situate or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—

(*a*) take possession of such property, books of account or other documents; and

(*b*) cause the same to be entrusted to the Tribunal or other person authorised by it.

(*2*) For the purpose of securing compliance with the provisions of sub-section (*1*), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(*3*) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

Civil court not to have jurisdiction.

391. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force by the Tribunal or the Appellate Tribunal.

Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.

392. No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Right to legal representation.

393. A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

36 of 1963.

394. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before Tribunal or the Appellate Tribunal, as the case may be. Limitation.

395. On the date of the constitution of the Tribunal,— Transfer of certain pending proceedings.

(*a*) all matters, proceedings or cases pending before the Board of Company Law Administration (hereafter in this section referred to as the Company Law Board) constituted under sub-section (*1*) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

1 of 1956.

(*b*) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days;

1 of 1956.

(*c*) all proceedings under the companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings either *de novo* or from the stage before their transfer:

Provided that nothing in this clause shall apply to any proceedings for the winding up of a company subject to the supervision of court pending before any District Court or High Court immediately before such date, and such proceedings shall, after such date, continue to be dealt with by the District Court or the High Court, as the case may be, and—

(*i*) the company shall be wound up in the same manner and with the same incidents, and

(*ii*) any appeal against any order of the District Court or the High Court shall lie to the competent court to which appeal would have laid,

1 of 1956.

as if the Companies Act, 1956 had continued to be in force.

CHAPTER XXVII

Special Courts

Establishment of special courts.

396. (*1*) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish as many special courts as may be necessary.

(*2*) A special court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(*3*) A person shall not be qualified for appointment as a judge of a special court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

Offences triable by special courts.

397. (*1*) Notwithstanding anything contained in the code of Criminal Procedure, 1973,— 2 of 1974.

(*a*) all offences under this Act shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

(*b*) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (*2*) or sub-section (*2A*) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: 2 of 1974.

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the special court having jurisdiction;

(*c*) the special court may exercise, in relation to the person forwarded to it under clause (*b*), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and 2 of 1974.

(*d*) a special court may, upon perusals of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(*2*) When trying an offence under this Act, a special court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

2 of 1974.

(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the special court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the special court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

Appeal and revision.

398. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a special court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

2 of 1974.

Application of Code to proceedings before a special court.

399. Save as otherwise provided in this Act, the provisions of the code of Criminal Procedure, 1973 shall apply to the proceedings before a special court and for the purposes of the said provisions, the special court shall be deemed to be a Court of Session and the person conducting a prosecution before a special court shall be deemed to be a Public Prosecutor.

2 of 1974.

Offences to be non-cognizable.

400. (*1*) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

2 of 1974.

(*2*) No Court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (*1*) is the Registrar or a person authorised by the Central Government, the presence of such officers before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial. 2 of 1974.

(*4*) The provisions of sub-section (*2*) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

Explanation.— A liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (*1*).

Transitional provisions.

401. Any offence committed under this Act, which is triable by a special court shall, until a special court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

Composition of certain offences.

402. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the aggrieved person or persons with the permission of the court having jurisdiction to try the offence. 2 of 1974.

2 of 1974.

403. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

Power of Central Government to appoint company prosecutors.

2 of 1974.

404. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

Appeal against acquittal.

405. The provisions of section 250 of the Code shall apply *mutatis mutandis* to accusation without reasonable cause before the special court or the Court of Session.

Compensation for accusation without reasonable cause.

406. The Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

Application of fines.

CHAPTER XXVIII

MISCELLANEOUS

407. Save as otherwise provided in this Act, if in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement,—

Punishment for false statements.

(a) which is false in any material particulars, knowing it to be false; or

(*b*) which omits any material fact, knowing it to be material, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.

408. Save as otherwise provided in this Act, if any person intentionally gives false evidence—

Punishment for false evidence.

(*a*) upon any examination on oath or solemn affirmation, authorised under this Act; or

(*b*) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

Punishment where no specific penalty or punishment is provided.

409. If a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Punishment in case of repeated default.

410. In case a company or any officer who is in default repeats the default, he shall be punishable with imprisonment as provided, but in case of defaults for which fine is provided either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such default.

Punishment for wrongful withholding of property.

411. (*1*) If any officer or employee of a company—

(*a*) wrongfully obtains possession of any property, including cash of the company; or

(*b*) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any creditor or contributory thereof, be punishable with fine which shall be not less than one lakh rupees but which may extend to five lakh rupees.

(*2*) The Court trying an offence under sub-section (*1*) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to undergo imprisonment for a term which may extend to two years.

Punishment for improper use of "Limited", "Private Limited" or "OPC Limited".

412. If any person or persons trade or carry on business under any name or title of which the word "Limited" or the words "Private Limited" or the letters and word "OPC Limited" or any contraction or imitation thereof is or are the last word or words, that person

or each of those persons shall, unless duly incorporated with limited liability, be punishable for using that name or title with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Adjudication of penalties.

413. (*1*) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.

(*2*) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (*1*).

(*3*) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or any default under the relevant provision of the Act.

(*4*) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.

(*5*) Any person aggrieved by an order made by the adjudicating officer under sub-section (*4*) may prefer an appeal to the Regional Director having jurisdiction in the matter.

(*6*) Every appeal under sub-section (*5*) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fee as may be prescribed.

(*7*) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit confirming, modifying or setting aside the order appealed against.

(*8*) (*i*) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, it shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees;

(*ii*) where an officer in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, he shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

Dormant company.

414. (*1*) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.— For the purposes of this section,—

(*i*) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(*ii*) "significant accounting transaction" shall not include payment of fees by a company to the Registrar, payments made by it to fulfil the requirements of this Act or any other law and payments for maintenance of its office and records.

(*2*) The Registrar on consideration of the application allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

(*3*) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

(*4*) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

(*5*) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

(*6*) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Protection of action taken in good faith.

415. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in-respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

416. Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any court, tribunal or other authority the source from where he got any information which—

Non-disclosure of information in certain cases.

(*a*) has led the Central Government to order an investigation under section 183; or

(*b*) is or has been material or relevant in connection with such investigation.

417. (*1*) The Central Government may, by notification, and subject to much conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.

Delegation by Central Government of its powers and functions.

(*2*) A copy of every notification issued under sub-section (*1*) shall, as soon as may be after it is issued, be laid before each House of Parliament.

418. (*1*) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—

Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

(*a*) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;

(*b*) to give any direction in relation to any matter; or

(*c*) to grant any exemption in relation to any matter, then in the absence of anything to the contrary contained in that provision or any other provision of this Act, the Central Government or the Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(*2*) Save as otherwise provided in this Act, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—

(*a*) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter;

(*b*) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(*c*) in respect of any other matter, shall be accompanied by such fee as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

Condonation of delay in certain cases.

419. Notwithstanding anything contained in this Act,—

(*a*) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

Annual report by Central Government.

420. The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

Power to modify certain provisions of Act in their application to private company, One Person Company and small company.

421. (*1*) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of Chapters III, IV, VII and IX to XIII of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to private company, One Person Company and small company or any of them.

(*2*) A copy of every notification proposed to be issued under sub-section (*1*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Prohibition of association or partnership of persons exceeding certain number.

422. (*1*) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company

under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

(*2*) Nothing in sub-section (*1*) shall apply to—

(*a*) a Hindu undivided family carrying on any business; or

(*b*) an association or partnership, if it is formed by professionals who are governed by special Acts.

(*3*) Every member of an association or partnership carrying on business in contravention of sub-section (*1*) shall be personally liable for all liabilities incurred in such business and shall be punishable with fine which may extend to one lakh rupees.

Repeal of certain enactments and savings.

1 of 1956. **423.** (*1*) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed:

1 of 1956.

Provided further that until the constitution of the Tribunal and the Appellate Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and Court shall continue to apply as if the Companies Act, 1956 has not been repealed.

1 of 1956.

(*2*) Notwithstanding the repeal under sub-section (*1*) of the repealed enactments,—

(*a*) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any direction given or any proceeding taken or any penalty or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(*b*) subject to the provisions of clause (*a*), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed,

passed, given, taken, executed, issued or done under or in pursuance of this Act;

(*c*) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(*d*) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(*e*) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(*f*) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(*g*) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(*h*) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act. 1 of 1956.

(*3*) The mention of particular matters in sub-section (*2*) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act. 1 of 1897.

Dissolution of Company Law Board and consequential provisions.

424. (*1*) Notwithstanding anything contained in section 422, the Board of Company Law Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal. 1 of 1956.

(*2*) The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal shall vacate their respective offices on such constitution and no such Chairman, Vice-Chairman and Members and officers or other employees shall be entitled to claim any

compensation for the premature termination of the term of his office or of any contract of service, if any:

Provided that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer and other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

14 of 1947.

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Central Government under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees who have become officers or employees of the Central Government shall, out of the monies standing to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed.

Power to remove difficulties.

425. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of section 1 of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power of Central Government to make rules.

426. (*1*) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

(*3*) Any rule made under sub-section (*1*) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(*4*) Every rule made by the Central Government under sub-section (*1*) shall be laid as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Companies Act, 1956 was enacted with the object to consolidate and amend the law relating to companies and certain other associations. Simultaneously, the Companies Act, 1913, then in force, was repealed.

2. Many changes have taken place in the national and international economic environment since the enactment of the Companies Act, 1956. This has made the economy more diverse, complex and dynamic. In this milieu, the corporate form of organization is increasingly emerging as the preferred vehicle for economic and commercial activity and has contributed significantly to the growth of the Indian economy and the emergence of service, information and knowledge-based enterprises. The number of companies has expanded from 30,000 in 1956 to nearly 8 lakh companies functioning as of date. Companies are now mobilising resources at a scale unimaginable even a decade ago, continuously entering into and bringing new activities into the fold of the Indian economy, exporting a wide range of goods and services and providing increasing employment opportunities.

3. The expansion and growth of the Indian economy has also generated considerable interest in the international investing community. However, there is a need for sustaining growth in a globalised and competitive environment. The increasing options and avenues for international business, trade and capital flows have made it imperative for the growing Indian economy to not only harness its entrepreneurial and economic resources efficiently but also to be competitive in attracting investment to sustain the impressive growth recorded by it in recent years. Many investors are also looking towards the statutory and regulatory framework for the corporate sector in the country while deciding on their investment options. Modernisation of corporate regulation, governing various aspects of setting up of enterprises, structures for sharing of risk and reward, their governance and accountability to stakeholders, financial procedures and responsibility for disclosures, procedures for rehabilitation, liquidation and winding up is, therefore, critical to the perceptions of investors and determining their business and investment decisions.

4. In the background of the above developments and recognising that the competitive and technology driven business environment today require the corporate entities to be provided greater autonomy of operation and innovation with reasonable process requirements and compliance costs, a need was felt to help sustain the growth of the Indian corporate sector by enabling a new legal framework that would be compact, amenable to clear interpretation, and respond in a timely and appropriate manner to meet the requirements of ever evolving economic activities and business models, while fostering a positive environment for investment and growth. In addition, there is also a need to avoid overlapping and conflict of jurisdiction in the area of sectoral regulations. Therefore, piecemeal re-engineering of the corporate regulatory framework was not considered adequate to enable the systemic changes required. Hence, a comprehensive review of the Companies Act, 1956, and introduction of a revised statutory framework in the form of a new Companies Bill has been considered essential to achieve the desired reform.

5. In the above backdrop, the review of the Companies Act, 1956 and drafting of a new Companies Bill was taken up by the Government on the basis of a detailed consultative process. A "Concept Paper on new Company Law" was placed on the website of the Ministry on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December, 2004 to make recommendations in respect of new Company Law. The Committee included representatives from concerned Departments and Ministries, professional Institutes and trade bodies and individual experts as members or special invitees. The Committee deliberated extensively on various Issues and submitted its report to the Government on 31st May, 2005. After considering the report of the Committee and other inputs received from time to time, the Government took up the exercise of comprehensive review of the Companies Act, 1956. Broadly, the objective of the review was to—

(*i*) retain essential features of the existing framework, segregate substantive law from the procedures to enable a clear framework for good corporate governance that addresses the concerns of all stakeholders equitably;

(*ii*) revise the law so as to enable a compact statute that is amenable to easy understanding and interpretation;

(*iii*) enable greater flexibility in procedural aspects so that with the change of time the procedural framework, to be prescribed through rules, may be amended without amendment of the substantive enactment;

(*iv*) establish a climate that encourages setting up of businesses and their growth while enabling measures to protect the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices and effective enforcement;

(*v*) provide a framework for responsible self-regulation through determination of corporate matters through decisions by shareholders, in the background of clear accountability for such decisions, obviating the need for a regime based on Government approvals;

(*vi*) address the practical concerns of small businesses so that people may deal with and invest in companies with confidence, promote international competitiveness of Indian businesses and provide them with the flexibility to meet the challenges of the global economy;

(*vii*) incorporate international practices based on the models suggested by the United Nations Commission on International Trade Law (UNCITRAL); and

(*viii*) provide for a reasonable and appropriate framework for enforcement of the law that enables proper investigation and imposition of appropriate sanctions comprising of penalties for non-compliance and punishment for violation of the law and for fraudulent conduct, keeping in view the experience resulting from past stock market scams and concerns expressed by Joint Parliamentary Committees thereon.

6. Finally, a comprehensively revised Bill, the Companies Bill, 2008 was prepared in consultation with Ministry of Law and was introduced in the Lok Sabha on 23rd October, 2008 in the 14th Lok Sabha and was subsequently referred to the Department related Parliamentary Standing Committee on Finance for examination and report. However, before the said Committee could present its report, 14th Lok Sabha was dissolved and the Companies Bill, 2008 lapsed as per clause (*5*) of article 107 of the Constitution of India. In view of this, it is proposed to introduce the Companies Bill, 2009.

7. The Companies Bill, 2009, *inter alia* provides for:—

(*i*) the basic principles for all aspects of internal governance of corporate entities and a framework for their regulation, irrespective of their area of operation, from incorporation to liquidation and winding up, in a single, comprehensive legal framework to be administered by the Central Government. In doing so, the Bill also seeks to harmonise the Company law frame work with the sectoral regulations;

(*ii*) articulation of shareholders democracy with protection of the rights of minority stakeholders, responsible self-regulation with adequate disclosures and accountability and also reduction of Government control over internal corporate processes;

(*iii*) easy transition of companies operating under the Companies Act, 1956, to the new legal framework as also from one type of company to another, freedom with regard to the numbers and layers of subsidiary companies that a company may have, subject to disclosures in respect of their relationship and transactions or dealings between them;

(*iv*) a new entity in the form of One Person Company (OPC), empowering the Government to provide for a simpler compliance regime for OPC and small companies and retention of the concept of Producer companies, while providing a more stringent regime for companies with charitable objects to check misuse;

(*v*) application of the successful e-Governance initiative of the Ministry of Corporate Affairs (MCA-21) to all the processes involved in meeting compliance obligations. Company processes may also be carried out through electronic mode;

(*vi*) speedy incorporation process, with detailed declarations and disclosures about the promoters, directors, etc., at the time of incorporation. Every company director would be required to acquire a unique Director Identification Number;

(*vii*) relaxation of restriction limiting the number of persons in associations or partnerships, etc., to a maximum of one hundred, with no ceiling as to associations, or partnerships, formed by professionals regulated by special Acts;

(*viii*) duties and liabilities of the directors and every company to have at least one director resident in India. The Bill also provides for independent directors to be appointed on the Boards of such companies as may be prescribed, along with attributes determining independence. The requirement to appoint minimum number of independent directors, where applicable, to listed public companies

is one-third of the total number of directors. For other public companies, the requirement and number may be prescribed through rules;

(*ix*) statutory recognition to audit committee, remuneration committee and stake-holders relationship committee of the Board and the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary to be as Key Managerial Personnel (KMP);

(*x*) companies not to be allowed to raise deposits from the public except on the basis of permission available to them through other special Acts. The Bill prohibits insider trading by company directors or Key Managerial Personnel and declares it as an offence with criminal liability;

(*xi*) recognition of both accounting and auditing standards. The role, rights and duties of the auditors have been defined so as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding Companies is proposed to be made mandatory;

(*xii*) a single forum for approval of mergers and acquisitions along with a simple and shorter merger process for holding and wholly owned subsidiary companies or between two or more small companies as well as recognition of cross border mergers. Concept of deemed approval also provided in certain situations;

(*xiii*) a framework for enabling fair valuations in companies for various purposes. Appointment of valuers is proposed to be made by an audit committee or in its absence by the Board of Directors;

(*xiv*) claim often investor over a dividend or a benefit from a security not claimed for more than a period of seven years not to be extinguished, and Investor Education and Protection Fund (IEPF) is to be administered by a statutory authority;

(*xv*) shareholders associations or group of shareholders to be enabled to take legal action in case of any fraudulent action on the part of a company and to take part in investor protection activities and "Class Action Suits";

(*xvi*) a revised framework for regulation of insolvency, including rehabilitation, liquidation and winding up of companies and the process to be completed in a time bound manner;

(*xvii*) consolidation of fora for dealing with rehabilitation of companies, their liquidation and winding up in the single forum of National Company Law Tribunal and appeal to National Company Law Appellate Tribunal with suitable transitional provisions. The nature of the Rehabilitation and Revival Fund as provided in the Companies (Second Amendment) Act, 2002 is to be replaced by Rehabilitation and Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency;

(*xviii*) a more effective regime for inspections and investigations of companies while laying down the maximum as well as minimum quantum of penalty for each offence with suitable deterrence for repeated defaults. The company is identified as a separate entity for imposition of monetary penalties from the officers in

default. In case of fraudulent activities, provisions for recovery and disgorgement have been included;

(*xix*) levy of additional fee in a non-discretionary manner for procedural non-compliance, such as late filing of statutory documents, to be enabled through rules. Defaults of procedural nature to be penalised by levy of monetary penalties by the adjudicating officers not below the level of Registrar. The appeals against orders of adjudicating officers are to lie with designated higher authorities;

(*xx*) special courts to deal with offences under the Bill. Company matters such as , mergers and amalgamations, reduction of capital, insolvency including rehabilitation, liquidations and winding up are proposed to be dealt with by the National Company Law Tribunal.

8. In view of the extensive changes made in the Companies Act, 1956, it has been considered necessary to repeal the said Act and enact the Companies Bill, 2009.

9. The Notes on Clauses explain, in detail, provisions of the Bill.

10. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th July, 2009 SALMAN KHURSHID

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 1/4/2009-CL-I dated the 17th July, 2009 from Shri Salman Khurshid, Minister of State for Corporate Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Companies Bill, 2009, recommends introduction of the Bill in the House under article 117(1) of the Constitution and also recommends to the House the consideration of the Bill under article 117(3) of the Constitution.

Notes on Clauses

Clause 1. — It has been made flexible to enforce various sections on different dates. Sub-clause (4) makes position clear as to application of this Act.

Clause 2. — This clause corresponds to section 2 of the Companies Act, 1956 and defines various expressions used in the Bill.

Clause 3. — This clause corresponds to section 12 of the Companies Act, 1956 and seeks to provide minimum number of persons to form a public, private or One Person Company for any lawful purpose, by subscribing their names to the memorandum. Memorandum of One Person Company shall indicate the name of a person who shall become member, in the event of death, disability or otherwise of the single member. The companies formed under this clause may be limited by shares or limited by guarantee or an unlimited company.

Clause 4. — This clause corresponds to section 25 of the Companies Act, 1956 and empowers the Central Government to register an association as limited company having charitable objects to promote commerce, art, science, sports, education, research, social welfare, religion, charity, etc., without adding to its name the words "Limited", "Private Limited" or "OPC Limited". The profit or any income of the company shall be used for promoting the objects of the company. Payment of dividend to members is prohibited. The Central Government shall issue license on such terms and conditions as shall be prescribed by it for registration of such companies and these companies shall be subject to certain exemptions and restrictions. In case of contravention of this clause or the conditions imposed, the Central Government may revoke the license order the company to be wound up or amalgamated with another company having similar objects. A firm may be allowed to become a member of such company.

Clause 5. — This clause corresponds to sections 13, 14 and 20 of the Companies Act, 1956 and seeks to provide for the requirements with respect to memorandum of a company. The memorandum shall mention the name of a company, State in which the registered office of the company is to be situated, objects for which the company is proposed to be incorporated, liability of members, etc.

Clause 6. — This clause corresponds to sections 26, 27, 28 and 29 of the Companies Act, 1956 and seeks to provide the contents and model of articles of association. The articles may contain an entrenchment provision also.

Clause 7. — This clause corresponds to section 33 of the Companies Act, 1956 and seeks to provide for the procedure to be followed for incorporation of a company. Memorandum and articles of association duly signed, a declaration in a prescribed form to the effect that the requirements of the Act in respect of registration have been complied with; affidavit from the subscribers to the memorandum and from the first directors, to the effect, that they are not convicted and have not been found guilty of any fraud or misfeasance, etc., under this Act

during the last five years, complete details of name, address of the company, particulars of every subscriber and the persons named as first directors shall be given to the Registrar. Thereafter, the Registrar of companies shall register the company and issue a Certificate of Incorporation and allot a Corporate Identity Number. The persons furnishing false information in this connection shall be liable for punishment and the company which is registered may be liable for strike off from the register or winding up on the order of Tribunal.

Clause 8. — This clause corresponds to section 34 of the Companies Act, 1956 and seeks to provide for the effect of registration of a company. The clause provides that from the date of incorporation, the subscribers become the members of the company. The company shall be a body corporate with a name, capable of exercising all the functions of an incorporated company under this Act and shall have perpetual succession and a common seal with power to acquire, hold and dispose of property, to contract, to sue and be sued, by the said name.

Clause 9. — This clause corresponds to section 36 of the Companies Act, 1956 and seeks to provide for the effect of memorandum and articles whereby the memorandum and articles shall be binding on the company and the members to the extent as if they respectively had been signed by the company and by each member. All moneys payable by any member to the company shall be debt due from him to the company.

Clause 10. — This clause corresponds to section 149 of the Companies Act, 1956 and seeks to provide that the company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director or subscriber that every subscriber to the memorandum has paid the value of shares taken by him, and the company has filed with the Registrar the verification of its registered office. If a copy has not filed such declaration within 180 days of the date of incorporation. The Registrar of companies may remove the name of the company if he has reasonable cause to believe that the company is not carrying on business or operations.

Clause 11. — This clause corresponds to sections 146 and 147 of the Companies Act, 1956 and seeks to provide that from the date of incorporation and at all times thereafter, a company shall have a registered office capable of receiving and acknowledging all communications and notices addressed to it. In case of any change of the registered office, the company has to give notice to the Registrar of companies within a stipulated time. Any change of registered office outside the local limits of any city, town or village shall be done only with the approval of members through special resolution.

Clause 12. — This clause corresponds to section 16 of the Companies Act, 1956 and seeks to provide that a company may alter the provisions of its memorandum with approval of the members through special resolution. No alteration shall have any effect unless it is registered with the Registrar. Where there is change in the name of a company, the Registrar shall issue a fresh certificate of Incorporation. Any alteration of the memorandum relating to the place of registered office from one State to another shall be effective only with the approval of the Central Government on an application filed to it. A copy of the order to this effect has to be filed with the Registrar.

Clause 13. — This clause corresponds to section 31 of the Companies Act, 1956 and seeks to provide for alteration of articles. A company may alter its articles including alterations

having effect of conversion of a private company or a One Person Company into a public company or a One Person Company or a public company into private company with the approval of members through special resolution and approval of the Tribunal will be required for conversion of a public company into a private company or OPC. A copy of order of Tribunal shall be filed with the Registrar together with a printed copy of the altered articles.

Clause 14. — This clause corresponds to section 40 of the Companies Act, 1956 and seeks to provide that every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles of association.

Clause 15. — This clause corresponds to section 22 of the Companies Act, 1956 and seeks to empower the Central Government to give direction to the company to rectify its name if the name registered is identical with or too nearly resembles the name, by which a company in existence has been previously registered, or the name is identical with or too nearly resembles to a registered trade mark.

Clause 16. — This clause corresponds to section 39 of the Companies Act, 1956 and seeks to provide that every company shall on being so requested by a member, send copies of memorandum, and articles of association, agreement or resolution on payment of fees.

Clause 17. — This clause corresponds to section 32 of the Companies Act, 1956 and seeks to provide that a company may re-register itself in same or any other class of companies by altering its memorandum and articles of association. The re-registration shall not affect any debts, liabilities, obligations or contracts incurred or entered into by the company.

Clause 18. — This clause corresponds to section 42 of the Companies Act, 1956 and seeks to provide that a subsidiary company shall not hold shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Clause 19. — This clause corresponds to sections 51, 52 and 53 of the Companies Act, 1956 and seeks to provide for the mode in which documents may be served on the company, its members and also on the Registrar.

Clause 20. — This clause corresponds to section 54 of the Companies Act, 1956 and seeks to provide for authentication of documents, proceedings and contracts, etc.

Clause 21. — This clause corresponds to section 47 of the Companies Act, 1956 and seeks to provide for execution of bills of exchange, *hundi*, promissory notes and other deeds. A company may, by writing under its common seal, authorise any person as its attorney to execute deeds on company's behalf. Deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have same effect as if it were made under its common seal.

Clause 22. — This clause corresponds to section 55A of the Companies Act, 1956 and seeks to provide that the powers relating to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed on any stock exchange in India, be administered by the Securities and Exchange Board of India, and in other cases be administered by the Central Government.

Clause 23. — This clause corresponds to section 56 and Schedule II of the Companies Act, 1956 and seeks to provide for the matters to be stated and information to be given in the prospectus. Prospectus shall not be issued before the date of its publication. No statement of an expert shall be included in the prospectus unless he is engaged or interested information of a company and has given his written consent to the issue of prospectus before the delivery of a copy of the prospectus to the Registrar for registration. Registrar shall register the prospectus only after the registration requirements are complied with. Prospectus is to be issued within ninety days from the date of delivery of prospectus to the Registrar. In case, a prospectus is issued by a company in contravention of the provision of this section, the company and person knowingly party to such contravention shall be punishable.

Clause 24. — This clause corresponds to section 67 of the Companies Act, 1956 and seeks to provide that a company may make an offer or invitation to the public to subscribe for securities. A statement indicating the salient features of the offer or invitation has to be filed with the Registrar of companies for registration.

Clause 25. — This clause corresponds to section 66 of the Companies Act, 1956 and seeks to provide that where an advertisement of any prospectus of a company is published, it shall specify therein the contents of memorandum as regards to the objects, the liability of members and the amount of share capital, the names of the signatories and the number of shares subscribed by them and also its capital structure, etc.

Clause 26. — This clause corresponds to section 60A of the Companies Act, 1956 and seeks to provide that any class or classes of companies prescribed by the Securities and Exchange Board of India may file a shelf prospectus with the Registrar of companies at the stage of the first offer of securities having validity for a period of one year. No further issue of prospectus is required in respect of a second or subsequent offer of securities included in such prospectus for a period of one year. Company shall also file information memorandum on new charges created, of any change in financial position with the Registrar of companies prior to the issue of a second or subsequent offer under shelf prospectus.

Clause 27. — This clause corresponds to section 60B of the Companies Act, 1956 and seeks to provide for issue of red-herring prospectus prior to issue of a prospectus. A company proposing to issue a red-herring prospectus shall file it with Registrar at least three days prior to the opening of the subscription list and the offer.

Clause 28. — This clause corresponds to sub-section (*3*) of section 56 of the Companies Act, 1956 and seeks to provide that every form of application issued for purchase of any securities of a company shall be accompanied by an abridged prospectus.

Clause 29. — This clause corresponds to section 63 of the Companies Act, 1956 and provides for criminal liability for misstatements in prospectus. The person who authorises the issue of such prospectus shall be punishable with fine and imprisonment.

Clause 30. — This clause corresponds to section 62 of the Companies Act, 1956 and seeks to provide that in case any person subscribes for securities on the basis of misleading statements or inclusion or omission of any matter in the prospectus resulting in any loss or damage, the person who has authorised the issue of such prospectus or a director, promoter, whosoever is liable, shall have to compensate every person who has sustained such loss or damage.

Clause 31. — This clause corresponds to section 68 of Companies Act, 1956 and seeks to provide that any person who fraudulently induces persons to invest money by making statement which is false, deceptive, misleading or deliberately conceals any facts, shall be punishable with imprisonment and with fine.

Clause 32. — This is a new clause which seeks to provide that a suit may be filed or any other action may be taken by any person, group of persons or any association of persons who have been affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Clause 33. — This clause corresponds to section 68A of the Companies Act, 1956 and seeks to provide that any person who makes abates making of an application in fictitious name or makes or abates making of multiple applications or otherwise induces companies to allot shares in fictitious name, shall be punishable with imprisonment and with fine. The clause further provides that Court may order disgorgement of any such gain and seizure and disposal of such securities.

Clause 34. — This clause corresponds to section 69 of the Companies Act, 1956 prohibiting allotment of securities where the minimum amount has not been subscribed and the amount received is to be refunded to all the applicants within a given time frame.

Clause 35. — This clause corresponds to section 73 of the Companies Act, 1956 and seeks to provide that prospectus has to mention the name of the stock exchange where the securities are to be dealt with. Any allotment without permission of the stock exchange shall be void. All moneys received on application from the public for subscription to the securities shall be kept in a separate bank account. In case of default, the company and every officer of the company who is in default shall be punishable with fine or with imprisonment or with both. A company may pay commission to any person in connection with the subscription to its securities.

Clause 36. — This is a new clause which provides that a company may issue depository receipts to be dealt with in a depository mode in any foreign country.

Clause 37. — This clause corresponds to sections 85 and 86 and seeks to provide that there shall be two kinds of share capital namely equity share capital and preference share capital. Preferential share capital carries a preferential right with respect to payment of dividend and also for repayment of capital at the time of winding up.

Clause 38. — This clause corresponds to section 82 of the Companies Act, 1956 and seeks to provide that the shares and debentures are movable property transferable in a, manner provided in the articles of a company.

Clause 39. — This clause corresponds to section 83 of the Companies Act, 1956 and seeks to provide that every share in a company having a share capital shall be distinguished by distinctive number. This clause does not apply to shares held with the depository.

Clause 40. — This clause corresponds to section 84 of the Companies Act, 1956 and seeks to provide that a certificate issued by a company shall be *prima facie* evidence of the title of the person to such shares. It provides the manner for issuance of duplicate share certificate and the particulars to be entered in the register of members.

Clause 41. — This clause corresponds to section 87 of the Companies Act, 1956 and seeks to provide that every member who is a holder of equity share shall have the right to vote on every resolution placed before the company. His voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company. Every member of a company who is holding preference shares shall have a right to vote only on such resolutions which directly affect the rights attached to his preference shares.

Clause 42. — This clause corresponds to sections 106 and 107 of the Companies Act, 1956 and seeks to provide that where share capital is divided into different classes of shares, the rights attached to any class of shares may be varied with the written consent of the holders of not less than three-fourths of the issued shares or by special resolution. Where the holders of ten per cent. of the issued share capital did not consent to such variation, they may apply to Tribunal for cancellation or modification in such variation.

Clause 43. — This clause corresponds to section 91 of the Companies Act, 1956 and seeks to provide that where any calls for further share capital are made on the shares of a class, such call shall be made on uniform basis on all shares falling under that class.

Clause 44. — This clause corresponds to section 92 of the Companies Act, 1956 and seeks to provide that a company can accept from any member the whole or a part of the amount remaining unpaid on any shares without being called up and that he will not be entitled to any voting rights on the amount paid by him unless amount has been called up.

Clause 45. — This clause corresponds to section 93 of the Companies Act, 1956 and seeks to provide that a company, if authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Clause 46. — This clause corresponds to section 78 of the Companies Act, 1956 and seeks to provide that a company shall transfer the amount received by it as share premium to securities premium account and state the means in which the amount in that account can be applied.

Clause 47. — This clause corresponds to section 79 of the Companies Act, 1956 and seeks to provide that companies are prohibited from issuing shares at a discount except in the case of issue of sweat equity shares.

Clause 48. — This clause corresponds to section 79A of the Companies Act, 1956 and seeks to provide that on fulfilling certain conditions, a company may issue sweat equity shares of a class of shares already issued. The rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity shares and holders of such shares rank *pari passu* with other equity shareholders.

Clause 49. — This clause corresponds to sections 80 and 80A of the Companies Act, 1956 and seeks to provide that no company limited by shares shall issue irredeemable preference shares. A company may issue preference shares for a period not exceeding twenty years. However, for infrastructural project preference shares can be issued for more than twenty years.

Clause 50. — This clause corresponds to sections 108, 109B, 110 and 113 of the Companies Act, 1956 and seeks to provide that transfer of securities/interest of a member not to be registered except on production of instrument of transfer duly stamped, dated and executed. In case of loss of the instrument, the company may register the transfer in terms of indemnity. Where an application relates to partly paid-up shares, the transfer shall not be registered unless a notice is issued to the transferee. In case of refusal of transfer of shares, transferee may appeal to the Tribunal.

Clause 51. — This clause corresponds to section 116 of the Companies Act, 1956 and seeks to provide punishment for a person who deceitfully personates the owner of any share or interest.

Clause 52. — This clause corresponds to sub-sections (*1*) and (*2*) of section 111 of the Companies Act, 1956 and seeks to provide for that if a company without sufficient cause refuses to register the transfer of shares, appeal against such refusal shall lie to the National Company Law Tribunal.

Clause 53. — This clause corresponds to section 111A of the Companies Act, 1956 and seeks to provide that if the name of any person has been entered in or has been omitted from the register of members without sufficient cause, the member or the person aggrieved may appeal to the Tribunal or to a competent court outside India in respect of foreign members or debenture holders for rectification of register. The Tribunal may either dismiss the appeal or direct for rectification of register, transfer or transmission. The Tribunal may also direct to pay damages to the aggrieved party.

Clause 54. — This clause corresponds to section 148 of the Companies Act, 1956 and seeks to provide that where any notice, advertisement or other official publication, or any business letter, etc., of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letters billhead or letter paper shall also state the subscribed and paid-up capital.

Clause 55. — This clause corresponds to section 94 of the Companies Act, 1956 and seeks to provide that a limited company having a share capital may alter its share by passing resolution in its general meeting.

Clause 56. — This clause corresponds to section 81 of the Companies Act, 1956 and seeks to provide that a company having a share capital can increase its subscribed capital by the issue of further shares to its existing members, to employees through employee's stock option, or to the general public, after having the shares valued by registered valuers. This provision is not to apply to conversion of debentures or loans into shares of the company.

Clause 57. — This clause corresponds to sections 95 and 97 of the Companies Act, 1956 and seeks to provide for the companies to give notice to Registrar of alteration or increase of share capital along with an altered memorandum.

Clause 58. — This clause corresponds to section 98 of the Companies Act, 1956 and seeks to provide that an unlimited company having a share capital may be reregistered as a limited company by increasing the nominal amount of each share. This clause further provides that the company can not call unpaid portion of share capital except in the event of winding up.

Clause 59. — This clause corresponds to sections 100 to 105 of the Companies Act, 1956 and seeks to provide that on the confirmation by the Tribunal a limited company may reduce its share capital and alter its memorandum accordingly. This clause further provides that the Tribunal shall give notice to the Central Government and to the SEBI and consider the representations received in this behalf. The company shall deliver a certified copy of the order of the Tribunal to the Registrar who shall issue a certificate to this effect to the company. The clause does not apply to buy back of its own securities by a company.

Clause 60. — This clause corresponds to section 77 of the Companies Act, 1956 and seeks to provide the restrictions on purchase by companies or giving loans to others for purchase of its own shares. This clause further provides that the company's right to redeem any preference shares issued by it is not affected by such restriction.

Clause 61. — This clause corresponds to section 77A of the Companies Act, 1956 and seeks to provide that a company may purchase its own shares out of its free reserves, the securities premium account or from the proceeds of the issue of any shares or other specified securities. The clause provides for the conditions to be fulfilled for buy-back of securities. Every buy-back should be completed within one year from the date of passing of the special resolution. A declaration of solvency has to be filed by the company to the Registrar and SEBI before the buy-back is proposed. After completion of buy-back a return has to be filed with Registrar and Securities and Exchange Board of lndia. After buying back, the company shall physically destroy all the shares.

Clause 62. — This clause corresponds to section 77AA of the Companies Act, 1956 and seeks to provide that in case of buy-back of shares out of free reserves, a sum equal to the nominal value of the shares so purchased shall be transferred to capital redemption reserve account.

Clause 63. — This clause corresponds to section 77B of the Companies Act, 1956 and seeks to prohibit buy-back through any subsidiary company, through any investment company or through such company which has defaulted in making repayment of deposits, interest thereon, redemption of debentures, payment of dividend, etc.

Clause 64. — This clause corresponds to sections 117, 117A, 117B, 117C and 118 to 123 of the Companies Act, 1956 and seeks to provide that a company may issue debentures with an option to convert into shares at the time of redemption but cannot issue debentures with voting rights. On issue of debentures, the company shall create a Debenture Redemption Reserve Account. The company shall not issue prospectus to more than five hundred persons without appointing a debenture trustee. The duty of the debenture trustee is to protect the interest of the debenture holders and redress their grievances. This clause further provides that in the event of the failure of the company in making repayment of maturity value of debentures or to pay interest, the tribunal may, on an application, pass such order to make the payment to the debenture holders along with interest due thereon.

Clause 65. — This clause corresponds to section 109A of the Companies Act, 1956 and seeks to provide that every share holder or debenture holder may appoint a nominee or a joint nominee who shall be the owner of the instrument in the event of death of the holder or the joint holder unless the nomination is varied or cancelled.

Clause 66. — This clause corresponds to section 58A of the Companies Act, 1956 and seeks to provide that no company shall invite, accept or renew deposits from public. It can do so only from members of the company subject to fulfillment of certain conditions. In case of failure to repay the deposit or interest thereon the Tribunal may order for repayment or for any loss or damage.

Clause 67. — This is a new clause which seeks to provide that the deposit accepted before this Act comes into force by a company or any interest due thereon shall be repaid within one year. Extension of time for repayment may be granted by the Tribunal on an application.

Clause 68. — This new clause seeks to provide that in case the company fails to pay the deposit or any interest thereon and it is proved that the deposits had been accepted with intent to defraud the depositors, every officer who was responsible for acceptance of deposits shall be personally responsible, without any limitation of liability for all losses or damages incurred by the depositors.

Clause 69. — This clause correspond to section 125 of the Companies Act, 1956 and seeks to provide that a company creating a charge within or outside India, shall, register the said charge with the Registrar within thirty days. The Registrar after registering the charge, shall issue a certificate of registration. The liquidator or any other creditor shall not take into account any charge created unless registered with the Registrar.

Clause 70. — This clause corresponds to section 138 of the Companies Act, 1956 and seeks to provide that where a company fails to register the charge, the person in whose favour the charge is created may apply to the Registrar for registration of charges.

Clause 71. — This clause corresponds to sections 127 and 135 of the Companies Act, 1956 and seeks to provide that the requirement of registering the charge created by a company shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.

Clause 72. — This clause corresponds to section 126 of the Companies Act, 1956 and seeks to provide that any person acquiring a property, assets undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Clause 73. — This clause corresponds to section 130 of the Companies Act, 1956 and seeks to provide that the Registrar shall, in respect of every company, keep a register containing particular of charges so registered. The register shall be open for inspection on payment of fee.

Clause 74. — This clause corresponds to section 138 of the Companies Act, 1956 and seeks to provide that a company shall intimate to Registrar about the payment or satisfaction in full of any charge so registered. The Registrar shall issue notice to holder of the charge calling a show cause why payment or satisfaction should not be recorded and in case of no reply, the memorandum of satisfaction shall be entered in the register of charges.

Clause 75. — This clause corresponds to section 137 of the Companies Act, 1956 and seeks to provide that if a person obtains an order for the appointment of a receiver or a person to

manage the property subject to charge, he shall give notice to the company and the Registrar about such an order. The person appointed as receiver shall also give notice to the company and the Registrar on his ceasing to hold such appointment.

Clause 76. — This clause corresponds to section 143 of the Companies Act, 1956 and seeks to provide that every company shall keep a register of charges at its registered office and this register shall be open for inspection during business hours by members without fee and by any other person with fee.

Clause 77. — This clause corresponds to section 142 of the Companies Act, 1956 and seeks to provide for the penal provisions for contravening any of the provisions of the chapter.

Clause 78. — This clause corresponds to sections 150, 151, 152 and 152A of the Companies Act, 1956 and seeks to provide that every company shall keep and maintain the register of members, register of debenture holders and register of any other security holders. This clause further provides that every register shall include an index of the name. A company, if authorised by its articles, may keep a foreign register outside India. This clause also provides that a company shall file with the Registrar, the particulars and situation of place where the register is to be kept and any changes in the situation of such place.

Clause 79. — This clause corresponds to section 187C of the Companies Act, 1956 and seeks to provide that a declaration is to be given to the company by any person who is a member but not holding the beneficial interest in such shares. Further, the person holding beneficial interest shall declare the nature of his interest and other particulars on those shares to the company. Any changes in the beneficial interest is also to be declared. This clause also provides that the company shall make a note of all the declaration made to it and file a return with Registrar.

Clause 80. — This clause corresponds to section 187D of the Companies Act, 1956 and seeks to provide that the Central Government may appoint one or more competent persons to investigate and report as to the beneficial ownership.

Clause 81. — This clause corresponds to section 154 of the Companies Act, 1956 and seeks to provide that a company may close the register of members, debenture holders and other security holders by giving minimum seven days notice.

Clause 82. — This clause corresponds to section 159 of the Companies Act, 1956 and seeks to provide that every company shall prepare an annual return containing certain particulars such as registered office, principal business activities, particulars of holding, subsidiary and associate companies, its shares, debentures and other securities, members, promoters, etc. The annual return shall be signed both by a director and a company secretary. Where there is no company secretary or, in case of listed companies, the return shall be signed by the Company Secretary in whole-time practice and the same shall be filed with the Registrar. Company secretary in practice shall also be punished if he certifies otherwise than in conformity of this section or rules.

Clause 83. — This clause corresponds to section 163 of the Companies Act, 1956 and seeks to provide that register of members, debenture holders and any other security holders and

copies of annual returns shall be kept at the registered office and can also be kept at any place other than registered office where more than one-tenth of total members reside, if approved by special resolution. This clause further provides that the registers and the indices shall be open to inspection and any person can take extracts during any business hours without payment of any fee and can also get copies thereof with payment of fee. The Central Government may by order direct inspection of documents and to have an extract or copy of such registers by any person.

Clause 84. — This clause corresponds to section 164 of the Companies Act, 1956 and seeks to provide that the register indices and copies of annual return shall be *prima facie* evidence of any matter.

Clause 85. — This clause corresponds to section 166 of the Companies Act, 1956 and seeks to provide for that every company other than One Person Company in addition to any other meeting shall hold a general meeting as its annual general meeting. There should not be a gap of more than fifteen months between two annual general meetings. This clause further provides that first annual general meeting shall be held within a period of nine months from the closing of first financial year and within a period of six months in all other cases. This clause also provides that annual general meeting shall be called on any day which is not a National Holiday and may be held either at registered office of a company or at some other place where the registered office of the company is situated. The Central Government may exempt any company from this compliance.

Clause 86. — This clause corresponds to section 167 of the Companies Act, 1956 and seeks to provide that in case of any default in holding annual general meeting of a company, the Tribunal on the application of any member of the company, call or direct the calling of an annual general meeting. The Tribunal may also direct that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Clause 87. — This clause corresponds to section 186 of the Companies Act, 1956 and seeks to provide that if for any reason, it is impracticable to call a meeting of a company other than an annual general meeting the Tribunal shall have the power to order for calling the meeting either *suo motu* or on the application of any director of the company or of any member of a company.

Clause 88. — This clause corresponds to section 168 of the Companies Act, 1956 and seeks to provide that if any default is made in holding a general meeting of the company or in complying with any directions of the Central Government, or Tribunal, the company and every officer of the company who is in default shall be punishable with fine.

Clause 89. — This clause corresponds to section 169 of the Companies Act, 1956 and seeks to provide that the Board may call an extraordinary general meeting on its own or on a request from such number of members holding not less than one-tenth of paid-up capital of the company. In case of company not having a share capital, such number of members having not less than one-tenth of the total voting power of all the members call an extraordinary general meeting. In case the Board does not call the meeting within twenty-one days requisitionists may call the meeting. This clause further provides that any reasonable expenses incurred by the requisitionists shall be reimbursed.

Clause 90. — This clause corresponds to sections 171 and 172 of the Companies Act, 1956 and seeks to provide that general meeting may be called by giving not less than 21 days notice to all members, legal representative of any deceased member or the assignees of the insolvent members, the auditors and directors in writing or through electronic mode. A shorter notice may also be given with the consent of ninety-five per cent. of the members entitled to vote.

Clause 91. — This clause corresponds to section 173 of the Companies Act, 1956 and seeks to provide that a statement setting out all the material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting. This clause further provides for all the businesses that shall be deemed to be special. In case of non-disclosure or insufficient disclosure in any statement made by director, manager or other key managerial personnel which results into any benefit for themselves or their relatives, shall have to be compensated.

Clause 92. — This clause corresponds to section 174 of the Companies Act, 1956 and seeks to provide that unless the articles of the company provide for a larger number, five members personally present in case of a public company and two members personally present in case of a private company shall be the quorum for a meeting. This clause further provides that if the quorum is not present within half-an-hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board. However, the meeting called by requisitionist shall stand cancelled in the absence of quorum. In case of adjournment or of change of day, time and place of meeting, the company shall give not less than three days' notice to the members where quorum is not present in the adjourned meeting also, the members present shall be the quorum.

Clause 93. — This clause corresponds to section 175 of the Companies Act, 1956 and seeks to provide that members shall elect one among themselves to be the Chairman by show of hands. The clause further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll.

Clause 94. — This clause corresponds to section 176 of the Companies Act, 1956 and seeks to provide that a member who is entitled to attend and vote can appoint another person as a proxy to attend and vote at the meeting on his behalf, in writing or by electronic mode. However, proxy shall not have the right to speak at a meeting and shall not be entitled to vote except on poll.

Clause 95. — This clause corresponds to section 181 of the Companies Act, 1956 and seeks to provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or on which company has exercised any right or lien. No member can be prohibited from exercising his voting right on any other ground.

Clause 96. — This clause corresponds to section 177 of the Companies Act, 1956 and seeks to provide that at general meeting, a resolution put to vote shall, unless a poll is demanded or the voting is carried out electronically, be decided on a show of hands. A declaration by the Chairman and an entry in the minutes book is conclusive evidence that resolution is passed.

Clause 97. — This is a new clause and it provides that a member may exercise his vote at a meeting by electronic means.

Clause 98. — This clause corresponds to section 179 of the Companies Act, 1956 and seeks to provide that before or on declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting on his own or on demand made by members order for a poll. This clause further provides that the demand for poll may be withdrawn by the persons who made the demand. The Chairman of the meeting shall appoint scrutiniser for observing the poll process and votes given on poll and to report thereon. The result of the poll shall be deemed to be the decision of the meeting on the resolution. The Chairman shall regulate the manner in which poll shall be taken.

Clause 99. — This clause corresponds to section 192A of the Companies Act, 1956 and seeks to provide that the Central Government may declare items of business that can be transacted only by postal ballot and also in respect of any item of business other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting may also be transacted through postal ballot.

Clause 100. — This clause corresponds to section 188 of the Companies Act, 1956 and seeks to provide that a company shall, on requisition in writing of certain number of members, give notice or circulate statement to members on proposed resolution intended to be moved in the meeting. The statement need not be circulated if the Central Government declares that the right conferred is being abused to secure needless publicity for defamatory matters.

Clause 101. — This clause corresponds to section 187A of the Companies Act, 1956 and seeks to provide that President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit, to act as his representative at any meeting and to vote by proxy and postal ballot as member of the company.

Clause 102. — This clause corresponds to section 187 of the Companies Act, 1956 and seeks to provide that where a body corporate is a member or a creditor of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

Clause 103. — This clause corresponds to section 189 of the Companies Act, 1956 and seeks to provide that a resolution shall be an ordinary resolution if the votes cast in favour of the resolution exceeds the votes, if any, cast against the resolution by the members. A resolution shall be special when it is duly specified in the notice, calling the general meeting and votes cast in favour is three times the votes cast against the resolution.

Clause 104. — This clause corresponds to section 190 of the Companies Act, 1956 and seeks to provide that where a special notice is required of any resolution, notice of the intention to move such resolution is to be given by such number of members in such manner as may be prescribed.

Clause 105. — This clause corresponds to section 191 of the Companies Act, 1956 and seeks to provide that where a resolution is passed at an adjourned meeting, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

Clause 106. — This clause corresponds to section 192 of the Companies Act, 1956 and seeks to provide that a copy of every resolution and an agreement together with an explanatory statement shall be filed with the Registrar within 30 days of its passing. The Registrar shall register the same and in case of any default, every officer who is in default including the liquidator shall be liable.

Clause 107. — This clause corresponds to sections 193, 194, 195 and 197 of the Companies Act, 1956 and seeks to provide that every Company shall prepare, sign and keep minutes of proceedings of every General Meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or Committee of the Board and also resolution passed by postal ballot. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The Chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. Minutes kept shall be evidence of the proceedings recorded in a meeting. This clause also seeks to provide that every company shall observe secretarial standards with respect to general and Board meeting.

Clause 108. — This clause corresponds to section 196 of the Companies Act, 1956 and seeks to provide that the minutes book of general meetings shall be kept at the registered office of a Company and shall be open for inspection to members during business hours without any charge. A member shall be entitled for a copy of any minutes subject to payment of fees. The copy should be made available to him within seven days of his making request. Where the company refuses inspection or fails to furnish a copy of minutes within specified time, the Central Government is empowered to direct immediate inspection or sending a copy of minutes in the matter and the company and every officer of the company shall be punishable with fine.

Clause 109. — This new clause seeks to provide that every listed company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provision of the Act and the rules made thereunder. A copy of this report shall be filed with the Registrar.

Clause 110. — This clause corresponds to section 205 of the Companies Act, 1956 and seeks to provide that dividend shall be declared by a company for any financial year at a general meeting out of the profits for that year or any previous year or years arrived at after providing for depreciation or out of money provided by the Central Government or a State Government for the payment of dividend. However, before the declaration of any dividend certain percentage of profit shall be transferred to the reserves of the company. In case of inadequacy of profits or loss or absence of profit in any financial year dividend can be declared and paid out of accumulated profits transferred to reserves by passing Board resolution unanimously and special resolution in annual general meeting. The clause provides for the manner of providing depreciation. The Board may declare interim dividend out of profits. The amount of dividend shall be deposited in a scheduled bank in separate account within five days. Dividend shall be paid by cheque or warrant or in any electronic mode to the shareholders entitled to the payment of dividend. No dividend can be declared in the event of failure to repay the deposits accepted by company. Capitalisation of profits for issuing bonus shares is not prohibited.

Clause 111. — This clause corresponds to section 205A of the Companies Act, 1956 and seeks to provide that where the dividend is not paid or claimed within thirty days, the company shall, within seven days, transfer the total unpaid or unclaimed amount to an unpaid dividend account to be opened by the company in a scheduled bank. In case of any default in transferring the amount, the company shall be liable to pay interest on the amount as has not been transferred. The amount remaining unpaid or unclaimed for seven years shall be transferred to Investor Education and Protection Fund. A statement of such amount is required to be sent to the Authority administrating the Fund.

Clause 112. — This clause corresponds to section 205C of the Companies Act, 1956 and seeks to provide that the Central Government shall establish a fund to be called the Investor Education and Protection Fund. The Fund shall be utilised for refund of unclaimed dividends, application monies due for refund and interest thereon, the promotion of investors' education, awareness and protection. To administer the fund, the Central Government shall constitute an authority consisting of Chairperson, maximum of seven members and Administrator. Accounts of the Fund would be audited by Comptroller and Auditor General and the audit report along with duly certified accounts to be forwarded to the Central Government. The authority shall prepare its annual report and the annual report along with audit report to be laid before each House of Parliament by the Central Government.

Clause 113. — This clause seeks to provide that all amount lying in the existing fund, *i.e*. Investor Education and Protection Fund as per section 205C of the Companies Act, 1956 shall stand credited to the Investor Education and Protection Fund established under this Act.

Clause 114. — This clause corresponds to section 206A of the Companies Act, 1956 and seeks to provide that where any instrument of transfer of shares is not registered, the amount of dividend shall be transferred to the Unpaid Dividend Account and to keep in abeyance the rights to any right shares or bonus shares.

Clause 115. — This clause corresponds to section 207 of the Companies Act, 1956 and seeks to provide that where the dividend has been declared but has not been paid or the warrants have not been posted within thirty days of declaration, every director who is knowingly party to the default shall be punishable with imprisonment up to two years with fine and the company shall be liable to pay interest of 18 per cent. per annum thereon.

Clause 116. — This clause corresponds to section 209 of the Companies Act, 1956 and seeks to provide that every company shall prepare and keep at its registered office books of account and other relevant books and papers which give a true and fair view of the state of the affairs of the company and its branch offices. However, if Board decides to keep books and other papers at any other place in India, a notice to this effect shall be given to the Registrar and relevant books and paper can also be kept in electronic mode. For branch offices of the company in India or outside, it shall be deemed to have complied with the provisions of this section, if summarised returns are sent periodically to the registered office. The books of accounts and other books and papers maintained by the company shall be open for inspection by any director. A person duly authorised by the Board can only inspect books of accounts of subsidiaries companies. This clause further provides that books of accounts of every company shall be kept for eight years. In case, an investigation has been ordered, the Central Government shall have power to ask the company to keep the books of accounts for a period longer than eight years.

Clause 117. — This clause corresponds to section 211 of the Companies Act, 1956 and seeks to provide that the financial statements shall give a true and fair view of the state of affairs of the company and shall comply with accounting standards. The financial statement shall be laid in the annual general meeting of that financial year. In case of subsidiary companies, the company shall prepare a consolidated statement of all subsidiaries and lay before the annual general meeting. The Central Government shall have the power to exempt a class or classes of companies from any of the requirement of this section.

Clause 118. — This clause corresponds to section 210A of the Companies Act, 1956 and seeks to provide that the Central Government may by notification constitute an advisory committee to be called the National Advisory Committee on Accounting and Auditing Standards to advise the Central Government on accounting and auditing policies and standards for adoption. The clause further provides for the members who shall constitute the Advisory Committee. The members of the Advisory Committee shall be entitled to fees, travelling, conveyance and other allowances. The Advisory Committee in consultation with Indian Institute of Chartered Accountants of India shall make recommendations to the Central Government on the matters relating to accounting and auditing policies and standards.

Clause 119. — This clause corresponds to section 211(3C) of the Companies Act, 1956 and it seeks to provide that the Central Government may, after consultation with the Advisory Committee, notify the accounting standards for adoption by companies.

Clause 120. — This clause corresponds to sections 215, 216 and 217 of the Companies Act, 1956 and seeks to provide that the financial statement including consolidated financial statements should be approved by the Board of Directors before they are signed and submitted to auditors for their report. The auditor's report is to be attached to every financial statement. A report by the Board of Directors containing details on the matters specified including directors responsibility statement shall be annexed to every financial statement laid before company.

The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board report.

Clause 121. — This clause corresponds to section 219 of the Companies Act, 1956 and seeks to provide that a copy of financial statement, auditor's report alongwith annexures/ attachments shall be sent to every member, every trustee for the debenture holder, and all other persons who are so entitled 21 days before the date of general meeting. A specific manner of circulation may be prescribed by the Central Government. Every member, trustee, etc. is allowed to inspect the financial statements and auditor's report, etc., at the registered office of the company during any business hours.

Clause 122. — This clause corresponds to section 220 of the Companies Act, 1956 and seeks to provide that copies of financial statement and all such documents which are annexed to the financial statement and adopted at the annual general meeting shall be filed with Registrar. In case a company does not hold an annual general meeting in any year, a statement of facts and reasons alongwith financial statement and attachment has to be filed with the Registrar. This clause further provides that in case the accounts are not adopted at annual general meeting or in adjourned meeting, the unadopted accounts shall be filed with the Registrar and the Registrar shall take them in his records as provisional till the final accounts are filed.

Clause 123. — This clause corresponds to section 224 of the Companies Act, 1956 and seeks to provide that a company shall appoint an individual or a firm as an auditor at annual general meeting subject to his written consent who shall hold office till conclusion of next annual general meeting. A notice of appointment should be filed with the Registrar. The Comptroller and Auditor General of India appoints auditor of Government Companies failing which Central Government/State Government appoints auditor on the request of the company. First auditor is appointed by Board within 30 days of incorporation and in case of failure to appoint, the members at a general meeting shall appoint and Comptroller and Auditor General of India shall appoint auditor of Government companies failing which Board shall appoint first auditor and in case of failure Central Government/State Government will appoint. The clause further provides for the provisions relating to the casual vacancy, resignation, re-appointment and removal of auditor. The Tribunal is empowered to change the auditor in case of any fraud by him.

Clause 124. — This clause corresponds to sections 224(1B) and 226 of the Companies Act, 1956 and seeks to provide for appointment of only Chartered Accountants in practice as auditors. The clause further provides for the persons who are not eligible for appointment as an auditor of a company. An auditor who is disqualified subsequent to his appointment, has to vacate office.

Clause 125. — This clause corresponds to section 224 of the Companies Act, 1956 and seeks to provide for remuneration of auditors of the company. The remuneration is to be fixed in the general meeting. The clause further defines the term "remuneration".

Clause 126. — This clause corresponds to section 227 of the Companies Act, 1956 and seeks to provide for the powers and duties of auditors. Every auditor can access books of accounts, vouchers and seek such information and explanation from the company and enquire such matters as he consider necessary. In case of financial statements, auditor of holding company can access records of subsidiaries. The auditor has to make a report to the members on that accounts, financial statement or other documents required to be laid in general meeting give a true and fair view of the state of the company's affairs and such other matters as may be prescribed. The report shall state reasons for negative and qualified remarks. The clause also provides the manner in which audit report of a Government company shall be finalised by the Comptroller and Auditor General. This clause also provides to notify the auditing standard by the Central Government.

Clause 127. — This is a new clause and it seeks to provide that an auditor can do such other services as approved by the Board or audit committee. The clause further provides for the services which the auditor cannot perform.

Clause 128. — This clause corresponds to section 229 of the Companies Act, 1956 and seeks to provide that its auditor's report can be signed by the person appointed as an auditor of the company. He shall also sign or certify any other document of the company.

Clause 129. — This clause corresponds to section 231 of the Companies Act, 1956 and seeks to provide that auditor or his representative, qualified to be an auditor, shall get all the notices of general meetings and shall attend the same and be heard on any part of the business concerning him as the auditor.

Clause 130. — This clause corresponds to sections 232 and 233 of the Companies Act, 1956 and seeks to provide for the penalties for contravention of provisions of the clauses 123 to 129. In case an auditor knowingly or willfully contravenes he shall be punishable with imprisonment or with fine or with both. The Auditor is also required to refund remuneration received by him to company and for any damages to the company or to any person suffered due to misleading or incorrect statements of particulars made in his report.

Clause 131. — This clause corresponds to section 233B of the Companies Act, 1956 and seeks to empower Central Government after consultation with regulatory body to direct certain companies to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost. The Central Government may direct the audit of cost records of the company by Cost Accountant in practice appointed by Board and on such remuneration as determined by the members. The clause further provides that the qualifications, disqualifications, rights, duties and obligations as apply to auditor shall also be applicable to cost auditor as well. The Central Government may call for further information and explanation if necessary after considering cost audit report.

Clause 132. — This clause corresponds to some of the provisions of sections 252, 253 and 259 of the Companies Act, *1956* and some new provisions. It seeks to provide that every company shall have a Board of Directors and prescribes the minimum and maximum number of directors. The clause also seeks to provide that every company shall have at least one director who would be ordinarily resident in India. The clause further provides the conditions for appointment of independent director. The clause also seeks to define the terms "independent director" and "nominee director" and seeks to provide that an Independent Director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in Board meeting and profit related commission and stock options as approved by the members.

Clause 133. — This clause corresponds to some of the provisions of sections 254 to 256 and 264 of the Act and some new provisions and seeks to provide the manner in which the directors including the first directors shall be appointed by a company. The clause seeks to provide that other than first directors, the directors shall be appointed in general meetings. The clause further provides that every director would obtain DIN from the Central Government before he acts as a director in any company. Every proposed director shall furnish his DIN, a declaration that he is not disqualified to become a director and a consent to hold office as director before he is appointed. Further in case of independent directors, the Board shall give a report in the General meeting that every independent directors appointed fulfils the conditions specified for his appointment. The clause also provides for the manner in which rotation of directors shall take place.

Clause 134. — This clause corresponds to section 266A of the Companies Act, 1956 and seeks to provide that every individual intending to be appointed as director shall make an application for allotment of Director Identification Number (DIN) to the Central Government along with fee.

Clause 135. — This clause corresponds to section 266B of the Companies Act, 1956 and seeks to provide that the Central Government shall allot Director Identification Number (DIN) to the applicant within one month from the receipt of the application.

Clause 136. — This clause corresponds to section 266C of the Companies Act, 1956 and seeks to provide that no individual, who has already been allotted a Director Identification Number shall apply, obtain or possess another Director Identification Number.

Clause 137. — This clause corresponds to section 266D of the Companies Act, 1956 and seeks to provide that every existing director shall, intimate his Director Identification Number within one month of its receipt to the company or all companies wherein he is a director.

Clause 138. — This clause corresponds to section 266E of the Companies Act, 1956 and seeks to provide that every company shall furnish the Director Identification Numbers of all its directors to the Registrar or any other officer or authority as specified by the Central Government.

Clause 139. — This clause corresponds to section 266F of the Companies Act, 1956 and seeks to provide that every person or company, while furnishing any return, information or particulars shall mention the Director Identification Number in such return, information or particulars.

Clause 140. — This clause corresponds to section 266G of the Companies Act, 1956 and seeks to provide that if any individual or director, or a company contravenes any of the provisions, of clauses 133, 136 and 137 shall be punishable with fine and where the contravention is a continuing one, with a further fine.

Clause 141. — This clause corresponds to section 257 of the Companies Act, 1956 and seeks to provide that a person, not being a retiring director shall be eligible for appointment as a director at any general meeting. The clause further provides the manner in which the persons other than retiring director can stand for directorship and the company shall inform its members of the candidature of a person for the office of director.

Clause 142. — This clause corresponds to sections 260, 262 and 313 of the Companies Act, 1956 and contains some new provisions. The Board if authorised by articles may appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time. The clause further seeks to provide that the Board may, if so authorised by its articles or by a resolution passed by the company, appoint a person, to act as an alternate director for a director during his absence for a period of not less than three months from India. The clause also seeks to provide that only a person, who is qualified to be appointed as an independent director, shall be eligible to be appointed as an alternate director in place of an independent director. The clause provides that an alternate director shall not hold office larger than permissible and shall vacate the office if and when the director in whose place he has been appointed returns to India. The clause further provides that in the case of a public company or a private company which is a subsidiary of a public company, the casual vacancy may be filled by the Board of Directors at a meeting of the Board. The clause also provides that any person so appointed shall hold office up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Clause 143. — This clause corresponds to section 263 of the Companies Act, 1956 and seeks to provide that at a general meeting of a company, a motion for the appointment of two or more persons as directors by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

Clause 144. — This clause corresponds to section 265 of the Companies Act, 1956 and seeks to provide that the articles of a company may provide for the appointment of not less than two—thirds of the total number of the directors in accordance with the principle of proportional representation.

Clause 145. — This clause corresponds to section 274 of the Companies Act, 1956 and seeks to provide the circumstances and situations under which a person shall not be eligible for appointment as a director of a company. The clause further provides for the situations in which a director shall not be eligible to be re-appointed as a director of that company or appointed in other public company for a period of five years. The clause also provides that a private company may by its articles provide for any other disqualifications in addition to those specified in this clause.

Clause 146.— This clause corresponds to section 275 of the Companies Act, 1956 and seeks to provide that no person, shall hold office as a director, in more than fifteen public limited companies at the same time.

Clause 147.— This is a new clause and seeks to provide that a director of a company shall act in accordance with the company's articles. It further seeks to provide for various duties of directors. In case of contravention, director is punishable with fine and if a director is found guilty of making any undue gain either to himself or to his relatives, partners or associates he shall also be liable to pay an amount, equal to that gain, to the company.

Clause 148. — This clause corresponds to section 283 of the Companies Act, 1956 and seeks to provide the grounds and circumstances under which the office of a director shall become vacant. The clause further provides that where a person acts as a director after he is aware that the office of director held by him has become vacant on account of any disqualification, he shall be punishable with fine. Where all the directors vacate their offices under any of the disqualifications, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed in the general meeting. The clause also provides that a private company may provide for any other ground for vacation of office.

Clause 149. — This is a new clause and seeks to provide that a director may resign from his office by giving a notice in writing and the Board shall, on receipt of such notice intimate the Registrar and place such resignation in the subsequent general meeting of the company. The clause further provides for the date on which the notice of resignation shall take effect. The clause seeks to provide that where the number of directors is reduced be low the quorum fixed, the continuing director or director(s) shall be deemed to constitute the quorum.

Clause 150. — This clause corresponds to sections 284 of the Companies Act, 1956 and seeks to provide that a company may, by ordinary resolution remove a director (not being a director appointed by the Tribunal under section 213). Special notice shall be required of any resolution, to remove a director or to appoint somebody in place of a director so removed. The clause further provides that the director shall be entitled to be heard on the resolution at the meeting. A vacancy created by the removal of a director may be filled by the appointment of another director in his place by the meeting at which he is removed. The clause seeks to provide that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

Clause 151. — This clause corresponds to sections 303 and 307 of the Companies Act, 1956 and seeks to provide that every company shall keep at its registered office a register containing particulars of its directors and the key managerial personnel including the details of securities held by each of them in the company or its holding, subsidiary or associate companies. A return containing particulars and documents of appointment or any change in the directors and the key managerial personnel shall be filed with the Registrar.

Clause 152. — This clause corresponds to section 304 of the Companies Act, 1956 and also seeks to provide the manner in which register kept under clause 151 shall be open for inspection. The members shall take extracts therefrom and obtain copies thereof free of cost. The clause seeks to provide that if any inspection as provided in this clause is refused, or if any copy required thereunder is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

Clause 153. — This clause is a new clause which seeks to provide that where a company contravenes any of the provisions of this Chapter and no specific punishment is provided therein, the company, every director or employee who is responsible shall be punishable with fine.

Clause 154. — This clause corresponds to sections 285 and 286 of the Companies Act, 1956 and seeks to provide that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and hold a minimum number of four meetings of its Board of Directors every year. The participation of directors in a meeting of the Board may be either in person or through video conferencing or such other electronic means. The clause further provides that a notice of the meeting of Board shall be given to every director at his address registered with the company. The meeting of the Board may be called at shorter notice to transact urgent business where at least one independent director, if any, shall be present.

Clause 155. — This clause corresponds to sections 287 and 288 of the Companies Act, 1956 and seeks to provide that the quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the directors participating by video conferencing or other electronic means shall be counted for quorum. It further provides that where the number of interested directors exceeds, or is equal to, two-thirds of the total strength of the Board, the number of directors who are not interested and present at the meeting, being not less than two, shall be the quorum. The clause further provides that the meeting shall stand adjourned if it could not be held for want of quorum.

Clause 156. — This clause corresponds to section 289 of the Companies Act, 1956 and seeks to provide that no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation unless the resolution has been circulated in draft, to all the directors, or members of the committee at their addresses in India, and has been approved by a majority. The clause also provides that such a resolution shall be noted and made part of minutes at a subsequent meeting.

Clause 157. — This clause corresponds to section 290 of the Companies Act, 1956 and seeks to provide that any act done by a person as a director shall not be invalid if it is subsequently discovered that his appointment was invalid. The clause further provides that nothing shall be

given validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

Clause 158. — This clause contains some provisions of section 292A of the Companies Act, 1956 and contains some new provisions and seeks to provide the requirement and manner of constituting audit, remuneration, Stakeholders Relationship Committees of the Board. The clause also provides for the requirements in respect of such committees.

The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and at least one director having knowledge of financial management, audit or accounts.

The Chairman of an Audit Committee shall be an independent director.

Remuneration Committee shall consist of non-executive directors as appointed by the Board out of which at least one shall be an independent director. Such Remuneration Committee shall determine the company's policies relating to the remuneration of the directors, key managerial personnel and such other employees as may be decided by the Committee.

The clause further provides that the Board having a combined membership of the shareholders, debenture holders and other security holders of more than one thousand at any time during a financial year shall constitute a Stakeholders Relationship Committee which shall consist of a chairman who is a non-executive director and such other members of the Board as decided by the Board. Stakeholders Relationship Committee shall consider and resolve the grievances of stakeholders.

Clause 159. — This clause corresponds to sections 291 and 292 of the Companies Act, 1956 and seeks to provide that the Board of Directors shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do except those that are to be exercised or done by the company in general meeting. The clause further specifies the powers to be exercised by the Board of Directors on behalf of the company.

Clause 160. — This clause corresponds to section 293 of the Companies Act, 1956 and seeks to provide for the powers of the Board of Directors of a company to be exercised only with the consent of the company by a special resolution.

Clause 161. — This clause corresponds to section 293A of the Companies Act, 1956. It seeks to provide the manner and limits up to which a company shall be able to contribute the amount to any political party or to any person for a political purpose. The clause further provides the manner in which every company shall disclose in its profit and loss account any amount so contributed by it during any financial year.

Clause 162. — This clause corresponds to section 299 of the Companies Act, 1956 and seeks to provide the manner and periodicity in which every director shall make disclosures of his concern or interest in any company or bodies corporate, firms, or other association of individuals. It also seeks to provide that every director of a company who is concerned or interested in a contract or arrangement shall disclose the nature of his concern or interest at the meeting of the Board and shall not participate in such meeting. The clause further provides that a contract or arrangement entered into by the company without disclosure or with participation by a director who is so concerned or interested shall be voidable at the option of the company.

Clause 163. — This clause corresponds to section 295 of the Companies Act, 1956 and seeks to provide the circumstances and manner in which a company shall advance any loan to any of its directors or to any other person in whom he is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Clause 164. — This clause corresponds to section 372A of the Companies Act, 1956 and seeks to provide the manner in which and limits up to which a company shall give any loan or give any guarantee or provide security in connection with a loan to any other body corporate or person or acquire by way of subscription, purchase or otherwise, the securities of any other body corporate. The clause further provides that the companies as providing or associating loans shall disclose in financial statements full particulars of the loans given investments made or guarantees or securities provided. The clause also provides for the manner in which registers will be kept by a company to record transactions and the manner in which such registers shall be available for inspection. The clause exempts certain categories of companies from the provisions of this clause.

Clause 165. — This clause corresponds to section 49 of the Companies Act, 1956 and seeks to provide that all investments made or held by a company in any property, security or other asset shall be made and held by it in its own name. It also seeks to provide that the company may hold any shares in its subsidiary company in the name of any nominee of the company, if it is necessary to ensure that the number of members of the subsidiary company is not reduced below the statutory limit. The clause further provides that where any securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register containing such particulars and such register shall be open for inspection.

Clause 166. — This clause corresponds to section 297 of the Companies Act, 1956 and seeks to provide the manner in which contracts or arrangements by a company with related parties shall be made and disclosed. It provides for the matter that requires the consent of Board of Directors of company or prior approval by special resolution. It seeks to provide that every such contract or arrangement shall be referred to in the Board's Report to the shareholders along with the justification. It also provide that where any contract or arrangement is entered into by a director or any other employee, without complying with the provisions and if it is not ratified by the approving authority, such contract or arrangement shall be voidable at the option of the Board.

Clause 167. — This clause corresponds to section 301 of the Companies Act, 1956 and seeks to provide the particulars and the manner in which such particulars shall be entered by the company in the registers of contracts or arrangements in which directors are concerned or interested. It further provides that the register kept under this clause shall be kept at the registered office of the company and open for inspection. The register shall also be produced at every annual general meeting of the company and shall remain open and accessible during the meeting to any person having the right to attend the meeting.

Clause 168. — This clause corresponds to section 302 of the Companies Act, 1956 and seeks to provide that every company shall keep at its registered office a copy of contract of service entered into by it with a managing or whole time director or where such a contract is not in writing, a written memorandum setting out its terms shall be kept. It also provides that copies

of such contract and the memorandum shall be open to inspection by any member. The provisions of this clause shall not apply to any private company.

Clause 169. — This clause corresponds to sections 319 and 320 of the Companies Act, 1956 and seeks to provide the circumstances and manner which a director of a company shall receive any payment by way of compensation for loss of office or as consideration for retirement from office, etc. It further provides that where a director of a company receives payment of any amount in contravention of this clause or the proposed payment is made before it is approved by the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

Clause 170. — This is a new clause and seeks to provide for the manner in respect of regulation of arrangements between a company and its directors in respect of acquisition of assets for consideration other than cash. The clause provides that such arrangements shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company. The clause also provides the circumstances when an arrangement entered into by a company or its holding company in contravention of the provisions is voidable at the instance of the company.

Clause 171. — This is a new clause and seeks to provide for the manner in which certain transactions or contracts are entered between a one person company and its sole member. It seeks to provide that where a One Person Company Limited by shares or by guarantee enters into a contract with the sole member of the company who is also director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract and every such contract shall be informed to the Registrar.

Clause 172. — This is a new clause and seeks to prohibit whole-time director or any of its key managerial personnel from buying certain kinds of future contracts in relation to securities of the company. It further provides that where whole-time director or key managerial personnel acquires any securities in contravention of this clause he shall, surrender such securities and the company shall not register the same in his name in the register and if they are in dematerialised form, it shall inform the depository not to record such acquisition.

Clause 173. — This is a new clause and seeks to prohibit directors or key managerial person of the company to deal in securities of a company, or counsel, procure or communicate, directly or indirectly, about any unpublished price-sensitive information to any person.

Clause 174. — This clause corresponds to sections 197A, 267, 269, 317, 384, 385 and 388 of the Companies Act, 1956 and seeks to provide that no company shall appoint or employ a managing director and manager at the same time and further that no company shall appoint or reappoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time. It also provides that no company shall appoint any firm, body corporate, or other association as its manager. The clause also provide the disqualification in respect of appointment of key managerial personnel. It also seeks to provide the manner in which a managing director, whole-time director or manager shall be appointed.

Clause 175. — This clause corresponds to section 309 of the Companies Act, 1956 seeks to provide that remuneration to managerial personnel can be paid either by way of a monthly payment or at a specified percentage of the net profits, or partly by monthly payment and partly by the percentage of net profits. It further provides that where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, etc., for which they may be guilty, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

Clause 176. — This clause corresponds to section 309 of the Companies Act, 1956 and seeks to provide the kind of remuneration which can be paid to a director who is neither a whole-time director nor a managing director of a company. It provides that such a director can be paid fee for attending meetings of the Board or committees thereof. It further seeks to provide that such a director can be paid profit-related commission with the prior approval of members by a special resolution. The clause further provides that where any director draws or receives any sum as remuneration in excess, he shall refund such sum to the company.

Clause 177. — This clause corresponds to section 318 of the Companies Act, 1956 and seeks to provide the circumstances and manner in which any managing or whole-time director or manager, shall be entitled to receive payment by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement. The clause also specifies the quantum of such compensation.

Clause 178. — This is a new clause and seeks to provide that every company belonging to such class or description of companies, as prescribed by the Central Government, shall have whole-time key managerial personnel. It also seeks to provide that a whole-time key managerial personnel shall not hold office in more than one company at the same time except that of a director if company permits him in this regard.

Clause 179. — This clause corresponds to sections 209A and 234 of the Companies Act, 1956 and seeks to empower Registrar to call for any information, explanation or documents and to inspect books of accounts of the company, etc. The Company and its officers shall furnish the information or explanation in documents within the specified time. Where the Registrar is satisfied on the basis of information in documents that the business of the company is conducted in a fraudulent manner, he may, order an inquiry. Further, the Central Government can also order inquiry by the Registrar or by an inspector appointed by it.

Clause 180. — This clause corresponds to section 209A of the Companies Act, 1956 and seeks to provide the procedure to be adopted for inspection or inquiries to be made by the Registrar or Inspector. Every director, officer or employee shall be bound to provide the information or the documents called for. It empowers the Registrar and Inspector with the powers of the Civil Court under the Code of Civil Procedures, 1908 for summoning, examining on oath, inspection of books and other documents, etc.

Clause 181. — This clause corresponds to section 209A of the Companies Act, 1956 and seeks to provide that the Registrar or Inspector shall submit a report to the Central Government after inspection of books of accounts or the examining any person as the case may be and will

include in his recommendations for further investigation, if necessary, duly supported by reasons or documents.

Clause 182. — This clause corresponds to section 234A of the Companies Act, 1956 and seeks to provide for seizure *of* documents by the Registrar if he has reasonable ground to believe that the same is likely to be destroyed, mutilated, altered, falsified, etc., with the permission of special court. The Registrar has to return the seized documents within 180 days to the company from whose custody the documents were seized.

Clause 183. — This clause corresponds to section 235 of the Companies Act, 1956 and seeks to empower the Central Government to order an investigation into the affairs of a company either on the report of Registrar or on special resolution passed by a company or in public interest. Further, this clause also empowers Court or the Tribunal to order that the affairs of a company ought to be investigated. For the purpose of investigation, the Central Government has the power to appoint Inspector(s) and seek report.

Clause 184. — This clause corresponds to section 237 of the Companies Act, 1956 and seeks to empower the Tribunal to order an investigation by the Central Government in case an application is made by at least 100 members or by member having one-tenth of total voting power or one-fifth of the members in case of company with no share capital seek an investigation into the affairs of the company or on an application suggesting fraud, misfeasance or misconduct or when any information is withheld. This clause further empowers the Central Government to appoint Inspector(s) and seek report.

Clause 185. — This clause corresponds to sections 236 and 245 of the Companies Act, 1956 and seeks to provide that the company or the applicants have to give security for payment of the costs and expenses of the investigation and shall deposit amount not exceeding Rs. 25 lakhs towards the cost of investigation. It provides that on completion of investigation, the cost of investigation shall be worked out and notice thereof shall be served on the company for payment of such amount within specified time. The amount so payable shall be a charge on property and recoverable accordingly.

Clause 186. — This clause corresponds to section 238 of the Companies Act, 1956 and seeks to provide bar on firm, body corporate or other association for appointment as Inspector.

Clause 187. — This clause corresponds to section 247 of the Companies Act, 1956 and seeks to empower the Central Government to appoint one or more Inspectors to investigate and report on the membership of the company. Such an investigation shall include any arrangement or understanding observed in practice relevant for the purpose of investigation.

Clause 188. — This clause corresponds to section 240 of the Companies Act, 1956 and seeks to provide that it shall be the duty of all officers and employees of the company which is under investigation to produce books and papers and give all assistance to the Inspector. The clause provides for the powers of the Inspector. The Inspector may examine any person on oath and notes of such examination shall be taken in writing. In case of failure to furnish information or to appear for examination on oath, the offence is punishable with imprisonment and fine.

Clause 189. — This clause corresponds to section 239 of the Companies Act, 1956 and seeks to empower the Inspector to investigate the affairs of any other body corporate where such corporate body is or has been a holding company or subsidiary company or has the same Managing Director or Manager or where Board of Directors act on the directions of such company, and if necessary subject to prior approval of the Central Government, he can investigate into the affairs of such body corporate or Managing Director or Manager, etc., be done.

Clause 190. — This clause corresponds to section 240A of the Companies Act, 1956 and seeks to deal with seizure of documents by the Inspector when he has reasonable ground to believe that they are likely to be destroyed, mutilated, altered, falsified, etc. The Inspector has to return the seized documents after conclusion of investigation. It empowers the Inspector to conduct search, seize books or papers in terms of the provisions of the Code of Criminal Procedure, 1973.

Clause 191. — This is a new clause and seeks to provide that where in connection with inquiry or investigation into the affairs of the company or a reference by the Central Government or on complaint by any person that transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of company, its shareholders, creditors or in public interest then Tribunal may order freezing of such transfer, removal or disposal of assets for a maximum period of three years.

Clause 192. — This clause corresponds to section 250 of the Companies Act, 1956 and seeks to provide for imposition of restrictions by the Tribunal in connection with investigation under clause 187 on the securities of the company for a period not exceeding three years.

Clause 193. — This clause corresponds to sections 241 and 246 of the Companies Act, 1956 and seeks to provide for submission of the interim and final report of investigation to the Central Government. Such a report shall be in writing or printed. The Central Government shall forward a copy of report to the company and may furnish a copy on payment of prescribed fee to any person who is member of company or creditor of company or the body corporate affected. Wherever applicable, a report shall also be furnished to Court or Tribunal. Further, such a report can be submitted as evidence in any legal proceedings.

Clause 194. — This is a new clause and seeks to provide that no suit or proceedings shall lie in any Court or Tribunal or other authority in respect of any action initiated by the Central Government for making an investigation or for appointment of any inspector in this regard and no proceedings of an inspection shall be called in question or stayed by any Court or Tribunal or any authority till such investigation report is submitted.

Clause 195. — This clause corresponds to sections 242, 243 and 244 of the Companies Act, 1956 and seeks to empowers the Central Government to prosecute such person for the offence and cast duty on officers, employees or the company or body corporate to provide necessary assistance in connection with the prosecution. This clause further deals with action to be taken on the investigation report which includes winding up, misfeasance, recovery proceedings, etc.

Clause 196. — This clause corresponds to section 245 of the Companies Act, 1956 and seeks to provide that expenses of investigation shall be borne by the Central Government in the first

instance. Thereafter, it shall be borne by person so convicted on a prosecution instituted or who is ordered to pay damages or restore the property to the extent he may be ordered to pay the said expenses as specified by the Court. Further, any amount which company is liable to pay shall be the first charge on the property.

Clause 197. — This clause corresponds to section 250A of the Companies Act, 1956 and seeks to provide with continuation of investigation even after voluntary winding up or application is pending before the Tribunal. Further, it provides that winding up order shall not absolve director or employee from participating in the proceedings before the Inspector or any liability as a result of findings by Inspector.

Clause 198. — This clause corresponds to section 251 of the Companies Act, 1956 and seeks to provide the rights of the legal Advisers or bankers of the body corporate or other person, not to disclose to the Tribunal or to the Central Government or to the Inspector any information as to the affairs of any of their customers, other than such company or body corporate.

Clause 199. — This is a new clause and seeks to provide that the provisions relating inspection or investigation under Chapter XIV shall also apply *mutatis mutandis* to inspection or investigation of foreign companies.

Clause 200. — This clause is a new clause which seeks to provide punishment for furnishing false statements, mutilation or destruction of documents during the course of inspection or investigation.

Clause 201. — This clause corresponds to section 391 of the Companies Act, 1956 and seeks to provide powers to Tribunal to make order on the application of the company or any creditor or member or in case of company being wound up, of liquidator for the proposed compromise or arrangements including debt restructuring, etc., between company, its creditors and members. An application by affidavit shall disclose all material facts relating to company, reduction of share capital, etc. Where a meeting is called, a notice shall be sent to all creditors, members, debenture holders individually or by advertisement which shall be accompanied by statement disclosing the details of compromise or arrangement. The order of the Tribunal sanctioning compromises or arrangement shall be filed with the Registrar. Takeover of companies have been included in compromises or arrangements. An aggrieved party may appeal to the Tribunal in the event of any grievances with respect to the takeover offer in case of companies other than listed companies.

Clause 202. — This clause corresponds to section 392 of the Companies Act, 1956 and seeks to provide powers to Tribunal to enforce compromise or arrangements with creditors and members as ordered under clause 201. The clause also provides that, if the Tribunal is satisfied that such compromise or arrangement cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up of the company.

Clause 203. — This clause corresponds to section 394 of the Companies Act, 1956 and seeks to provide powers to Tribunal to order for holding meeting of the creditors or the members and to make orders on the proposed reconstruction, merger or amalgamation of companies. The clause provides for the manner and procedure in which the meeting so ordered by the

Tribunal to be held. Where the Tribunal orders for transfer of any property or liability, that property or liability shall be transferred to and become the property or the liabilities of the transferee company and any property may, if the orders so directs, be freed from of any charge by virtue of compromises or arrangement. Every company shall file a certified copy of the order within thirty days with the Registrar for registration.

Clause 204. — This is a new clause and seeks to provide for merger or amalgamation between two small companies or between a holding company and its wholly owned subsidiary company by giving a notice of the proposed scheme inviting comments or objections by both the transferor and the transferee company. The scheme is to be approved by the respective members at a general meeting by passing a special resolution and by three-fourths in value of the creditors of respective companies. Transferee Company shall file a copy of the approved scheme with the Registrar and the Official Liquidator. If the Registrar is of the opinion that such a scheme is not in public interest or in interest of the creditors, he may file an application before the Tribunal stating his objections and requesting it to consider the scheme for reconstruction merger or amalgamation, etc., under clause 203. The Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit. The transferor company shall be deemed to be dissolved on registration of the scheme. This clause also provides for effects of registration of the scheme with the Registrar.

Clause 205. — This is a new clause and seeks to provide the mode of merger or amalgamation between registered companies under the proposed legislation and companies incorporated in the jurisdictions of such countries, as notified from time to time by the Central Government, by mutual agreement. This clause further provides that foreign company may merge or amalgamate into a company or *vice versa* and the terms and conditions of the scheme of merger or amalgamation may provide for the payment of consideration to the shareholders of the merging company in cash or partly in cash or partly in Indian Depository Receipts.

Clause 206. — This clause corresponds to section 395 of the Companies Act, 1956 and seeks to provide the manner in which the transferee company shall acquire shares of the shareholders dissenting from the scheme or contract as approved by the majority shareholders holding not less than nine-tenths in value of the shares whose transfer is involved. The transferee company shall send a copy of the notice to the transferor company together with an instrument of transfer, to be executed and pay the consideration representing the price payable by the transferee company for the shares. Such consideration received by transferor company shall be paid into separate bank account and any other consideration shall be held by company in trust and shall be disbursed to the entitled shareholders.

Clause 207. — This clause corresponds to section 395 of the Companies Act, 1956 and seeks to provide the procedure and manner in which the registered holder of at least 90 per cent shares of a company shall notify the company of their intention to buy the remaining equity shares of minority shareholders, by virtue of an amalgamation, share exchange, conversion of securities, etc., provision for valuation of shares have been provided by a registered valuer. This clause provides for the procedure to be followed for acquiring shares held by minority shareholders.

Clause 208. — This clause corresponds to section 396 of the Companies Act, 1956 and seeks to provide power to Central Government to provide for amalgamation of two or more companies

in public interest by passing an order to be notified in the Official Gazette. Every member or creditor or debenture holder shall have same interest or rights against transferee company as he had in original company and where the interest or right is less than his interest or right, he shall be entitled to compensation by transferee company. Any aggrieved person may approach Tribunal for reassessment of compensation.

Clause 209. — This clause seeks to provide mode of registration of offer of schemes or contract involving the transfer of shares. Every circular containing such offer and recommendation and containing a statement shall be accompanied by requisite information and must be registered with the Registrar before issue. The Registrar may refuse to register any such circular which does not contain the requisite information. This clause further seeks to provide that power to appeal shall lie with Tribunal in the event of refusal of registration of offer of scheme by Registrar of companies.

Clause 210. — This clause corresponds to section 396A of the Companies Act, 1956 and seeks to provide that no company which has been amalgamated or whose shares has been acquired by another company to dispose of its books of account and papers without the prior permission of the Central Government. The Government may appoint a person to examine books and papers to ascertain whether they contain any evidence of commission of offence in connection with promotion, formation, management, etc., of the company.

Clause 211. — This clause seeks to provide that the liability in respect of offences committed by the officers in default of transferor company prior to its merger or amalgamation or acquisition shall continue after such merger or amalgamation or acquisition.

Clause 212. — This clause corresponds to section 397 of the Companies Act, 1956 and seeks to provide the circumstances in which an application may be made to the Tribunal by any member of a company or by the Central Government for relief in cases of oppression and mismanagement in the affairs of the company.

Clause 213. — This clause corresponds to sections 397, 398, 402, 403 and 404 of the Companies Act, 1956 and seeks to provide for powers of Tribunal to pass an order with a view to bring to an end the matters complained of oppression and mis-management. The clause provides that a certified copy of order of Tribunal shall be filed with the Registrar. The Tribunal may make any interim order as it thinks just and equitable. Where Tribunal's order require alteration of articles, a certified copy of the same is to be filed with the Registrar.

Clause 214. — This clause corresponds to section 407 of the Companies Act 1956 and seeks to provide for consequence of termination or modifications of certain agreements by an order passed by the Tribunal. Such order shall not give rise to any claims against the company by any person for damages or compensation for loss of office. Further, no such managing director or director or manager whose agreement is so terminated shall be appointed as such for a period of five years from the date of the order without the leave of the Tribunal.

Clause 215. — This clause corresponds to section 399 of the Companies Act 1956 and seeks to provide that the members of a company not less than one hundred in number or not less than one-tenth of the total number of members whichever is less or any member(s) holding not less than one-tenth of the issued share capital and in case of company without share

capital not less than one-fifth of the total number of its members can file an application to the Tribunal for relief in cases of oppression and mis-management. The clause further provides that the Tribunal may waive all or any of the requirements specified therein.

Clause 216. — This is a new clause and seeks to provide that anyone or more members or one or more creditors may file an application before the Tribunal on behalf of the members and creditors if they are of the opinion that the management or control of the affairs of company are being conducted in a manner prejudicial to the interests of the company or its members or creditors to restrain the company from oppression or mis-management. The order passed by the Tribunal shall be binding on the company and all its members and creditors.

Clause 217. — This clause seeks to provide that clauses 312-316 (both inclusive) relating to power to punish for contempt of the Tribunal, etc., shall apply in relation to a fraudulent application made to the Tribunal for oppression and mis-management.

Clause 218. — This is a new clause and seeks to provide that valuation in respect of any property, stocks, shares, debentures, securities, goodwill or net worth of a company or its assets shall be valued by a person registered as a valuer, appointed by the audit committee or in its absence by the Board of Directors of the company.

Clause 219. — This is a new clause and seeks to provide the procedure for registration as valuer. The Central Government shall maintain a register called the register of valuers in which the names and addresses of persons registered as valuers are to be recorded. It also provides that a Chartered Accountant, Cost and Works Accountant, Company Secretary or other persons possessing prescribed qualifications may apply to the Central Government to be registered as a valuer. The clause further provides that no company or body corporate shall be eligible to apply as registered valuer.

Clause 220. — This is a new clause seeking to provide powers to the Central Government for appointment of a committee of experts to recommend suitable names for the purpose of inclusion in the register of valuers.

Clause 221. — This is a new clause seeking to restrict a person to practice, describe or project himself as a registered valuer unless he is registered as a valuer. Further, the clause seeks to provide for submission of the report of valuation of any assets by a registered valuer in such form and verified in such manner as may be prescribed. The registered valuer shall not charge at a rate exceeding the rate prescribed.

Clause 222. — This is a new clause and seeks to provide that a registered valuer or a person who has made an application for registration as a valuer is sentenced to a term of imprisonment for any offence or found guilty of misconduct in his professional capacity, shall immediately after such conviction or finding intimate the particulars thereof to the Central Government.

Clause 223. — This is a new clause and seeks to provide the circumstances under which the name of a valuer may be removed from the register or restored in the register by the Central Government. The Central Government shall review the performance of all registered valuers once in three years and may remove the name of any person after giving opportunity of being heard.

Clause 224. — This clause corresponds to section 560 of the Companies Act, 1956 and seeks to provide the circumstances under which the Registrar shall send a notice to the company and all the directors of the company of his intention to remove the name of the company from the register. The clause further provides that a company by a special resolution or with the consent of seventy-five percent members in terms of share capital may also file an application to the Registrar for removing the name of the company from the register. Where company is regulated under special law, approval of the regulatory body constituted, shall also be obtained and enclosed with application.

The clause further seeks to provide that at the expiry of the time mentioned in the notice, the Registrar may strike of the name of the company from the register, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. However, the Registrar, before passing an order shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. The liability of every director, manager or other officer exercising any power of management and every member of company dissolved shall continue and may be enforced as if company had not been dissolved.

Clause 225. — This is a new clause and seeks to provide certain situations in which no application can be made by the company under sub-clause (2) of clause 224 for removing its name from the register. It further provides penalty if a company files an application in violation of the conditions prescribed. An application filed by a company for removing its name shall be withdrawn by the company or rejected by the Registrar as soon as conditions for removing name of the company from register is brought to his notice.

Clause 226. — This clause seeks to provide that where a company is dissolved it shall cease to operate as a company and the Certificate of Incorporation is deemed to have been cancelled except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

Clause 227. — This is a new clause and seeks to provide penalty in case fraudulent application is made for removal of name of the company from the register with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons. Further the Registrar may also recommend prosecution against the persons responsible for the filing of such applications.

Clause 228. — This clause corresponds to sub-section (6) of section 560 of the Companies Act, 1956 and seeks to provide that any person, aggrieved by an order of the Registrar notifying a company as dissolved under clause 224 can file an appeal to the Tribunal within 3 years for restoration of the name of the company in the register. If Tribunal is of the opinion that removal of name is not justified or in the absence of any ground, may order for restoration of the name. The company shall file the copy of order with Registrar and the Registrar shall restore the name and issue a fresh Certificate of lncorporation. The clause further provides that where the name of the company is struck off from the register, the name of the company may be restored, if the Tribunal, on an application by the company, any member or creditor, is satisfied that the company was carrying on business or was in operation or otherwise and it is just to restore the name of company to the register before the expiry of twenty years.

Clause 229. — This clause corresponds to section 424A of the Companies Act, 1956 and seeks to provide the manner in which a company be declared sick. In case a company fails to pay its debt, the creditor may file an application to the Tribunal for determination that the company be declared as a sick company. An applicant may at any time apply for stay of proceedings of winding up. The Tribunal may pass an order on the application. The company at its own may also file an application to the Tribunal for declaring it as a sick company. After filing application before the Tribunal the company shall not dispose of its assets except as required in the normal course of business and the Board of Directors shall not take any steps likely to prejudice the interests of the creditors. The Tribunal shall determine whether the company is sick or not within sixty days.

Clause 230. — This clause seeks to provide that any secured creditor of sick company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company. This clause further provides for certain conditions to be fulfilled in case the financial assets of the sick company had been acquired as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. An application shall be accompanied by audited financial statements of the company and a draft scheme of revival and rehabilitation of the company along with fee.

Clause 231. — This is a new clause and seeks to provide that the Tribunal shall fix a date of hearing not later than ninety days from date of the receipt of an application and appoint an interim administrator to convene a meeting of creditors of the company to ascertain whether it is possible to revive and rehabilitate the sick company. In case, no draft scheme is filed by the company, the tribunal may direct the interim administrator to take over the management of the company to protect and preserve the assets of the sick company and for its proper management.

Clause 232. — This is a new clause and seeks to provide that the interim administrator shall appoint a committee of creditors having not more than seven members including a representative of every class of creditor, if any. The interim administrator may direct any promoter, director or any other key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as considered necessary by the interim administrator.

Clause 233. — This is a new clause and seeks to provide that if the Tribunal is satisfied with the report of the interim administrator wherein the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that it is not possible to revive and rehabilitate such company, the Tribunal shall order that the proceedings for the winding up of the company be initiated. In case where they have resolved for revival of the company or shall appoint a company administrator for the company and advice such administrator to prepare a scheme of revival and rehabilitation of the sick company. The Tribunal may, appoint an interim administrator as the company administrator.

Clause 234. — This is a new clause and seeks to provide that the interim administrator or company administrator shall be appointed by the Tribunal from a panel of advocates, company secretaries, chartered accountants, cost and works accountants, etc. The Tribunal may direct the company administrator to take over the assets or management of the company to assist

him in the management of the company. The company administrator may engage the services of experts.

Clause 235. — This clause corresponds to section 424H of the Companies Act, 1956 and seeks to provide that the company administrator shall prepare a complete inventory of all assets and liabilities, all books of account, a list of shareholders and creditors, a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio, proforma accounts of company where audited accounts are not available and a list of workmen of the company.

Clause 236. — This clause corresponds to section 424D of the Companies Act, 1956 and seeks to provide that the company administrator shall prepare a scheme of revival and rehabilitation of the sick company. The clause further provides for the various measures to be considered while preparing the scheme.

Clause 237. — This clause corresponds to section 424D of the Companies Act, 1956 and seeks to provide that the scheme prepared by the company administrator will be placed before the separately convened meetings of secured and unsecured creditors of the sick company. If the scheme is approved by the unsecured and secured creditors, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme. Where the scheme relates to amalgamation of the sick company with any other company, such scheme shall be laid before the general meetings of the companies for approval by their shareholders and separately in the meetings of secured and unsecured creditors. On the receipt of the scheme, the Tribunal after satisfying that the scheme had been validly approved pass an order sanctioning such scheme. The sanction accorded by the Tribunal shall be conclusive evidence and a copy of the sanctioned scheme shall be filed with the Registrar by the sick company.

Clause 238. — This clause seeks to provide that on and from the date of the coming into operation of the sanctioned scheme, its provisions shall be binding on the sick company and the transferee company and also on the shareholders, creditors and guarantors of the said companies.

Clause 239. — This clause corresponds to section 424G of the Companies Act, 1956 and seeks to provide that the Tribunal for effective implementation of the scheme may authorise the company administrator to implement a sanctioned scheme. Where it is difficult to implement the scheme for any reason or the scheme fails due to non-implementation of obligations by the parties concerned, the company administrator or in his absence, the company, the secured creditors, or the transferee company in a case of amalgamation, may make an application before the Tribunal for modification of the scheme or to declare the scheme as failed, as the case may be, and may request that the company may be wound up. The Tribunal shall, pass an order for modification of the scheme or declaring the scheme as failed and pass an order for the winding up of the company.

Clause 240. — This is a new clause and seeks to provide that if the scheme is not approved by the creditors in the manner specified, the company administrator shall submit a report to the Tribunal and the Tribunal shall order for the winding up of the sick company.

Clause 241. — This clause corresponds to section 424K of the Companies Act, 1956 and seeks to provide that if it appears to the Tribunal in the course of scrutiny or implementation of any scheme that any person who has taken part in the promotion, formation or management of the sick company or its undertaking has misapplied or retained, or become liable or accountable for, any money or property of the sick company; or has been guilty of any misfeasance, malfeasance or nonfeasance or breach of trust in relation to the sick company, the Tribunal may by order, direct him to repay or restore the money or property, with or without interest, as it thinks just, or to contribute to the assets of the sick company. Further, if the Tribunal is satisfied on the basis of the information and evidence with respect to any person who by himself or along with others had diverted the funds or property or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall, direct the public financial institutions, scheduled banks and State level institutions not to provide, any financial assistance for a maximum period of ten years to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director or to disqualify a person from being appointed as a director for a period of six years.

Clause 242. — This clause corresponds to section 424L of the Companies Act, 1956 and seeks to provide the punishment if any person violates the provisions relating to the revival and rehabilitation of sick companies or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence or attempts to tamper the records of reference or appeal filed under this Act.

Clause 243. — This is a new clause and seeks to provide that no appeal shall lie and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Chapter. Further, no civil court shall have any jurisdiction in respect of matter which Tribunal or Appellate Tribunal is empowered.

Clause 244. — This clause corresponds to section 441C of the Companies Act, 1956 and seeks to provide that a Fund to be called the Rehabilitation and Insolvency Fund shall be formed for the purposes of rehabilitation, revival and liquidation of sick companies. The clause provides for the amounts to be credited to the Fund. The Fund shall be managed by an independent administrator to be appointed by the Central Government. The fund can be utilised only by the companies who contributed to the fund to the extent to its contribution for making payment to the workmen protecting the assets of company etc.

Clause 245. — This clause corresponds to section 425 of the Companies Act, 1956. The clause seeks to provide two modes of winding up such as by the Tribunal or voluntary.

Clause 246. — This clause corresponds to sections 433 and 434 of the Companies Act, 1956 and seeks to provide the circumstances under which a company may be wound up by the Tribunal, The clause further seeks to define the circumstances when a company is deemed to be unable to pay its debts.

Clause 247. — This clause corresponds to section 439 of the Companies Act, 1956 and seeks to authorise the persons or authority who can file or present a petition to the Tribunal for the winding up of a company, This clause further seeks to authorise a secured creditor, holder of

any debenture and trustee for the holders of debentures and contributory to file the petition for winding up of a company. A petition filed by the company for winding up shall be accompanied by a statement of affairs of the company.

Clause 248. — This clause corresponds to section 443 of the Companies Act, 1956 and seeks to provide the time within which the Tribunal may pass an order either dismissing the petition for winding up or make an order for winding up; or make any interim order or appoint a provisional liquidator. The clause further provided that when a petition is presented on just and equitable ground, the Tribunal may refuse it if it is of the opinion that any other remedy is available.

Clause 249. — This clause corresponds to section 439A of the Companies Act, 1956 and seeks to empower the Tribunal to direct the company to file its objections along with a statement of its affairs when a petition is made by a person other than the company. Failure to file the statement of affairs will forfeit the right to oppose the petition and the directors and officers as found responsible for such non-compliance, shall be punishable. The clause further seeks to provide punishment to the directors and other officers of the company who have contravened the provisions of this clause such as non-filing of the statement of affairs and completed and audited books of account of the company.

Clause 250.— This clause corresponds to sections 448, 449 and 450 of the Companies Act, 1956. This clause seeks to provide for the appointment of provisional liquidator or the Company Liquidator for the purpose of winding up of a company from a panel of professionals maintained by the Central Government. Such professionals must be having atleast ten years of experience in company matters or such other qualifications. The clause also empowers the Central Government to remove the name of a person from the panel of professionals on the ground of misconduct, fraud etc., after giving him an opportunity of being heard. The clause further provides that the Tribunal shall specify the terms and conditions and fee payable to the liquidator.

Clause 251.— This is a new clause and seeks to provide the grounds on which the Tribunal may remove the provisional liquidator or the Company Liquidator as liquidator of the company. In case of death, resignation or removal, the Tribunal may transfer the work assigned to another Company Liquidator after recording the reasons in writing. The clause also authorises the Tribunal to recover such loss or damage from the liquidator who fails to perform his duty after providing him a reasonable opportunity of being heard.

Clause 252. — This clause corresponds to sections 444 and 445 of the Companies Act, 1956 and seeks to provide for the order of Tribunal for the winding up of a company to the Company Liquidator and the Registrar within a period of fifteen days from the date of passing of such order. The Registrar on receipt of orders make an endorsement of it in its record and notify the same in the Official Gazette. The order of the Tribunal would be deemed to be a notice of discharge to the officers, employees and workmen of the company except when the business of the company is continued.

Clause 253. — This clause corresponds to section 447 of the Companies Act, 1956 and seeks to provide that the winding up order shall operate in favour of all the creditors and contributors of the company.

Clause 254. — This clause corresponds to section 446 of the Companies Act, 1956 and seeks to provide that on passing of winding up order or appointment of provisional liquidator, all suits, etc., by or against the company shall not be commenced or if pending, to be proceeded, except with the leave of the Tribunal. The clause further seeks to provide for the time frame within which an application seeking leave is to be disposed of by the Tribunal. However, this provision shall not apply to any proceedings pending in appeal before the Supreme Court or a High Court.

Clause 255. — This clause seeks to provide the jurisdiction of Tribunal to entertain or dispose of any suit or proceedings or claim by or against the company and also to entertain or dispose of any question of law arising before or after winding up.

Clause 256. — This clause corresponds to section 455 of the Companies Act, 1956 and seeks to provide for submission of report containing the particulars of the nature and details of assets of the company, amount of issued, subscribed and paid-up capital, etc., to the Tribunal by Company Liquidator within sixty days from the date of order of the Tribunal. The clause also seeks to provide that the Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether any fraud has been committed by any person in its promotion or formation. The Company Liquidator shall also report on the viability of the business of the company or the steps which are necessary for maximising the values of the assets of the company. The clause also entitle the creditor or a contributory of the company to inspect the report submitted and to take copies thereof or extracts therefrom on payment of the fee.

Clause 257. — This is a new clause and seeks to empower the Tribunal to consider the report of Company Liquidator and fix a time limit or revise the time-limit already fixed within which the entire proceedings shall be completed and the company dissolved. The clause further seeks to empower the Tribunal to order for sale of assets of the company or appointment of sale Committee to assist the Company Liquidator in sale. The clause seeks to empower the Tribunal, to order for investigation where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company and also order such steps as may be necessary to protect, preserve or enhance the value of the assets of the company.

Clause 258. — This clause corresponds to section 456 of the Companies Act, 1956 and seeks to cast duty upon provisional liquidator or the liquidator on the order of the Tribunal to take into his custody all the property, effects and actionable claims to which the company is entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company. This clause further provides that all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company. This clause also provides for filing of an application by the Company Liquidator seeking directions of the Tribunal with regard to surrender or transfer of any money, property, books and papers by any trustee, receiver, banker, agent, officer or other employee of the company.

Clause 259. — This is a new clause and seeks to provide for co-operation by the promoters, directors, officers and employees, past and present, of the company to the Company Liquidator in discharge of his functions and duties. This clause further seeks to provide that if any of the

aforesaid person fails to discharge his obligations, he shall be punishable with imprisonment or with fine or with both.

Clause 260. — This clause corresponds to section 467 of the Companies Act, 1956 and seeks to provide for settlement of list of contributories, rectification of register of members, to make calls on or adjust the rights of contributories, etc. This clause further provides for adoption of procedure by the Tribunal while settling the list and rights of contributories.

Clause 261. — This is a new clause and seeks to put obligations on directors and managers of limited company whose liability is unlimited, to contribute in addition to his liability to contribute as an ordinary member. The clause further provides for the exemptions when a past director or manager shall not be liable to make further contribution as if he were at the commencement of winding up, a member of an unlimited company.

Clause 262. — This clause corresponds to sections 464 and 465 of the Companies Act, 1956 and seeks to provide for the constitution of a Committee of inspection by the Tribunal to advise the Company Liquidator and to report to the Tribunal on matters as the Tribunal may direct. This clause further provides the maximum number of members being creditors or contributories and other persons as directed by Tribunal, who can become members of the Committee. The clause also seeks to direct Company Liquidator to convene a meeting of the creditors and contributories to ascertain the composition of the Committee of inspection. It finally seeks to provide that the meeting of Committee of inspection shall be chaired by the Company Liquidator.

Clause 263. — This is a new clause and seeks to provide that the Company Liquidator shall make quarterly reports to the Tribunal with respect to the progress of the winding up of the company. The clause further provides that the Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

Clause 264. — This clause corresponds to section 466 of the Companies Act, 1956 and seeks to empower the Tribunal to stay the proceedings of winding up for such time not exceeding one hundred and eighty days and on after satisfying itself that it is fair and just to revive and rehabilitate the company. The clause provides that before making an order, the Tribunal may require the Company Liquidator to furnish a report of any relevant facts or matter. The clause further cast duty upon the Company Liquidator to forward a copy of every order to the Registrar who shall make an endorsement of the order in the books and records relating to the company.

Clause 265. — This clause corresponds to section 457 of the Companies Act, 1956 and seeks to provide the powers exercisable by the Company Liquidator *viz*. power to carry on the business of the company, to sell the movable and immovable property of the company, to defend or institute any suit, to raise any money on the security of assets of the company, etc. The clause finally provides that the Company Liquidator shall perform the duties as may be specified by the Tribunal.

Clause 266. — This clause corresponds to section 459 of the Companies Act, 1956 and seeks to allow the Company Liquidator, with the sanction of the Tribunal, to appoint chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals as may be necessary to assist him in the performance of his duties and functions.

The clause further seeks for disclosure by the person to the Tribunal of any conflict of interest or lack of independence in respect of his appointment.

Clause 267. — This clause corresponds to section 460 of the Companies Act, 1956 and seeks to allow Company Liquidator to administer the distribution of assets among its creditors in accordance with the directions given by the resolution of the creditors or contributories at any general meeting or by the Committee of inspection. In case of conflict, the directions given by the creditors or contributories at any general meeting are deemed to override any directions given by the Committee of inspection. The clause further seeks to empower the Company Liquidator to summon general meetings of the creditors or contributories. Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal who may confirm, reverse or modify the act or decision and make such further order as it think just in the circumstances.

Clause 268. — This clause corresponds to section 461 of the Companies Act, 1956 and seeks to provide that the Company Liquidator shall keep proper books and make necessary entries. He shall also prepare the minutes of the proceedings at meetings. The clause further provides that the books may be inspected by any creditor or contributory or through his agent.

Clause 269. — This clause corresponds to section 462 of the Companies Act, 1956 and seeks to provide for the maintenance of books of account by the Company Liquidator. The Company Liquidator shall present to the Tribunal a receipt and payments account in duplicate duly verified by a declaration, twice in each year during his tenure of office. It also seeks for filing of copy of such audited accounts with the Registrar and the Tribunal. This clause further seeks to provide that the Company Liquidator shall send the printed copy of the audited accounts to every creditor and every contributory. This clause also provides for forwarding a copy of accounts to Central or State Governments in case of a Government Company.

Clause 270. — This clause corresponds to section 469 of the Companies Act, 1956 and seeks to provide that the Tribunal may pass an order requiring the contributory to contribute any amount due by him. This clause further provides in case of an unlimited company, contributory can set off any amount payable to him by the company. A director or manager can similarly set off the amount when their liability is unlimited in a limited company. This clause finally provides that such set off facility shall also be given to a contributory after all the creditors have been repaid in full irrespective of whether the company is limited or unlimited.

Clause 271. — This clause corresponds to section 470 of the Companies Act, 1956 and seeks to provide that the Tribunal may, at any time after the passing of a winding up order, make calls on all or any of the contributories to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company.

Clause 272. — This clause corresponds to section 475 of the Companies Act, 1956 and seeks to provide that the Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled.

Clause 273. — This clause corresponds to section 476 of the Companies Act, 1956 and seeks to provide that the Tribunal may order for payment out of the assets, of the costs, charges and expenses incurred in winding up in order of priority, when the assets of the company are insufficient to satisfy its liabilities.

Clause 274. — This clause corresponds to section 477 of the Companies Act, 1956 and seeks to provide that the Tribunal may summon and examining before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company or capable of giving information relating to formation, promotion or affairs of the company. This clause further provides that the Tribunal may direct the liquidator to file before it a report in respect of property, debt, etc., of the company in possession of other persons. It also seeks to empower Tribunal to impose an appropriate cost if any officer or person so summoned fails to appear before the Tribunal at the appointed time without a reasonable cause.

Clause 275. — This clause corresponds to section 478 of the Companies Act, 1956 and seeks to provide that the Tribunal may order examination of any person on the report made by the Company Liquidator that in his opinion, a fraud has been committed by such person in promotion or formation or the conduct of the business of the company. The person shall be examined on oath and shall answer all the questions as put by the Tribunal. It also seeks to provide that any creditor or contributories may also take part in the examination either personally or by any agent with the permission of the Tribunal. It provides that Company Liquidator shall take part in the examination and undertake such legal assistance as may be sanctioned by the Tribunal.

Clause 276. — This clause corresponds to section 479 of the Companies Act, 1956 and seeks to provide that the Tribunal may pass an order at any time either before or after passing a winding up order, to arrest a contributory or any person having property, accounts or papers who is about to abscond or quit India or is about to remove or conceal any of his property, for the purpose of evading payment of calls or to avoid examination of affairs of the company. It further seeks to provide that the books and papers and movable property shall be seized and kept safely until Tribunal orders.

Clause 277. — This clause corresponds to section 481 of the Companies Act, 1956 and seeks to provide that the Company Liquidator shall make an application to the Tribunal for dissolution of a company which has been completely wound up. The Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. A copy of the order shall be filed by the Company Liquidator within thirty days with the Registrar who shall record in the register. This clause further seeks to provide punishment with fine for failure on the part of liquidator in forwarding copy to Registrar.

Clause 278. — This clause corresponds to section 483 of the Companies Act, 1956 and seeks to provide that the provisions contained in Chapter XX shall have no effect in case of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before the commencement of the Act.

Clause 279. — This clause corresponds to section 484 of the Companies Act, 1956 and seeks to provide the circumstances for voluntarily winding up of a company. This clause provides that the company may be wound up if the company passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved. Alternatively, the company may be voluntarily wound up by passing a special resolution.

Clause 280. — This clause corresponds to section 488 of the Companies Act, 1956 and seeks to provide for making declaration of solvency by the company director at least five weeks before the date of passing of resolution to winding up of the company and delivered to the Registrar for registration. The declaration shall be accompanied by a copy of auditor's report on the Profit and Loss Account and Balance Sheet of the company and a copy of report by registered valuer on the assets of the company. This clause further seeks to provide that where the declaration of the directors proved to be wrong, such directors shall be punishable with imprisonment or with fine or with both.

Clause 281. — This clause corresponds to section 500 of the Companies Act, 1956 and seeks to provide for calling of meeting of the company and its creditors at which the resolution for the voluntary winding up is to be proposed. This clause provides that where two-thirds creditors are of the opinion that the company be wound up voluntarily, it shall be wound up voluntarily and where they pass a resolution that the company be wound up by Tribunal, an application be filed with the Tribunal. The resolution so passed at a creditors meeting is required to be filed with the Registrar within ten days of the passing thereof.

Clause 282. — This clause corresponds to section 485 of the Companies Act, 1956 and seeks to provide for publication of resolution to wind up voluntarily by advertisement in the Official Gazette and also in some newspaper circulating in the district where the registered office or the principal office of the company is situated.

Clause 283. — This clause corresponds to section 486 of the Companies Act, 1956 and seeks to give effect that the date of commencement of voluntary winding up shall be the date of passing of the resolution for the same.

Clause 284. — This clause corresponds to section 487 of the Companies Act, 1956 and seeks to restrict the company to carry on the business except to the extent necessary for its beneficial winding up.

Clause 285. — This clause corresponds to section 502 of the Companies Act, 1956 and seeks to provide that in case of voluntary winding up, the company shall appoint a Company Liquidator in general meeting from panel prepared by the Central Government. In case creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator. This clause further seeks to provide for filing of a declaration by such liquidator disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of appointment.

Clause 286. — This clause corresponds to section 492 of the Companies Act, 1956 and seeks to provide for removal of liquidator by the company or creditor where the appointment has been made by company or creditor, respectively. This clause also seeks to provide for vacation of office by liquidator and appointment of Company Liquidator in case of vacancy occuring as a result of death, resignation, removal or otherwise.

Clause 287. — This clause corresponds to section 493 of the Companies Act, 1956 and seeks to provide for giving of notice to the Registrar of the appointment of a Company Liquidator along with the name and particulars of the Company Liquidator.

Clause 288. — This clause corresponds to section 491 of the Companies Act, 1956 and seeks to provide that on the appointment of a Company Liquidator, all the powers of the Board of directors and of the managing or whole-time directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment to the Registrar.

Clause 289. — This clause corresponds to section 512 of the Companies Act, 1956 and seeks to provide the powers and duties of a liquidator in a voluntary winding up such as settlement of the list of contributories, call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, maintain regular and proper books of account, pay the debts of the company and shall adjust the rights of the contributories among themselves and observe due care and diligence in the discharge of his duties.

Clause 290. — This clause corresponds to section 503 of the Companies Act, 1956 and seeks to provide for appointment of committee by the creditors or by the company in general meeting to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

Clause 291. — This clause corresponds to section 508 of the Companies Act, 1956 and seeks to provide for submission of quarterly report on progress of winding up of company by the Company Liquidator. The clause further provides that a meeting of the members and the creditors be called as and when necessary but at least one meeting each of creditors and members be held in every quarter and apprise them of the progress of the winding up of the company. This clause further seeks to provide punishment with a fine, if the Company Liquidator fails to comply with the provisions of this clause.

Clause 292. — This clause corresponds to section 519 of the Companies Act, 1956 and seeks to empower the Tribunal to consider the report of the Company Liquidator and order for investigation, if the report specifies that a fraud has been committed by any person in respect of the company. It also seeks for examination and attendance of any person indulging in the promotion or formation or the conduct of business of the company.

Clause 293. — This clause corresponds to section 509 of the Companies Act, 1956 and seeks to provide for preparation of report by the Company Liquidator regarding winding up of company showing that the property and assets of the company have been disposed of and its debt are fully discharged or discharged to the satisfaction of the creditors and call a general meeting of the company for the purpose of laying the final winding up accounts before it, and passing of resolution for company's dissolution. Company Liquidator is required to file the report along with copy of the final winding up accounts and resolution passed in the meeting with the Registrar. It also seeks to provide for filing of application by the liquidator with the Tribunal with the request for passing of order dissolving the company and the Tribunal shall pass such order within sixty days from the date of receipt of such application. It further seeks to provide for filing of the order of Tribunal with the Registrar within thirty days. This clause seeks to cast duty upon the Registrar for publication of a notice in the Official Gazette that the company is dissolved.

Clause 294. — This clause corresponds to section 494 of the Companies Act, 1956 and seeks to empower the Company Liquidator of the transferor company to accept shares, etc., by way of compensation wholly or in part for sale of property, etc., of the company where the transferor

company is proposed to be wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to the transferee company. This clause further seeks to provide that the liquidator may abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or the registered valuer, where any member of the transferor company did not vote in favour of the special resolution and expresses his dissent in writing addressed to the Company Liquidator within seven days after passing of the resolution. It also seeks to provide that if the Company Liquidator elects to purchase the member's interest, the purchase money, raised by him in such manner as may be determined by a special resolution, shall be paid before the company is dissolved.

Clause 295. — This clause corresponds to section 511 of the Companies Act, 1956 and seeks to provide for distribution of property of the company in its winding up in satisfaction of its liabilities *pari passu* unless the articles of the company otherwise provides.

Clause 296. — This clause corresponds to section 517 of the Companies Act, 1956 and seeks to empower Tribunal to amend, vary, confirm or set aside the arrangement entered into between a company and its creditors. The arrangement as aforesaid shall be sanctioned by a special resolution and also by the creditors holding three-fourths in value of debt.

Clause 297. — This clause corresponds to section 518 of the Companies Act; 1956 and seeks to allow Company Liquidator or any contributory or creditor to apply to the Tribunal for determination of any question arising in the course of winding up of a company or in respect of the enforcing of calls, the staying of proceedings or any other matter. The Tribunal may pass an order staying the proceedings in the winding up forthwith to the Registrar who shall make a minute of the order in his books relating to the company.

Clause 298. — This clause corresponds to section 520 of the Companies Act, 1956 and seeks to provide for the payment of all costs, charges and expenses properly incurred in the winding up, including the fee of the Company Liquidator out of the assets of the company in priority to all other claims.

Clause 299. — This clause corresponds to section 528 of the Companies Act, 1956 and seeks to provide that all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages shall be as proof against the company.

Clause 300. — This clause corresponds to section 529 of the Companies Act, 1956 and seeks to provide for application of existing insolvency rules under the law of solvency in winding up of insolvent companies with regard to debts, valuation of annuities, etc. This clause further seeks to provide that the liquidator shall enforce such charge on the security of secured creditors representing workmen's portion therein. Any person entitled to any dividend may make his claim.

Clause 301. — This clause corresponds to section 529A of the Companies Act, 1956 and seeks to provide that workmen's dues and debts due to secured creditors shall be paid in priority to all other debts.

Clause 302. — This clause corresponds to section 530 of the Companies Act, 1956 and seeks to provide for payment of various outstanding claims or dues which will be paid in priority of other debts such as all revenues, taxes, cesses due to the Central Government or State Government, all wages as salary for the time work or payable by way of commission, amount due under Employees State Insurance Act and Workmen's Compensation Act, sum due under provident, pension and gratuity fund. The debts mentioned in this clause shall be paid in full forthwith. If the goods of the company being distain by any person, such debts shall be given first priority.

Clause 303. — This clause corresponds to section 53I of the Companies Act, 1956 and seeks to provide that the Tribunal, after satisfying itself, may declare the transaction relating to preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application as invalid and restore the position.

Clause 304. — This clause corresponds to section 531A of the Companies Act, 1956 and seeks to provide that the Tribunal may declare any transfer of property, movable or immovable, or any delivery of goods, etc., made by a company within a period of one year before the presentation of a petition for winding up, as void against the Company Liquidator being such transfer was not in good faith.

Clause 305. — This clause corresponds to section 532 of the Companies Act, 1956 and seeks to provide for declaration of any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors as void.

Clause 306. — This clause corresponds to section 533 of the Companies Act, 1956 and seeks to provide protection to the creditor of a company which is being wound up and where the creditor or the person preferred has been paid by the company with the fraudulent motive on the part of the company to relieve from liability or reduce the liability of a person who has stood surety or guarantee to the creditor on behalf of the company.

Clause 307. — This clause corresponds to section 534 of the Companies Act, 1956 and seeks to prohibit companies which are in insolvent condition from creating any floating charges on their assets, with a view to securing past liabilities. It also empowers the Central Government to prescribe by rules regarding the rate of floating charge.

Clause 308. — This clause corresponds to section 535 of the Companies Act, 1956 and seeks to enable the company liquidator to get rid of onerous property by disclaiming it. This clause further seeks to provide the time schedule within which the company liquidator and Tribunal are required to complete such actions as necessary. The Tribunal before or on granting leave to disclaim may require such notices to be given to persons interested and impose such terms and conditions of granting leave, and make such other order in the matter as the Tribunal considers just.

Clause 309. —This clause corresponds to section 536 of the Companies Act, 1956 and seeks to empower the Company Liquidator in voluntary winding up to sanction transfers after winding up and declare any alteration in the status of members of the company made after the commencement of the winding up as void. This clause further seeks to provide declaration of

any disposition of the property, etc., as void, if the same is made without the order of the Tribunal in the case of a winding up by the Tribunal.

Clause 310. — This clause corresponds to section 537 of the Companies Act, 1956 and seeks to prohibit any attachment, sale, distress, etc., without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up. This clause provides for non-applicability of above provisions to the proceedings for recovery of any tax or impose or any dues payable to the Government.

Clause 311. — This clause corresponds to section 538 of the Companies Act, 1956 and seeks to provide that if any past or present officer of the company commits certain offences, such as not delivering movable and immovable property of the company, not delivers books and papers of the company, not giving true disclosures, guilty of fraud, etc., shall be punishable with imprisonment or with fine or with both. The clause further provides punishment to any person who pawns, pledges or disposes of any property in circumstances which amount to an offence and who takes or otherwise receives the property, knowing it to be pawned, etc., shall be punishable with imprisonment or with fine or with both.

Clause 312. — This clause corresponds to section 540 of the Companies Act, 1956 and seeks to provide that if any person who which is found to have given false pretences or by means of any other fraud, induced any person to give credit to the company, to defraud the creditors, conceal or removed any part of the property is punishable with imprisonment or with fine or with both.

Clause 313. — This clause corresponds to section 541 of the Companies Act, 1956 and seeks to provide that a company which is being wound up should keep proper books of account throughout the period of two years immediately preceding the commencement of the winding up.

Clause 314. — This clause corresponds to section 542 of the Companies Act, 1956 and seeks to provide that for frauds by past or present officers and liability for fraudulent conduct of business is punishable with imprisonment or with fine or with both. This clause further seeks to confer power upon Tribunal to fix the responsibility of erring directors or officer of the company for fraudulent conduct of business.

Clause 315. — This clause corresponds to section 543 of the Companies Act, 1956 and seeks to confer power upon the Tribunal to assess the damages against delinquent directors, manager, liquidator or officer of the company for misapplication, retainer, misfeasance or breach of trust.

Clause 316. — This clause corresponds to section 544 of the Companies Act, 1956 and seeks to provide that the Tribunal to extend the liability of ex-partners or directors of the company under clause 314 relating to fraudulent conduct of business or under clause 315 relating to misfeasance or breach of trust.

Clause 317. — This clause corresponds to section 545 of the Companies Act, 1956 and seeks to provide that the Tribunal may prosecute the delinquent officers and members of the company for being guilty of offence in relation to the company.

Clause 318. — This clause corresponds to section 546 of the Companies Act, 1956 and seeks to provide that the Company Liquidator shall exercise general powers of winding up of the company's affairs relating to compromising, setting, and collecting debts and paying out claims, etc., subject to the sanction of the Tribunal.

Clause 319. — This clause corresponds to section 547 of the Companies Act, 1956 and seeks to provide that in case of every invoice, business letters, etc., issued by the company after the winding up of the company shall contain a statement that the company is wound up.

Clause 320. — This clause corresponds to section 548 of the Companies Act, 1956 and seeks to provide that the books and papers of the company be *prima facie* evidence of the truth of all matters purporting to be recorded therein, in case a company is wound up.

Clause 321. — This clause corresponds to section 549 of the Companies Act, 1956 and seeks to provide for inspection of books and papers relating to winding up of a company by the creditors and contributories. It finally provides that the above provisions shall not exclude or restrict any right conferred by any law on the Central Government or State Government or any officer or authority of the Government.

Clause 322. — This clause corresponds to section 550 of the Companies Act, 1956 and seeks to provide for disposal of books and papers after the affairs of a company have been completely wound up and it is about to be dissolved. It further provides that no responsibility shall be imposed upon regarding the books and papers after expiry of five years from the dissolution of the company. It also seeks to empower the Central Government to prescribe by rules the period, form and manner of retention of such books and papers of company which has been wound up.

Clause 323. — This clause corresponds to section 551 of the Companies Act, 1956 and seeks to provide for furnishing of information or statement where the winding up of a company is not concluded within one year after its commencement and duly audited by a person qualified to act as auditor of the company, within two months after the expiry of the year. Such statement shall be filed periodically. It also seeks to empower the Central Government to prescribe by rules such form and manner in which the statement is to he filed by the Company Liquidator.

Clause 324. — This clause corresponds to section 552 of the Companies Act, 1956 and seeks to provide for making payments into the Public Accounts of lndia in the Reserve Bank of India by the Official Liquidator.

Clause 325 .— This clause corresponds to section 553 of the Companies Act, 1956 and seeks to provide that the Company Liquidator shall make payments into a scheduled Bank and credit it into a Special Bank Account known as the Company Liquidation Account opened by him of the monies received by him as liquidator. The clause finally provide for payment of interest and penalty, in case, of the Liquidators retains any specified sum for more than the prescribed period.

Clause 326. — This clause corresponds to section 554 of the Companies Act, 1956 and seeks to provide that the funds of the company in winding up shall not be kept in private banking account.

Clause 327. — This clause corresponds to section 555 of the Companies Act, 1956 and seeks to provide that unpaid dividends and undistributed assets of the companies being wound up which are in the hands of the Liquidator shall be paid by the Liquidator into the Company Liquidation Dividend and Undistributed Assets Account. The clause also seeks to provide that the above provisions shall also be applied in case of dissolution of a company. It also seeks to provide that the Liquidator shall forthwith furnish a statement to the Central Government. This clause also seeks to provide that the Liquidator shall be given a receipt from the Reserve Bank of lndia for the money paid by him. This clause also seeks to provide that the Tribunal may pass an order for the payment of required sum to the claimant out of the said account.

Clause 328. — This clause corresponds to section 556 of the Companies Act, 1956 and seeks to provide that if the Company Liquidator fails to make good the defaults committed by him within fourteen days from the date of service of notice on him. The Tribunal may make an order to make good the default on request by any creditor, contributory, etc.

Clause 329. — This clause corresponds to section 557 of the Companies Act, 1956 and seeks to empower the Tribunal, in all matters relating to winding up of a company, to ascertain the wishes of creditors or contributories by calling their meetings.

Clause 330. — This clause corresponds to section 558 of the Companies Act, 1956 and seeks to provide for filing affidavit before any court, Tribunal, Judge or person lawfully authorised to receive affidavits in India and in any other country, as the case may be.

Clause 331. — This clause corresponds to section 559 of the Companies Act, 1956 and seeks to empower the Tribunal to declare dissolution of company void on an application made by the Company Liquidator of the company or by any other person at any time within two years from the date of dissolution. It also seeks to provide for filing of order of the Tribunal, with the Registrar who shall register the same and if such person fails so to do, he shall be punishable with fine.

Clause 332. — This clause corresponds to section 441 of the Companies Act, 1956 and seeks to provide that where before the presentation of petition for winding up by Tribunal, a resolution for voluntary winding up has been passed, the proceedings of voluntary winding up of a company shall commence from the date of passing of the resolution, unless the Tribunal, on proof of fraud or mistake, thinks otherwise. It also seeks to provide that in any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

Clause 333. — This clause corresponds to section 458A of the Companies Act, 1956 and seeks to provide that while computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

Clause 334. — This is a new clause which seeks to empower the Central Government for appointment of as many Official Liquidators as it may consider necessary and may also appoint Joint, Deputy or Assistant Official Liquidators to assist him in discharge of his functions in relation to the winding up of companies by the Tribunal. It also seeks to provide that the salary and allowances to the Official Liquidator, etc., shall be paid by the Central Government.

Clause 335. — This clause corresponds to section 457 of the Companies Act, 1956 and seeks to provide for the powers and duties of the Official Liquidator. The Official Liquidator shall exercise powers such as conducting inquiries or investigations, maintaining information and records, etc., of the companies under winding up.

Clause 336. — This is a new clause which seeks to provide for winding up of company having assets of book value not exceeding one crore rupees through summary procedure. This clause also seeks to empower the Tribunal to appoint Official Liquidator as the liquidator of the company, who shall submit a report to the Tribunal indicating whether any fraud has been committed in promotion, formation or management of affairs of the company. It also seeks to provide that the Tribunal if satisfied that fraud has been committed, may order for the investigation of the affairs of the company. The clause finally provides that the Tribunal may order for the winding up of the company after considering the investigation report.

Clause 337. — This is a new clause which seeks to provide that the Official Liquidator shall dispose of all the assets and collect the amount payable to the company from the debtors and contributories. It also seeks to provide that the Official Liquidator shall deposit the amount recovered into the public account of India in the Reserve Bank of India.

Clause 338. — This is a new clause which seeks to provide for settlement of claims of creditors by the Official Liquidator.

Clause 339. — This is a new clause which seeks to provide that any creditor aggrieved by the decision of the Official Liquidator may apply to the Tribunal who shall either dismiss the application or modify order of Official Liquidator. If the claim has been accepted, the Official Liquidator shall make payment to the creditors.

Clause 340. — This is a new clause which seeks to provide for submission of final report to the Tribunal by the Official Liquidator when he is satisfied that the company can be finally wound up. The Tribunal shall on receiving the report order for the dissolution of the company. After the order is passed, the Registrar shall strike off the name of the company from the register of companies and a notification to this effect be published in the Official Gazette.

Clause 341. — This clause corresponds to section 591 of the Companies Act, 1956 and seeks to provide that where not less than 50 per cent. of the paid up capital of foreign company is held by one or more citizens of India or one or more companies incorporated in India or by one or more citizens and one or more companies of India, such company shall comply with provisions as if it were a company incorporated in India.

Clause 342. — This clause corresponds to sections 592 and 593 of the Companies Act, 1956 and seeks to provide for the documents which every foreign company shall deliver to the Registrar for registration after the establishment of their place of business in India. It also seeks to provide that if any alterations are made or occur in the documents, the foreign company shall deliver a return in this regard to the Registrar.

Clause 343. — This clause corresponds to section 594 of the Companies Act, 1956 and seeks to provide that every foreign company shall, in every calendar year prepare a balance sheet and profit and loss account and shall lay before the company in general meeting and deliver a

copy of such documents to the Registrar. In case such document is not in English, a certified translation thereof in English shall also be filed. Further every foreign company shall also file a list of the places of business in India as at the date of its balance sheet.

Clause 344. — This clause corresponds to section 595 of the Companies Act, 1956 and seeks to provide that every foreign company shall exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in English and in local languages in general use in the locality in which the office or place is situated. The foreign company will write its name, liability of its members and name of the country in which it is incorporated in legible English characters in all business letters, billheads, letter paper, and prospectus, etc.

Clause 345. — This clause corresponds to section 596 of the Companies Act, 1956 and seeks to provide the manner in which documents which are required to be served on a foreign company shall be deemed to be sufficiently served.

Clause 346. — This clause corresponds to section 600 of the Companies Act, 1956 and seeks to provide that the provisions relating to issue of debentures, preparation and filing of annual return, preparation of books of account and manner in which they may be kept, registration of charges and inspection and investigation of books of account shall apply *mutatis mutandis* to a foreign company.

Clause 347. — This clause corresponds to section 601 of the Companies Act, 1956 and seeks to provide the fee which a foreign company will have to pay to the Registrar for registering any document.

Clause 348. — This clause corresponds to section 602 of the Companies Act, 1956 and seeks to define the expressions "certified", "director" and "place of business" for foreign companies.

Clause 349. — This clause corresponds to section 603 of the Companies Act, 1956 and seeks to provide the guidelines for issue of prospectus in India offering to subscribe for securities of a company incorporated outside India. The condition requiring or binding an applicant for securities to waive compliance with any requirement shall be treated as void. This clause further provides that in case of non-compliance, a director or other person responsible for issue of prospectus shall not incur any liability by reason of non-compliance or contravention if it is proved that he had no knowledge or contravention was an honest mistake of fact. This section shall not apply in case the prospectus is issued to existing members or debenture holders of a company.

Clause 350. — This clause corresponds to section 604 of the Companies Act, 1956 and seeks to provide that if the prospectus includes a statement purporting to be made by an expert, such statement must be included in the prospectus in the form and context in which it is included and there does not appear in the prospectus, a statement that he has given and has not withdrawn his consent.

Clause 351. — This clause corresponds to section 605 of the Companies Act, 1956 and seeks to provide that a copy of the prospectus of a company incorporated or to be incorporated outside India certified by the Chairman and two other directors of the company as having been

approved by resolution of the managing body has to be delivered to the Registrar for registration along with the required documents.

Clause 352. — This clause corresponds to section 605A of the Companies Act, 1956 and seeks to provide rules applicable for the offer of Indian Depository Receipts, the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts, the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and the manner of sale, transfer or transmission of Indian Depository Receipts by a company incorporated or to be incorporated outside India.

Clause 353. — This clause corresponds to sections 606 and 607 of the Companies Act, 1956 and seeks to provide that the provisions relating to criminal and civil liability for misstatement in a prospectus, fraudulently inducing persons to invest money shall apply to the issue of a prospectus by a company incorporated or to be incorporated outside India.

Clause 354. — This clause corresponds to section 598 of the Companies Act, 1956 and seeks to provide that where a company fails to comply with any of the provisions relating to companies incorporated outside India, the company shall be punishable with fine.

Clause 355. — This clause corresponds to section 599 of the Companies Act, 1956 and seeks to provide that any failure by a company to comply with the provisions of the Chapter relating to companies incorporated outside India shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof. However, the company will not be entitled to bring any suit, claim, set off, etc., until it has complied with the provisions of this Chapter.

Clause 356. — This clause corresponds to section 619A of the Companies Act, 1956 and seeks to provide that where the Central Government is a member of a Government company, it shall arrange to prepare an annual report on the working and affairs of the company along with audit report and comments of Comptroller and Auditor General and laid before both Houses of Parliament. It also seeks to provide that where a State Government is a member of a Government company, it shall also prepare an annual report along with aforesaid enclosures and laid before both the Houses of the State Legislature.

Clause 357. — This clause corresponds to section 620 of the Companies Act, 1956 and seeks to provide that the Central Government, may notify any provisions of this Act which shall not be applicable or shall apply with modification to any Government Company. This clause further seeks to provide that such notification shall be laid in draft before each House of Parliament before it is so notified and shall be subject to modification by both the Houses.

Clause 358. — This clause corresponds to section 609 of the Companies Act, 1956 and seeks to provide that for the purpose of registration of companies, the Central Government shall establish such number of offices at such places and with such jurisdiction as it thinks fit. It further seeks to provide that the Central Government may appoint a Director General of Registration, such number of Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies. This clause also provides for the terms and conditions of service, including the salaries payable to persons aforesaid. It finally provides that the Central Government may direct the preparation of seal or seals for authentication of documents required in connection with the registration of companies.

Clause 359. — This clause corresponds to section 610A of the Companies Act, 1956 and seeks to permit companies to file returns and documents on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar and further seeks to provide that such filings shall also be deemed to be a document for the purposes of this Act and shall be admissible as evidence in any proceedings thereunder.

Clause 360. — This clause corresponds to section 610B of the Companies Act, 1956 and seeks to empower the Central Government to make rules in regard to filing of various applications, documents, returns, etc., service or delivery of any document, notice or communication, etc., maintenance of various applications, documents and returns filed, manner of inspection of the various documents, payment of fees, charges or other sums payable in the electronic form and the manner in which various registry functions *viz.* alteration of memorandum, articles, prospectus, issuing certificate of incorporation, etc., shall be performed by Registrar in electronic form. This clause also seeks to provide that the Central Government may notify a scheme to carry out the provisions of this clause.

Clause 361. — This is a new clause and seeks to empower the Central Government to provide in the rules that the electronic form shall be exclusive, or in the alternative or in addition to the physical form.

Clause 362. — This clause corresponds to section 610D of the Companies Act, 1956 and seeks to provide that the Central Government may provide such value added services through the electronic form and levy fee thereon.

Clause 363.— This clause corresponds to section 610E of the Companies Act, 1956 and seeks to provide that all the provisions of the Information Technology Act, 2000 relating to the electronic records, shall apply in relation to the records in electronic form as specified under this Act.

Clause 364. — This clause corresponds to section 611 of the Companies Act, 1956 and seeks to provide that any document to be filed, registered or recorded under this Act shall be on payment of fee and charges.

Clause 365. — This clause corresponds to section 612 of the Companies Act, 1956 and seeks to provide that all fees, charges and other sums received by any Registrar, Additional, Joint, Deputy, or Assistant Registrar, or any other officer of the Central Government shall be paid into the public account of India in the Reserve Bank of India.

Clause 366. — This clause corresponds to section 615 of the Companies Act, 1956 and seeks to provide that the Central Government may order any company, to furnish such information or statistics with regard to its constitution or working, within specified time. Such an order shall be published in the Official Gazette. This clause further seeks to provide that the Central Government for the purpose of satisfying itself may order such company to produce such records or documents or allow inspection thereof or furnish such further information as that Government may consider necessary. This clause also seeks to provide that where a foreign company carries on business in India, all the references in this section shall be applicable to the foreign company as well.

Clause 367. — This clause corresponds to section 620A of the Companies Act, 1956 and seeks to provide that the Central Government may notify a company to be a Nidhi company. The Central Government may also notify the provisions of this Act which shall not apply or shall to a Nidhi company. This clause finally provides that the notification shall be laid before each House of Parliament.

Clause 368. — This clause corresponds to section 10FD and 10FR of the Companies Act, 1956 and seeks to provide definitions of Chairperson, Judicial Members, Member, President, Technical Member in Appellate Tribunal and Tribunal.

Clause 369. — This clause corresponds to section 10FB of the Companies Act, 1956 and seeks to deal with the constitution of National Company Law Tribunal (NCLT). The NCLT shall consist of President and such number of Judicial and Technical Members as Central Government may deem necessary.

Clause 370. — This clause corresponds to section 10FD of the Companies Act, 1956 and seeks to provide the qualifications of President and Members of the Tribunal.

Clause 371. — This clause corresponds to section 10FR of the Companies Act, 1956 and seeks to deal with the formation of the National Company Law Appellate Tribunal (NCLAT) consisting of Chairperson and Judicial and Technical Members which shall not exceed eleven.

Clause 372. — This clause corresponds to section 10FR of the Companies Act, 1956 and seeks to provide that Chairperson of NCLAT shall be a judge of Supreme Court or Chief Justice of High Court, the Judicial Member shall be a judge of High Court or Judicial Member of Tribunal for 5 years. The Technical Member shall be a person having atleast experience of 25 years in banking, management, economics, etc.

Clause 373. — This clause corresponds to section 10FX of the Companies Act, 1956 and seeks to provide that President of the Tribunal and Chairperson or the Judicial Members of the Appellate Tribunal shall be appointed after consultation with Chief Justice of India. Members of the Tribunal and Technical Member of the Appellate Tribunal shall be appointed on the recommendations of a Selection Committee consisting of Chief Justice of India or his nominee, Secretary in the Ministry of Corporate Affairs as Convener of Selection Committee, Secretary in the Ministry of Law and Justice and two other Secretaries of the Government of India to be nominated by the Central Government.

Clause 374. — This clause corresponds to sections 10FE and 10FT of the Companies Act, 1956 and seeks to provide the terms of office of President, Chairperson and Members of the Tribunal or Appellate Tribunal.

Clause 375. — This clause corresponds to sections 10FG and 10FW of the Companies Act, 1956 and seeks to provide the salary, allowances and other terms and conditions of service of Members of the Tribunal or Appellate Tribunal.

Clause 376. — This clause corresponds to sections 10FH and 10FS of the Companies Act, 1956 and seeks to provide that in the event of death, resignation, absence, etc., of the President or Chairperson, the senior-most Member of the Tribunal or Appellate Tribunal shall discharge the duties of President or Chairperson, as the case may be.

Clause 377. — This clause corresponds to sections 10FI and 10FU of the Companies Act, 1956 and seeks to deal with the resignation of President, Chairperson, Members. It provides that President, Chairperson or member may address his resignation to the Central Government.

Clause 378. — This clause corresponds to sections 10FJ and 10FV of the Companies Act, 1956 and seeks to provide the grounds for removal of the Chairperson or President or Members of the Appellate Tribunal or Tribunal by the Central Government in consultation with the Chief Justice of India. It provides removal on the ground of insolvency, conviction of offence involving moral turpitude, on being mentally or physically incapable, etc. The Central Government in consultation with the Supreme Court will regulate the procedure for the inquiry, if any, of the alleged misbehaviour of the members.

Clause 379. — This clause corresponds to sections 10FK and 10GA of the Companies Act, 1956 and seeks to provide that the Central Government in consultation with Tribunal and Appellate Tribunal may provide the officers and staff of the Tribunal or Appellate Tribunal who shall discharge their function under the superintendence and control of the Chairperson or President of Members, as the case may be.

Clause 380. — This clause corresponds to section 10FL of the Companies Act, 1956 and seeks to provide for the constitution Benches of the Tribunal. It provides that the Principal Bench shall be at New Delhi. Further, it provides that powers of the Principal Bench shall be exercised by two Members and a single Member may also function as a Bench in certain cases. The President may for disposal of the case(s) relating to rehabilitation, restructuring or reviving the winding up of companies may constitute Special Benches consisting of three or more members. Lastly, in case of difference of opinion, matter shall be decided by the majority.

Clause 381. — This clause corresponds to section 10FM of the Companies Act, 1956 and seeks to provide that the Tribunal may rectify any mistake within two years from the date of order passed by it. This clause further provides that a copy of each order shall be sent to all the concerned parties by the Tribunal.

Clause 382.— This clause corresponds to section 10FQ of the Companies Act, 1956 and seeks to provide appeal against the order of the Tribunal in the Appellate Tribunal. It provides that appeal may be filed within 45 days from the date of order and in case Appellate Tribunal is satisfied that delay is justified then further period of 45 days is allowed. The Appellate Tribunal after according an opportunity of hearing may confirm, modify or set aside order of the Tribunal and provide copy of order to the Tribunal and parties to appeal.

Clause 383. — This is a new clause to provide expeditious disposal of cases before Tribunal or Appellate Tribunal. It provides that the Tribunal or the Appellate Tribunal shall make every effort to dispose of cases within three months from the date of commencement of proceedings before Tribunal or filing of appeal before Appellate Tribunal.

Clause 384. — This clause corresponds to section 10GF of the Companies Act, 1956 and seeks to provide that an appeal against the order of the Appellate Tribunal shall be filed before the Supreme Court within sixty days and in case of justified delay within a further period of sixty days only on any question of law arising from such an order.

Clause 385. — This clause corresponds to section 10FZA of the Companies Act, 1956 and seeks to provide the procedure to be adopted by the Tribunal or Appellate Tribunal to dispose of any proceeding. It provides that Tribunal or Appellate Tribunal shall not follow the Code of Civil Procedure, 1908 but would be guided by the principles of natural justice. The Tribunal or the Appellate Tribunal may regulate their own procedure. However, while discharging their functions, it would have the power vested with the Civil Court in respect of any suit for summoning and enforcing the attendance of any person, examining him on oath, etc. Orders passed by it shall be enforced as a decree passed by the court and may be sent for execution to the court under whose jurisdiction, the company or the person, as the case may be, has registered office or resides respectively.

Clause 386. — This clause corresponds to section 10G of the Companies Act, 1956 and seeks to provide that the Tribunal or the Appellate Tribunal shall have the same powers of contempt as that of High Court under the provisions of the Contempt of Courts Act, 1971.

Clause 387. — This clause seeks to provide that the Tribunal or the Appellate Tribunal may by general or special order authorise any person to inquire into the matter connected with any proceeding and report to it.

Clause 388. — This clause corresponds to section 10FY of the Companies Act, 1956 and seeks to provide that the President, Chairperson, Members, Officers and employees of the Tribunal and the Appellate Tribunal shall be treated as public servants within the meaning of section 21 of the Indian Penal Code.

Clause 389. — This clause corresponds to section 10FZ of the Companies Act, 1956 and seeks to provide for protection of action taken in good faith by the President, Chairperson, members, officers, etc., of the Tribunal or Appellate Tribunal.

Clause 390. — This clause corresponds to section 10FP of the Companies Act, 1956 and seeks to provide for the power of the Tribunal to take the assistance of Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector for taking into custody all property, books of account, etc. and acts thereof shall not be questioned in any court or before any authority in case of a sick company or winding up of any company.

Clause 391. — This clause corresponds to section 10GB of the Companies Act, 1956. This clause seeks to provide that no civil court shall have jurisdiction in respect of any matters that are assigned to the Tribunal or the Appellate Tribunal.

Clause 392. — This clause corresponds to section 10GC of the Companies Act, 1956 and seeks to provide that proceedings of the Tribunal or Appellate Tribunal shall not be invalid merely on the ground of existence of any vacancy or defect in its constitution.

Clause 393. — This clause corresponds to section 10GD of the Companies Act, 1956 and seeks to provide that a party to the proceeding may appear in person or authorise a Chartered Accountant, Cost Accountant, Company Secretary or Legal Practitioners to present the case before the Tribunal or the Appellate Tribunal.

Clause 394. — This clause corresponds to section 10GE of the Companies Act, 1956 and seeks to provide that provisions of the Limitations Act, 1963 shall apply to the proceedings before the Tribunal or the Appellate Tribunal.

Clause 395. — This clause corresponds to sections 10FA and 647A of the Companies Act, 1956 and seeks to provide that on formation of Tribunal, all matters pending before Company Law Board shall stand transferred to the Tribunal. Similarly, all proceedings relating to compromise, arrangements and reconstruction and winding up of the companies pending before District Courts and High Courts shall be transferred to the Tribunal except winding up proceedings pending before District Courts or High Courts.

Clause 396. — This is a new clause which deals with the establishment of Special Courts by the Central Government in consultation with the Chief Justice of the High Court within whose jurisdiction the Judge to be appointed is working. It further provides that person so appointed as Judge of Special Court shall be the one who immediately before such appointment is holding the office of Session Judge or an Additional Sessions Judge.

Clause 397. — This is a new clause which seeks to provide that all offences under this Act shall be triable by the Special Courts. However, where an accused is produced before Magistrate, the Magistrate may order detention of such person and if he considers the detention unnecessary, he shall forward the case to the Special Court. The Special Court would have the liberty to try summary in a summary way for offences punishable with imprisonment for a term not exceedinig three years although it may order for the regular trial.

Clause 398. — This is a new clause which seeks to provide that the High Courts shall have the power of appeal or revision as if special courts were Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Clause 399. — This is a new clause which seeks to provide for the application of Code to the proceedings before the Special Court. It provides that Special Court shall be deemed to be a Court of Session and the provisions of the Code of Criminal Procedure, 1973 shall apply to the Special Court.

Clause 400. — This clause corresponds to some of the provisions of sections 621 to 631 of the Companies Act, 1956 and seeks to provide that every offence punishable under this Act shall be non-cognizable. The Court shall take cognizance only on complaint made by Registrar, shareholder of the company of a person authorised by Central Government.

Clause 401. — This is a new clause which provides that till such time Special Courts are established, the existing Court of Session will continue to exercise jurisdiction. However, it will not affect the powers of High Court to transfer any case.

Clause 402. — This clause corresponds to section 621A of the Companies Act, 1956 and seeks to provide that any offence which is not punishable with imprisonment only or imprisonment and also with fine may be compounded by the aggrieved person.

Clause 403. — This clause corresponds to section 624A of the Companies Act, 1956 and seeks to provide that the Central Government may appoint any number of Company Prosecutors who shall have the same powers and privileges as that of Public Prosecutor.

Clause 404. — This clause corresponds to section 624B of the Companies Act, 1956 and seeks to provide that the Central Government shall have the power to direct the Company Prosecutor or authorise any other person to appeal against the order of acquittal passed by any court, other than a High Court.

Clause 405. — This is a new clause which deals with compensation for accusation without reasonable cause before the Special Court or Court of Session.

Clause 406. — This clause corresponds to section 626 of the Companies Act, 1956 and seeks to provide that any fine imposed or any part thereof may be applied towards payment of cost of proceedings or towards payment of reward to person on whose information the proceedings were instituted.

Clause 407. — This Clause corresponds to section 628 of the Companies Act, 1956 and seeks to provide that if in any return, report, etc., any person who makes a false statement or omits material facts, shall be punishable with imprisonment and with fine.

Clause 408. — This clause corresponds to section 629 of the Companies Act, 1956 and seeks to provide that in case of giving false evidence, the concerned person shall be liable to imprisonment and fine.

Clause 409. — This clause corresponds to section 629A of the Companies Act, 1956 and seeks to provide for punishment where no specific punishment or penalty is provided elsewhere in the Companies Act.

Clause 410. — This clause seeks to provide that if any default is repeated, it shall be punishable with imprisonment as provided and twice the amount of fine for such default.

Clause 411. — This clause corresponds to section 630 of the Companies Act, 1956 and seeks to provide penalty for wrongful possession or holding of the property of the company by any officer or employee of company.

Clause 412. — This clause corresponds to section 631 of the Companies Act, 1956 and seeks to provide punishment for improper use of the title words 'limited', 'private limited' or 'OPC limited'.

Clause 413. — This is a new clause which provides that Central Government may appoint adjudicating officers for adjudging penalty under the provision of this Act. The company or officer shall be given an opportunity to be heard before imposing any penalty. Aggrieved person may appeal to Regional Director. Any person not paying penalty shall be punished with imprisonment or fine or with both.

Clause 414. — This is a new clause and seeks to deal with dormant company. It provides that a dormant company shall be one which has not been carrying any business or has not made any significant accounting transaction in the last two financial years. Such a company may make an application to Registrar for obtaining the status of a dormant company. The Registrar shall maintain the register of dormant company, which shall keep the minimum number of directors and pay annual fees. This clause further provides that in case of a company which has not filed Balance Sheet, Profit and Loss Account or annual return for two financial years, the Registrar shall enter the name in the register maintained for dormant company. However, if the dormant company fails to comply with the requirements of this clause then the Registrar shall have the power to strike off its name.

Clause 415. — This clause seeks to provide that no suit, prosecution or other legal proceedings shall lie against the Government or any other person authorised by the Government for acts done or intended to be done in good faith.

Clause 416. — This clause corresponds to section 635AA of the Companies Act, 1956 and seeks to provide that no officer of the Government or any other person shall be compelled to disclose to any court, tribunal or other authority the source of any information which has led to an order of investigation into the affairs of the company.

Clause 417. — This clause corresponds to section 637 of the Companies Act, 1956 and seeks to empower the Central Government to delegate any of its powers or functions to any authority or officer by notification. It provides that any power can be delegated other than power to make rules. It further provides that a copy of notification shall be placed before both the Houses of Parliament.

Clause 418. — This clause corresponds to section 637A of the Companies Act, 1956 and seeks to provide that while according approval, sanction, consent, confirmation, etc., giving directions or granting exemptions, the Central Government or the Tribunal may impose such conditions or restrictions as it think fit.

Clause 419. — This clause corresponds to section 637B of the Companies Act, 1956 and seeks to provide that whenever any application is to be made to Central Government or any document is required to be filed with Registrar within specified time, the Central Government may, after recording the reasons for delay, condone the delay.

Clause 420. — This clause corresponds to section 638 of the Companies Act, 1956 and seeks to provide that the Central Government shall prepare annual report on the working of the Act and shall be laid before both the Houses of Parliament.

Clause 421. — This clause seeks to provide that in case of one person company or small company, the Central Government may by notification exempt the compliance of certain provisions. However, a copy of draft notification shall be laid before both the House of Parliament.

Clause 422. — This clause corresponds to section 11 of the Companies Act, 1956 and seeks to provide that the number of persons in any association or partnership shall not exceed one hundred. This clause further provides that the above restriction shall not apply to an association or partnership, constituted by professionals and Hindu Undivided Family.

Clause 423. — This clause deals with repealing of Companies Act, 1956 and Registration of Companies (Sikkim) Act, 1961. However, the provisions relating to Producer Companies shall be applicable *mutatis mutandis* as if Companies Act has not been repealed. It further provides that till the formation of Tribunal and Appellate Tribunal, the provisions of Companies Act, 1956 with regard to Company Law Board shall continue to apply.

Clause 424. — This clause corresponds to section 10FA of the Companies Act, 1956 and seeks to provide that on the constitution of the Tribunal and Appellate Tribunal, the Company Law Board shall stand dissolved. It provides that consequent upon formation of the Tribunal or Appellate Tribunal, the persons holding the office of Chairman, Vice-Chairman or Members

shall stand vacated without any compensation for premature termination. Further, the officials on deputation shall be reverted to their parent cadre and the officials of the Board shall become officials of the Central Government with the same rights and privileges.

Clause 425. — This is a new clause which seeks to provide that Central Government may by order remove, any difficulties which may arise in giving effect to the provisions within three years of commencement of the Act by publishing it in the Official Gazette and laying before each House of Parliament.

Clause 426. — This clause corresponds to section 642 of the Companies Act, 1956 and seeks to provide that the Central Government shall have the power to make rules. Every rule made under this clause shall be laid before both the Houses of the Parliament.

FINANCIAL MEMORANDUM

Clause 112 provides for establishment of Investor Education and Protection Fund for promotion of investor awareness and protection. To carry out the objectives of the Fund, the Central Government shall constitute an Authority with such members but not exceeding seven, as the Central Government may appoint, to administer the Fund. This clause is similar to section 205C of the Companies Act, 1956 (hereinafter referred to as the existing Act).

Clause 118 provides for constitution of National Advisory Committee on Accounting and Auditing Standards (NACAAS) to advise the Central Government on the formulation and laying down of accounting and auditing policies and Accounting and Auditing standards for adoption by companies or their auditors. The members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as may be prescribed in the rules. This clause is similar to section 210A of the existing Act.

Clause 183 of the Bill empowers the Central Government to appoint inspectors to investigate the affairs of companies. Clause 195 of the Bill empowers the Central Government to prosecute the offenders on the basis of the report of the investigation. The expenses on investigation, under certain circumstances are to be initially defrayed by the Central Government out of the moneys provided by the Parliament and are ultimately recoverable from the persons concerned. Clause 179 empowers the Registrars and the officers authorised by the Central Government to inspect the books of account of companies. These clauses are similar to the provisions of section 235, 242 and 209A of the existing Act.

Clause 244 empowers the Central Government to appoint an independent administrator to manage the Rehabilitation and Insolvency Fund. This clause is similar to sections 441 A to 441 D of the Companies Act, 1956 with some modifications.

Clause 334 empowers Central Government to appoint Official liquidators including Joint, Deputy or Assistant Official Liquidators who are to be the whole time officers of the Central Government, *i.e.,* whose salary shall be paid by Central Government. Clause 334 is similar to the provisions of section 448 of the existing Act.

Clause 358 of the Bill empowers the Central Government to establish registration offices to appoint a Director-General of Registration and Registrars, Additional, Joint and Assistant Registrars and to prescribe terms and conditions of their service. Clause 358 is similar to the provisions of section 609 of the existing Act.

Clauses 369, 371 and 375 of the Bill provide for the constitution of the National Company Law Tribunal and National Company Law Appellate Tribunal respectively. These clauses are similar to sections 10FB to 10FG and 10FR to 10FX of the Companies Act, 1956. For establishment of these institutions, the funds are already being provided by the Parliament.

Clause 396 of the Bill empowers the Central Government to establish, by notification, such number of Special Courts as may be necessary for the purpose of providing speedy trial of offences under the proposed legislation. The intention under this clause is to designate specified Judge or Judges from existing judicial set up to try on offences under the proposed Bill.

Clause 403 of the Bill empowers the Central Government to appoint Company Prosecutors for the conduct of prosecutions arising out of the proposed legislation. The Company Prosecutors already appointed under the existing Act will continue to function under the proposed legislation.

Clause 413 of the Bill provides for appointment of adjudicating officers to impose penalties for procedural non—compliance, The officers not below the rank of Registrar shall be notified as 'adjudicating officers'.

The expenditure on an authority to administer Investor Education and Protection Fund, National Advisory Committee on Accounting and Auditing Standards, inspecting officers, administrator to manage the Rehabilitation and Insolvency Fund, appointment of whole time Official liquidators (including Joint, Deputy or Assistant Official Liquidators), setting up of registration offices, appointment of Director-General of Registration and Registrars, Additional, Joint and Assistant Registrars, constitution of National Company Law Tribunal and National Company Law Appellate Tribunal, Special Courts, appointment of adjudicating officers and appointment of Company Prosecutors will be met out of the existing budgetary allocations of the Ministry of Corporate Affairs.

The Bill, therefore, will not involve any additional expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDlNG DELEGATED LEGISLATION

Item (a) of sub-clause (1) of clause (2) proposes to empower the Central Government to prescribe the salient features of a prospectus to be contained in abridged prospectus.

Sub-item (iv) of item (m) of sub-clause (1) of clause (2) proposes to empower the Central Government to prescribe items of costs for a class of companies specified under section 131.

Sub-item (i) of item (zzzg) of sub-clause (1) of clause 2 proposes to empower the Central Government to prescribe the amount of paid-up share capital for being a small company which shall not be more than five crore rupees.

Sub-item (ii) of item (zzzg) of sub-clause (1) of clause 2 proposes to empower the Central Government to prescribe the amount of turnover which shall not be more than twenty crore rupees for being a small company.

Sub-clause (1) of clause 3 proposes to empower the Central Government to prescribe the manner in which the name of subscriber to a memorandum of a company shall be given for complying with the requirements for registering a company under the Act.

Second proviso to sub-clause (1) of clause 3 proposes to empower the Central Government to prescribe time and form for intimation by the sole member of a one person company for change of name of his successor to the Registrar of Companies.

Sub-clause (1) of clause 4 proposes to empower the Central Government to prescribe the manner and conditions for issuing licence to a company to be formed for charitable objects, etc.

Item (b) of sub-clause (3) of clause 5 proposes to empower the Central Government to prescribe words on expressions which can be a part of name of a company only with the previous approval of the Central Government.

Sub-clause (4) of clause 5 proposes to empower the Central Government to prescribe the form, manner and fees required for making an application to Registrar for keeping a name reserved by a company.

Sub-clause (5) of clause 5 proposes to empower the Central Government to prescribe the fee required for serving the name for a further period of sixty days.

Sub-clause (6) of clause 5 proposes to empower the Central Government to prescribe the form of Memorandum of Association of a company.

Sub-clause (2) of clause 6 proposes to empower the Central Government to prescribe the matters to be contained in Article of Association of a company.

Sub-clause (6) of clause 6 proposes to empower the Central Government to prescribe model articles for different types of companies.

Item (a) of sub-clause (1) of clause 7 proposes to empower the Central Government to prescribe the manner in which a memorandum is to be signed by all subscribers.

Item (b) of sub-clause (1) of clause 7 proposes to empower the Central Government to prescribe form of declaration in which an advocate, Chartered Accountant, Cost Accountant or Company Secretary or director, manager, etc., engaged in the formation of a company, shall declare that all requirements of the Act and rules in respect of registration and the matters precedent or incidental thereto have been complied with.

Item (e) of sub-clause (1) of clause 7 proposes to empower the Central Government to prescribe the items for proof of identity of a subscriber to the memorandum of a company.

Item (f) of sub-clause (1) of clause 7 proposes to empower the Central Government to prescribe the particulars regarding proof of identity of a person who has been mentioned as first director in the Articles of the company.

Item (g) of sub-clause (1) of clause 7 proposes to empower the Central Government to prescribe the form and manner in which the interests of first directors of a company in other firms or bodies corporate are to be furnished/disclosed along with their consent to act as director.

Sub-clause (2) of clause 7 proposes to empower the Central Government to prescribe the form for certificate of incorporation to be issued by the Registrar.

Item (a) sub-clause (1) of clause 10 proposes to empower the Central Government to prescribe a form of declaration and manner of its verification to be filed by a director or subscriber in respect of payment of value of shares for which they have agreed as their subscription.

Item (b) of sub-clause (1) of clause 10 proposes to empower the Central Government to prescribe the manner in which verification of registered office shall be furnished to the Registrar.

Sub-clause (2) of clause 11 proposes to empower the Central Government to prescribe the manner in which the verification of the company's registered office is to be made.

Item (d) of sub-clause (3) of clause 11 proposes to empower the Central Government to prescribe the documents on which the company is to get its name printed.

Sub-clause (4) of clause 11 proposes to empower the Central Government to prescribe the manner for verification of change in the situation of the company's registered office.

Proviso of sub-clause (6) of clause 12 proposes to empower the Central Government to prescribe time and manner in which the company has to file the order of the Central Government approving the alteration involving transfer of registered office of a company from one State to another with the Registrar of each State.

Sub-clause (2) of clause 13 proposes to empower the Central Government to prescribe the manner in which copy of altered Articles of Association are to be filed with the Registrar.

Sub-clause (1) of clause 16 proposes to empower the Central Government to prescribe fee, which members are required to pay to the company for sending a copy of the memorandum, articles, agreements and resolutions referred to in clause 106, on his request.

Sub-clause (1) of clause 19 proposes to empower the Central Government to prescribe the electronic modes and other modes in which the documents can be served on a company or an officer thereof.

Sub-clause (2) of clause 19 proposes to empower the Central Government to prescribe the electronic modes and other modes in which the documents can be served to the Registrar or any member of the company.

Sub-item (i) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe such other persons whose names, etc., are to be given in prospectus.

Sub-item (ii) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe time for issue of allotment letters and refunds, etc., relating to issue of securities.

Sub-item (iii) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe manner of disclosure about details of monies, *i.e.* utilised and unutilised out of issue.

Sub-item (v) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe the other persons whose consent is required for issue of prospectus.

Sub-item (viii) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe capital structure of the company, in prospectus.

Sub-item (ix) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe particulars of the terms of the present issue, in prospectus.

Sub-item (xiii) of item (a) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe details of directors, proposed directors including their appointments and remuneration and extent of their interests in the company, in prospectus.

Sub-item (i) of item (b) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe this in addition to reports of the auditor of the company with respect to profit, loss, assets and liabilities of the company, in prospectus.

Sub-item (ii) of item (b) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe matters relating to company's subsidiaries, in prospectus.

Sub-item (iii) of item (b) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe the manner in which reports are to be made by the auditors for last five financial years in prospectus.

Item (d) of sub-clause (1) of clause 23 proposes to empower the Central Government to prescribe matters and reports to be included in prospectus issued by a company in addition to information required under this section.

Second proviso of sub-section (2) of section 24, empower the Central Government to notify public financial institutions on non-banking financial companies to whom first proviso shall not apply.

Sub-clause (2) of clause 26 proposes to empower the Central Government to prescribe changes, which have occurred in the first offer of the security and the succeeding offer of securities to be included in information memorandum.

Sub-clause (3) of clause 34 proposes to empower the Central Government to prescribe the manner and time within which the minimum amount has not been subscribed within a period of one hundred and twenty days from the date of issue of prospectus.

Sub-clause (4) of clause 34 proposes to empower the Central Government to prescribe the manner in which a return of allotment has to be filed with the Registrar by companies.

Item (b) of sub-clause (3) of clause 35 proposes to empower the Central Government to prescribe time, in which the monies received from applicant in pursuance of the prospectus, has to be returned.

Sub-clause (6) of clause 35 proposes to empower the Central Government to prescribe the conditions on which a company may pay commission to any person for subscription to its securities.

Clause 36 proposes to empower the Central Government to prescribe conditions and manner in which a company may issue depository receipts to be dealt in depository mode in any foreign country.

Sub-clause (3) of clause 40 proposes to empower the Central Government to prescribe the manner of issue of a share certificate or the duplicate thereof the form of such certificate and the particulars to be entered in the register of members and other matters.

Item (d) of sub-clause (1) of clause 48 proposes to empower the Central Government to prescribe rules for issuing sweat equity shares by unlisted companies.

Sub-clause (2) of clause 49 proposes to empower the Central Government to prescribe conditions for issuing and redeeming preferential shares.

First proviso to sub-clause (2) of clause 49 proposes to empower the Central Government to prescribe infrastructure projects, for which a company may issue preferential shares for more than twenty years. It also proposes to empower the Central Government to prescribe the percentage of shares which shall be redeemed on an annual basis.

Sub-clause (1) of clause 50 proposes to empower the Central Government to prescribe share transfer form and time within which this has to be delivered to the company.

Proviso of sub-clause (1) of clause 50 proposes to empower the Central Government to prescribe time if, within which, the instrument of transfer of securities is not been delivered, the company may registered the transfer of securities on the terms of indemnity.

Sub-clause (3) of clause 50 proposes to empower the Central Government to prescribe the manner of notice of the application to be given by a company to the transferee in case of transfer of partly paid shares.

Sub-clause (1) of clause 53 proposes to empower the Central Government to prescribe the form in which an application is to be made to the Tribunal for rectification of register of members and also to notify competent court outside India in respect of foreign industries or debenture holders residing outside India.

Item (a) of sub-clause (1) of clause 56 proposes to empower the Central Government to prescribe terms and conditions relating to the time within which the offer of shares has to be accepted or renounced by a shareholder.

Item (b) of sub-clause (1) of clause 56 proposes to empower the Central Government to prescribe conditions to issue shares to its employees under the scheme of employee stock option.

Item (c) of sub-clause (1) of clause 56 proposes to empower the Central Government to prescribe the conditions for valuation report of a registered valuer to determine the price of shares.

Sub-clause (1) of clause 57 proposes to empower the Central Government to prescribe the form for filing notice for alteration of share capital to the Registrar.

Item (d) of sub-clause (2) of clause 61 proposes to empower the Central Government to notify higher ratio of debt to capital and free reserves for a class or classes of companies.

Item (g) of sub-clause (2) of clause 61 proposes to empower the Central Government to prescribe rules for buy-back of securities by a company, which is not listed with any stock exchange.

Sub-clause (6) of clause 61 proposes to empower the Central Government to prescribe the form of declaration of solvency by directors of a company.

Sub-clause (9) of clause 61 proposes to empower the Central Government to prescribe particulars to be entered in register maintained regarding securities bought back by a company.

Sub-clause (10) of clause 61 proposes to empower the Central Government to prescribe particulars to be filed, by a company, with Registrar of Companies and Securities and Exchange Board of lndia after completion of buy-back of securities.

Explanation to clause 61 proposes to empower the Central Government to notify securities as specified securities other than employees stock option.

Sub-clause (3) of clause 64 proposes to empower the Central Government to prescribe terms and conditions and class of companies which can issue secured debentures.

Sub-clause (5) of clause 64 proposes to empower the Central Government to prescribe the conditions for governing the appointment of trustees for issue of debentures by a company.

Sub-clause (13) of clause 64 proposes to empower the Central Government to prescribe rules for securing of the issue of debentures, the form of debenture trust deed, the procedure for debenture holder to inspect trust deed and to obtain copies thereof and other related matters.

Sub-clause (1) of clause 65 proposes to empower the Central Government to prescribe the manner in which a holder of shares or debentures of a company may nominate any person to whom his shares or debentures shall vest in the event of his death.

Sub-clause (2) of clause 65 proposes to empower the Central Government to prescribe the manner in which joint holder of shares and debentures may nominate any person in case of death of all the joint holders.

Sub-clause (3) of clause 65 proposes to empower the Central Government to prescribe the manner in which a nomination is to be varied or cancelled.

Sub-clause (4) of clause 65 proposes to empower the Central Government to prescribe the manner in which any person may be appointed and become entitled to the shares or debentures of the company, in the event of the death of the nominee during his minority.

Sub-clause (2) of clause 66 proposes to empower the Central Government to make rules in consultation with the Reserve Bank of India with respect to acceptance of deposits from members.

Item (a) of sub-clause (2) of clause 66 proposes to empower the Central Government to prescribe the form and manner in which particulars are to be contained in circular to members of company for inviting deposits.

Item (d) of sub-clause (2) of clause 66 proposes to empower the Central Government to prescribe the manner and limit for providing insurance against deposits.

Sub-clause (1) of clause 69 proposes to empower the Central Government to prescribe the form and manner in which a charge can be created and fee to be charged thereon.

Proviso of sub-clause (1) of clause 69 proposes to empower the Central Government to prescribe additional fee on payment of which an application for registering charges can be made within a period of three hundred days.

Sub-clause (2) of clause 69 proposes to empower the Central Government to prescribe the form and manner in which certificate of registration of charges is to be issued by Registrar of Companies to the company or person in whose favour the charge is created.

Clause 70 proposes to empower the Central Government to prescribe the form and manner in which a person in whose favour the charge is created may apply for registration of charge when company fails to do so and also the fee and additional fee which Registrar may charge for such registration.

Sub-clause (1) of clause 73 proposes to empower the Central Government to prescribe the form and particulars to be included in register of charges to be kept by the Registrar.

Sub-clause (2) of clause 73 proposes to empower the Central Government to prescribe fee to be paid by a person for inspecting the register of charges.

Sub-clause (1) of clause 74 proposes to empower the Central Government to prescribe the form in which a company shall intimate the Registrar of the payment or satisfaction of charges.

Sub-clause (1) of clause 75 proposes to empower the Central Government to prescribe time within which a notice is to be given to the company and Registrar for appointment of a receiver and to prescribe fee for registering particulars of the receiver, person or instrument with the Registrar.

Sub-clause (1) of clause 76 proposes to empower the Central Government to prescribe the form and manner of register of charges and floating charges to be kept by a company at its registered office and the particulars to be incorporated in the Register.

Item (b) of sub-clause (2) of clause 76 proposes to empower the Central Government to prescribe fee for inspecting the register of charges by a person other than a member.

Sub-clause (1) of clause 78 proposes to empower the Central Government to prescribe the form and manner in which following registers are to be maintained:—

(a) Register of members indicating separately equity and preference shares held by each member and residing in India and outside;

(b) Register of debenture holders;

(c) Register of any other security holders.

Sub-clause (4) of clause 78 proposes to empower the Central Government to prescribe the manner in which part of the registers referred to in sub-clause (1) of clause 78, called "foreign register" are to be kept in any country outside of India.

Sub-clause (1) of clause 79 proposes to empower the Central Government to prescribe the form of declaration by a person to the company who does not hold the beneficial interests in shares but whose name is there as a member in the register of members of the company, specifying the name and other particulars of the person who holds the beneficial interest in such shares.

Sub-clause (2) of clause 79 proposes to empower the Central Government to prescribe particulars to be included in declaration to the company by a person who holds or acquires a beneficial interest in the shares of a company but whose name is not there in the register of members of the company.

Sub-clause (3) of clause 79 proposes to empower the Central Government to prescribe the form and particulars to be included therein in case of any change in a declaration made by a person to the company who holds the beneficial interest in shares of the company and the person whose name is there in register of members of the company but who does not hold any beneficial interest in such shares.

Sub-clause (4) of clause 79 proposes to empower the Central Government to prescribe the form of return in which declarations are made under this section to be filed by a company with the Registrar.

Sub-clause (1) of clause 81 proposes to empower the Central Government to prescribe the manner of notice to be given to members of a company before closing the register of members or debenture holders or any other security holders.

Sub-clause (1) of clause 82 proposes to empower the Central Government to prescribe form containing the particulars in respect of annual return.

Item (j) of sub-clause (1) of clause 82 proposes to empower the Central Government to prescribe the form of annual return and other matters to be included therein.

Proviso to sub-clause (1) of clause 82 proposes to empower the Central Government to prescribe the paid-up capital and turnover of a company or whose shares are listed on a recognised stock exchange, shall, in addition to being signed by Managing Director and the Company Secretary shall also be signed by a Company Secretary in whole-time practice and to prescribe the form for such certification.

Sub-clause (2) of clause 82 proposes to empower the Central Government to prescribe the extracts of the annual return that shall form part of the Board's Reports.

Sub-clause (3) of clause 82 proposes to empower the Central Government to prescribe fee and additional fee for filing annual return with the Registrar.

Sub-clause (2) of clause 83 proposes to empower the Central Government to prescribe fee for inspecting the registers maintained under sub-clause (1) of clause 78 by a person who is not a member, debenture holder of company.

Item (b) of sub-clause (3) of clause 83 proposes to empower the Central Government to prescribe fee for a copy of registers or entries or returns maintained under sub-clause (1) of clause 78.

Sub-clause (4) of clause 89 proposes to empower the Central Government to prescribe the manner in which a meeting may be called by the requisitionists in case the Board fails to call the meeting.

Sub-clause (1) of clause 90 proposes to empower the Central Government to prescribe the manner for calling a general meeting of the company.

Clause 94 proposes to empower the Central Government to prescribe the manner and the conditions subject to which a proxy can be appointed by shareholders.

Clause 97 proposes to empower the Central Government to prescribe the manner in which a member may exercise his vote at a meeting by electronic means.

Sub-clause (5) of clause 98 proposes to empower the Central Government to prescribe the manner in which the Chairman of meeting shall get the poll process scrutinised and report thereon.

Sub-clause (1) of clause 99 proposes to empower the Central Government to prescribe the manner and matters on which a business can be transacted at a general meeting through postal ballot.

Clause 104 proposes to empower the Central Government to prescribe the number of members who can give a notice of their intention to move a resolution requiring special notice and the manner in which such notice of the resolution shall be given.

Sub-clause (1) of clause 106 proposes to empower the Central Government to prescribe the matters and the manner in which the resolutions passed in general meeting are to be filed with the Registrar.

Sub-clause (1) of clause 107 proposes to empower the Central Government to prescribe the time within which and manner in which a company shall prepare and keep minutes of proceedings of every general meeting, meeting called by requisitionists, meeting of class of shareholders or creditors, resolution passed by postal ballot and meetings of the Board and any of its committees.

Sub-clause (10) of clause 107 proposes to empower the Central Government to prescribe the secretarial standards for general and Board meetings of a company.

Sub-clause (2) of clause 108 proposes to empower the Central Government to prescribe fee for furnishing a copy of minutes of any general meeting to any member of the company.

Sub-clause (1) of clause 109 proposes to empower the Central Government to prescribe the manner in which a report on annual general meeting shall be prepared.

Sub-clause (2) of clause 109 proposes to empower the Central Government to prescribe fee to be paid by member of a company for being furnished with copy of minutes, etc.

Item (a) of sub-clause (2) of clause 110 proposes to empower the Central Government to prescribe rate of depreciation on assets of the company.

Sub-clause (4) of clause 111 proposes to empower the Central Government to prescribe the form of statement to be filed by company with authority administering the fund on transfer of unpaid money to Investor's Education and Protection Fund.

Item (g) of sub-clause (2) of clause 112 proposes to empower the Central Government to prescribe other amounts which shall be transferred to Investor's Education and Protection Fund.

Sub-clause (3) of clause 112 proposes to empower the Central Government to prescribe rules for utilisation of Investor's Education and Protection Fund.

Sub-clause (5) of clause 112 proposes to empower the Central Government to prescribe the form in which authority shall maintain accounts and other relevant records after consulting Comptroller and Auditor-General of India.

Sub-clause (8) of clause 112 proposes to empower the Central Government to prescribe the form and time for preparing annual report by the authority giving a full account of its activities during the financial year.

Second proviso of sub-clause (1) of clause 116 proposes to empower the Central Government to prescribe the manner in which books of account can be kept in electronic mode.

Sub-clause (3) of clause 116 proposes to empower the Central Government to prescribe the conditions for making inspection of books of account and other records by a director.

Sub-clause (1) of clause 117 proposes to empower the Central Government to prescribe the form in which financial statements are to be prepared by a company at the end of each financial year.

Sub-clause (4) of clause 118 proposes to empower the Central Government to prescribe fees, traveling, conveyance and other allowances to the members of National Advisory Committee on Accounting and Auditing Standards.

Proviso to sub-clause (1) of clause 120 proposes to empower the Central Government to prescribe the manner in which financial statements shall be authenticated.

Proviso to sub-clause (1) of clause 121 proposes to empower the Central Government to prescribe the net worth and turnover of companies and manner in which such company shall circulate their Financial Statements.

Sub-clause (1) of clause 122 proposes to empower the Central Government to prescribe the manner to file the financial statements with the Registrar.

Sub-clause (2) of clause 122 proposes to empower the Central Government to prescribe the manner to file the financial statements where annual general meeting has not been held along with the statement of facts and reasons for not holding the annual general meeting with the Registrar.

Proviso of sub-clause (1) of clause 123 proposes to empower the Central Government to prescribe the conditions for making an appointment of an auditor in a company.

Sub-item (i) of item (d) of sub-clause (3) of clause 124 proposes to empower the Central Government to prescribe the percentage which a person or his relative or partner should not hold as securities of the company or its subsidiary, etc., for being eligible for appointment as an auditor of a company.

Sub-item (iii) of item (d) of sub-clause (3) of clause 124 proposes to empower the Central Government to prescribe the amount given by a person or his relative or partner as a guarantee or security in connection with the indebtness of any third person to the company or its subsidiary, or its holding or associate company or a subsidiary of such holding company which shall disqualify a person from being appointed as an auditor of the company.

Item (e) of sub-clause (3) of clause 124 proposes to empower the Central Government to prescribe the business relationships which if a person has with the company or its subsidiary, or its holding or associate company, or a subsidiary of such holding company shall not be appointed as an auditor of the company.

Item (g) of sub-clause (3) of clause 124 proposes to empower the Central Government to prescribe the number of companies beyond which a person shall not be appointed as an auditor of the company.

Sub-clause (1) of clause 126 proposes to empower the Central Government to prescribe the matters, which an auditor shall inquire into as he consider necessary for the performance of his duties.

Sub-clause (2) of clause 126 proposes to empower the Central Government to prescribe the matters, which an auditor shall include in its report to the members of the company.

Item (j) of sub-clause (3) of clause 126 proposes to empower the Central Government to prescribe additional matters to be included in auditors' report.

Sub-clause (8) of clause 126 proposes to empower the Central Government to prescribe the powers and duties of branch auditors or company's auditor with reference to the audit of branch offices of a company.

Sub-clause (1) of clause 131 proposes to empower the Central Government to prescribe the items of cost to be included in the books of account kept by specified class of companies.

Sub-clause (2) of clause 131 proposes to empower the Central Government to specify the manner in which audit of cost records of a company shall be conducted.

Sub-clause (3) of clause 131 proposes to empower the Central Government to prescribe the manner in which a Cost Accountant shall be appointed in a company.

Sub-clause (3) of clause 132 proposes to empower the Central Government to prescribe amount of paid-up share capital for listed companies which shall be required to appoint one-third of its total directors as independent directors. It also proposes to empower the Central Government to prescribe minimum number of independent directors in case of public companies and subsidiaries of any public company which are not listed.

Item (c) of sub-clause (5) of clause 132 proposes to empower the Central Government to prescribe other qualifications to be possessed by an independent director.

Sub-clause (5) of clause 133 proposes to empower the Central Government to prescribe the time within which and manner in which consent given by a director shall be filed with the registrar.

Sub-clause (6) of clause 133 proposes to empower the Central Government to prescribe the procedure and principles in accordance with which directors shall retire by rotation under such sub-clause.

Sub-clause (7) of clause 133 proposes to empower the Central Government to prescribe the time and procedure in respect of making of appointment of director in case a company fails to re-appoint a director or to appoint a person as a director in place of a retiring director.

Clause 134 proposes to empower the Central Government to prescribe the form, manner and the fees payable in respect of application for Director Identification Number.

Clause 135 proposes to empower the Central Government to prescribe manner in which Director Identification Number shall be allotted by the Central Government.

Sub-clause (1) of clause 138 proposes to empower the Central Government to specify apart from Registrar any other authority to whom Director Identification Number may be furnished by a company under such sub-clause.

Sub-clause (1) of clause 141 proposes to empower the Central Government to prescribe the sum of money to be deposited in connection with proposing the candidature of a person as a director in the company.

Sub-clause (2) of clause 141 empowers the Central Government to prescribe the manner in which the company shall inform its members of the candidature of a person for office of director.

Sub-clause (1) of clause 149 proposes to empower the Central Government to prescribe manner and form in which Board shall intimate Registrar in respect of notice of resignation given by a director under this sub-clause.

Proviso to sub-clause (1) of clause 149 of the Bill proposes to empower the Central Government to prescribe the manner in which a director himself may forward a copy of his resignation to the Registrar under this clause.

Sub-clause (1) of clause 150 proposes to empower the Central Government to prescribe the procedure to be followed by a company while removing a director from his office before the expiry of period of his office.

Sub-clause (1) of clause 151 proposes to empower the Central Government to prescribe the particulars in respect of directors and key managerial personnel to be entered in the register required to be kept by the company pursuant to this clause.

Sub-clause (2) of clause 151 proposes to empower the Central Government to prescribe the particulars and documents to be contained in the return to be filed with the Registrar under such sub-clause.

Proviso to sub-clause (1) of clause 154 proposes to empower the Central Government to issue directions by way of notifications, to the effect that provisions in respect of sub-clause (1) shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

Sub-clause (2) of clause 154 proposes to empower the Central Government to prescribe other means of communication, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings, which may be used for holding meetings of the Board.

Proviso to sub-clause (2) of clause 154 proposes to empower the Central Government to specify such matters which shall not be dealt with in a meeting of the Board through video conferencing or other electronic means.

Sub-clause (1) of clause 158 proposes to empower the Central Government to prescribe class or description of companies which shall have to constitute an audit committee and a remuneration committee of the Board.

Sub-clause (1) of clause 162 proposes to empower the Central Government to prescribe the manner in which a director shall make disclosure in respect of companies, firms and other bodies corporate in which he has any concern or interest.

Sub-clause (5) of clause 164 proposes to empower the Central Government to prescribe the limits up to which such class of companies governed by section 12 of the Securities and Exchange Board of India Act, 1992 which may be prescribed by the Central Government, shall give loan, or guarantee or make investments. This sub-clause also seeks to empower Central Government to prescribe class of companies governed by section 12 of the Securities and Exchange Board of India Act, 1992 in respect of which limits prescribed *supra* would be applicable.

Sub-clause (8) of clause 164 empower the Central Government to prescribe the particulars which shall be included and the manner in which a register shall be kept by a company giving loan or providing guarantee, etc.

Sub-clause (9) of clause 164 empower the Central Government to prescribe the fees payable for taking extracts or obtaining copies of any part of register maintained under sub-clause (8) by any company.

Sub-clause (3) of clause 165 proposes to empower the Central Government to prescribe the particulars to be contained in the register to be kept by a company in respect of securities, which are not held in its name.

Proviso to sub-clause (1) of clause 166 proposes to empower the Central Government to prescribe the lower limit of paid-up capital of a company or the upper limit of transactions of a company for entering into contract or arrangement, except with the prior approval by way of special resolution.

Sub-clause (1) of clause 167 proposes to empower Central Government to prescribe particulars and manner in which register(s) in respect of contracts or arrangements to which sub-clause (2) of clause 162 applies shall be kept by every company.

Sub-clause (4) of clause 167 proposes to empower the Central Government to prescribe the manner and fees payable for inspection of register maintained under sub-clause (1).

Sub-clause (1) of clause 169 proposes to empower the Central Government to prescribe the particulars, with reference to payment proposed to be made by transferee or person, which are to be disclosed to members in view of provisions of such sub-clause.

Sub-clause (2) of clause 169 proposes to empower the Central Government to prescribe limits or priorities in respect of any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement, which shall not be effected by the provisions of sub-clause (1) of this clause.

Sub-clause (1) of clause 175 proposes to empower the Central Government to prescribe the manner in which net profits of a company shall be computed for the purpose of ascertaining the payment of remuneration to a managing or whole-time director or a manager of a company.

Sub-clause (1) of clause 178 proposes to empower the Central Government to prescribe class or description of companies who shall be required to have whole-time key managerial personnel.

Item (b) of sub-clause (3) of clause 193 proposes to empower the Central Government to prescribe fee for furnishing a copy of the final report.

Sub-clause (4) of clause 193 proposes to empower the Central Government to prescribe the manner in which Inspector may authenticate the report.

Sub-clause (3) of clause 201 proposes to empower the Central Government to prescribe the other methods which shall be disclosed in the statement apart from the disclosure indicated in the said sub-clause.

Sub-clause (5) of clause 201 proposes to empower the Central Government to prescribe the form and accompanied documents in which a notice shall be sent under sub-clause (3) of the said clause.

Sub-clause (10) of clause 201 proposes to empower the Central Government to prescribe rules regarding the manner, terms and conditions for takeover offer to be made.

Sub-clause (11) of clause 201 proposes to empower the Central Government to prescribe the manner in which an aggrieved party may appeal to the Tribunal, in the event of any grievances with respect to the takeover offer in case of unlisted companies.

Sub-clause (2) of clause 204 proposes to empower the Central Government to prescribe the manner in which the transferee company shall file a copy of the approved scheme with the Registrar and the Official Liquidator.

Sub-clause (10) of clause 204 proposes to empower the Central Government to prescribe fee due on revised capital for filing an application with the Registrar along with the scheme registered and indicating the revised authorised capital.

Sub-clause (1) of clause 205 proposes to empower the Central Government to notify the names of countries to which the provisions of the Chapter shall apply.

Sub-clause (1) of clause 206 proposes to empower the Central Government to prescribe the manner in which the notice is to be given by the transferee company to any dissenting shareholders that the transferee company desired to acquire his share.

Sub-clause (2) of clause 207 proposes to empower the Central Government to prescribe the rules for determining the price for buying of equity shares from the minority shareholders.

Sub-clause (3) of clause 207 proposes to empower the Central Government to prescribe the rules for determining the price for buying of equity shares from the majority shareholders.

Sub-clause (3) of clause 208 proposes to empower the Central Government to prescribe the authority for assessment of compensation to be paid to the member or creditor by the transferee company.

Item (a) of sub-clause (1) of clause 209 proposes to empower the Central Government to prescribe the information and the manner in which every circular containing the offer shall be accompanied with.

Sub-clause (2) of clause 219 proposes to empower the Central Government to prescribe qualifications of persons for registration as a registered valuer other than chartered accountants, cost and works accountants and company secretaries and form to apply for licensing a registered valuer.

Sub-clause (3) of clause 219 proposes to empower the Central Government to prescribe fee for filing application to the Central Government for registration as a registered valuer.

Item (b) of sub-clause (3) of clause 219 proposes to empower the Central Government to prescribe rules to make the valuation.

Sub-clause (1) of clause 220 proposes to empower the Central Government to prescribe the number of experts and their minimum qualification for appointment of such experts in the committee of experts.

Sub-clause (2) of clause 221 proposes to empower the Central Government to prescribe form in which valuation report shall be submitted as well as the manner of its verification.

Sub-clause (3) of clause 221 proposes to empower the Central Government to prescribe the maximum rate which shall be charged by the registered valuer.

Sub-clause (4) of clause 223 proposes to empower the Central Government to prescribe the enquiry officers as well as their powers.

Sub-clause (1) of clause 224 proposes to empower the Central Government to specify the notice period for removal of name of a company.

Sub-clause (2) of clause 224 proposes to empower the Central Government to prescribe the format of public notice to be issued by the Registrar.

Sub-clause (4) of clause 224 proposes to empower the Central Government to prescribe the manner in which public notice shall be published by the Registrar.

Sub-clause (1) of clause 229 proposes to empower the Central Government to prescribe the manner in which an application is to be filed to the Tribunal.

Item (b) of sub-clause (2) of clause 230 proposes to empower the Central Government to prescribe particular and documents and manner of authentication as well as the requisite fee for an application to be made to Tribunal in respect of revival and rehabilitation of sick company.

Item (c) of sub-clause (2) of clause 230 proposes to empower the Central Government to prescribe the draft scheme of revival and rehabilitation.

Sub-clause (1) of clause 234 proposes to empower the Central Government to notify the name of the professionals such as advocates, company secretary, chartered accountant, cost and works accountant to be appointed as interim administrator or company administrator.

Sub-clause (4) of clause 244 proposes to empower the Central Government to prescribe the rules regarding the manner in which the rehabilitation and insolvency fund shall be managed.

Sub-clause (5) of clause 247 proposes to empower the Central Government to prescribe the form and manner in which a statement of affairs is to be filed along with the petition for winding up before the Tribunal.

Sub-clause (1) of clause 249 proposes to empower the Central Government to prescribe the form and manner in which the company is to file its objection along with a statement of its affairs on receipt of orders of the Tribunal on a petition for winding up filed by any person other than the company.

Sub-clause (2) of clause 250 proposes to empower the Central Government to maintain a panel of professionals consisting of their names, experience and other qualifications and also empower to notify the category/class of professionals who can be considered for appointment as provisional liquidator.

Sub-clause (5) of clause 250 proposes to empower the Central Government to prescribe the form in which a declaration is to be filed by the provisional liquidator or Company Liquidator, disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

Sub-clause (5) of clause 256 proposes to empower the Central Government to prescribe the fee for payment of taking copies or extracts of statements to be submitted by the Company Liquidator.

Sub-clause (5) of clause 262 proposes to empower the Central Government to prescribe the form and manner relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the committee of inspection.

Sub-clause (1) of clause 263 proposes to empower the Central Government to prescribe the form and manner in which a periodical reports on the progress of the winding up of the company is to be made to the Tribunal by the Company Liquidator.

Sub-clause (2) of clause 266 proposes to empower the Central Government to prescribe the form in which the person appointed to assist Company Liquidator shall discloser information relating to any conflict of interest or lack of independence in respect of his appointment.

Sub-clause (1) of clause 268 proposes to empower the Central Government to prescribe the form and manner in which the Company Liquidator shall keep proper books, minutes of the proceedings at the meeting and other matters in relation to the company under liquidation.

Sub-clause (1) of clause 269 proposes to empower the Central Government to prescribe the form and manner in which the Company Liquidator shall maintain proper and regular books of account including accounts of all receipts and payments made by him in relation to the company under liquidation.

Sub-clause (2) of clause 269 proposes to empower the Central Government to prescribe the following:—

(*a*) number of times the Company Liquidator shall present to the Tribunal account of receipts and payment made to the Liquidator;

(*b*) form in which receipts and payments shall be presented to the Tribunal;

(*c*) form of declaration and manner of its verification.

Sub-clause (4) of clause 285 proposes to empower the Central Government to prescribe the form and manner in which a declaration shall be by the Company Liquidator disclosing any conflict of interest or lack of independence in respect of his appointment with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.

Sub-clause (4) of clause 289 proposes to empower the Central Government to prescribe the form and manner in which the Company Liquidator shall maintain regular and proper books of account. This clause also empower the Central Government to authorise any officer, apart from members and creditors and to inspect such books of account.

Sub-clause (1) of clause 291 proposes to empower the Central Government to prescribe the form and manner of Report on the progress of winding up in which the Company Liquidator shall present it to creditors.

Sub-clause (2) of clause 293 proposes to empower the Central Government to prescribe the form and manner in which meeting of the company shall be called for the purpose of laying the final winding up accounts.

Item (b) of sub-clause (4) of clause 293 proposes to empower the Company Liquidator to prescribe the manner in which Company Liquidator shall file application along with his report to Tribunal for passing an order on dissolution of company.

Sub-clause (4) of clause 297 proposes to empower the Central Government to prescribe the form and manner in which a copy of an order staying the proceedings in the winding up shall be forwarded by the company to the Registrar.

Item (b) of sub-clause (1) of clause 302 proposes to empower the Central Government to prescribe the limit on amount payable on account of all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission, etc.

Sub-clause (2) of clause 318 proposes to empower the Central Government to prescribe the circumstances, conditions, restrictions and limitations under which the Company Liquidator shall exercise powers without sanction of the Tribunal.

Sub-clause (3) of clause 318 proposes to empower the Central Government to prescribe the manner in which any creditor or contributory may file application to the Tribunal on powers exercised by Company Liquidator.

Sub-clause (1) of clause 321 proposes to empower the Central Government to prescribe the rules in accordance of which any creditor or contributory of the company may inspect the books and papers of the company.

Sub-clause (1) of clause 323 proposes to empower the Central Government to prescribe the form and manner in which a statement is to be filed duly audited by a person qualified to act as auditor of the company, in relation to company where winding up is not concluded within one year after its commencement.

Sub-clause (4) of clause 323 proposes to empower the Central Government to prescribe the fee on payment of which in which any creditor or contributory of the company may inspect the statement and receive a copy thereof or an extract therefrom.

Clause 324 proposes to empower the Central Government to prescribe the manner and time in which Company Liquidator shall pay the monies received by him as liquidator of any Government company, into the public account of India in the Reserve Bank of lndia.

Sub-clause (1) of clause 325 proposes to empower the Central Government to prescribe the manner and time in which the Company Liquidator shall deposit the monies received by him in his capacity as Company Liquidator in a scheduled bank to the credit of special bank account.

Sub-clause (3) of clause 327 proposes to empower the Central Government to prescribe the form and manner in which the liquidator shall furnish the statement indicating therein all sums included in payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto.

Sub clause (1) of clause 335 proposes to empower the Central Government to prescribe the power and duties of Official Liquidator.

Item (c) to sub-clause (2) of clause 335 proposes to empower the Central Government to prescribe the statistics, information and records relating to companies under winding up, which the Official Liquidator may maintain.

Sub clause (4) of clause 336 proposes to empower the Central Government to prescribe the form and manner of the report to be submitted by Official Liquidator to tribunal on any fraud which has been committed in promotion, formation or management of the affairs of the company.

Sub-clause (1) of clause 338 proposes to empower the Central Government to prescribe the manner in which Official Liquidator shall call upon the creditors to prove their claim.

Sub-clause (2) of clause 338 proposes to empower the Central Government to prescribe the manner in which the Official Liquidator shall prepare a list of claims of creditors.

Clause 341 proposes to empower the Central Government to notify certain companies to comply with the provisions of Chapter XXI and such other provisions of this Act with regard to the business carried on by it in India as if it were a company incorporated in India.

Item (c) of sub-clause (1) of clause 342 proposes to empower the Central Government to prescribe particulars to be contained in the list of the directors and secretary to filed by foreign companies.

Sub-clause (3) of clause 342 proposes to empower the Central Government to prescribe form in which all the alteration has to be delivered by the foreign company to the Registrar for registration.

Sub-clause (3) of clause 343 proposes to empower the Central Government to prescribe form in which a copy of list of all places of business established by the company in India has to be delivered by foreign company to the Registrar.

Clause 347 proposes to empower the Central Government to prescribe the fee for registering documents with the Registrar by foreign companies.

Clause 351 proposes to empower the Central Government to prescribe such documents of foreign companies which has or has not established a place of business in India for the purpose of registration of prospectus.

Clause 352 proposes to empower the Central Government to frame rules for followings:—

(a) the offer of lndian Depository Receipts;

(b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian, and underwriters; and

(d) the manner of sale, transfer or transmission of Indian Depository Receipts.

Sub-clause (1) of clause 357 proposes to empower the Central Government to give directions, by notification in the Official Gazette that any of the provisions of the Bill shall not apply to any Government Company or shall apply to any Government Company with such exception, modification and adaptation as may be specified in the notification.

Sub-clause (1) of clause 358 proposes to empower the Central Government to establish such number of offices and at such places as it thinks fit specifying their jurisdiction for the purpose of registration of companies under this Act.

Sub-clause (2) of clause 358 proposes to empower the Central Government to prescribe power which shall be exercisable by Director General of Registration, Registrars, Additional, Joint, Deputy and Assistant Registrars.

Sub-clause (3) of clause 358 proposes to empower the Central Government to make rules in regard to prescribing the terms and conditions of service, including the salaries payable to persons appointed under this clause.

Sub-clause (4) of clause 358 proposes to empower the Central Government to direct preparation of seal or seals for authentication of documents required for, or connected with the registration of companies.

Clause 359 proposes to empower the Central Government to prescribe the manner of authentication of documents filed by company in electronic form, etc., for the purpose.

Item (a) of sub-clause (1) of clause 360 proposes to empower the Central Government to make rules of filing for various application, documents and returns, etc., in electronic form including the manner of their authentication.

Item (b) of sub-clause (1) of clause 360 proposes to empower the Central Government to make rules of service or delivery of any document, notice or communication, etc., in the electronic form and the manner of their authentication.

Item (c) of sub-clause (1) of clause 360 proposes to empower the Central Government to make rules for maintenance of various applications, documents and return filed with the Registrar in the electronic form and manner of their registration or authentication.

Item (d) of sub-clause (1) of clause 360 proposes to empower the Central Government to make rules regarding the manner of inspection of the various documents maintained in the electronic form.

Item (e) of sub-clause (1) of clause 360 proposes to empower the Central Government to make rules for payment of fees, charges or other sums payable through the electronic form.

Item (f) of sub-clause (1) of clause 360 proposes to empower the Central Government to make rules and the manner in which various registry functions shall be performed by Registrar in electronic form.

Sub-clause (2) of clause 360 proposes to empower the Central Government to frame, by notification, a scheme to carry out the provisions of sub-clause (1) of this clause.

Clause 362 proposes to empower the Central Government to provide value-added services through electronic form and levy fee thereon.

Sub-clause (1) of clause 364 proposes to empower the Central Government to prescribe fee and charges required to be paid on account of giving, filing, registering or recording of any document or fact under the provisions of this Act.

Proviso to sub-clause (1) of clause 364 proposes to empower the Central Government to prescribe the additional fee for documents to be submitted, filed, registered or recorded, on any fact or information required under this Act.

Sub-clause (1) of clause 366 proposes to empower the Central Government to issue an order requiring any company or companies to furnish information or statistics with regard to its or their or its constitution or working and time or to produce records or documents in its possession or allow inspection thereof by any officer or furnish such further information as that Government may consider necessary.

Sub-clause (2) of clause 367 proposes to empower the Central Government to give directions, by notification in the Official Gazette, that any of the provisions of the Act shall apply to any Nidhi or shall apply to any Nidhi with such exception, modification and adaptation as may be specified in the notification.

Clause 369 proposes to empower the Central Government to constitute by notification a Tribunal to be known as National Company Law Tribunal and appointment of Chairperson and judicial and technical member thereof.

Clause 371 proposes to empower the Central Government to constitute by notification an Appellate Tribunal to be known as National Company Law Appellate Tribunal and appointment of Chairperson and judicial and technical member thereof.

Clause 375 proposes to empower the Central Government to prescribe for salary, allowances and other terms and conditions payable to the Members of the Tribunal Appellate Tribunal.

Sub-clause (3) of clause 379 proposes to empower the Central Government to prescribe for salary, allowances and other terms and conditions payable to the officers/employees of the Tribunal/Appellate Tribunal.

Clause 380 proposes to empower the Central Government to prescribe the number of benches of NCLT.

Sub-clause (3) of clause 382 proposes to empower the Central Government to prescribe the form and fee for filing an appeal against the order of the Tribunal.

Item (h) of sub-clause (2) of clause 385 proposes to empower the Central Government to prescribe matters other than those specified in this sub-clause, in respect of which the Tribunal and Appellate Tribunal shall be the same powers as are vested in a civil court.

Sub-clause (1) of clause 396 proposes to empower the Central Government to specify the number of special courts to be established for the purpose of providing speedy trial of offences under this Act.

Sub-clause (1) of clause 413 proposes to empower the Central Government to prescribe the manner of imposing penalty by an officer not below the rank of Registrar.

Sub-clause (6) of clause 413 proposes to empower the Central Government to prescribe form, manner and fee for filing an appeal by the aggrieved person against the order made by adjudicating officer.

Sub-clause (1) of clause 414 proposes to empower the Central Government to prescribe manner for obtaining the status of a dormant company for such companies which are registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction or is an inactive company.

Sub-clause (2) of clause 414 proposes to empower the Central Government to prescribe form of certificate to be issued by Registrar allowing the status of a dormant company.

Sub-clause (3) of clause 414 proposes to empower the Central Government to prescribe form of register of dormant companies to be maintained by the Registrar.

Sub-clause (5) of clause 414 proposes to empower the Central Government to prescribe minimum number of directors, documents to be filed and annual fee to be paid to Registrar by

a dormant company to retain its dormant status and also empower the Central Government to prescribe form of application, documents and fee to be paid to Registrar for becoming an active company.

Sub-clause (2) of clause 418 proposes to empower the Central Government to prescribe fee for application to be made to the Central Government or to the Tribunal in respect of any approval, sanction, consent, confirmation or recognition and also in respect of any direction or exemption to be given or granted by the Government or the Tribunal.

Sub-clause (1) of clause 422 proposes to empower the Central Government to prescribe maximum number of persons for forming association or partnership unless it is registered under this Act or is formed under any other law for the time being in force.

Proviso 4 to sub-clause (2) of clause 424 proposes to empower the Central Government to prescribe the manner in which provident fund, superannuation fund, welfare fund or other fund for the benefit of the officer and other employees of the Company Law Board, who has become officers and employees of the Central Government shall be dealt with by it consequent upon dissolution of Company Law Board.

The matters in respect of which notification may be issued or rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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to consolidate and amend the law relating to companies.

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(Shri Salman Khurshid, Minister of Corporate Affairs)