

**57**

**STANDING COMMITTEE  
ON FINANCE  
(2011-2012)**

**FIFTEENTH LOK SABHA**

**MINISTRY OF CORPORATE AFFAIRS**

**THE COMPANIES BILL, 2011**

**FIFTY-SEVENTH REPORT**



सत्यमेव जयते

**LOK SABHA SECRETARIAT  
NEW DELHI**

*June, 2012 / Jyaistha, 1934 (Saka)*

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(2011-2012)

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MINISTRY OF CORPORATE AFFAIRS

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*Presented to Hon'ble Speaker on 26 June, 2012*



LOK SABHA SECRETARIAT  
NEW DELHI

*June, 2012 / Jyaistha, 1934 (Saka)*

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## CONTENTS

	PAGE No.
COMPOSITION OF THE COMMITTEE .....	(iii)
INTRODUCTION .....	(v)

### REPORT

#### PART I

I. Introduction.....	1
II. New Provisions introduced in Companies Bill, 2011 .....	9
III. Salient features of the Companies Bill, 2011 .....	15
IV. Suggestions on the Companies Bill, 2011 .....	19

#### PART II

Observations/Recommendations .....	114
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#### APPENDICES

I. Dissent note submitted by Shri Gurudas Dasgupta, MP ....	120
II. Minutes of the sittings of the Committee held on 24 January, 2012, 20 April, 2012, 18 May, 2012 and 7 June, 2012 .....	123
III. The Companies Bill, 2011 .....	131



COMPOSITION OF STANDING COMMITTEE ON FINANCE  
(2011-2012)

Shri Yashwant Sinha—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Shivkumar Udasi
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

*Rajya Sabha*

- \*22. Smt. Renuka Chowdhury
- \*23. Shri Ravi Shankar Prasad
- 24. Shri Vijay Jawaharlal Darda
- 25. Shri Piyush Goyal
- \*26. Shri P. Rajeeve
- 27. Shri Satish Chandra Misra
- \*28. Dr. Mahendra Prasad
- 29. Dr. K.V.P. Ramachandra Rao
- 30. Shri Yogendra P. Trivedi
- \*\*31. Shri Naresh Agrawal

SECRETARIAT

- 1. Shri A.K. Singh — *Joint Secretary*
- 2. Shri R.K. Jain — *Director*
- 3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

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\* Nominated to be the Member of the Standing Committee on Finance *w.e.f.* 4th May, 2012.

\*\* Nominated to be the Member of the Standing Committee on Finance *w.e.f.* 15th May, 2012.

## INTRODUCTION

1. I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fifty-seventh Report on the Companies Bill, 2011.

2. The Companies Bill, 2011 introduced in Lok Sabha on 14 December, 2011, was referred to the Committee on 5 January, 2012 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. The Standing Committee on Finance had earlier examined the Companies Bill, 2009 and presented report on the same in the Parliament on 31 August, 2010. Keeping in view the recommendations made by the Standing Committee, a revised Companies Bill, 2011 was prepared by the Ministry of Corporate Affairs. The Hon'ble Speaker referred the revised Bill to Parliamentary Standing Committee on Finance as certain new provisions were included in the Bill, which were not earlier referred to the Committee during the examination of Companies Bill, 2009.

3. The Committee obtained suggestion from organizations/experts as also written information on the aforesaid Bill from the Ministry of Corporate Affairs.

4. The Committee, at their sittings held on 24th January, 2012 and 20th April, 2012 took evidence of the representatives of the Ministry of Corporate Affairs.

5. The Committee, at their sittings held on 18 May, 2012 and 7 June, 2012 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Hon'ble Speaker/Parliament.

6. The Committee wish to express their thanks to the officials of the Ministry of Corporate Affairs for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

7. The Committee also wish to express their thanks to all the organizations and experts for their valuable suggestions on the Bill.

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

NEW DELHI;  
15 *June*, 2012  

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25 *Jyaistha*, 1934 (*Saka*)

YASHWANT SINHA,  
*Chairman,*  
*Standing Committee on Finance.*

# **REPORT**

## **PART I**

### **I. Introduction**

1.1 The Companies Act, 1956 had been enacted with the object to consolidate and amend the law relating to the companies and certain other associations. The said Act has been in force for about fifty-five years and had been amended 25 times. The number of companies has expanded from about 30,000 in 1956 to nearly 8 lakh companies functioning as on date. A number of changes have taken place during the last 2-3 decades in the national and international economic and regulatory environment. The Indian economy has also experienced substantial expansion and growth. The change in regulatory structure for corporate sector was also considered necessary to address issues relating to regulatory harmony, recognition of good corporate practices and technological improvements.

1.2 Keeping in view the above factors, the Central Government after due consultations and deliberations decided to repeal the Companies Act, 1956 and enact a new legislation to provide for new provisions to meet the changed national and international economic environment and accelerate the expansion and growth of our economy.

1.3 A Concept Paper on Company Law was placed on the Ministry's official website on August 4, 2004 for suggestions/comments by all interested stakeholders. A large number of comments, responses and suggestions were received. To examine these comments, suggestions and to advise the Central Government on various issues, the Government constituted an Expert Committee under the Chairmanship of Dr. J.J. Irani, Director, Tata Sons Ltd. 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.

1.4 The Committee submitted its report to the Government on 31st May, 2005. The Report of Dr. Irani Committee, in addition to publication on the website of the Ministry was also circulated to all Central Ministries/ Departments, Chief Secretaries of State Governments and various Chambers/Professional Institutes. Taking into account the principles enunciated in the Report of the Irani Committee and views, comments and suggestions received by the Ministry from various quarters, the Companies Bill, 2008 was prepared.

1.5 The Companies Bill, 2008 was introduced in the Lok Sabha, which was subsequently referred to the Parliamentary Standing Committee on Finance for examination and report. However, before the 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 was proposed to re-introduce the Companies Bill, 2008 as the Companies Bill, 2009, without any change except for the Bill year and the Republic year. The Companies Bill, 2009 accordingly, was introduced in the Lok Sabha on 3rd August, 2009.

1.6 After introduction, the Companies Bill, 2009 was referred to Parliamentary Standing Committee on Finance for examination and report. The Committee examined the same in detail in consultation with various stakeholders including the administrative Ministry and submitted a comprehensive Report to the Parliament on 31st August, 2010. Keeping in view the recommendations made by the Standing Committee, a revised Companies Bill, 2011 was prepared which was approved by the Cabinet on 24th November, 2011. This Bill was introduced in the Lok Sabha on 14th December, 2011. The Hon'ble Speaker referred the Bill to Parliamentary Standing Committee on Finance on 5th January, 2012 as certain new provisions were included in the Bill, which were not earlier referred to the Committee during the examination of Companies Bill, 2009.

1.7 According to the Ministry of Corporate Affairs, most of the recommendations made by the Committee in their earlier Report (21st Report) on the Companies Bill, 2009 have been accepted by the Government and incorporated in the Companies Bill, 2011. In a statement furnished to the Committee, they have submitted that out of 178 recommendations made by the Committee, 167 have been incorporated fully; six have been partially incorporated and in respect of five

recommendations, a different view has been taken as indicated in the statement given below:—

**Recommendations which have been partially accepted**

Sl. No.	Text of Recommendation	Clause in the Companies Bill, 2009	Clause in the Companies Bill, 2011	Comments
1	2	3	4	5
1.	<p>Definition of the term Key Managerial Personnel:</p> <p>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. [1.71]</p>	2(1) (zza):	2(51):	<p>The whole-time directors, in case of companies where managing directors or managers are there, do not exercise substantial powers of management and control a specific area of management (like Finance, Human Resource or Manufacturing/ Engineering etc). Hence it was felt that whole-time directors should not be recognized as KMPs. However, they may be prescribed as KMPs under new sub-clause 2(50)(iv) at a subsequent stage if considered appropriate.</p>
2.	<p>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</p>	24(3)	42	<p>The suggestion is partially accepted. Clause 42 is not meant for public offers. It seeks to provide for private placements. Hence, a period of sixty days has been provided for such cases.</p>

1	2	3	4	5
	<p>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 afore-mentioned 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. 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. [3.35]</p>			
3.	<p>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. Number of public companies to be restricted to 10 instead of 15.</p> <p>The proposed alternate clause, as reproduced below, may be reconsidered, keeping in view practical considerations:—</p> <p>‘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’.</p>	146	165	<p>The suggestion is partially accepted. The maximum number of public companies in which a person can be appointed as director has been restricted to 10.</p> <p>Other recommended modifications have been incorporated.</p>

1	2	3	4	5
	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. [11.72 to 11.74]			
4.	Every Company to have only one investment company. [12.90]	164	186(1)	The suggestion is partially accepted. Clause 186(1) modified to enable formation of Special Purpose Vehicles (SPVs).
5.	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	229 and 230	253 and 254	The suggestion is partially accepted. The issues pertaining to absence of sufficient discretionary powers with the Tribunal to decide on issues relating to the company and its stakeholders and undermining the interests of non-secured creditors have been agreed.



1	2	3	4	5
				up as and when necessary considered necessary as per directions of Tribunal, the provisions of joint meeting are not being considered necessary.

**Recommendations on which a different view has been taken by Ministry**

Sl. No.	Recommendation of the Committee (Para Number)	Clause in the Companies Bill, 2009	Clause in the Companies Bill, 2011	Comments
1	2	3	4	5
1.	Unlisted companies not to be mandated consolidation of financial statements. [9.17]	117(3)	129(3)	Intention of consolidation of financial statements is to give true and clear picture of financial position of the holding company and its all subsidiary companies to the investor and public at large. This would reflect the true strength of the entire group of companies.
2.	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. [10.12]	118/123	132/139	It is felt that maintenance of comprehensive list of audit firms may be best maintained by professional bodies like Institute of Chartered Accountants of India (ICAI).
3.	Cost Auditor should be appointed by Share holders in Annual General Meeting. [10.67]	131	148	Cost Audit is to be provided for only certain classes of companies. Since cost

1	2	3	4	5
				records and cost audit are tools for management for achieving more cost efficiency, it is considered that their appointment may be decided by the Board itself.
4.	To explore the feasibility of advisory Boards for bigger companies comprising of qualified persons/professional experts. [29]	132	149	The Bill already provides for various Committees like Audit Committee and Nomination and Remuneration Committee etc. and elaborates their duties. Therefore, a separate advisory Board is not considered to be necessary.
5.	Meeting to decide scheme of merger and amalgamation: If written consent is received from the requisite number of members or creditors, the requirement to hold a meeting could be dispensed with. [15.16]	201	230	Meeting should be held so that the information about the merger, amalgamation should be there in the knowledge of the members.

1.8 On being asked about these new provisions introduced in the Bill, the Ministry, while referring to the general recommendation of the Committee in their earlier Report on the subject, have submitted as below:—

Para 21 (Part-I) of 21st Report

“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.

- (ii) Most of the changes proposed in the Bill after submission of the report of the Committee seek to achieve the aim set out in the above paragraph and strengthen corporate governance.

The main consideration for introducing these provisions was to avoid possibility of initiating a process of amendments soon after enactment of the new Companies Act.”

## II. New Provisions introduced in Companies Bill, 2011

2.1 While incorporating the several recommendations of the Committee, as also some of the suggestions/representations received subsequent to submission of report of Committee, the provisions of the Companies Bill, 2009 were revised and a fresh Bill was formulated as Companies Bill, 2011 and introduced in Parliament. A statement indicating the changes made and the new provisions introduced has been submitted by the Ministry as below:—

Sl. No.	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
1	2	3	4	5
1.	2(1) (zzp)	2(68)	Definition of 'private company' —Maximum number of members to be increased from 50 to 200.	To allow setting up of private companies with more number of members.
2.	—	New Clause 29	Dematerialization of securities:— Mandatory for listed and such class of companies as may be prescribed; — Optional for other companies	Change is of procedural nature and seeks to synchronize the provisions of the Bill with the provisions of Depositories Act and SEBI Act. (Depositories Act enables dematerialization for all kinds of securities and SEBI Regulations make it mandatory for all public offers to be in dematerialized form.)  Would result in good corporate governance since frauds related to loss of/duplicate securities certificates would not happen. Further it would also be more convenient for investors since there would not be need to

1	2	3	4	5
				exercise safeguards relating to physical share certificates.
3.	24(2)	42	Modifications in clause relating to private placement.	To prevent misuse of existing provisions on the matter, to protect interest of investors and to synchronize the provisions with SEBI regulations/norms.
4.	52	New sub-clause (2) of clause 58	While making securities of public companies to be freely transferable, shareholders contracts/agreements also made enforceable.	To recognize Shareholders Agreements/Contracts as per commercial practices.
5.	112	125	Transfer of securities in respect of unclaimed dividend beyond 7 years to be also transferred to IEPF.	It was felt that since dividend for relevant securities has been unclaimed for seven years or more, the underlying securities may be mis-used by vested parties and these should also be allowed to be transferred to IEPF. The rightful claimants can claim them back from IEPF through provisions in rules.
6.	—	New Clauses 130 and 131	Re-opening of accounts by companies after obtaining approval of Tribunal.	<p>The change proposes to provide procedural requirement in respect of revision in accounts in certain cases. The present law is silent in respect of re-opening or re-casting of accounts. In certain cases, particularly, in cases relating to fraud, there may be need to re-open/re-cast accounts to reflect true and fair accounts. In case of Satyam case, such recasting was ordered by Court.</p> <p>The provisions in the Bill mandate such re-opening on the order of Court or Tribunal. In other cases the re-opening is being permitted, through order of Tribunal, with adequate safeguards.</p>

1	2	3	4	5
7.	—	New Clause 135	Corporate Social Responsibility (CSR)	CSR provisions have been included in accordance with recommendations made by Hon'ble Committee. Additionally, it is being proposed that companies covered under such provisions shall constitute a CSR Committee of Board and the Board of such a company shall be required to make every endeavour to spend 2% amount as provided in clause. An indicative Schedule of CSR activities has also been appended to the Bill. The Schedule empowers the Central Government to prescribe new CSR activities by amending the Schedule as and when such a need arises.
8.	123	139	Procedure with regard to appointment of auditors:— Instead of year to year basis it can be appointment by members in general meeting for five years.	The procedure has been proposed to be modified in respect of appointment of auditors. It is proposed that shareholders may have the power to appoint auditors for straight five years, instead of on year to year basis. This would ensure that promoter/company/management does not change auditor who is doing good job pre-maturely. Auditor's early resignation and removal have been made possible. Approval of Central Government provided in case an auditor is removed before his tenure.
9.	126	143(12) to 143 (15)	Provisions proposed for statutory duties on Auditors (and other professionals) to report fraud to Central Govt.	Keeping in view the Satyam experience it was felt that such auditors/professionals should be under obligation to report fraud to Central Govt.
10.	132	New 149(1) 2nd proviso	Woman Director	Appointment of at least one Woman director has been proposed to be mandated in such class of companies as may be prescribed. The class

1	2	3	4	5
				shall be prescribed through rules. This is likely to be in line with the policy of the Government for encouraging more and more women participation in decision making at various levels.
11.	—	New 151	Small Shareholders' elected Director — Listed companies allowed to have one Director to be elected by small/minority shareholders.	Companies Act, 1956 has this provision but Companies Bill, 2009 did not include these provisions. These have been proposed to be included in the new Bill.
12.	204	New sub-clause (10) to clause 233	A transferee (holding) company not to hold shares in its own name consequent upon merger of a subsidiary with a holding company.	Necessary for good corporate governance and to prevent market manipulation by companies by indulging in trading in their own shares.
13.	204/336	233/361	Enhanced coverage/scope for summary merger and summary liquidation.	This has been proposed to ensure that the Bill is flexible and takes care of future anticipated problems for the corporate sector.
14.	216	245	Class action to be allowed on the applications of members or depositors only.	It has been felt that since creditors can enforce their claims through contracts/agreements with borrower companies, they may not be given statutory right for class action. On the other hand since depositors do not have any contractual rights and are mainly of unsecured nature, they are being proposed to be empowered with right to file class action petitions before Tribunal.
15.	301	326(1) (proviso) and 326(2)	Wages/Salaries payable to workmen for a period of 2 years protected in case of winding up of the company.	Such payments have been proposed to have overriding effect over all other claims, including those of secured creditors. This is being considered essential to protect interests of workmen in case of winding up of companies.

1	2	3	4	5
16.	—	New Clauses 366 read with 374	Enabling provisions for allowing conversion of various entities (like societies, cooperative societies, firms and LLPs) into companies.	<p>Under the existing Act, mainly partnership firms are being allowed to be converted into companies subject to certain safeguards and the satisfaction of the Registrar of Companies.</p> <p>Keeping in view the fact that LLP Act, 2008 has been in force since 2009 and various other entities like societies, cooperative societies may also have need commercial freedom for conversion into corporate form, the enabling provisions (on the lines of provisions in the existing Act) have been proposed for conversion of such entities into companies as well, subject to adequate safeguards.</p>
17.	370(3)  373(2)	409(3) (a)  412(2) (e)	<p>NCLT provisions:—</p> <p>ICLS officers of JS rank proposed to become Technical Members in certain cases</p> <p>Selection Committee to also have Secretary, D/o Financial Services as Member</p>	<p>The provisions in respect of NCLT and NCLAT have been revised in view of Order of Hon'ble Supreme Court in the NCLT matter. Minor variation on these two issues have been proposed to ensure that</p> <p>(i) genuine experienced candidates (<i>i.e.</i> ICLS/ILS Officers having 15 years experience with at least 3 years in the rank of JS or above) are allowed to become Technical Members.</p> <p>(ii) Secretary, DFS has been proposed as Member in Selection Committee to ensure that candidates with adequate experience with reference to SICA cases are selected.</p>
18.	—	New Clause 442	Conciliation and Mediation Panel	To enable voluntary arbitration by parties and to expedite decision on applications/petitions filed under new Bill for approval.
19.	357, 367(2), 421	462	Exemption from provisions of the new legislation.	Presently, the Act/Companies Bill allows Central Government to modify provisions of

1	2	3	4	5
				<p>the law for class of companies <i>e.g.</i> Government Companies, Producer Companies, Nidhi Companies and in respect of e-governance initiatives.</p> <p>It is proposed to empower Central Government to have power, in public interest, to exempt/modify provisions of the Act for a class or classes of companies. Draft notification shall be laid in draft form in both the Houses of Parliament and shall be effective only after both the Houses approve it.</p>
20.	—	New Clause 463	Power of Court to grant relief in certain cases.	Section 633 of existing Companies Act, 1956 was not included in the Companies Bill, 2009 and is now proposed to be included.
21.	424	466	Provisions regarding continuation of President/Members of CLB with Tribunal.	Existing Members/Employees of CLB to be retained in NCLT if they qualify norms under new Bill. This has been proposed to ensure continuity in the functioning of the body.
22.	174(5)	196(4)	Modification to be made in the requirement for passing of Special resolution before appointment of managing director, whole-time director or manager.	The clause 196(4) of the Companies Bill, 2011 presently provides for passing of special resolution, on the lines of similar provisions provided in clause 174(5) of the Companies Bill, 2009. However in view of the recommendation made by Hon'ble Committee to review the provisions in respect of appointment/remuneration of managerial personnel keeping in view the provisions of Companies Act, 1956 it is felt that requirement of passing of special resolution may be modified to passing of ordinary resolution as provided in the existing Act.

### **III. Salient features of the Companies Bill, 2011**

3.1 The following are the salient features of the Companies Bill, 2011:—

- (i) E-Governance:— Maintenance and allowing inspection of documents by companies in electronic form being allowed for the first time.
- (ii) Concept of Corporate Social Responsibility is being introduced.
- (iii) Enhanced Accountability on the part of Companies:
  - (a) In addition to the concept of Independent Directors (IDs) introduced, the provisions in respect of their tenure and liability, etc., have been provided. Code for IDs provided in a new Schedule to the Bill. Databank for IDs proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of IDs.
  - (b) Corporate Social Responsibility (CSR) Committee of the Board proposed in addition to other Committees of the Board *viz.* Audit Committee, Nomination and Remuneration and Stakeholders Relationship Committee. These committees shall have IDs/non-executive directors to bring more independence in Board functioning and for protection of interests of minority shareholders.
  - (c) Definition of “promoter” also included along with his liability in certain cases.
  - (d) Provisions in respect of vigil mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices.
  - (e) The Central Government has been empowered to prescribe restrictions in respect of layers of subsidiaries for any class or classes of companies.
  - (f) New provisions suggested for allowing re-opening of accounts in certain cases with due safeguards.

- (iv) Additional Disclosure Norms:
  - (a) New disclosures like development and implementation of risk management policy, Corporate Social Responsibility Policy, manner of formal evaluation of performance of Board of Directors and individual directors included in the Board report in addition to disclosures proposed in such report in the Companies Bill, 2009.
  - (b) Consolidation of accounts: Accounts of Foreign subsidiaries to be attached for filing them with the Registrar. Subsidiary to include “associate” and “joint venture” for the purpose of consolidation.
  - (c) Every listed company required to file a return with the Registrar regarding change in the shareholding position of promoters and top ten shareholders of such company.
- (v) Facilitating raising of capital by companies:
  - (a) Provisions for offer or invitation for subscription of securities on private placement basis revised to ensure more transparency and accountability.
  - (b) Companies being allowed to issue equity shares with differential voting rights.
  - (c) Central Government empowered to prescribe, through rules, the requirements in connection with provision for money made by a company for allowing purchase of company’s shares by its employees under a scheme for their benefit. Disclosure to be made in the Board’s report in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates.
- (vi) Audit Accountability
  - (a) Rotation of auditors and audit firms being provided for.
  - (b) Stricter and more accountable role for auditor being retained. Provisions relating to prohibiting auditor from performing non-audit services revised to ensure

independence and accountability of auditor. Subject to the maximum prescribed number of companies, the members of a company may resolve that the auditor or audit firm of such company shall not become auditor in companies beyond the number as may be specified in such resolution.

- (c) National Advisory Committee on Accounting and Auditing Standards (NACAAS) proposed to be renamed as National Financial Reporting Authority (NFRA) with a mandate to ensure monitoring and compliance of accounting and auditing standards and to oversee quality of service of professionals associated with compliance.

The Authority shall consider the International Financial Reporting Standards and other internationally accepted accounting and auditing policies and standards while making recommendations on such matters to the Central Government which will improve the competitiveness of our companies with other companies. The Authority is also proposed to be empowered with *quasi judicial* powers to ensure independent oversight over professionals.

- (d) Cost Audit: Cost records to be mandated for companies engaged in production of such goods or rendering of such services as may be prescribed. The concept of “cost auditing standards” being mandated.
- (e) Secretariat Audit: Prescribed class of companies would need to attach with the Board’s Report, a Secretarial Audit Report given by a company secretary in practice.

(vii) Managerial Remuneration

- (a) Provisions relating to limits on remuneration provided in the existing Act (11% of net profits) included.
- (b) For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration annexed to the Bill and in case a company is not able to comply with such Schedule, approval of Central Government would be necessary. Individual limits for remuneration enhanced in the Bill *vis-à-vis* the existing limits. Concept of

payment of periodic fees which shall include sitting fees to directors being included in the Bill.

- (c) Independent Directors (IDs) not to get stock option: IDs not to get stock option but may get payment of fees and profit linked commission subject to limits specified in the Bill/rules. Central Government may prescribe amount of fees under the rules.

(viii) Facilitating Mergers/Acquisitions

Simplified procedure (through confirmation by the Central Government), laid down for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiary(ies), between two or more small companies and for such other class or classes of companies as may be prescribed. This would result into faster decisions on approvals for mergers and amalgamations resulting effective restructuring in companies and growth in the economy. For other companies, such matters would be approved by Tribunal.

(ix) Protection for Minority Shareholders:

- (a) Exit option to shareholders in case of dissent to change in object for which public issue was made.
- (b) Specific disclosure regarding effect of merger on creditors, key managerial personnel, promoters and non-promoter shareholders is being provided. The Tribunal is being empowered to provide for exit offer to dissenting shareholders in case of compromise or arrangement.
- (c) The Board may have a director representing small shareholders who may be elected in such manner as may be prescribed by rules.

(x) Investor Protection:

- (a) Acceptance of deposits from public subject to a more stringent regime.
- (b) Central Government to have power to prescribe class or classes of companies which shall not be permitted to allow use of proxies. The Bill also to have provisions

to provide that a person shall have proxies for such number of members/such shares as may be prescribed.

- (c) Provisions for Class Action Suits revised to provide minimum number of persons who may apply for such suits. Safeguards against misuse of these provisions also being included.
- (xi) Serious Fraud Investigation Office (SFIO): Statutory status to SFIO proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill. Definition of 'Fraud' provided. Stringent penalty provided for fraud related offences.
- (xii) Woman Director: At least one woman director being made mandatory in the prescribed class or classes of companies.
- (xiii) National Company Law Tribunal (Tribunal): Keeping in view the Supreme Court's judgment, on the 11th May, 2010 on the composition and constitution of the Tribunal, modifications relating to qualification and experience, etc., of the members of the Tribunal have been made. Appeals from Tribunal shall lie to National Company Law Appellate Tribunal.
- (xiv) Mediation and Conciliation Panel: It is proposed to create and maintain as "Mediation and Conciliation Panel" for facilitating mediation and conciliation between parties during any proceeding under the proposed Legislation before the Central Government or Tribunal.
- (xv) Central Government to have power to exempt/modify provisions of the Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of thirty days.

#### **IV. Suggestions on the Companies Bill, 2011**

4.1 A large number of suggestions were received by the Committee in response to the Press Communiqué dated 5 February, 2012. Many of these suggestions broadly related to recommendations of the Committee

made in their earlier Report, which have been accepted by the Ministry, as indicated in the Statement given below:—

Sl. No.	Clause/ title/Issue	Suggestion	Comments of Ministry
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1.	2 (6): Associate Company 2(27): Control 2(76) Related party 2(87) subsidiary company	It is suggested that the definitions of the terms 'associate company', 'control', 'related party' and 'subsidiary company' included under the Bill should be consistent with the Accounting Standards.	(i) These issues were also considered by Hon'ble Committee during examination of the Companies Bill, 2009. Kind attention is drawn to recommendations at Para 58, 59, 1.44, 1.112 and 1.122 of report of Hon'ble Committee. The provisions on these issues in the new Bill are based on such recommendations.  (ii) The provisions of the Bill, on enactment, shall have precedence over accounting standards. Hence on such enactment, the accounting standards would be modified to bring them in line with the legislation.
2(i).	2(40): financial statement	Clause 2(40) defines 'financial statement' whereas IFRS and Indian Accounting Standards (Ind AS) use the term 'general purpose financial statements'. These statements are those intended to meet the needs of users who are not in a position to require an entity to prepare reports tailored to their particular information needs and thus the term 'General purpose financial statements' may be used. In the definition, it may be desirable to add that GPFS includes consolidated financial statement wherever applicable.	(i) The term 'financial statement' was used in the Companies Bill, 2009 [in clause 2(1)(zp)], which was examined by Hon'ble Committee. The Committee did not make any recommendation to modify the nomenclature of the term.  (ii) The suggestion to replace 'financial statement' with 'general purpose financial statement' can be adequately covered through proviso to clause 129(1) of the Bill which provides that items contained in financial statements shall be in accordance with the definitions of such items

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			provided in the Accounting Standards. Even under the existing regulatory framework the term 'general purpose financial statements' has been defined under the Companies (Accounting Standards) Rules, 2006 through which accounting standards have been prescribed for compliance by companies.
2(ii)	2(40): Financial statement	The phrase 'if applicable' needs to be added in clause 2(40) (iv) and accordingly the clause should read as..... "a statement of changes in equity, if applicable;...."	The suggestion is of a drafting nature and may be considered.
3.	2(41): Financial Year	(i) Flexibility provided to companies to determine a financial year under section 2(17) of the existing Act may be retained. The choice may be driven by various factors other than just a holding or subsidiary company being located outside India.  (ii) Alternatively, Tribunal while granting the permission under the proviso should take cognizance of the requirements of AS 21: Consolidated Financial Statements.	(i) Similar suggestion was made to Hon'ble Committee by a few stakeholders during examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 1.58 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (ii) The Tribunal, being a <i>quasi judicial</i> body, is empowered to consider all legal and accounting aspects before granting approvals and, therefore, insertion of an explicit clause to that effect may not be necessary.
4.	2(43): Free Reserves	Words 'unrealized gain' and 'notional gains' be deleted. The objective of ensuring that mere revaluation does not give rise to 'free reserves' will still be achieved by the definition which will exclude reserves arising from 'revaluation'.	The reference to such words is necessary to match the provisions with requirements under International Financial Reporting Standards (IFRSs).

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5.	2(52): Listed company	The definition may be amended to read as “means a company which has its equity shares listed on any recognized stock exchange.”	The definition contained in the Companies Act, 1956 [section 2(23A)] has been practically retained; it has thus withstood the test of time as its operation has not caused any difficulty. It is, therefore, felt that it may be retained.
6.	2(54) Managing Director -	It may be clarified that the MD shall exercise his powers subject to the superintendence, control and direction of the Board of directors.’	(i) Kind attention is drawn to recommendation at Para 1.69(c) and 1.71 of report of Hon’ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.  (ii) Further, the fact that MD shall exercise his powers subject to the superintendence, control and direction of the Board of directors is now such an implicit part of the Company Law that no doubt exists on the subject. Hence there may not be any necessity of any change in the clause.
7(i)	2(60)(iv) Officer who is in default	The person charged with the responsibility should have given consent.	The provisions of clause 2(60)(iv) correspond to clause 2(1)(zzi)(iv) of the Companies Bill, 2009 without any change. On this issue no recommendation was made by Hon’ble Committee. Further, it is felt that bringing in the element of ‘consent’ will provide a loophole to enable many persons in serious default to escape their liability. It is, therefore felt that the definition may be left as it is.
7(ii)	2(60)(vi) Officer who is in default	This clause states that merely by receipt by a director of proceedings of a board meeting would make	(i) Kind attention is drawn to the relevant sub-clause 2(60)(vi) included in the definition of the term ‘officer

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		<p>a director officer in default. This provision is quite draconian and would prevent credible people getting onto company boards. Hence, should be rectified.</p>	<p>who in default':—</p> <p>*****.</p> <p>(vi) <i>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;</i></p> <p>(ii) It can be observed that above provisions do not make a director an 'officer in default' only/merely on receipt of proceeding of Board meeting. The provisions would apply when the concerned director was aware of any contravention (through receipt of board proceedings) and who does not object to the same or if the contravention had taken place with his consent or connivance.</p> <p>(iii) The clause is well drafted and has also been appreciated in context of immunity for a director who either was genuinely unaware about any contravention or who did not consent or connived for any such contravention. The provisions may be retained as proposed in the Bill.</p>
8(i)	2 (69): Promoter	A clarification be added to the effect that this definition will not affect definition of the term 'promoter' under	Similar suggestion made during examination of Companies Bill, 2009 was considered by the Hon'ble

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		SEBI Regulations.	Committee. Kind attention is drawn to recommendation at Para 1.95 to 1.98 of report of Hon'ble Committee. The provisions proposed in the new Bill are in line with such recommendation. Hence, there may not be any necessity of any change in the clause.
8(ii)	2(69)(b) read with proviso: Promoter	In the proviso reference to sub-clause (b) is erroneous since it gives rise to a meaning that if a person is acting in a professional capacity he can still have control over the affairs of the company, directly or indirectly, whether as a shareholder, director, or otherwise and such a person would not be a promoter. This is a very easy gateway and would not be justified in public interest.	The suggestion which is of a drafting nature may be considered.
9(i)	2(76): Related party	Clause 2(76)(vii) is very wide as influence over a single director is not enough to affect decisions of the company. The reference to a "director" should be replaced by reference to "Board of directors" or to "majority of the Board of directors".	<p>(i) The phrase 'any person on whose advice, directions or instructions a director or manager is accustomed to act' is used in Company Law for 'shadow director'. Such phrase also appears in the term 'officer in default'. Inclusion of such a person within the definition of 'related party' is necessary to prevent diversion of funds.</p> <p>(ii) Further, the provisions of clause 2(76)(vii) correspond to clause 2(1)(zzy)(vi) of the Companies Bill, 2009 without any change. Since no recommendation was made by Hon'ble Committee on this issue, the provisions may be retained without any change.</p>

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9(ii)	2(76):	<p>The Committee had recommended the inclusion of Director and Key Managerial personnel in the definition of “related party”. While this suggestion has been incorporated, it has not been suitably done across the definition in all the relevant places. Clause 2(76) (iii), (iv), (v), (vi) and (vii) should also include Key Managerial Personnel (KMPs) along with director.</p>	<p>Kind attention is drawn to recommendation at Para 1.112 of report of Hon’ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence, there may not be any necessity of any change in the clause.</p>
10.	2(77): Relative	<p>(i) List of relatives that fall within the definition of ‘Hindu Undivided Family’ (HUF) should be specified in the Bill.</p> <p>(ii) List of the relatives to be prescribed should be consistent with the definition of the relative given in SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, viz:</p> <p>“Immediate Relative: means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.”</p> <p>(iii) Item (iii) of clause 2(77) empowers Central Government to prescribe relatives through rules. Suitable provisions to be included in the Bill itself instead of under rules.</p> <p>(iv) Definition of Relative to be amended to include only spouse, dependent children and dependent parents staying connected with concerned individual.</p>	<p>(i) to (iv): (a) Kind attention is drawn to recommendation at Para 1.117 of report of Hon’ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.</p> <p>(b) Further, the term ‘HUF’ has been used in section 6 of existing Act as well without any further elaboration as the term HUF is a well known term.</p> <p>(c) Hence, there may not be any necessity of any change in the clause.</p>

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11.	2(78): 'remune- ration'	In the definition of term 'remuneration', stock option given to directors/employees would be covered. It is suggested that 'Stock options' should not be covered.	These provisions are exactly the same as included in clause 2(1)(zzza) of the Companies Bill, 2009. The Hon'ble Committee did not make any recommendation to modify this provision. The clause may, therefore, be retained as proposed.
12.	2(85): Small Company	<p>(i) Instead of keeping a low threshold and then increasing the same from time to time till figure reaches Rs. 5 crore, it would be better that the limit of Rs. 50 lakh be substituted by Rs. 5 crore. Change in limits from time to time cause hardships for those who are transitioning.</p> <p>(ii) The definition of 'small and medium company' under Companies (Accounting Standards) Rules, 2006, can be used to provide the limited number of benefits extended to the small companies in the Bill.</p>	<p>(i) Kind attention is drawn to recommendation at Para 18-20 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.</p> <p>(ii) The objective behind inclusion of the term 'small company' in the Companies Bill, 2011 is different from the definition of 'small and medium company' under accounting standards. Hence, there may not be any necessity of change in the definition proposed in the Bill.</p>
13.	2(87)(ii): Subsidiary Company	The words 'total share capital' would mean both equity and preference, so, it should be rectified to mean only equity share capital as preference share capital represents non-voting shares.	It is a fact that the term 'total share capital' represents the aggregate of equity and preference shares. In other words, it is possible to envisage a situation where part of the 'total share capital' will not represent voting rights. While this is an innovative measure taken on account of experience gained from some recent cases involving the instrumentalities of subsidiaries as a means of transactions which the parent company was prohibited from undertaking by reasons of

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			ineligibility. The committee may take a final view on the matter.
14.	2(89): Total voting power	The words 'all other persons' appearing in the existing definition have been left out. The words 'all other persons' would mean proxy(ies) whose presence in the meeting should also be taken into account. Hence clause may be modified.	The suggestion which is of a drafting nature may be considered.
15.	Formation of companies: Number of Members	The number of members for wholly owned subsidiaries of companies may be kept at one ( <i>i.e.</i> , the holding company), regardless of whether the holding company is a private or public company. Such subsidiaries could be treated as private or public companies, depending on whether the parent is a private or public company as well as the Articles of Association of the subsidiary company. The requirement of having nominee shareholders to make up the minimum number of members may be avoided.	Kind attention is drawn to provisions of clause 187(1) proviso which is similar to clause 165(1) proviso of the Companies Bill, 2009. The suggestion made is already taken care of under such provisions. Hence, there may not be any necessity of any change in the clause.
16.	3(1) first proviso: nomination by sole member	Nomination should also cover situations where sole member becomes of unsound mind or is otherwise unable to contract.	The suggestion may be accepted.
17.	3: Formation of companies: One Person Company (OPC)	Words 'one person company' appears 48 times under various provisions. There should be a separate chapter for OPC which would be helpful for small entrepreneurs.	Similar suggestion was made by stakeholders to Hon'ble Committee during examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 53 of report of Hon'ble Committee. The provisions proposed in clause 462 in the new Bill [Power to exempt class or

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			<p>classes of companies from the provisions of this Act] are in accordance with such recommendation. Hence, there may not be any necessity of any change in the clause and in any case introduction of a separate chapter is not justified as conditions/exemptions/special requirements for OPCs have been provided in the relevant provisions (about 15 clauses) itself for their easy reference.</p>
18.	13(8): Exit offer to minority shareholders	<p>(i) A threshold on the unutilised amount should be fixed. In other words, where minimal amount is unutilised, alteration should be allowed.</p> <p>(ii) This is welcome, however, undue powers to shareholders would lead to unnecessary hardships and hence there is need for balancing.</p>	<p>(i) and (ii):— The provisions of clause 13(8) aim to protect interests of minority shareholders and need to be retained as proposed. Any further safeguards/balancing may be considered by SEBI under regulations to be framed under this clause.</p>
19.	26: Matters to be stated in Prospectus	<p>(i) To the extent possible, the Bill should minimize regulation of capital issuances to the public as these are separately governed by detailed regulations laid down by the SEBI. This will avoid regulatory overlap and confusion. However, the Act should still set out guidance for SEBI to draft detailed regulations.</p> <p>(ii) SEBI be given authority under clause 26 to elaborate on, clarify and, if appropriate, exempt companies from requirements of clause 26.</p>	<p>(i) and (ii):— Kind attention is drawn to recommendation at Para 33, 3.10 to 3.27 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Fulllest liberty is given to the SEBI to exercise jurisdiction in all matters connected with issue of capital. SEBI is now satisfied with the provisions in the Bill which have a bearing on its functioning. Hence, there may not be any necessity of any change in the clause.</p>

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20.	26(1)(a)(xi)(E)	Clause 26(1)(a)(xi)(E) may be amended to restrict disclosure to pending litigation or legal action and past cases where penalties have been imposed by concerned authorities.	Kind attention is drawn to recommendation at Para 3.15 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence, there may not be any necessity of any change in the clause.
21.	26(7)	The clause be restricted to persons named as auditors, legal advisors, attorneys, solicitors, bankers or brokers, similar to section 60 of the Act.	These provisions are same as included in clause 23(5) of the Companies Bill, 2009. The Hon'ble Committee did not make any recommendation to modify these provisions. The clause may, therefore, be retained as proposed.
22.	28(1): Offer for Sale of shares by certain members of a company	Language should be amended to include sale of whole of any members' shareholding and the clause should read "to offer whole or part of their holding of shares to the public".	The suggestion may be accepted.
23.	32(4): Red Herring Prospectus	Words 'closing price of securities' appearing in clause: As the securities are not listed on the date the prospectus is filed with ROC and SEBI, the language should be changed to 'issue price of securities'.	(i) The words 'closing price of securities' have been used in the existing Act as well as in the Companies Bill, 2009.  (ii) However, the change is of drafting nature and may be considered for addressing through legislative vetting.
24(i)	35: Civil liability for mis-statements in prospectus	(i) Sections 62(2)(c); 62(2)(d) and 62(3)(c) of the Companies Act, 1956 be included in the Bill as these exceptions are relevant in relation to the extent of liability.  (ii) Secondly, though directors are liable for the overall management and operations of a company, each person should be liable to the extent of his/her	(i) to (iii):— Kind attention is drawn to provisions of clause 30 of the Companies Bill, 2009. The provisions proposed in clause 35 of the new Bill are similar to such provisions. The relevant exceptions have already been provided in clause 35(2). Hence there may not be any necessity of any change in the clause.

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		<p>responsibilities in relation to the disclosures made in a prospectus issued by a company. If a mis-statement in a prospectus has been made by an expert who had provided such information as part of his/her expert report and if the company and its directors had reasonable ground to believe that such statement was true, the company and the directors should not be liable for the mis-statement made by the expert. The expert should be made liable for such mis-statement in the prospectus. We suggest inclusion of a provision to this effect.</p> <p>(iii) Protection to director may be restored and liability should be affixed only if the person as accorded his consent to his directorship and the impugned contents of the prospectus.</p>	
24(ii)	35: Civil liability for mistakes in prospectus	Inclusion of auditors in these clauses is not appropriate where the auditor is not party to any fraudulent activity relating to the issue. The auditor should be liable only in relation to the work performed by it or for fraudulent act committed with his knowledge or consent.	The clause is similar to clause 30 of the Companies Bill, 2009. There is no direct reference of auditor in the clause. The auditor shall be liable if he is covered as an expert (alongwith other experts) referred to in the provisions. There may not be any necessity of modification of this clause.
25.	43/47: Exemptions to Private Company regarding issue of types of shares	Similar to section 90 of the existing Act, a savings provision may be introduced exempting a private company from the restrictions imposed as regards types of share capital and voting to provide flexibility to private	Section 90 of existing Act was not considered even in the Companies Bill, 2009 since it was felt that exemptions to class of companies (including private companies) can be given through notifications after due deliberations with

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		companies in these matters.	concerned stakeholders and through laying in draft form in the Parliament. Clause 462 provides for such powers/ procedure. It is submitted that this approach is more conducive to deal with all possible eventualities.
26.	52: Securities Premium Account	<p>(i) Securities Premium account allowed to be used for bonus shares and writing off expenses/commission allowed on issue of equity shares by certain class of companies: The right may be extended to all class of companies.</p> <p>(ii) Since IFRS does not permit adjustment of preliminary expenses and also premium payable on redemption of preference shares/debentures against share premium account, clause 52(3) should capture items (b) and (d) as against (a), (c) and (e) of clause 52(2).</p>	<p>(i) and (ii): (a) Kind attention is drawn to recommendation at Para 42 and 4.16 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.</p> <p>(b) Provisions of clause 52(2) and 52(3) may be seen together which would clarify the intention. The intention is to provide flexibility to companies and distinguish companies which are required to follow IFRS converged standards and companies which are to follow Indian non-converged standards.</p> <p>(c) Since, these provisions are in accordance with the IFRS requirements, there may not be any necessity of any change in the clause.</p>
27.	53: Issue of shares at discount	A company may be permitted to issue shares at discount subject to ordinary resolution and approval of Tribunal reflecting the position under section 79 of existing Act.	These provisions are similar to clause 47 of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill.
28.	55: Redemption of Preference shares	As regards preference shares that are redeemable after 20 years a provision may be made to grant dividend on	(i) Kind attention is drawn to recommendation at Para 4.19 to 4.21 of report of Hon'ble Committee. The

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		such preference shares at a specific percentage or by linking to a market benchmark.	provisions proposed in the new Bill are in accordance with such recommendation. Moreover, clause 55(2) <i>proviso</i> is not restricting payment of any such dividend. (ii) Hence, there may not be any necessity of any change in the clause.
29.	59: Rectification of Register of Members	Clause 59(4) should be suitably modified to prescribe a time limit of 'two months from the date of transfer of the shares or debentures held by a depository or from the date on which instrument of transfer or intimation of transmission was delivered to the company' in line with section 111A of existing Act.	These provisions are similar to clause 50(7) of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. In view of the procedural nature of the present suggestion the provision may, therefore, be retained as proposed in the Bill.
30.	62: Further Issue of share capital	(i) A blanket restriction under clause 62(1) on all further issues by a company may affect the business and operations of a company and the restriction as under the Act may be retained. Since Clause 62 of the Bill is made applicable to a private company as well (while Section 81 of the Act excluded its applicability to a private company), a private company may continue to be exempted from complying with the provisions of the Clause.  (ii) An exception should be created, whereby a company should be permitted to make a preferential allotment to its existing shareholders without being subject to conditions specified under Clause 62 of the Bill. Furthermore, the exclusion of applicability of the Clause in the event of	(i) These provisions are similar to clause 56(1) of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill.  (ii) Making preferential allotment without following provisions of clause 62 may not be proper as this may result in offering of shares to selected (existing) shareholders without obtaining requisite approvals from Board/shareholders provided under clause 62.

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		<p>allotment of shares under an underwriting agreement may be expressly stated.</p> <p>(iii) ESOP:— An employee stock option scheme may be adopted by ordinary resolution at the general meeting without any additional conditions other than as specified in the resolution. Provision may be made to ensure that as regards issue to non-residents, the pricing guidelines are to be complied with.</p>	<p>Hence the suggestion may not be accepted.</p> <p>(iii) Kind attention is drawn to recommendation at Paras 4.30(iii) and 4.32 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.</p>
31.	66(3) Proviso: Reduction of share capital	Certificate about compliance with accounting standards to be filed by company's auditor with Tribunal: A specified time period may be prescribed within which such a certificate by the auditor is required to be filed.	<p>(i) Kind attention is drawn to recommendation at Paras 4.37 and 4.38 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.</p> <p>(ii) Detailed requirements in connection with making of application/petition and relevant time limits can be specified under the rules for uniformity. Hence there may not be any necessity of any change in the clause.</p>
32.	67: Restrictions on loan for purchase of shares	Clause may be modified to provide specific exemption as regards leveraged buy outs.	Similar suggestion made during examination of Companies Bill, 2009 was evidently not considered by the Hon'ble Committee. Leveraged buy outs take place either contractually or through approvals of scheme of compromise/arrangements by Courts (Tribunal once new Bill comes) and need not be referred to in statute specifically.
33.	70: Buy back	The term 'term loan' used in clause 70(1)(c) may be defined and in particular to	The provisions are similar to clause 63(c) of the Companies Bill, 2009 and

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		be specified if it includes working capital requirements.	section 77B(c) of existing Act. No recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill. Moreover, 'term loan' is a commonly understood term and need not be defined.
34(i)	71: Debentures	An issue of debentures would be duly approved in a meeting of Board of Directors. Therefore, Bill may provide ordinary resolution for such issue.	<p>(i) It may be seen that requirement for special resolution is applicable only with reference to proviso to sub-clause (1) which pertains to issue of debentures with an option to convert debentures into shares. These provisions are on the lines of provisions of section 81(3)(b) of the existing Companies Act, 1956 and may be retained as proposed.</p> <p>(ii) For issue of other debentures, the powers are vested with the Board of Directors as provided in clause 179(3)(c). The suggestion made, therefore, is already addressed.</p>
34(ii)	71	(i) The terms and conditions of issue of secured debentures may be specifically provided in the Bill. [Clause 71(3)]	<p>(i) (a) Clause 71(3) reads as under:—</p> <p><i>(3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.</i></p> <p>(b) The clause is similar to clause 64(3) of Companies Bill, 2009. The clause seeks to provide flexibility which could be useful in case of need for urgent modifications in norms for terms and conditions for issue of secured debentures.</p>

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		<p>(ii) Under sub-clause (4), every company which issues debentures is required to create a debenture redemption reserve account out of its profits available for payment of dividend. However, the quantum of profit to be transferred is not specified. Hence, sub-clause (4) should be modified to prescribe a specified percentage of profits that is to be transferred to the debenture redemption reserve.</p>	<p>(ii) Clause 71(13) empowers Central Government to prescribe, <i>inter-alia</i>, quantum of debenture redemption reserve required to be created. The limits/quantum, thus, shall be prescribed under the rules.</p>
34(iii)	71	<p>(i) Enabling provisions to issue perpetual debentures as per Section 120 of the Act have been omitted in the Bill.</p> <p>(ii) The power granted to the companies to re-issue redeemed debentures, as contained in Section 121 of the Act is also missing in the Bill.</p>	<p>(i) and (ii):— The provisions now being suggested were not included even in the Companies Bill, 2009 since it was felt that such matters can be addressed/clarified through rules, if required. Hence such provisions need not be included at this stage.</p>
35.	72: Power to nominate	<p>As per judicial announcements nominee is regarded as 'trustee' to look after the property and property vests in legal heirs as per will or succession certificate (in absence of will). The clause therefore ought to be appropriately amended to bring it in line with judicial pronouncements.</p>	<p>(i) Similar suggestion made during examination of Companies Bill, 2009 was evidently not considered by the Hon'ble Committee.</p> <p>(ii) Further, provisions of clause 72 of Companies Bill, 2011 are similar to section 109A of the existing Act and were included in clause 65 of the Companies Bill, 2009. The Hon'ble Committee did not make any recommendation to modify such clause.</p> <p>(iii) In view of above, there may not be any necessity of any modification in the Bill on this matter. Hence the suggestion may not be accepted.</p>

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36.	Tracking Shares (No provision)	To introduce tracking shares as this would increase the depth of capital markets.	Similar suggestion made during examination of Companies Bill, 2009 was not considered by the Hon'ble Committee. During consultation with various stakeholders on the 2009 Bill at drafting stage, views were expressed that the concept of 'Tracking Shares' may confuse the investors and therefore, should not be introduced at this stage. In view of such comments, the provisions were not included in the Bill and are still not considered necessary.
37.	73: Acceptance of public deposits	This clause says that companies can accept depositors only from their shareholders. The pernicious practice of giving one or two shares to members of public and making them shareholders for accepting deposits should also be stopped. Such deposits should be accepted from members holding of a minimum 100 shares.	(i) Kind attention is drawn to provisions of clause 76 which allow a class or classes of companies (to be prescribed under rules) to accept deposits from public subject to compliance with provisions of that clause.  (ii) Provisions of clause 73 seek to prohibit acceptance of deposits from public since it is felt that a shareholder, who has already invested risk capital with the company and who is aware about the objects/business plan and prospects of the company (through various disclosures being provided by the company to him as shareholder) would be in a better position to take such investment decisions than a member of public. This approach seems to be justified. In addition, provisions of clause 73 also provide for following safeguards to protect interests of depositors:—

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			<p>(a) issuance of a circular to potential depositors indicating financial position of company, credit rating obtained, existing outstanding deposits etc. More details which may be issued under such circular can be prescribed under rules;</p> <p>(b) filing of such circular with the Registrar before actually accepting deposits;</p> <p>(c) creation and maintenance of deposit repayment reserve account with requisite amount kept in a separate bank account;</p> <p>(d) deposit insurance cover;</p> <p>(e) providing security, if deposits are secured; detailed disclosures/ disclaimers in case of unsecured deposits;</p> <p>(f) remedy for grievance redressal in case of non-payments through orders of Tribunal;</p> <p>(g) compliance with the rules which may be prescribed by Central Government in consultation with RBI;</p> <p>(iii) Accordingly, it is felt that the above provisions seem to be reasonable and may be retained.</p>
38.	77: Duty to register charges	Bill should be amended to include a threshold above which charges would be required to be registered.	Similar suggestion was made by a stakeholder during the examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 6.5

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			of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
39.	78: Application for registration of charges	Extension of period for registration:—  whether creditors' right to apply for registration of charge commences upon expiry of original 30 days or upon expiry of extended time period (which could potentially be 300 days). This aspect needs clarification.	The intention is to make Registry up-to-date on matters relating to charges. Accordingly, the intention is that if the borrower company does not create the charge within initial 30 days, the creditor shall have the right to get the charge registered immediately after expiry of this period. Any improvement in drafting, if required, in this clause can be addressed through legislative vetting.
40.	90: Investigation into beneficial ownership of shares in certain cases	These provisions could be misused to unduly harass and influence companies and should be deleted.	These provisions are same as included in clause 80 of the Companies Bill, 2009 (and as available under section 187D of existing Companies Act, 1956). Hon'ble Committee did not make any recommendation to modify these provisions. The clause may, therefore, be retained as proposed.
41.	93: Return to be filed with the Registrar	(i) Generally top 10 shareholders changes very frequently in their shareholdings. Intimation to every such change is a very onerous and time consuming task and no meaningful purpose will be served at the RoC's end. Such returns should be filed on quarterly basis instead.  (ii) Quantum has not been defined, <i>i.e.</i> whether single	(i) and (ii):— Kind attention is drawn to recommendation at Paras 7.12 and 7.13 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. The details about quantum/per cent of change which will trigger the provisions may be

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		share change will require filing. This may practically result in filing almost every week which will lead to increase in administrative work. Therefore, certain threshold (e.g. 2% or 5% should be prescribed) and the periodicity of the reporting may be changed to monthly or quarterly basis.	prescribed under rules. The suggestion made, therefore, can be addressed under rules.
42.	96(2): AGM-national holiday	Expression 'public holiday' be used in stead of 'national holiday' as provided in the existing Act.	As the intention is to facilitate widest participation by the shareholders, the term, "public holiday" was omitted to facilitate holding of such meetings as early as possible including on Sundays. The Honourable Committee had also not commented on this aspect though the provision was included in Companies Bill, 2009 also.
43.	103(1): Quorum for meetings	To be amended to reflect the position under the existing Act since the number of members may change due to transfer of shares leading to uncertainty on whether quorum was present.	(i) Kind attention is drawn to recommendation at Paras 63 and 7.28 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. The determination of total number of members for the purpose of calculation of quorum can be done through closure of register of members/fixing a record date as is done for payment of dividend.  (ii) Hence there may not be any necessity of any change in the clause.
44.	108: Voting through electronic means	Advance Receipt of Intimations from Shareholders to participate in meeting through Video conferencing to be required	Kind attention is drawn to recommendation at Para 7.33 of report of Hon'ble Committee. The provisions proposed in the new Bill are

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		and participation should be limited to watching proceedings only.	in accordance with such recommendation. Detailed procedural requirements are proposed to be prescribed under rules. Hence there may not be any necessity of any change in the clause.
45.	110:Voting by postal ballot	The Bill should be amended to include a list of negative items that are to be transacted only at a general meeting and not through postal ballot.	These provisions are similar to clause 99 of the Companies Bill, 2009. No recommendation in such provisions was made by Hon'ble Committee. Since provisions relating to voting by postal ballot (which includes voting by electronic mode) are investor friendly and need to be encouraged, these provisions may, therefore, be retained as proposed in the new Bill.
46.	123 and Schedule II: Declaration of dividend	<p>(i) The rate of depreciation seems to be very aggressive and specifically in continuous process plant reduce from earlier 18 years to 8 years now. Actual life of plant and machinery is generally much higher as prescribed.</p> <p>(ii) In case of heavy capital intensive industries for <i>e.g.</i> fertilisers the project itself will become economically unviable if such aggressive depreciation rates are applied.</p> <p>(iii) Need to upward revise the useful life of general plant and machinery not covered under special plant and machinery.</p>	<p>(i) to (iii):— (a) Kind attention is drawn to recommendation at Paras 8.10 to 8.13 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.</p> <p>(b) The Schedule II was prepared after examination of all related issues, consultation with various stakeholders like Chambers, Professional Institutes, concerned Regulators/Ministries/Departments. Thereafter the Schedule was scrutinized by ICAI. The National Advisory Committee on Accounting Standards (NACAS) had also deliberated on this Schedule and recommendation was made to Central Government to prescribe the same.</p>

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			<p>(c) Further, since this is a Schedule which can be altered by Central Government in accordance with the provisions of clause 467 of the Bill, the difficulties, if any, can be removed through amendment of Schedule II on enactment of the Bill.</p> <p>(d) Hence there may not be any necessity of any change in the Schedule II at this stage.</p>
47.	125: Investor Education and Protection Fund (IEPF)	Provisions for giving immediate relief to small investors have not been included in the Bill. The same may be considered.	<p>(i) Kind attention is drawn to provisions of clause 125(3)(c), (d) and (e) which read as under:—</p> <p>“(3) The Fund shall be utilised for—</p> <p>***</p> <p>(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;</p> <p>(d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and</p> <p>(e) any other purpose incidental thereto, in accordance with such rules as may be prescribed:”</p>

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			(ii) It is felt that the suggestion made is already covered under above provisions. Detailed requirements shall be prescribed under rules.
48.	128(1): Books of Account, etc., to be kept by the Company	Cognizance may be given to the situations where the servers are maintained outside India. As long as there is access to add, modify and delete data exists in India, the information maintained on servers outside India should be considered as adequate compliance with the requirements of the Bill.	The suggestion is noted in context of rules to be made under this clause.
49.	128(6)	There are several Government Companies who have not prepared their annual accounts in time. It may be difficult to prove that default was committed willfully. The default of Key Managerial Personnel concerned can be presumed and stringent provision made to enforce accountability in preparation of financial statements on an annual basis.	The suggestion is noted to be addressed through legislative vetting.
50.	129(1): Financial Statements	First proviso to Clause 129(1) states that "...items contained in such financial statements shall be in accordance with the accounting standards" is redundant in view of Clause 129(1) which already states "The financial statements..... comply with the accounting standards notified under....."	(i) Kind attention is drawn to Paras 9.9 and 9.10 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.  (ii) The proviso is necessary to recognize terms defined under various accounting standards as statutory terms for accounting purposes.  (iii) Hence there may not be any necessity of any change in the clause.

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51(i)	129(3): Financial statement	An express provision may be made, in line with Section 213 of the Act, prescribing the procedure to be followed in the event that the financial years of the parent and subsidiary company or companies or the subsidiaries <i>inter se</i> , are different (in light of the definition of financial year suggested herein above).	(i) The provisions of section 213 (Financial year of holding company and subsidiary) of existing Act were not included in the Companies Bill, 2009 since provisions for mandatory consolidation of accounts were provided. These provisions have been provided in clause 129(3) of Companies Bill, 2011. Any procedural requirements relating to consolidation of accounts can be prescribed either under relevant accounting standards or under rules to be framed under clause 129(3).  (ii) Hence there may not be any necessity of any change in the clause.
51(ii)	129 (3): Consolidated Financial Statements	Where a company is already presenting Consolidated Financial Statements, the requirement to attach another statement containing salient features of financial statements of subsidiaries would be redundant and lead to increased work for companies. The manner of consolidation is covered in respective accounting standards (AS 21, 23 and 27) and therefore there is no requirement for any separate rules in this regard. Accordingly, requirements of second proviso to 129(3) are ambiguous and redundant.	(i) Consolidation of accounts is a very technical exercise requiring compliance with relevant accounting standards. The basic elements/parameters in such exercise are not known to layman/common investors. Hence enabling provisions (through rule making) have been retained to provide simplified consolidation summary for use of such investors. Further, accounting standards may be modified, subsequently to maintain consistency with the Bill/rules.  (ii) Hence there may not be any necessity of any change in the clause.
52.	129 (7): Financial Statements	The defense of default not committed willfully has been excluded from the penal provisions, which	These provisions are same as included in clause 117(6) in the Companies Bill, 2009. Hon'ble Committee did not

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		seems to be harsh, since there could be instances where such default are merely technical in nature or not of significance in view of the directors. The concept of willful default needs to be restored as it exists in the current Companies Act, 1956.	make any recommendation to modify these provisions. The Court or Tribunal will in any case have the opportunity to examine evidence in each case to determine whether a particular act or omission amounted to 'default' in the facts and circumstances of a given case. The clause may, therefore, be retained as proposed.
53.	129, 136, 137: Waiver from furnishing Indian GAAP Consolidated financials	Companies which are preparing financial statements as per IFRS requirements, may be given the option to file/circulate such IFRS compliant financial statements rather than financial statements as per Indian Accounting Standards.	In order to ensure uniformity in following accounting norms for the purpose of preparation of financial statements, it may not be appropriate to give such an option to companies.
54.	129:	Annual report of Audit Committee members should be annexed in "Annual Balanced sheet".	(i) Clause 177(8) of the new Bill provides as under:—  <i>"177(8) The Board's report under sub-section (3) of section 134 shall disclose the 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."</i>  (ii) These provisions are considered sufficient. Attaching reports of audit committee with balance sheets will make them bulky and routine.
55.	132: National Financial Reporting Authority (NFRA)	(i) Provision for a NFRA may be removed and furthermore the role of the NACAAS <i>vis-à-vis</i> the ICAI (which prescribed accounting standards and regulates	(i) to (iv): (a) Kind attention is drawn to recommendations at Para 37 and 9.23 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance

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		<p>the conduct of its members) may be clarified.</p> <p>(ii) Issues such as independent and other ethical requirements with regard to auditors arise from the Chartered Accountants Act and the Institute of Chartered Accountant (ICAI)'s Code of Ethics. Such requirements now proposed/ provided in the Bill (through NFRA) may lead to a conflict between the ICAI and NFRA. The roles and power of the regulators should be rationalized such that there are no conflicts.</p> <p>(iii) Matters of professional or other misconduct committed by any member or CA firm to be referred to ICAI firstly which may refer it to NFRA for final action. ICAI may be retained as regulating authority.</p> <p>(iv) As per international norms, NACAAS can continue the role of setting Accounting Standards and a separate audit oversight body can be set up for regulating the auditing profession.</p>	<p>with such recommendation. Hence there may not be any necessity of any change in the clause.</p> <p>(b) The NFRA shall follow procedure which shall be fair to all concerned stakeholders. The apprehensions expressed can be suitably addressed in rules/ procedure of functioning of NFRA.</p> <p>(c) Hence, the provisions may be retained as proposed in the Bill.</p>
56(i)	134(1): Financial statement and board's report	CEO to sign only if he is a director:— This provision may be removed and a chief executive officer may be permitted to sign the financial statements, whether or not he is a director of the company.	Kind attention is drawn to recommendation at Para 9.28 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence, there may not be any necessity of any change in the clause.
56(ii)	134(1):	In clause 134(1) it is necessary to add	(i) Since relevant disclosures/ declaration on integrity of

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		<p>Management Responsibility Statement. This needs to be addressed by assigning baseline accountability to the CEO/CFO to bring in clear functional responsibility on the management as distinguished from a distributed responsibility of Board of Directors.</p>	<p>financial statements are being included in the 'Directors Responsibility Statement' [Clause 134(3)(c)], which is the part of report of Board of Directors, there is no need to make provisions for obtaining similar declaration from the executives/management of the company.</p> <p>(ii) In any case the liability under clause 134(8) shall be attached to 'officer who is in default' which may include officers involved in non-compliance or those charged with the responsibility.</p> <p>(iii) The clause may, therefore, be retained as proposed.</p>
56(iii)	134(1):	<p>(i) Provisions to require CEO to sign the financial statements only if he is a member of the Board have been included. However, the CFO is also now included as a signatory and there is no mandatory requirement that he should sign only if he is member of the Board.</p> <p>(ii) Clause 134(1) now requires signing of the financial statements by the CFO which implies that every company should mandatorily appoint a CFO, although such appointment is not mandated elsewhere in the Bill. Further, clause 203 requires mandatory signature by the Secretary in all cases. The phrase 'if any' should be added after the term 'CFO' and 'secretary', respectively.</p>	<p>(i) and (ii):— The suggestion may be accepted.</p>

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56(iv)	134(1):	Considering option of authentication of the financial statements by only one director in cases where only one Director is present in India, with an explanatory statement has not been considered by the Bill.	The provisions for authentication by single director were not included in the Companies Bill, 2009 also with a view to ensure accountability on the part of directors. The preparation of annual accounts is the key function of the Board of directors and at least two directors, if not the whole Board, need be accountable to authenticate the accounts. The suggestion made, therefore, may not be accepted.
57(i)	134(3):	<p>(i) The requirement under this provision would be difficult to comply with in practice and are unnecessary for private company and OPC. Such requirements be not made applicable to such companies.</p> <p>(ii) Disclosures under clause 134(3) are onerous and should be voluntary.</p>	<p>(i) and (ii): (a) The requirements proposed in clause 134 are not entirely new. Most of them are already provided in section 217 of existing Act (Board's report) and are applicable to all companies. New disclosures were provided in the Companies Bill, 2009 to make Directors' Report more informative and relevant for users, keeping into account the international practices on the matter. This approach has also been accepted by Hon'ble Committee.</p> <p>(b) Exemptions for any particular class of companies can be considered under provisions of clause 462, if considered so necessary.</p> <p>(c) The clause may be retained as proposed.</p>
57(ii)	134(3):	Government issues directions to Government company some of which have bearing on the financial position of the Company. To bring in greater transparency, it is necessary to	A large number of disclosures have already been provided for inclusion in the Board's report and adding further requirements for a particular class of companies in a general

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		disclose impact of government directions on the financial position of Government Company in the report of Board under clause 134(3).	enactment on companies does not appear to be justified. The matter has been discussed by Secretary (MCA) with Secretary (DPE) who has agreed to examine if assessment of financial impact, if any, of Government directives to Government companies could be administratively prescribed.
57(iii)	134(3):	Since as per clause 204, secretarial audit report is to be given by a company Secretary <i>in practice</i> , in clause 134(3) (f) (ii), the words “in practice” should be added.	The suggestion may be accepted.
58.	134(8): Financial Statement, Board’s Report, etc	The defense of default not committed willfully has been excluded from the penal provisions, which seems to be harsh, since there could be instances where such default are merely technical in nature or not of significance in view of the directors. The concept of willful default needs to be restored as it exists in the current Companies Act, 1956.	(i) These provisions are similar to clause 129(7) of the Companies Bill, 2009. Comments made with reference to that clause at serial number 52 of this statement (page 19) are relevant to this clause also. (ii) Further, no recommendation for any modification in such provisions was made by Hon’ble Committee. These provisions may, therefore, be retained as proposed in the new Bill.
59(i)	135: Corporate Social Responsibility (“CSR”)	(i) The clause adequately covers areas pertaining to which are the companies eligible to practice CSR (in terms of net worth, turn over and net profit), how and when the CSR report has to be furnished, points of evaluation, and who will form the review committee. Clause seems to provide a security valve for companies	(i) to (v): (a) Kind attention is drawn to recommendations at Paras 49-51 and 9.47 of report of Hon’ble Committee.  (b) Keeping in view the need for balancing of various interests involved, the provisions on CSR as provided in clause 135 of the Bill read with Schedule VII to it appear to be reasonable.

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		<p>by stating under sub point (5), that if a company fails to meet the desired standard, it may get away by providing the reason. Such a statement may, in practice, defeat the very purpose of clause 135.</p> <p>(ii) Schedule VII of the Companies Bill, 2011 rightly provides an exhaustive list of possible areas in which one could carry out CSR initiatives. Speaking sociologically, apart from the role of the company in churning out a CSR project, what is also crucial is the role of the people who are the beneficiaries of the project. This makes it essential to add a sub clause that sensitizes the company to appreciate the role of the recipient of the initiative. The Bill could include this point within Schedule VII where, within the areas chosen by the company, the nature of project to be undertaken and executed should be in keeping with the needs of the people.</p> <p>(iii) Similarly, an additional schedule containing an ideal type of CSR policy framework could be constituted. Also, mention could be made of the region in which such initiatives should ideally be carried out. This is to say whether a company must engage in CSR in its immediate surrounding, or opt for any other convenient location or engage in regions having pressing needs. Last, but not least the Bill could attempt</p>	<p>It may be appreciated that with these provisions included in the Companies Act, India will be the first country to include provisions on CSR in its Company Law. The provisions may be reviewed after enactment of the legislation and watching the experience of companies covered under clause 135. The broad objective is to instill the spirit of CSR amongst corporate sector. The provisions, therefore, may be retained as proposed.</p>

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		<p>to make clear whether the objective of the company by engaging in such a development oriented step should be a long term sustainable project, or a short-term gesture of philanthropy. In this manner a fine line can be drawn between a sustainable CSR initiative and a mere act of donation or charity.</p> <p>(iv) It may be provided that in case company spends less than the required %, it shall transfer residual amount to the fund next year. Also, a Central Funding Agency to be created. Provision regarding social audit of companies' CSR policies may be considered.</p> <p>(v) Corporate should be given the flexibility to decide the extent of responsibility causes. While the Government can encourage CSR initiatives, it may not be appropriate to impose rules such as minimum spend to be incurred towards CSR initiatives, Additionally, such imposition may not even lead to the desired results as the companies which feel that they are forced to undertake such activities, may comply with it only as a mandatory regulation without any interest in the outcome.</p>	
59(ii)	135:	Profit making companies with turnover above Rs. 100 crores must develop areas within 1 Km. radius of their setup. Annual spend and benefits arrived should also be audited.	Besides, the clarification given above, it is submitted that rigid requirements like developing area within 1 km. radius may not be provided as this will tend to work to the disadvantage of remote,

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			backward areas which may be in greater need of such investment/expenditure.
59(iii)	135:	Provision may be made for filing a certificate with the jurisdictional ROC, the Tribunal or any other authority, on an annual basis, indicating due compliance with the CSR provisions.	Details about CSR activities shall form part of Board's report [Clause 135(4)(a)] and shall also be placed on the website of the company, if any. Since Board's report is also filed (alongwith financial statements) with Registrar, the suggestion made is taken care of.
60(i)	136:Right of member to copies of audited financial statement	<p>(i) Clause 136(1) refers to words 'annexed or attached'. Similar reference to 'annex' is also made in the explanation to Clause 129 which states:</p> <p>“Explanation — For the purpose of this section, except where the context otherwise requires any reference to the financial statement shall include any notes or documents annexed or attached thereto.....”</p> <p>(ii) It is noted that while there are requirements to attach certain documents to the financial statements [for example, the Auditor's report per Clause 134(2) and Report of the Board Directors per Clause 134(3)], there is no requirement to annex any document to the financial statements. To remove any ambiguity, it needs to be specified which are the documents that need to be annexed to the financial statements. If there are no such documents, the use of the term 'annexed' in the referred clauses above, is superfluous and should be deleted.</p>	(i) and (ii): Though the provisions are similar to what were provided in Companies Bill, 2009 (Clause 121), the suggestion, which is of a drafting nature, is noted to be addressed with legislative vetting. Drafting inter-linkage required between clause 136 and 101 on this issue has been noted to be addressed through legislative vetting.

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60(ii)	136 (read with clause 101): Meeting to held with shorter notice	Shorter notice may be permitted for circulation of Financial Statements which is one of the key requisites for holding annual general meeting (AGM).	Kind attention is drawn to provisions of clause 101(1) (proviso) of the Bill which allow holding of general meetings (including AGM) at shorter notice. Such provisions can be used for the purpose of holding AGM at shorter notice. The circulation of financial statements (as agenda item) can also be done by using such provisions. Hence, there may not be any necessity of any change in the clause.
61.	137(3): Filing of financial statements with the ROC	The provision may be restricted to imposition of a fine only, without any imprisonment, particularly in the event of absence of a director charged with the responsibility of complying with this Clause.	These provisions are same as included in clause 122(3) of the Companies Bill, 2009. Hon'ble Committee did not make any recommendation to modify these provisions. (Kind attention is drawn to recommendation at Para 9.56/9.57 of report of Hon'ble Committee.) Hence, there may not be any necessity of any change in the clause.
62(i)	138(1): Internal Audit	Unlisted companies may be exempted from the provisions of this Clause.	<p>(i) Kind attention is drawn to the provisions of this clause which reads as under:—</p> <p><i>“138(1) Such class or classes 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, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.”</i></p> <p>(ii) Since the clause empowers Central Government to prescribe class of companies under rules, the suggestion is noted for</p>

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			consideration for rule making. Hence there may not be any necessity of change in the clause.
62(ii)	138(1) Appoint- ment of external person as internal auditor	(i) Flexibility to be given to companies to appoint in-house employee to conduct internal audit.  (ii) Professionals for internal audit should not be specified in law.	(i) and (ii):— The provisions of clause 138 do not prohibit appointment of in-house employee. Further, the provisions also empower the Board of relevant company to appoint any professional (even other than a CA or CWA) as internal auditor if it so decides. Hence both the suggestions are already taken care of.
63(i)	139(2): appoint- ment and rotation of auditors	(i) Instead of rotation of audit firms, rotation of audit partners (after 5 to 7 years) be considered, also joint audits be considered in some very large entities. Quality Review Board should also take adequate steps in this regard.  (ii) Appointment of auditors be considered for block of 3 years instead of 5 years. Rotation of partners could be after 9 years – 3 blocks of 3 years each.  (iii) The disqualification should apply only to individual partner of audit firm/s not being permitted to be appointed as the auditor of the same company, irrespective of which audit firm he is a part of.  (iv) To avoid deeply laid financial scams (such as Satyam fraud) Company Bill made “Mandatory Rotation of auditors”. But still it doesn't look too stringent it should have been framed as	(i) to (v): (a) Kind attention is drawn to recommendation at Para 10.8 and 10.9 of report of Hon'ble Committee on the Companies Bill, 2009. The provisions proposed in clause 139(2) of the Companies Bill, 2011 are in line with such recommendation. Enabling provisions for joint audit (clause 139(3)(b) and oversight of quality by National Financial Reporting Authority (NFRA) (Clause 132) have also been provided.  (b) Rotation of auditors including audit firms is being considered for introduction in EU, US, UK and Malaysia. Rotating partners without rotating the firm is also fraught with many risks and pitfalls and is best avoided.  (c) In view of above, the provisions for rotation of auditors/audit firms may be considered to be retained as proposed in the Bill.

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		<p>“Mandatory Rotation of audit firms”. This may break the monopoly of top four audit firms (KPMG, Deloitte, PWC, E&amp;Y). Thus more transparency in ethical way of financial reporting can be achieved. Even Europe Union (EU) is making this as change, as one of the step to come out of recession. Very recently court of law of “United States of America” slapped E&amp;Y audit firm with a fine of \$2million. And we are aware of fraud which happened in Satyam, in which PWC were involved. We should take these steps because prevention is better than cure.</p> <p>(v) Various studies and current policies around the world indicate that rotation of audit firm, in fact, defeat the very purpose for which it is proposed to be introduced. Under Clause 139(2), the requirement of rotation of audit firm should be removed and the requirement for audit partner rotation should be introduced on the lines of ICAI’s Code of Conduct.</p>	
63(ii)	139(2)	<p>(i) Since there may be listed companies which are small in size, applying the provisions relating to rotation of auditors/audit firms to every listed company may not be appropriate.</p> <p>(ii) Ideally rotation should not be mandated by law. If it is required to be retained, companies below a certain</p>	<p>(i) and (ii):— All provisions for good corporate governance and protection of investors need to be complied with by all listed companies, and by such companies which have had access (beyond a limit) to public funds like debts or deposits and also by bigger companies like companies having turnover/networth beyond a size. The</p>

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		size and listed Indian subsidiaries of MNCs listed abroad should be exempted from such provisions. Further, the audit committee/shareholders should have the power to decide on rotation, rather than through statute.	provisions proposed in clause 139(2) seek to capture such principle and such provisions may be retained without any change.
63(iii)	139(2) proviso: rotation of auditors	Tenure of the office held by auditors prior to the commencement of amended Act should not be considered <i>i.e.</i> the applicability of provisions should be with prospective effect. Provisions similar to clause 149(9) and (10) may be considered.	<p>(i) Clause 139(2) Second Proviso reads as under:—</p> <p><i>“Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this subsection, shall comply with the requirements of this subsection within three years from the date of commencement of this Act.”</i></p> <p>(ii) Since a period of three years has been provided for companies as transitional period to align the tenure of auditors in accordance with the provisions of new Bill, which appears to be reasonable, no further change is necessary in the provisions.</p>
64.	139(5)	Clause 139(5) contains ‘— any other company owned or controlled—’, however, the word ‘owned’ has not been defined in the Bill. To bring clarity, the word ‘owned’ may be defined.	The Bill has defined the term ‘control’ in clause 2(27) as per recommendation of Hon’ble Committee. It is felt that this would be adequate for the purpose of interpreting the wording of clause 139(5). Further the term ‘own’ is a general term which has been understood and known very well. Accordingly it is submitted that the term ‘own’ may be continued to be used in the Bill without being specifically defined.

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65.	139(11): Appointment of auditors	Audit Committee should ensure and monitor that independence criterion has been fulfilled by auditor of the company throughout his tenure.	Kind attention is drawn to provisions of clause 177(4)(i), 177(4)(ii), 177(4)(iii); 177(5) and 177(6) of the Bill which empower Audit Committee to monitor auditor's independence, functioning etc. The suggestion made, therefore, is already addressed.
66(i)	140: Removal of Auditors	While the appointments of an auditor by a company that is required to constitute an audit committee are required to be made after taking into account the recommendations of the audit committee, even removal of auditors under Clause 140 should take into account the recommendations of the audit committee.	Removal of auditor before the expiry of his term requires special resolution and approval of Central Government. Hence the suggestion has been addressed in spirit.
66(ii)	140: Removal, resignation etc of auditor.	(i) Explanation to the clause should distinguish between individual partner responsible for audit conducted and other partners where the firm or LLP is appointed as an auditor. This should protect the other partners of such firm/LLP which are not in default.  (ii) It should be clarified where the auditor is a firm, the order may be passed against the partner(s) who has/have colluded in committing the fraud.	(i) and (ii): The provisions have been included after detailed deliberations and experience gained recently in connection with various investigations initiated by this Ministry and other regulators. The provisions proposed are reasonable and should not be modified. The suggestion, however, is noted for drafting change, if any.
67.	141(1) and 141(2): Eligibility for appointment as auditor	(i) Only those firms/LLPs of which all the partners are Chartered Accountants, be permitted to sign off on audits. (ii) Alternatively, as a second-best option, it may be provided that firms/LLPs with non-Chartered Accoun-	(i) and (ii):— (a) Keeping in view the enactment of Limited Liability Partnership Act, 2008 and the need for allowing setting up of multi disciplinary entities, it was suggested to Hon'ble Committee (during

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		<p>tants as partners be structured in such a way, that the Chartered Accountant partners demonstrably have control over the firm/LLP and this be reflected in both, voting powers and profit shares, as set out in the documents of the firms/LLPs. As a further safeguard, it may be provided that if certain decisions in a firm or LLP require a super majority of the reach of the Chartered Accountant partners. This would be the only way to preserve the true independence of the Chartered Accountant partners, on their audit opinions, if at all an audit firm/LLP is to be permitted to have non-Chartered Accountant partners. A simple numerical majority will not do and can easily be circumvented to overwhelmed, defeating the intention of these provisions.</p>	<p>examination of the Companies Bill, 2009) that the provisions of clause 124 of the Companies Bill, 2009 (clause 141 in the new Bill) may be considered to be modified to allow setting up of multi disciplinary audit firms/LLPs, with majority of partners of such firm/LLP being chartered accountants qualified to practice as auditors, individually.</p> <p>(b) Kind attention is drawn to suggestion at page number 37-38 of Statement attached with OM No. 1/7/2009-CL-I dated 26.2.2010 of this Ministry.</p> <p>(c) Further, Acts pertaining to three Institutes viz Chartered Accountants Act, 1949, Cost and Works Accountant Act, 1959 and Company Secretaries Act, 1980 have also been amended recently to allow setting up of multi disciplinary firms/LLPs. Hence there may not be any necessity of any change in the clause.</p>
68.	141(3)(d)(i): Eligibility for appointment as auditor	<p>(i) Mere holding of few shares does not create influence so as to have a bearing on judgment. The word 'relative' also ought to be deleted from this clause. In case it is not acceptable, the definition of relative for applicability of this clause should be restricted to spouse and minor children who are staying with auditor in the same shelter and are not dependent on the auditors.</p>	<p>(i) and (ii):— These provisions correspond to clause 124(3)(d)(i) of the Companies Bill, 2009 which also included 'relative' within the ambit of these provisions in a similar manner. No recommendation for any modification regarding use of term 'relative' in the clause was made by Hon'ble Committee. Since these provisions seek to ensure independence of auditors and, therefore,</p>

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		(ii) A definition of the term 'interest' for the purpose of this clause should be included.	improve corporate governance standards, these provisions may, therefore, be retained as proposed in the new Bill.
69.	141(3)(d) (ii)	<p>(i) Only material indebtedness and security holding should be eligible for restriction.</p> <p>(ii) The specific amount for indebtedness should be included in the Bill itself. This could be set at the similar threshold as that of securities held, <i>i.e.</i>, Rs. 1000.</p>	(i) and (ii):— Since the amounts may need to be revised from time to time, it is appropriate to provide them under rules. Hence the provisions may be retained as proposed. This is also in line with the guiding principles recommended by Hon'ble Committee.
70.	141(3)(e)	<p>(i) While prescribing the nature 'business relationships', it would be relevant to refer to ICAI Code of Ethics for example of Close Business Relationship, like:</p> <ul style="list-style-type: none"> <li>&gt; Having a material financial interest in a JV with the audit client or a controlling owner, director, officer or other individual who performs senior managerial functions for that client; and</li> <li>&gt; Arrangement to combine one or more services or products of the Performing Firm, or a network firm, with one or more services or products of the audit client and to market the package with reference to both parties.</li> </ul> <p>(ii) Further, transactions in the ordinary course of business at arm's length price (<i>e.g.</i> purchase of general utilities like electricity) as well as those with other subsidiaries of the holding company should</p>	(i) to (iii):— Clause 141(3)(e) empowers Central Government to prescribe, by rules, nature of 'business relationship' which shall disqualify a person from becoming auditor in a company. The suggestions made shall be considered at the time of making rules under such clause.

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		<p>be excluded from the scope of business relationships which would disqualify a person from appointment as auditor.</p> <p>(iii) Material business relationships to also be allowed provided they are not material to either party. Threat aspects to be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to acceptance level.</p>	
71.	141(3)(g): Eligibility qualification and disqualification of auditors	<p>(i) In considering the limits on the number of audits an auditor is eligible to undertake, the exemption given to private limited companies should be restored as it exists in the Act currently. Existing provisions of Chartered Accountants Act and resolutions thereunder are adequate in this respect and it is unnecessary to introduce this provision in the Companies Act. If it desired to introduce this provision, the existing decisions of ICAI should be made integral part of the Act instead of inserted new and untested provisions.</p> <p>(ii) Restricting number of audits per firm is not a globally accepted practice. If required, it should be per partner.</p>	<p>(i) and (ii):— (a) The provisions with respect to restrictions on number of audits have been provided in section 224(1C) Explanation-I of the existing Companies Act, 1956 and were also included in the Companies Bill, 2009 as clause 124(3)(g).</p> <p>(b) The suggestion, however, is noted in connection with prescription of limits of auditee companies under the rules to be prescribed under this clause.</p>
72.	141(3)(h)	Ineligibility should apply when the person is finally convicted <i>i.e.</i> he has not appealed the order within the permitted time.	Kind attention is drawn to recommendation at Para 10.27 and 10.28 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.

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			In case of appeal, the appellate court can pass suitable orders (about stay of orders of lower court etc.) under general law. Hence there may not be any necessity of any change in the clause.
73.	141(3)(i)	To be redrafted so as to delete associate company and any other form of entity from the scope of this clause.	Kind attention is drawn to Para 34 (Part I) of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Since these provisions seek to ensure independence of auditors and, therefore, improve corporate governance standards, the provisions may be retained as proposed in the Bill.
74.	142(1): Remuneration of auditors	To be re-worded to provide that in case of first Auditors, the Board may fix the remuneration while appointing them.	Though the provisions are included in the same manner as in the 2009 Bill, the suggestion is noted to be addressed suitably through legislative vetting.
75.	143(1) Proviso: Power and duties of auditors and auditing standards	In view of practical difficulties, the clause should be modified to exclude overseas subsidiaries. For reporting the matters under 143(2), the auditor should be allowed to rely on the audit reports of the subsidiaries for reporting on the Consolidated Financial Statements (CFS). However, to have sufficient overview of the consolidated Group, the auditor should be required to audit consolidated assets and revenues above a specified threshold, say above 50%.	(i) Clause 143(1) proviso reads as under:—  <i>“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 statements with that of its subsidiaries.”</i>  (ii) The provisions simply seek to recognize the principle that auditor of a holding company shall have the right to access records of subsidiaries for the purpose of consolidation of financial statements. These are basic provisions which need to be

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			<p>there in law for facilitating audit of group accounts.</p> <p>(iii) Hence there may not be any necessity of any change in the clause.</p>
76.	<p>143(3)(b) 143(3)(f) 143(3)(h): Power and duties of auditors and auditing standards</p>	<p>(i) Clause 143(3) (f): The scope of reporting under this clause needs to be more specific since there could be a number of matters apart from 'financial transactions' which could have an adverse effect on the company, which are not even within the scope of an audit (e.g.; safety concerns, environment related issues, etc).</p> <p>(ii) The term 'financial transaction' itself should also be explained/defined, since certain financial transactions are already getting covered under this clause (e.g., transactions represented by book entries, terms of security for loans and advances, loans and advances shown as deposits, etc). Also, the term 'other matters' should be deleted from Clause 143(3)(f).</p> <p>(iii) The additional requirement relating to maintenance of accounts and matters related thereto required under clause 143(3)(h) is similar to the requirement under clause 143(3)(b). It is also suggested that the scope of "other matters connected" with maintenance of accounts should be specified in 143(3)(b) and the 143(h) is clarified.</p>	<p>(i) to (v):— (a) The suggestions seek clarification whether the role of auditor shall be limited to examination of financial aspects/matters only. (b) Kind attention is drawn to relevant provisions referred to in suggestions which read as under:—</p> <p><i>"143 (3) The auditor's report shall also state—</i></p> <p>***</p> <p><i>(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;</i></p> <p>***</p> <p><i>(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;</i></p> <p>***</p> <p><i>(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;"</i></p> <p>(c) It can be observed that the above provisions require auditors to report only on issues relating to</p>

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		<p>(iv) Under 143(3)(f), the scope of 'financial transactions or matters' needs to be defined and limited to financial reporting matters which are within scope of an audit. This may be combined with 143(3)(b).</p> <p>(v) 143(3)(h) may be amended to specify the scope of "other matters connected" with maintenance of accounts.</p>	<p>maintenance of books of account and financial transactions or financial matters and other matters connected therewith. These provisions seem to be appropriate and do not require any change.</p> <p>(d) These provisions are also similar to corresponding clauses included in Companies Bill, 2009 viz clause numbers 126(3)(b); 126(3)(f) and 126(3)(h) and as per recommendation of Hon'ble Committee.</p>
77.	143(3)(i): Reporting on internal financial controls	<p>(i) 143(3)(i) can be amended to limit internal financial controls to those which may impact financial statements.</p> <p>(ii) The additional requirement relating to reporting on adequate internal financial controls and operating effectiveness of such controls should be limited to those which may impact financial statements. Further, and assessment also needs to be made on benefit of imposing such duties with respect to private limited companies or small companies. It may not lead to the desired results while it would in almost all cases, increase the quantum of work to be performed by the auditors. Clause 143(3)(i) can be amended to limit internal financial controls to those which may impact financial statements.</p>	<p>(i) and (ii): (a) The relevant provisions read as under: <i>"143 (3) The auditor's report shall also state—</i></p> <p>*** <i>(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;"</i></p> <p>(b) Kind attention is drawn to recommendation at Para 9.41/9.47 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Kind attention is also drawn to Explanation to clause 134(5)(e) which defines the term 'internal financial control'. Such term basically refers to controls relating to efficient conduct of its business, safeguarding of its assets, prevention and detection of frauds and errors, accuracy of accounting records.</p>

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			(c) In view of above, there may not be any necessity of any change in the clause.
78.	143(5): Directions by C&AG	Clause 143(5) <i>inter alia</i> provides for CAG's authority to issue directions to statutory auditors in respect of accounting standards only. CAG has to exercise oversight over functioning of statutory auditors of Govt. companies. The existing mandate to issue directions on the manner in which accounts of Govt. companies are to be audited should be continued without restricting it to accounting standards only.	The suggestion may be accepted.
79.	143 (6)(a): Power of auditor in case of Govern- ment companies	Clause 143(6)(a) to be brought in line with section 619(3)(b) of existing Act. The duties and powers of the CAG are derived from the Constitution of India and the Comptroller and Auditor-General's (DPC) Act, 1971. As such the same cannot be subjected to the rights and obligations applicable to auditor. This clause should read as:  <i>“conduct a supplementary audit of the company's financial statement by such person or persons as he may authorize in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorized, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may direct.”</i>	The suggestion may be accepted.
80.	143(6)(b) Proviso	As comments given by the Comptroller and Auditor-	This will be dealt with in accordance with the decision

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		<p>General of India are as a result of supplementary audit and not on the supplementary audit, this may be deleted. Further, as Sub-section (1) of Section 136 deals with financial statements, the proper words to be used are 'financial statement'.</p> <p>The Proviso may be amended as under:—</p> <p><i>Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report <del>or, on the report of the supplementary audit conducted by him</del> shall be sent by the company to every person entitled to copies of audited <del>balance—sheet</del> financial statements under sub-section (1) of section 136 and also placed before annual general meeting of the company at the same time and in the same manner as the audit report.</i></p>	<p>about Clause 143 (6)(a) above.</p>
81.	143: Audit documentation in case of Government companies	<p>With a view to exercise oversight over functioning of CAs appointed as statutory auditors, it is necessary that there is statutory backing for access to audit documentation of the statutory auditors of Government Companies.</p>	<p>It will not be desirable to provide a discriminatory provision which obliges Auditors of Government Companies to make more disclosures to their appointer than Auditors of non-Government Company. However, the objective of accessing documents of the auditor can be achieved by the C&amp;AG by incorporating suitable provisions in their "Compendium of Directions" meant for Auditors of Government Companies.</p>
82.	143(8): Branch audits	<p>The existing Act provides exemptions from audit of branches subject to certain</p>	<p>Kind attention is drawn to clause 143 (8) of the Companies Bill, 2011 which</p>

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		<p>rules. However, the Bill does not have any similar provisions. Provisions should be incorporated to prescribe rules for exemption of specific branches from audits.</p>	<p>provides for right of auditors in connection with audit of branches. These provisions are similar to clause 126(8) of Companies Bill, 2009. The provisions may be retained in the same manner as these have been examined and deliberated extensively and meet the objectives and intention of legislation.</p>
83.	143: Certificate from auditor	<p>Insertion of provision in the Bill whereby a certificate has to be obtained from Statutory Auditor certifying that the Balance-Sheet prepared is same as filed with Different authorities.</p>	<p>As various statutes like Electricity Act, Banking Regulation Act, TRAI Act, IRDA Act etc. require a different format of balance sheet, the suggestion is not feasible. In any case clauses 1(4) and 129 of the Companies Bill, 2011 allow such different forms of presentation of financial statements.</p>
84.	144: Auditor not to render certain services	<p>(i) This clause be made applicable to only listed and large sized companies as may be prescribed.</p> <p>(ii) It is suggested that a situation where a subsidiary is audited by another firm of Chartered Accountants should be included as an exception to Explanation (ii).</p> <p>(iii) A distinction to be made between an entity with which the client has a control relationship and another entity with which there is a significant influence relationship.</p> <p>(iv) Provision should be amended to delete associate companies from the scope of this clause. Explanation to Clause 144 is very wide and</p>	<p>(i) to (vii): (a) These provisions were included in the Companies Bill, 2009 as Clause 127 which were examined by Hon'ble Committee. Kind attention is drawn to recommendation at Para 34 and Para 10.50 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. These provisions were included in the regulatory framework by various jurisdictions post 2002 scams of Enron/ Worldcom etc. to ensure independence of auditors. Implementation of such provisions internationally has successfully enhanced the standards of accountable and transparent financial reporting and auditing</p>

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		<p>needs to be deleted. Restrictions should be applicable only for a subsidiary or associate that is material to the auditee company or if the auditee company is material to the holding company.</p> <p>(v) Management services should be defined services such as valuations, due diligence, special audit/ investigation etc. which could have bearing on the audit services.</p> <p>(vi) Scope of terms 'investment advisory services' and 'management services' should be clarified so that there is no doubt as to whether a service falls under these or not. AICPA Code of Professional Conduct defines the terms 'investment advisory services'; 'investment banking services' and 'management services' which can be used. Some mechanism may be considered through which certain non-audit services which are being provided by auditors traditionally consistent with their skills and expertise may be continued with adequate safeguards. It may be necessary to evaluate the significance of any threat created by provisions of non-audit services. Clause may be amended to exclude services where there are no self-review threats from scope of this clause.</p> <p>(vii) If at all the Bill needs to cover non-audit services, the Bill itself should contain</p>	<p>requirements. The need for such prohibition for auditors has also been widely felt necessary across various fora in India as well.</p> <p>(b) Hence there may not be any necessity of any change in the clause.</p>

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		only minimum restrictions and further restrictions may be prescribed through Code of Ethics.	
85.	145: Auditors to sign audit reports, etc.	In view of the fact that LLP can now be appointed as an auditor and since Clause 141(2), provides that only that partners who are chartered accountants shall be authorised to act sign on behalf of the firm, similar requirement should be prescribed here or Clause 141(2) should be cross referred.	The suggestion could be accepted.
86.	146: Auditors to attend general meetings	Attendance of auditors be made mandatory only in annual general meeting instead of in all the general meetings.	These provisions are same as under section 231 of present Companies Act, 1956 and was repeated in the 2009 Bill. Hon'ble Committee did not make any recommendation to modify these provisions. No difficulty has ever been faced in giving effect to the relevant provision.
87.	147(2) to (4): Punishment for contravention	<p>(i) Before any complaint is lodged in any court/forum, such complaint should be first sent to ICAI for preliminary enquiry and if according to ICAI, after <i>prime facie</i> case of negligence, then only such complaint should be permitted to be filed in the court. In absence of such provision, auditors may have to devote considerable time in defending frivolous suits or damages.</p> <p>(ii) Defenses available as per section 233B of the existing Act for defaults not committed wilfully should be provided to auditors to</p>	(i) and (ii):— The jurisdiction of ICAI arises in cases of professional misconduct and not for punishment for offences as defined under various laws. Thus where an offence triable by a court of law is committed the matter shall have to be dealt with by the court of competent jurisdiction under the Code of Criminal Procedure. Similarly, for civil liability the competent civil court will adjudicate. It will of course be open for the ICAI to deal with cases of professional misconduct where its jurisdiction exists.

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		ensure that the auditor is not unduly harassed/punished for technical/procedural/administrative defaults.	
88.	147: Punishment for contravention	The provision for indemnifying the auditors as stated in present clause 201 of Companies Act, 1956, needs to be inserted again.	<p>(i) The provisions for indemnification of liability of senior management of a company (<i>viz.</i> managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary) through Directors and Officers (D&amp;O) Insurance have been incorporated in clause 197(13) of the Bill. Similar provisions were part of Companies Bill, 2009 and no modification to such provisions was suggested by Hon'ble Committee.</p> <p>(ii) The provisions for indemnification of auditors were not included in the Companies Bill, 2009 after detailed examination and consultation with all stakeholders. There may not be any justification for their inclusion at this stage without any detailed reasoning. The suggestion may therefore not be accepted.</p>
89.	148(1): Cost Audit requirements	Requirements for Cost Accounting and Cost Audit should be mandated in law particularly for industries falling under specified consumer goods category and not for all industries. IT industries need not be covered under these provisions.	Kind attention is drawn to recommendation at Paras 10.67 and 10.68 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. Clause 148 enables Central Government to prescribe such norms for specific classes of companies.

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90.	149 (1): companies having more than 15 directors on commencement of the Act	Companies having more than 15 directors as on the commencement of this Act may be allowed to have such number directors.	In the absence of any reasons having been given in support of the contention the Ministry finds no reason to consider revisiting the provision.
91.	149(3): Central Government's power to prescribe minimum number of independent directors	Thresholds or tests may be prescribed for unlisted companies and private companies which are subsidiaries of public companies in relation to this provision as it may not be appropriate for independent directors to be appointed to all unlisted public companies and private companies. One example could be the requirement to appoint independent directors on the board of a unlisted public company which accepts public deposits.	As submitted during examination of Companies Bill, 2009, these aspects shall be taken into account while prescribing such requirements (through rules) under clause 149(3) on enactment of the legislation.
92.	149(5) and (6): Attributes/ Requirements relating to IDs	(i) The definition of an "Independent director" in the Bill and the number of independent directors are in conflict with the provisions contained in Clause 49 of the Listing Agreement. These should be harmonized. Further, in order to ensure flexibility in connection with any future amendments, the same be defined through rules made under the Bill instead of the Act.  (ii) The reference to relative should not be brought under the purview of this provision. Otherwise, the reference to relative in this clause should be limited to 'spouse and minor children dependent on the concerned ID'.	(i) to (v):— Similar suggestion was made by stakeholders during examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Paras 33 and 11.45 of report of Hon'ble Committee regarding "Regulatory harmony". The provisions proposed in the new Bill are in accordance with such recommendation. As recommended by Hon'ble Committee, the Companies Bill, 2011 seeks to provide for minimum benchmarks for all companies in the Bill and SEBI has been given delegated powers to prescribe more detailed or additional regulatory regime for companies under SEBI's jurisdiction. Hence there

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		<p>(iii) This is not in harmony with clause 49 of Listing Agreement. Harmonization ought to be achieved for each understandability and compliance.</p> <p>(iv) SEBI guidelines allow ESOPs to IDs. There ought to be harmony between SEBI guidelines and provisions of the new Bill.</p> <p>(v) The Bill does away with employee stock options as remuneration for independent directors. This may be reconsidered.</p>	<p>may not be any necessity of any change in the clause.</p>
93(i)	149(7) and Schedule IV: Code for IDs	<p>(i) It ought to be made clear that Schedule IV is only guidelines and also needs complete review to bring it in line with the functions that an ID can perform practically.</p> <p>(ii) Modification/ Clarification needed as to whether Code for IDs is mandatory or whether it is a guide to professional conduct for IDs.</p>	<p>(i) and (ii):— Kind attention is drawn to recommendation at Para 29 and Para 11.45 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Clause 149 (7) of the Bill provides that the company and independent directors shall abide by the provisions specified in Schedule IV. Provisions of Schedule IV provide for various guiding principles to be followed by IDs during discharge of their duties and role effectively. In other word, Schedule IV is not merely a guideline.</p>
93(ii)	149(7):Code for IDs	<p>(i) The code states that an Independent Director (ID) shall uphold ethical standards of integrity and probity. What would constitute an ethical behavior is not defined and thus open to interpretation.</p> <p>(ii) The code does not give any cognizance to the need</p>	<p>(i) It is correct that these terms have not been formally defined and that these need to be determined on a case to case basis.</p> <p>(ii) Kind attention is drawn to provisions of clause 149(5)(f) which empowers Central Government to make rules with regard to</p>

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		for training for the IDs.	such other qualifications as may be prescribed for IDs. The requirement for training etc. can be provided in the rules framed under such clause.
94.	149(8): Remuneration for IDs	<p>(i) Clause 149(8) provides that an Independent Director shall not be entitled to any remuneration other than—</p> <p>(a) fee as in section 197(5); (b) reimbursement of expenses for attending meetings; and (c) profit-related commission approved by members.</p> <p>(ii) Clause 197(7) says that an independent Director may receive remuneration only by way of commission or fee under sub-clause (5). But sub-Clause (5) only talks about fees and not commission.</p> <p>(iii) Therefore, Clause 197 should also provide for commission to independent Director as prescribed in Clause 149(8) to be approved by members.</p>	(i) to (iii):— These are drafting issues and phraseology will be improved to maintain consistency and uniformity.
95.	149: Explanation to sub-clauses (9) and (10): tenure of independent director (ID)	Appropriate transition period of 2/3 years be provided for smooth transition <i>e.g.</i> in cases when the reappointment of IDs comes up after the commencement of the Act, the director who has served the longest and in excess of say, 15 years to begin with, should not be considered for reappointment so that over a period of time, there is full and smooth transition and benefit of the experience of the IDs is available to the entity.	The provisions of clause 470 (Removal of difficulty clause) can address such issues.

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96.	149(9) and (10):Tenure of IDs	Given that a director would usually take a year or two to be familiar with the dynamics of a company, the functioning of the board etc., a term greater than five years or a term which may be fixed (within reasonable limits) by the company may be more appropriate.	The provisions allow an ID to have a maximum tenure of 10 years subject to compliance with the provisions of clauses 149 (9) and (10). Further, the past period is also not proposed to be counted for computation of such limits. These provisions are considered to be already highly liberal and no further change appears to be necessary.
97.	149 (11): Indemnity for IDs	<p>(i) The non-obstante clause at the start of Clause 149(11) of the Bill should be modified to provide that the liability of such directors is limited in the manner specified therein irrespective of any other law in force.</p> <p>(ii) The clause does not give desired protection to IDs and non-executive directors (NED). The clause may be modified to ensure protection from other laws as well for restriction on arrest. A new clause is suggested as under:—</p> <p><i>”Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force,—</i></p> <p><i>(a) Independent director 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</i></p> <p><i>(b) no arrest warrant shall be</i></p>	(i) to (iv):— Kind attention is drawn to recommendation at Paras 11.43 and 11.45 of report of Hon’ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Since the provisions appear to be reasonable and practical, there may not be any necessity of any change in the clause.

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		<p><i>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.</i></p> <p><i>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."</i></p> <p>(iii) We appreciate the effort of the Ministry to mitigate the liability of the IDs however the fact that the Bill still treats them equivalent to other directors by holding them responsible through board processes.</p> <p>(iv) Non-executive directors who are relatives of promoters may also be given immunity.</p>	
98.	149(12)/152(6): Rotation of directors	(i) Clause 149(12) provides for IDs would not be liable to retire by rotation, whereas, clause 152(6) of the Bill that the directors not liable to retire by rotation cannot exceed 1/3rd of the total number of directors. Therefore, there should be clarity to provide that IDs shall not be counted/ included in total number of directors while complying with provisions of clause 152(6). Following	(i) and (ii):— The suggestions may be accepted.

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		<p>explanations may be inserted at the end of clause 152(6):—</p> <p><i>Explanation.— (i) For the purposes of this section ‘total number of directors’ shall not include independent directors on the board of a company whether appointed under this Act or otherwise.</i></p> <p><i>(ii) In this section and in section 160, the expression, ‘retiring director’ means a director retiring by rotation.</i></p> <p>(ii) Compliance with both clauses 152(6)(a) and 149(12) may not be feasible and these provisions may accordingly be reconsidered.</p>	
99.	150(1): Selection of Directors from panel	<p>(i) Flexibility to be given to Companies to appoint independent directors from outside the mandated panel.</p> <p>(ii) Constitution of a panel may complicate the appointment process and raise issue regarding the selection, verification, validation and management of independent directors in the panel.</p>	<p>(i) and (ii):— (a) Kind attention is drawn to the following extracts from Para 29 of report of Hon’ble Committee:—</p> <p>“**** The appointment process of IDs may also be made independent of the company management by constituting a panel or a databank to be maintained by the MCA, out of which companies may choose their requirement of Independent Directors. ****.”</p> <p>(b) In view of above recommendation, the provisions of clause 150 have been included in the Bill. The provisions do not require companies to mandatorily choose IDs from such databank. The conditions/attributes for appointment of IDs specified in clause 149(5) shall have to be fulfilled by every ID. Databank shall only disclose</p>

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			names, addresses and qualifications of persons who are eligible and willing to act as IDs. This is basically to facilitate the users. More safeguards to ensure independence and convenience for users about these issues can be prescribed in the rules under this clause.
100.	165: Number of directorships	The permission from Central Government to hold directorship in more than the number specified in the clause should be done away with in accordance with the views of the Standing Committee.	Kind attention is drawn to para 11.72 to 11.74 of the report of Hon'ble Committee. The provisions are in accordance with such recommendation and do not require any permission from Central Government on the matter. The suggestion made has already been taken care of.
101.	166(4) and 166(7): Duties of Directors	The provisions may discourage multiple directorships. To avoid confusion, it should be clarified that common directorships by themselves will not attract liability pursuant to Clause 166(4) read with Clause 166(7) unless the director fails to recuse himself from a decision where he has a conflict of interest.	(i) Similar suggestion was made before Hon'ble Committee during examination of Companies Bill, 2009 which was evidently not accepted by the Committee. It was indicated by this Ministry at that stage that the intention is not to prohibit directors from entering into fair dealings. The clause only prohibits a director making undue personal gains at the cost of the company in which he has been appointed. The duties provided under this clause are being and have always been considered to be duties of directors who have to act in a fiduciary and trusteeship role for the companies in which they have been appointed. Various courts have also upheld such duties in their

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			<p>pronouncements. The Bill has only tried to codify these duties for awareness and due compliance by directors.</p> <p>(ii) In view of above, there may not be any necessity of any modification in the Bill on this matter.</p>
102.	168: Resignation of directors	As information provided to the ROC may be made public, directors of private companies may be excluded from the ambit of this provision.	These provisions are same as included in the Companies Bill, 2009. Hon'ble Committee did not make any modification to modify these provisions. The clause may, therefore, be retained as proposed. Exemptions for any class of companies, if required after examination and deliberations, can be considered under clause 462.
103.	169(2): Removal of directors	Attention is drawn to clause 115 of the Bill which deals with resolutions requiring special notice. There is need for provision of uniform period of notice to move such resolution. Even if uniform period is not provided, for any reason, it is suggested that the provision regarding special notice should be clubbed together at one place.	Kind attention is drawn to recommendation at Para 7.39 -7.43 and Para 11.94 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. However, the suggestion to align requirements for giving special notice provided under provisions of clause 115 and 169(2) may be considered.
104.	173(2): Holding of meetings through video conferencing	<p>(i) In order to permit free and frank discussions by the Board, the Bill should expressly provided that only the start of the Board meeting and the voting on each item be recorded <i>i.e.</i> there should be no requirement to record the entire proceedings.</p> <p>(ii) Requirement of recording of proceedings of</p>	(i) and (ii):— Similar suggestion made during examination of Companies Bill, 2009 was not agreed to by the Hon'ble Committee. Kind attention is drawn to recommendation at Para 12.8 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. In any case, it is felt that the manner

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		Board meetings conducted through video conferencing should be dispensed with and Board meeting through audio conferencing to be permitted.	of recording minutes is a matter of internal policies and practices of a company and the legislation need not concern itself with such details.
105.	175:Passing of resolution by circulation	<p>(i) It was suggested that Ministry should prescribed the number of Directors that may be required in respect of any important matter which should be decided only through physical meeting and not through circulation of resolution. The suggestion has not been considered in the Bill.</p> <p>(ii) Since foreign directors are permitted, the words 'in India' may be deleted from Clause 175 of the Bill.</p>	<p>(i) (a) The comments indicated are not correct. Kind attention is drawn to recommendation of Hon'ble Committee at para 12.15 and provisions of clause 175(1) (Proviso) which read as under:—</p> <p><i>“Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.”.</i></p> <p>(b) Hence the recommendation of Hon'ble Committee has been implemented.</p> <p>(ii) The provisions are similar to clause 156(1) of the Companies Bill, 2009. No recommendation for any modification on this issue was made by Hon'ble Committee. The provisions, since appear to be reasonable and relevant, may be retained as proposed in the Bill.</p>
106(i)	177: Composition of Audit Committee	The requirements in respect of constitution of audit committee are different in the provisions of clause 177 and Clause 49 of Listing Agreement on some parameters. The two would need to be harmonized with	Kind attention is drawn to recommendation at Para 12.22 and 12.31 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. The provisions of the Bill

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		each other.	have been seen and commented upon by various stakeholders including the SEBI which chose not to comment on this provision. Therefore, it can be presumed that SEBI will carry out necessary harmonisation of such minor details.
106(ii)	177: Whistle blower mechanism	There should be provision regarding whistle blowing in the proposed Bill and legal protection to the whistle blowers.	(i) Kind attention is drawn to provisions of clause 177(9) and (10) which provide for provisions in respect of vigil mechanism (which is similar to whistle blowing mechanism) for a class or classes of companies as may be prescribed under rules. Safeguards against victimization for whistle blowers have also been provided for in such provisions.  (ii) The suggestion made, therefore, has already been addressed.
107.	178: Nomination and Remuneration Committee	Companies may have the option to have two Separate Committees 'Nomination Committee' and 'Remuneration Committee' instead of a single 'Nomination and Remuneration Committee'.	Kind attention is drawn to recommendation at Para 12.22 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Since the matter of nomination/selection of directors and their remuneration are interlinked, it is appropriate if the same Committee decides both the matters. Hence the nomenclature of the Committee may be retained as 'Nomination and Remuneration Committee'.
108.	179:Power of the Board	It is not the intention that every individual allotment of shares under ESOPs shall have to be approved by	The suggestion is noted for being addressed while framing the rules.

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		Board. The rules to be framed under this clause may clarify this aspect.	
109.	185: Loans to directors etc.	<p>(i) This clause corresponds to section 295 of existing Act. However, section 295(2) seems to have been inadvertently overlooked. Such exemption is necessary. A holding and subsidiary company are in substance one entity and consolidated financials ensure that all their transactions with third parties are accounted and disclosed. Consequently, it is necessary to give freedom to companies to deal with their subsidiaries as if they are mere divisions of the company.</p> <p>(ii) The recommendation of Committee for clarifying the expression used in the clause <i>i.e.</i> "to any other person in whom the director is</p>	<p>(i)(a) The Irani Committee on new Company Law (2005) had made following recommendations in connection with restrictions for loans to be made to directors:—</p> <p><i>"5.1 Generally the directors should not be encouraged to avail of loans or guarantees from companies. They should be allowed remuneration or sitting fees only. In case company decides so, loans to directors should be allowed only when company by special resolution approves such loans. Disclosures to be made to shareholders, through the explanatory statement, should be specified in the rules. It should be open to a company to formulate schemes (such as Housing Loan Schemes) for the benefit of Executive Directors. Once such schemes are approved by the shareholders by special resolution, loans under such schemes may be allowed to eligible directors, without again going to shareholders for approval."</i></p> <p>(b) The provisions proposed in the Companies Bill, 2011 are in accordance with above recommendation and were similarly included in the Companies Bill, 2009.</p> <p>(ii) Kind attention is drawn to recommendation at Para 12.68 of report of Hon'ble Committee. The provisions proposed in the new Bill</p>

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		interested'' has not been accepted in the Bill and should accordingly be addressed.	(Explanation to clause 185(1)) are in accordance with such recommendation. The suggestion, therefore, has already been accepted. Hence there may not be any necessity of any change in the clause.
110.	186: Loans and investments by company	The companies may be allowed transition period after the date of notification of about six months to enable them to take post facto shareholders' approval for those loans, investments and guarantees which are necessitated on the day of the notification of or immediately thereafter.	These aspects can be addressed during availability of period between passing of the Bill by Parliament and issue of notification for commencement of relevant provisions. Any important issue can be addressed through issue of notification under clause 470 (Power to remove difficulty).
111.	189(3): Register of contracts or arrangements in which directors are interested	Clause 189 (3) requires every Director to give notice to the Company about himself. It is not clear what this notice should contain. Sub-clause (2) already requires Directors and KMP to give notice of particular relating to his concern or interest.	The suggestion is noted to be addressed suitably through legislative vetting.
112.	195: Prohibition on Insider Trading of Securities	(i) To avoid any overlap between these provisions and SEBI regulations on the matter, these provisions be deleted from the Bill. Separately, it may also be noted that whereas the concept of insider trading is generally understood to apply within the framework of listed companies, clause 195 of the Bill does not draw this distinction and makes it application to all companies.  (ii) Explicit provision be made that this clause does not apply to private companies.	(i) and (ii):— (a) Kind attention is drawn to recommendation at Para 12.113 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.  (b) Kind attention is also drawn to following provisions of clause 458(1)(Proviso) through which powers to enforce these provisions have been delegated to SEBI. The

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			<p>provisions read as under:—</p> <p><i>“458(1) Proviso:— Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.”</i></p> <p>(c) There is therefore no apprehension of any inconsistency with SEBI regulations.</p>
113.	196(3)(a): Age Limit of Managerial personnel	If the limits in respect of age are required to be retained, their applicability be limited to listed public companies and a specified class of public companies ( <i>e.g.</i> companies which have accessed public deposits) and the same should not be made applicable to private companies.	<p>(i) These provisions were included in the Companies Bill, 2009 as clause 174(4)(a). Kind attention is drawn to recommendation at Para 13.8 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation.</p> <p>(ii) Hence there may not be any necessity of any change in the clause.</p>
114.	196(4): Requirement of Special Resolution for appointment of managerial person	The requirement relating to passing of 'special resolution' should be modified to 'ordinary resolution'.	The suggestion may be accepted.
115.	203: Appointment of	(i) The provisions for separate position for Chairman and CEO in	(i) (a) Kind attention is drawn to relevant provisions 203(1) Proviso which read as

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	key managerial personnel	<p>companies may be reviewed in case of companies having majority of independent directors in their Board.</p> <p>(ii) There should be a clarification that where there is an existing resolution for such appointment approved by shareholders, such resolution would continue to remain effective and new provisions shall apply for fresh appointment requiring approval of shareholders. The provisions should be applicable prospectively.</p>	<p>under:—</p> <p><i>Provided that unless the articles of such a company provide otherwise, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time.</i></p> <p>(b) It can be observed that provisions are voluntary in nature and company can amend its articles to allow a person to become Chairman as well as CEO/MD.</p> <p>(ii) There may not be any need for transitional arrangement since the provisions are voluntary in nature and the company has to amend its articles in case it does not intend to comply with the provisions. The need for any transitional time period, if at all required, can be considered through notification under clause 470 (Power to remove difficulty).</p>
116.	205(1)(b): Secretarial standards	Secretarial standards dealing with procedural matters only should be considered for mandatory compliance. Secretarial Standards dealing with interpretation of statutory provisions should not be made mandatory since such an interpretation may not always be in consonance with common law.	(i) The Standards issued by the Institutes (like ICAI, ICSI, ICWAI) are subject to provisions of all applicable laws in the country. In case of any inconsistency between provisions of any law and the standard, the provisions of law shall have overriding effect. This approach has been reflected in the Preface/Introduction to Standards issued by such Institutes. The same effect shall be retained in the Secretarial Standards after the new Bill is implemented.

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			(ii) In view of above, there does not appear to be any necessity of any modification in these provisions.
117.	212: Investigation by SFIO	A time frame has not been provided for completing such investigation. Time frame be provided for completing such investigation.	<p>(i) Similar suggestion was also made by certain stakeholder to Hon'ble Committee in context of inspection/investigation under the Companies Bill, 2009. It was submitted by this Ministry at that stage that there may not be any time limit on the action to be taken in connection with any inspection or investigation against a company since any contravention, which may also include any fraudulent action, may come to notice at any time and there should not be any statutory or legal restriction in respect of limitation of time on the Government in taking such action.</p> <p>(ii) In view of above, there may not be any necessity of any modification in the Bill on this matter.</p>
118.	230(5): Multiplicity of Regulators	It may be reconsidered whether such intimation is required as the appropriate regulation independently regulate compromise/arrangements under various statutes, as applicable. However, if this provision is retained, the phrase "such other regulators or authorities which are likely to be affected" be deleted as this is very broad and ambiguous.	Kind attention is drawn to recommendation at Para 15.20 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. In any case, the words recommended for deletion are necessary to rule out a possibility of some statutory authority having jurisdiction in some aspect of the case having been left out.
119.	230(9): Dispensing with the	A similar provision may be provided dispensing with the meeting of shareholders	The members and creditors stand on different footing so far as protection of their

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	meeting of Creditors in compromise	of closely held companies if they agree and confirm by affidavit the scheme of compromise and arrangement.	interests are concerned. The meetings of members are considered to be essential for such important matters to ensure corporate democracy and principle of participation in important decision makings.
120.	230 (10): Buy back in case of compromise, arrangements	Consideration of capital adequacy is safeguarded in a scheme of compromise or arrangement by the judicial oversight and the opportunity given to creditors. Hence buy-backs that form part of such compromises or schemes of arrangements need not be in accordance with clause 68. Hence clause 230(10) should be deleted.	These provisions are same as included in clause 201(9) of the Companies Bill, 2009. Hon'ble Committee did not make any modification to modify these provisions. The intention is to allow buy back after following comprehensive provisions of clause 68 of the Companies Bill, 2011 which seek to protect interests of investors, particularly minority investors. The provisions of clause 230(10) seek to check the malpractice adopted by companies to use compromise/arrangement route for buying back of securities instead of specific provisions of clause 68. Hence the intention behind clause 230(10) is to disallow such route. Such provisions may, therefore, be retained as proposed.
121.	234(1): Cross border mergers	It should be clarified that whist companies located in all (even un-notified) jurisdiction may merge into an Indian company; an Indian company may only merge into companies located in notified jurisdictions.	Kind attention is drawn to recommendation at Para 15.41 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
122.	235: Acquisition of shares of minority	(i) Sub-clause (3) provides that a copy of notice will be sent to the transferor company together with an	(i) and (ii):— The suggestion could be considered.

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		<p>instrument to be executed on behalf of the shareholders by the person appointed by the transferee (1) company and on its own behalf by the transferor (2) company. Here the shareholder holds the shares of the transferor company. Therefore it is presumed that the instrument will be executed by a person appointed by the transferor company and not the transferee company as stated in the sub-clause.</p> <p>(ii) Similarly, there is no scope for the transferor company to sign the instrument on its behalf. On the other hand, the instrument will be signed by the transferee company or its nominee.</p> <p><i>Suggestion:—</i> In the first para the word transferee (1) may be changed “transferor” and the word “transferor” (2) be changed as “transferee”.</p>	
123(i)	236: Minority Squeeze Out	<p>(i) This provision should apply only to listed companies in which case the same may be dealt with by the SEBI separately under the regulations issued by it and removed from the Bill.</p> <p>(ii) Further, the Clause does not appear to provide for a compulsory squeeze out of the minority shareholders. In the event that it is desired that the Bill provide for these matters (instead of the matter being dealt with separately by the SEBI which may be preferable), be recommended that the</p>	(i) to (iii):— The suggestion is noted for improvement in language to clarify intent clearly.

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		<p>Clause be modified to provide for a process for compulsory squeeze out of minority shareholders of the listed company in question.</p> <p>(iii) In such case, the relevant provisions of the Bill would also need to be harmonized with the SEBI( Delisting of Equity Shares) Regulations, 2009 and suitable drafting changes be made to Clause 236 of the Bill. By way of an illustration, it is not clear how the provisions of Clause 236(9) of the Bill would work.</p>	
123(ii)	236: Purchase of minority share-holding	Sub-clauses (2) and (3) appear to state the same actions as one says valuation by valuer according to rules to be prescribed and the other says price to be determined on the basis of sub-clause (2).	The objectives of these sub-clauses are different. While in sub-clause (2) majority shareholder offer to take stake of minority shareholders, in sub-clause (3) it is the minority shareholders who may offer their shares to majority shareholders. Since in both the situations valuation has been provided the set of rules framed under sub-clause (2) can also be used for valuation required under circumstances under sub-clause (3). Hence these two sub-clauses are different but interlinked. The provisions may be retained as proposed in the Bill.
124(i)	245: Class Action	The clause does not expressly provide for filing of derivative suits by shareholders of a company whereby shareholder initiates legal action when management fails to do so. Express provision dealing with derivative action by shareholders on behalf of a	Kind attention is drawn to recommendation at Para 16.25 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.

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		company be incorporated in clause 245.	
124(ii)	245: Class Action Suits	<p>(i) The fact that there are always possibilities of misuse cannot be ignored and a manner should be prescribed to prevent misuse of these provisions.</p> <p>(ii) Class action is particularly intended to redress grievances of members/depositors. Auditors are not involved in such wrong doings. Hence should be kept out of ambit of this clause.</p> <p>(iii) Clause to be amended to recover costs or expenses connected to the application for class action from person or company responsible for oppressive act only after the order is passed declaring them as guilty.</p>	<p>(i) and (ii):— (a) As recommended by Hon'ble Committee at para 16.25 of its report, the provisions on class action were examined in the light of such provisions provided under laws of other countries like UK and Singapore. The provisions have been revised accordingly and are part of clause 245 in the new Bill. Safeguards like making of application for class action by a minimum number of members/depositors; Tribunal to have power to consider certain important aspects while hearing class action applications and penal action in case of frivolous/vexatious applications have been included in the revised clause.</p> <p>(b) The suggestions made, therefore, have been addressed in the new provisions.</p> <p>(iii) This can be decided by the Tribunal and need not be provided in the law.</p>
124(iii)	245(1)(g) (ii): Class action	The term “wrongful act or conduct” is very ambiguous and may be omitted. Transgression of procedural/technical or unintentional should be viewed in broader perspective and should not be subject matter of class action suits. Only audit	On further consideration the Ministry is now inclined to be of the view that while civil liability needs to be shared by all auditors/partners in the auditing firm, criminal liability will be restricted to individuals to whom specific wrongful

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		partner who acted in gross negligent or fraudulent manner should be made responsible for outcome of class action and not the firm.	acts of omission and commission (which are declared to be offences under the Companies Act or other Law) are attributable. For the purpose of levy of fine, however, the firm will also be liable.
124(iv)	245: Derivative action	Class action suits are poor substitutes for derivative actions and would not be effective in India where effective corporation action is available only to the rich and mighty. Provision for derivative action should be considered to empower shareholders to go against the wrong doings of the companies at the expense of such companies.	These types of concepts evolve over time and should not be included hurriedly. The provisions proposed are in accordance with 2009 Bill and as per recommendations made by Hon'ble Committee. At this stage, inclusion of new concepts may not be accepted.
125.	247: Valuation by registered valuers	<p>(i) Only those valuers, who are (a) not already otherwise required to be registered with professional bodies or the Government, (b) not already subject to professional body supervision, and, (c) not liable to professional disciplinary proceedings, should be required to register, as proposed.</p> <p>(ii) To deter valuers from contravening the provisions of Clause 247 of the Bill, it may also be provided that a valuer who contravenes the provisions of this section shall (in addition to attracting the suggested penal clause) be disqualified from being re-appointed as a valuer of such company and of any other companies for a prescribed period of time.</p>	<p>(i) and (ii): (a) The provisions proposed in clause 247 seek to recognize the concept of valuer for the purpose of valuation of shares/assets/properties required under some of the provisions of the new Bill. These provisions are relevant for arriving at value of consideration for issue of securities for consideration other than cash and for right offer/exit offer etc. The intent behind these provisions is to ensure fair valuation of such shares/assets/properties and to protect interest of non-promoter shareholders.</p> <p>(b) Detailed requirements and safeguards shall be prescribed under rules to be framed under this clause. The suggestions made have been noted be considered at the time of such rule making.</p>

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126.	253(1): Determina- tion of sickness	The term 'sick company' needs to be defined in the Bill.	<p>(i) The term 'sick company' was not defined even in the Companies Bill, 2009 since the provisions of clause 253 are self-explanatory with regard to determination of sickness and the term 'sick company' has been used in context of such determination. Moreover, the term is relevant mainly for chapter relating to rehabilitation of companies only.</p> <p>(ii) Kind attention is drawn to recommendation at Para 19.13 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.</p>
127.	253(1)	On several occasions creating security involves obtaining approval of the lessor, permission of the State government, etc. These requirements cannot be dispensed with and at the same time it is beyond the control of the companies to expedite such approvals/permissions. Thus it would be pertinent to note that even though a company has the ability to pay of its debts or create adequate security in favour of its lenders, delay in aforementioned approvals will trigger the 30 days timeline. Hence it is requested to revise the clause keeping in view the above issues.	The period of 30 days provided in clause 253(1) does not refer to any period before creation of security. It merely refers to period of default in payment of debts outstanding to creditors. The provisions propose to give an additional statutory period of 30 days for settling debts of creditors before they can initiate the process for determination of the company as a sick company. The provisions are similar to provisions of clause 229 of the Companies Bill, 2009 which were seen by Hon'ble Committee. Hence there may not be any necessity of any change in this clause.
128.	447: Punishment for fraud	Clause 447 may be amended to restrict its applicability to clauses where the fines are	(i) As per recommendation made by Hon'ble Committee, the Bill has

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		not specified in any other clause.	<p>defined the term 'fraud' and provided punishment for the same. Offences involving fraud have also been inter-linked with such term and punishment. Additionally, in view of the recommendations made by Hon'ble Committee to strengthen the SFIO, fraud related offences have been made severe and power of arrest has been proposed for SFIO in such cases, subject to certain safeguards as provided under clause 212.</p> <p>(ii) In view of above, the suggestion may not be considered.</p>
129.	464: Prohibition of association or partnership	To ensure quality, professional service, firms need to have critical strength and therefore may be permitted 100 partners in a firm.	The suggestion has already been incorporated in the provisions of clause 464(2)(b). As recommended by Hon'ble Committee, the provisions proposed in Companies Bill, 2009 have been retained in this regard which seek to provide that restrictions about number of partners shall not be applicable to any association/partnership formed by professionals who are governed by special Acts (like CAs/CWAs/CSs). The suggestion, therefore, has already been accepted in the new Bill.
130(i)	469: Power to make rules	There are many matters which would be prescribed under the Rules. There is a need to strike balance between flexibility and certainty of law to face the challenges of increasing globalization. There is every possibility that the requirements may be	The suggestion has been noted and as submitted earlier draft rules would be placed in public domain for comments for appropriate duration.

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		<p>changed frequently, by way of changing rules. It is suggested that all draft rules should be kept open for public debate for sixty days.</p>	
130(ii)	469: Rules on accounts and audit provisions.	<p>Certain matters like (a) rules to facilitate rotation of auditors, (b) manner of selection of auditors, (c) conditions with regard to appointment of auditors <i>w.r.t.</i> consent to be given by auditor, and (d) number of audits that an auditor/firm can undertake should be incorporated in the Bill itself rather than making these a part of rules.</p>	<p>It may kindly be noted that though all substantive provisions/principles on the matters referred to in the suggestion like rotation norms for auditors, power of shareholders or C&amp;AG to appoint auditors and conditions with regard to disqualifications of auditors have been specifically indicated in the Bill. It is only the additional/procedural requirements like rules to facilitate rotation of auditors in a seamless manner, manner of giving of consent by auditor on his appointment and maximum number of audits which an auditor can perform which are proposed to be prescribed through rules. These provisions seek to ensure flexibility in the provisions. Moreover, framing of rules would also be as per consultative process and the views of all concerned stakeholders would be taken into account for this purpose.</p>
130(iii)	469: Rule making on certain matters	<p>(i) Definition of KMP [Clause 2(51)], related party [Clause 2(76)], number of investors in case of a private placement [Clause 42] and duties of debenture trustees [Clause 71] should be addressed through the provisions of the Act and not through rules.</p> <p>(ii) Similarly, Qualifications</p>	<p>(i) and (ii):— The suggestion has been examined and it is felt that the referred provisions proposed in the Bill [which (except clause 42) are as per Companies Bill, 2009] and have been already much deliberated and almost accepted by all. Hence no change seems to be necessary.</p>

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		of IDs [Clause 149(5)] and contents of prospectus [Clause 26] could be better covered through rules.	
131.	Schedule V: remuneration payable to managerial personnel read with clause 196/197	<p><b>Section II Para (B):</b> Under this clause if a person who is non-executive director becomes an executive director, he cannot get the benefit if the person is holding only one share of the company. Provisions may be therefore changed. Further these clauses should not be made applicable to private companies.</p>	Suggestion is acceptable in principle. However, some threshold shall have to be prescribed so that persons with substantial stake (who may be de-facto promoters) do not take advantage of such special dispensation.
132.	General	<p>Following provisions require review in context of criminal liability:—</p> <p>Delay in registering transfer of shares within the prescribed period [clause 56(6)];</p> <p>Defaults relating to registration of charges [clause 86];</p> <p>Failure to file certain agreements and resolutions with RoC [cl. 117(2)]</p> <p>Failure to fine DIN with the RoC [cl. 157]; Failure to disclose interest by directors [cl. 184(4)].</p>	<p>(i) The Ministry has been guided by the recommendation of Hon'ble Committee to ensure that technical or procedural defaults of companies are seen in a broader perspective in contrast to fraudulent practices/activities which need to be dealt with severely and decisively. The provisions in the new Bill are in accordance with such recommendation.</p> <p>(ii) The detailed analysis for distinguishing offences/ defaults/non-compliances was done in the light of such recommendation. The offence and penalty structure in the Bill seeks to provide for:—</p> <p>(a) regularization of filing of documents through late fees, (b) adjudication of procedural non-compliances/ defaults through levy of monetary penalties by Registrars, (c) adjudication of offences (involving fine or</p>

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			<p>imprisonment or both) through Special Courts to be designated/set up under the Bill.</p> <p>(d) redressal of civil action/liabilities through National Company Law Tribunal (NCLT).</p> <p>(iii) The penal clauses for non-compliances indicated in the suggestion appear to be appropriately provided.</p>
133.	New	<p>The concept/profession of “Certified Fraud Examiner” may be recognized in the Companies Bill in connection with carrying out investigation on fraud related matters.</p>	<p>(i) Concept of ‘Certified Fraud Examiner’ was not included in the Companies Bill, 2009, nor was any suggestion/recommendation on such matter during examination of such Bill.</p> <p>(ii) In view of strengthening of norms on statutory audit, internal audit, secretarial and cost audits, role of audit committee, enhanced role for IDs, accountability on the part of promoters/officers in default and management, recognition of SFIO and stricter regime to regulate fraud included in the Bill, there may not be any necessity of recognition of concept of ‘Certified Fraud Examiner’ in the Bill. The suggestion, therefore, may not be considered.</p>
134.	General	<p>Company making positive announcements for shareholders (right/bonus/New listings/buyback) but not implementing the same within six months must compensate the shareholders.</p>	<p>These aspects are already appropriately being regulated by SEBI. No further change appears to be necessary.</p>
135.	General	<p>Provision may be included in the Bill whereby</p>	<p>Suggestion is noted to be addressed through rules</p>

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		Quarterly return regarding opening and closing of any office other than its registered office has to be filed by companies.	under clause 92 (Format of Annual Return to be filed with Registrar).
136.	General	(i) Provision restricting companies not to receive share application money beyond its authorized share capital except in case of holding company receiving it by way of public issue may be included.  (ii) Also, application of provisions of the Bill on small companies to be overlooked.	(i) This aspect has already been addressed in Para 5(G)(g) of "General Instructions for preparation of Balance - Sheet" in Schedule III (Format of Financial Statement).  (ii) Exemptions to small companies have been provided in respective relevant clauses and future exemptions, if required, can be considered through notification under clause 462.

4.2 There were some suggestions which relate to those recommendations of the Committee which were either not accepted or partially accepted by the Ministry. This has been indicated in the statement given below alongwith comments of Ministry thereon:—

Sl. No.	Clause/ title/Issue	Suggestion	Comments of Ministry
1	2	3	4
1.	2(11): Body corporate or corporation	In order to be consistent with the provisions of Section 3 of the Limited Liability Partnership (LLP) Act, 2008, LLP should be specifically included in the definition of body corporate or corporation.	(i) Kind attention is drawn to recommendation at Para 1.44 of report of Hon'ble Committee. The Committee had recommended that the term 'LLP' may be included within the definition of the term 'body corporate'. The matter, however, was reviewed during consultation with concerned Ministries/ Departments and vetting by Law Ministry. It was felt that though LLPs are bodies corporate under LLP Act, 2008 which is a general Act for LLPs, reference of such

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			<p>term in the definition of the term 'body corporate' under the Companies Bill, 2011 will create avoidable confusion as the Companies Act is meant for only a particular species of body corporates viz. Companies.</p> <p>(ii) Clause 141(3)(a) of the Bill, however, allows, LLPs to be appointed as auditors in companies.</p> <p>(iii) It is felt that these provisions may be retained as proposed in the Bill.</p>
2.	2(51): Key managerial Personnel:	Whole Time Director (WTD) not included specifically as KMP. WTD to be included within definition of KMP even if the company has MD/Manager.	The whole-time directors, in case of companies where managing directors or managers are in position, do not exercise substantial powers of management and control despite being in charge of specific areas of management (like Finance, Human Resource or Manufacturing/Engineering etc). Hence it was felt that whole-time directors may not be brought within the purview of KMPs. There is, however, scope of bringing them within the purview of the term in view of clause 2 (51) (iv).
3.	2(71): Public Company	Unlike the Act, the Bill does not specify clearly which provisions would be applicable to such subsidiaries. This will require such subsidiaries to necessarily follow additional compliances relating to public co. as it is now. Existing provision in the Act [Section 3(iv)] should continue.	<p>(i) Clause 2(71) reads as under:—</p> <p><i>(71) "public company" means a company which—(a) is not a private company;(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:</i></p> <p><i>Provided that a company which is a subsidiary of a company,</i></p>

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			<p><i>not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;</i></p> <p>(ii) Kind attention is drawn to recommendation at Para 1.103 of report of Hon'ble Committee. The above provisions are in line with the recommendation. Further, the position under the existing Act is vague since the phrase 'a private company which is a subsidiary of a public company' repeatedly occurs in various sections causing confusion. By including such phrase in the definition clause itself the need for repetition has been obviated.</p> <p>(iii) The Bill seeks to clarify this aspect. Hence no change may be considered for this clause.</p>
4.	2(87): Proviso: Subsidiary company: layers require- ments	<p>(i) The Act now provides for consolidation of accounts of subsidiaries including associates and joint ventures. Consequently, full information of all transactions of company and its subsidiaries would be transparently disclosed. Hence it is no longer relevant to limit the number of layers of subsidiaries.</p> <p>(ii) The definition of subsidiary under the Bill and the AS21: Consolidated Financial Statements should be harmonized. The number of layers required by a company is dependent on</p>	<p>(i) to (iii):— (a) Kind attention is drawn to recommendation at Para 58-59, 1.122 and 12.90 of report of Hon'ble Committee. The provisions proposed in the new Bill are broadly in accordance with such recommendation and in any case consolidation of accounts does not by itself rule out misuse of subsidiaries embedded in various layers to achieve ulterior motives. Thus a removal on number of 'layers' is not justified on this ground.</p> <p>(b) In any case requirements for restrictions for layers</p>

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		<p>the number of business lines that it operates, the number of countries where its operations are spread, etc. Accordingly, it may not be feasible to apply one rule for all companies — rather cognizance should be given to the facts and circumstances of each company.</p> <p>(iii) MCA should specify the sectors to which this clause shall be applicable and the number of subsidiaries should be prescribed under the Bill itself as this clause shall have large impact on the parent companies.</p>	<p>for class or classes of companies shall be specified under rules as considered appropriate through deliberations with concerned stakeholders.</p>
5.	105(1): Proxies	<p>A representative of a member company should be allowed to appoint proxy and the authority of such proxy should not be restricted by number of shares the proxy represents.</p>	<p>(i) Kind attention is drawn to provisions of clause 113 which read as under:—</p> <p><i>113. (1) A body corporate, whether a company within the meaning of this Act or not, may,—</i></p> <p><i>(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;</i></p> <p><i>(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</i></p>

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			<p><i>an individual member, creditor or holder of debentures of the company.</i></p> <p>(ii) The above provisions are self explanatory with regard to powers of a member of a company, who is a body corporate, to appoint a representative to exercise powers to vote in general meetings on behalf of such body corporate member. Clause 113(2) further empowers such representative (of the body corporate) to vote through proxy or postal ballot. The restrictions about appointment of proxy by such a representative shall, however be in accordance with the provisions of clause 105 (Proxies) and the rules made there-under. The suggestion, therefore, is noted in connection with rules to be framed under clause 105.</p>
6.	129: Financial Statement	Unlisted entities should not be mandated to prepare Consolidated Financial Statement (CFS), as this would increase the cost of compliance. The provision that requires attaching a statement containing salient features of the financial statements of the subsidiary would suffice for such entities.	Intention of consolidation of financial statements is to give true and clear picture of financial position of the holding company and its all subsidiary companies to the investor and public at large. This would reflect the true strength of the entire group of companies. Since these provisions seek to enhance standards of financial reporting and are for the benefits of users of financial statements, including investors, the provisions proposed in the Bill may be considered to be retained.
7.	147(2)/ 147(3): Punishment	(i) The auditor would be liable only to a reasonable, limited and identifiable	(i) to (vi):— (a) While the provisions under consideration are essentially those

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	for contraven- tion	<p>group of users that have relied on his work (<i>e.g.</i>, creditors) even though these persons were not specifically known to the auditor at the time the work was done. Clause should be amended to prescribe no or low penalty for technical/administrative defaults by the auditor.</p> <p>(ii) Since auditor, although appointed under the Act, is engaged by way of contractual relationship with the company and should therefore be obligor only to the company. Hence the words 'or to any other person' may be deleted.</p> <p>(iii) Also, the term "intent to deceive" may lead to undue harassment and protracted litigation. Hence either this should be clarified further or should focus on willful non-compliance or gross negligence. Transgression of procedural/technical or unintentional should be viewed in broader perspective and should not be viewed as case of willful misconduct or gross negligence.</p> <p>(iv) The liability towards other persons may be restricted to cases where the contravention is made with the intention to deceive the company or its shareholders or creditors or any other person concerned or interested in the company.</p> <p>(v) Cl. 147(3) should be made applicable only in</p>	<p>contained in the 2009 Bill, following the recommendations of the Honourable Committee requiring the Government to define 'Fraud' and to link serious acts of omissions and commissions with such definitions certain changes had to be introduced in 2011 Bill. This has resulted in fixing civil and criminal liabilities on errant Auditors/ Audit Firms. The role of auditor is very important in context of financial discipline and accountability amongst companies. Their role is very essential in ensuring good corporate governance and protection of interests of stakeholders, particularly, non promoter stakeholders. Liability of auditors, therefore, has to commensurate with the expectations from them.</p> <p>(b) The present provisions <i>mutatis mutandis</i> continue the earlier formulation contained in clause 130 of the Companies Bill, 2009. Kind attention is drawn to recommendation at Para 10.60 of report of Hon'ble Committee. The provisions now proposed are in accordance with such recommendation.</p> <p>(c) Further, clause 147(2) does not include penalty for violation of clause 139 (contravention of provisions relating to rotation). Accordingly, reference of clause 139 may also be added in clause 147(2).</p>

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		<p>cases where auditor has been found guilty under proviso to clause 147(2) and not in all cases where auditor is convicted under clause 147(2).</p> <p>(vi) Various penal clauses in respect of auditors should be amended to restrict maximum penalty to the audit fees received and minimum to Rs. 10,000. The ICAI should be made regulatory authority for this clause.</p>	
8.	147(4): Punishment where audit is conducted by firm	<p>(i) The clause is against norms of criminal law and it would be unfair to make other partners or the firm criminally liable for fraudulent act of a partner.</p> <p>(ii) Clause 147(4) should be amended by replacing the words 'liability, whether civil or criminal' with the words 'civil liability'.</p> <p>(iii) Joint and several liability of the partners should be removed in line with the LLP Act, 2008. It is not clear as to how would the firm be liable for criminal consequences.</p> <p>(iv) Clause 147(4) may be deleted as clause 147(2) takes care of similar situations.</p>	(i) to (iv):— On further consideration the Ministry is now inclined to be of the view that while civil liability needs to be shared by all auditors/partners in the auditing firm, criminal liability will be restricted to individuals to whom specific wrongful acts of omission and commission (which are declared to be offences under the Companies Act or other Law) are attributable. For the purpose of levy of fine, however, the firm will also be liable.
9.	186:Loan and Investments by Company	(i) Investments to be made through not more than two layers of investment companies:— This provision is restrictive and may be re-considered and revised to provide the required flexibility in view of the commercial realities.	(i) Kind attention is drawn to recommendation at Para 57-59 and 12.90 of report of Hon'ble Committee. The suggestion made regarding layers for investment subsidiaries has been partially accepted. Clause 186(1) allows two layers to enable formation of Special

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		(ii) Loans/Investments to Wholly Owned Subsidiaries (WOS) should be exempted.	Purpose Vehicles (SPVs).  (ii) In accordance with the recommendations made by Hon'ble Committee at Paras 57-59 and 12.90 of its Report, Clause 186 seeks to apply such provisions to all companies including wholly owned subsidiaries. These provisions are necessary to ensure good corporate governance and prevent siphoning of funds. Hence there may not be any necessity of any change in the clause.
10.	203(1): Appointment of key managerial personnel	This clause does not include CFO. The Chief Financial Officer may be added in clause 203(1) as clause 2(51) which defines KMP includes CFO.	The suggestion may be accepted.

4.3 The suggestions received on new proposals (which were not included in the Companies Bill, 2009) alongwith the Ministry's comments thereon are indicated below:—

Sl. No.	Clause/ title/Issue	Suggestion	Comments of Ministry
1	2	3	4
1.	23(2): Public offer and private placement	Clause 23(2) may be amended to make it consistent with clauses 62 and 63 to allow issue of shares through right issues and bonus issues.	The suggestion may be accepted.
2.	23(2) read with clause 42	The word 'only' in clause 23(2) should be replaced with 'also' to remove confusion in interpretation of the two clauses. Restrictions on private placement are welcome.	The suggestion may be accepted.
3.	40: Securities	(i) It should be provided that if a company is not granted	(i) and (ii):— Since the new provisions now provide for

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	to be dealt with in stock exchanges.	<p>final listing approval, the company shall forthwith repay without interest all moneys received from the applicants within a specified period.</p> <p>(ii) Section 73(1A) of the Act provides that any allotment made in pursuance of a prospectus in a public offer shall be void if approval of the stock exchanges is not received within the prescribed time, and provision for appeal if application for listing is refused by any stock exchanges. Similar provisions were also included in Clause 35(2) of the Companies Bill, 2009. These Provisions are also very important for protection of investor interest, and hence we recommend that the same be reinstated.</p>	<p>obtaining permission from the recognized stock exchange prior to filing prospectus, the change suggested is not necessary. Once permission from recognized stock exchange has been received before filing of prospectus, there should not be any question of refund if permission by the exchange is not granted. Hence the provisions are more investor friendly and should be retained as proposed in the Bill.</p>
4.	42: Private Placement	<p>(i) The term 'private placement' be defined in line with safe harbor provisions contained in section 67(3) of the existing Act.</p> <p>(ii) Clause 42(3): In order to prevent the clause from having an unintentional effect of prescribing that every fund raising has to be successful, the words "or such offer or invitation has been unsuccessful and withdrawn by the company or has been abandoned by the company' be added in the end.</p> <p>(iii) Shares offered to employees pursuant to</p>	<p>(i) Since the provisions of clause 42 provide for various requirements in respect of 'private placement', there may not be any necessity to further define the term 'private placement'.</p> <p>(ii) and (iii):— The suggestions may be accepted.</p>

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		ESOP pursuant to clause 62(1)(b) be exempted from restrictions relating to private placement. This could be covered in clause 42 or in the rules to be notified.	
5.	42 read with 26, 62 Issues relating to public offer, private placement and prospectus etc.	<p>(i) On the following provisions/issues, status as approved by the Standing Committee in context of Companies Bill, 2009 to be maintained.</p> <p>(a) Clause 2(70): Definition of the term 'Prospectus';</p> <p>(b) Clause 2(31): Definition of the term 'Deposit';</p> <p>(c) Clauses 42 and 23: "Powers of SEBI" and "Public officer and Private Placement".</p> <p>(d) Clause 26: Matter to be stated in the prospectus.</p> <p>(e) Clause 32: Regarding information memorandum/ red herring prospectus.</p> <p>(f) Clause 62: Further issue of share capital.</p> <p>(ii) The term 'Hybrid' should be included in the Bill on the lines of Companies Act, 1956.</p> <p>(iii) Notification No. GSR 879(E) dated 14th December, 2011 published in Extraordinary Gazette with regard to the Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011 needs to be revoked immediately, as it is</p>	<p>(i) to (iii):— (a) The Hon'ble Committee along with other observations, specifically observed that 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 would therefore have to be appropriately addressed in the Bill".</p> <p>(b) Further, the Committee had emphasised that adequate safeguards are to be provided for the investors, particularly the small investors and those investors be made well aware of the risks involved in their investments. A good investor protection mechanism requires proper disclosures and enforcement mechanism in the event of defaults by companies. The Companies Bill, 2011 to which the provisions under reference relate, has been prepared keeping in view the directions of the Committee.</p> <p>(c) A detailed consultative process had been undertaken in the Ministry with other Ministries, Departments and Regulators for finalisation of the Bill. The</p>

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		unwanted and uncalled for as the Bill is still pending before the Parliament.	revised formulations are the outcome of this consultative process.
6.	58: Refusal of Registration	Since the proviso refers to a contract between two or more persons, a contract to which a public company is a party would be enforceable and may affect the free transferability of the shares of such company. Therefore, further clarity may be provided as regards circumstances under which the exemption to free transferability of shares of a public company would be applicable.	The provision simply seeks to codify the pronouncements made by various Courts holding that contracts relating to transferability of shares of a company entered into by one or more shareholders of a company (which may include promoter or promoter group as a shareholder) shall be enforceable under law. The provisions proposed in the Bill may be retained. Any clarification, if required, can be issued through circulars etc. after notification of the legislation.
7.	61(1)(b): Alteration of share capital	Since consolidation/division of shares is a process of internal reorganization of the share capital of a company, approval of Tribunal may not be necessary and hence the said provision requiring approval may be removed.	The approval of Tribunal is considered necessary to check the practice by companies of consolidating value of their shares with the objective to oust minority shareholders. Since these provisions seek to protect interests of minority shareholders and improve corporate governance norms, these may be retained as proposed in the Bill.
8.	70: Buy back	Time lines similar to provided in this clause (default remedied and 3 years thereafter) may be prescribed as regards non compliance with provisions of clauses 92, 123, 127 and 129.	The provisions are similar to section 77B (2) of existing Act which have been included in the new Bill as these were inadvertently left out in Companies Bill, 2009. These provisions may, therefore, be retained as proposed in the new Bill since these seek to bring more accountability on the part of companies.

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9.	124(6): Unpaid Dividend Account— Transfer of securities to IEPF	The requirement of transfer to IEPF of shares in respect of which dividend has remained unpaid/unclaimed for a consecutive period of 7 years or more should be dropped because companies cannot, in law, transfer such shares to IEPF.	<p>(i) This point has been further examined in consultation with the Ministry of Finance on whose insistence this provision was inserted in the first instance. The position may be summarized as under:—</p> <p>(a) The provision applies only when dividends remain unclaimed for a consecutive period of seven years. Once this provision takes effect it will have force of law and there will be no bar on the companies to affect such transfers as it will be as per requirement of the law itself.</p> <p>(b) Provisions may be retained as they seek to achieve broader objective of safety and security in capital market since unclaimed securities could be misused by unscrupulous persons for money laundering activities.</p> <p>(ii) Supporting procedural requirements shall be prescribed in the rules under this clause.</p>
10.	130:Re-opening of Accounts	The powers of the Tribunal to permit re-opening or re-casting should be extended in addition to incidents of fraud or mismanagement, to an event of a manifest or patent error and for any other reason that the Tribunal may deem just and proper.	The suggestion made is already covered under provisions of clause 131 of the Bill. (Voluntary Revision of Financial Statement or Board's report).
11.	139(1): Appointment and rotation of auditors	It is suggested that the present regime where shareholders appoint the auditors at every AGM be continued as it would be in line with the cardinal	The suggestion could be accepted in a manner that while the appointment may be for five years, the AGM may take note of its continuance annually.

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		principle of Company Law that auditors are accountable to shareholders and in line with the practice followed internationally.	
12.	139(3): Voluntary annual rotation of audit partner and joint audit	<p>(i) Annual rotation of audit partner and his team, if members of company so resolve, is not practical and feasible. [Clause 139(3)]. It ignores basic principle of utilizing continuing knowledge. Conferring such power also suggests that members do not have inherent power to impose conditions and is liable to be misunderstood. Hence clause 139(3) be deleted.</p> <p>(ii) The option given to require auditing partner/ staff rotate each year would be detrimental to audit quality apart from efficiencies of time and costs. Further, it is not clear in the Bill, as to how will the requirement relating to 'cooling off' period, be applied in such cases. While this requirement (including cooling off period, if prescribed), would not be feasible even in case of small firms with 2-3 partners. The option with the members to rotate audit partner and staff each year should be removed.</p>	<p>(i) and (ii):— (a) The relevant provisions of clause 139(3) read as under:—</p> <p><i>“(3) Subject to the provisions of this Act, members of a company may resolve to provide that—</i></p> <p><i>(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated every year; or</i></p> <p><i>(b) the audit shall be conducted by more than one auditor.”</i></p> <p>(b) Though the provisions are voluntary in nature, the suggestion to substitute the words 'every year' with 'at such interval as may be resolved by members' may be considered.</p>
13.	141(3)(g) Proviso: Eligibility, Qualifications and disqualification for auditor	(i) The purpose of giving the power to the members of a company of additionally imposing restrictions on the number of audits that the auditor can undertake is unclear. As there are limits to be prescribed on the number of audits as per the	(i) to (iii):— The suggestion for omitting the proviso to clause 141(3)(g) may be considered.

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		<p>Bill as well as limits already imposed by the ICAI in place, such additional limits do not appear to benefit either in terms of audit quality or independence. Rather, such powers given to the members may in fact be a deterrent in achieving the goal of auditor independence. Also, such additional limitations to be imposed by the members has neither been considered nor recommended by the Committee.</p> <p>(ii) Even without this express provision under 141(3)(g) proviso, such power is vested in members.</p> <p>(iii) The members of a particular company should not be the deciding authority for determining the number of companies. The Bill should specifically provide the number, like in the case of directorships to be held in other companies.</p>	
14.	143(12) to (15): Auditor to report fraud to Central Government	<p>(i) Duty to report fraud to the Central Government arise only if indicators of fraud are identified as part of audit process in accordance with auditing standards. If the amount involved is immaterial, the requirement to report may be dispensed with.</p> <p>(ii) The penalty imposed on auditor for failure to report any fraud does not appear to be commensurate with powers and duties bestowed/imposed on him.</p>	(i) and (ii):— The provisions are based on similar provisions available in Singapore Companies Act. The provisions very clearly state that if an auditor of a company, <i>in the course of the performance of his duties as auditor</i> , has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government. This is a wholesome provision and the

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			suggestion is not accompanied by any reason why the formulation needs to be revisited. The provisions may be considered without any change.
15.	149(1): Woman director	While it can be encouraged that companies should have women on the Board, it may not be practical for all prescribed companies to appoint a woman director, Further, where there are in fact, no women of the required caliber, qualifications, etc., the company cannot be forced to choose one or take in an outside just to comply with this requirement.	(i) This is an enabling provision to be used for a class of companies to be specified under the rules on enactment of the legislation.  (ii) It is hoped that such indicative provisions will make the companies more alive to giving salience to the female gender in the realm of corporate governance. It is also in line with the Government policy to encourage women's participation in decision making at every level in the society.  (iii) The provisions may be retained as proposed in the Bill.
16.	149(4): Transitional provisions for appointing woman director	Clause 149(4) be amended to give transitional period for the appointment of woman director and also for appointment of director who has stayed in India for total period of not less than 182 days in the previous year as provided in clause 149(2).	Clause 470 (Removal of difficulty) may be used for clarifying these transitional issues suitably.
17.	151: Appointment of director elected by small shareholders	The existing requirement as per Clause 252(1) proviso of the Companies Act, 1956 relating to small shareholders should be retained.	(i) Provisions of section 252(1) proviso of existing Act have been proposed in slightly modified form as clause 151 of the Bill which reads as under:—  <i>“151. A listed company may have one director elected by such small shareholders in such</i>

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			<p><i>manner and with such terms and conditions as may be prescribed."</i></p> <p>(ii) Since the above provisions are considered to be more reasonable, relevant and practical, these may be retained as proposed in the Bill.</p>
18.	167(1)(f): vacation of office of director	Vacation of office by a director should be effective only after the conviction has been upheld by the court of final appeal as there could be error in conviction by the court in the first instance.	Where an Appellate Court stays the conviction the requirement to vacate will also be in abeyance. Hence there may not be any necessity of any modification in the clause.
19.	167/164 Vacation/ Disquali- fication of office of director	Clauses cover offences whether involving moral turpitude or otherwise: Clause should cover only offence involving moral turpitudes.	Conviction of imprisonment of more than six months is for serious offence and it will be a difficult task to identify which offence in this category involves moral turpitude. The words "whether involving moral turpitude or otherwise" merely signify the fact that offences carrying a minimum sentence will attract the liability to vacate the position of Director. Hence there may not be any necessity of any modification in the clause.
20.	232(3)(b) and 233(10): Treasury Stock	These provisions propose to impose a blanket ban on treasury stock. In the event it is thought necessary to regulate treasury stock, a limit may be imposed on the amount of treasury stock that may be held or the time period for which such treasury stock may be held.	It is felt that complete ban/cancellation of such shares is necessary. This would ensure good corporate governance and prevent market manipulation by companies by indulging in trading in their own shares.
21.	434 and 465: Transfer of certain	Minor modifications of procedural nature in Clauses 434 and 465 of the Bill may be considered with a view	The changes suggested may be considered.

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	pending proceedings and transitional arrangements.	to ensuring clarity in the provisions relating to transfer of pending cases with CLB/Courts to National Company Law Tribunal.	
22.	466: Dissolution of Company Law Board	CLB is proposed to be converted into NCLT and those CLB members, who meet the qualifications for NCLT memberships would become members of NCLT. This is not the right way to constitute NCLT as the functioning of the CLB Benches was far from satisfactory.	The provisions are required to ensure continuity in the functioning of the body. Since provisions provide for retention of only those members of CLB who meet the qualifications for NCLT members, the provisions seem to be fair and reasonable and may be retained.

### **Directions to Government Companies**

4.4 It has been pointed out to the Committee by the C&AG that Government issues directions to Government companies from time to time, some of which have bearing on the financial position of the Company. C&AG has therefore suggested that to bring in greater transparency, it is necessary to disclose impact of Government directions on the financial position of Government Company in the report of Board under clause 134(3).

4.5 The Ministry have clarified that a large number of disclosures have already been provided for inclusion in the Board's report and adding further requirements for a particular class of companies in a general enactment on companies does not appear to be justified. The matter has been discussed by Secretary (Ministry of Corporate Affairs) with Secretary (DPE) who has agreed to examine if assessment of financial impact, if any, of Government directives to Government companies could be administratively prescribed.

4.6 The Committee brought to the notice of the Ministry that this suggestion of C&AG needs to be examined again in the light of the recent development in case of a similar directive given by the Government to one of the PSUs with regard to entering into Fuel Supply Agreements (FSAs) with power companies. The Ministry was thus asked to give fresh inputs on the matter.

4.7 The Ministry clarified as follows:—

(i) The suggestion made by the Comptroller and Auditor General of India (C&AG) to include in the Companies Bill provisions to require disclosure [in the report of Board of Directors under clause 134(3)] about impact of Government directions on the financial position of Government Company was formally taken up with the Department of Public Enterprises (DPE). The following comments have been received from DPE:—

“Presidential Directives are issued by the Administrative Ministries to the concerned CPSEs, if these relate to a single CPSE and with the concurrence of DPE, if these are applicable to more than one CPSE. Further, DPE may also ask the administrative Ministries to issue Presidential Directives to one or more CPSEs on policy issues requiring a uniform approach. These directives may or may not have financial impact. In some cases, computation of the financial impact of such directives may be difficult and, therefore, it may not be desirable to have an omnibus provision for disclosure in the Report of Board of Directors of the concerned CPSE.”

(ii) DPE has accordingly agreed with the view that such a provision is not warranted in the Companies Bill. This Ministry feels that new provisions suggested by C&AG may not be considered to be included in the Companies Bill, 2011.

(iii) The Ministry further submits that it does not have requisite inputs to comment on specific Presidential Directives.

### **Clause 186: Loan and Investments by Company**

4.8 Clause 186(7) which corresponds to section 372A(3) of present Companies Act reads as:—

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.

4.9 The Committee have received a suggestion that the rate of interest on inter-corporate loans should be linked to the yield on the Government of India dated securities of equivalent maturity.

4.10 The Ministry's reply is as follows:—

Section 49 of RBI Act, 1934 reads as under:

*49. Publication of bank rate. The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act.*

The provisions of section 372A were included in the Companies Act, 1956 through Companies (Amendment) Act, 1999 to provide flexibility to companies in availing loans and investments from other companies. Prior to such amendment, the compliance with provisions of sections 370 and 372 was required for making inter corporate loans and inter corporate investments respectively which required approval from Central Government in case such loans/ investments exceeded the limits prescribed.

After coming into effect of section 372A, companies are not required to obtain approval of Central Government for inter corporate loans and investments. Such transactions can be made through approval of the Board of directors/shareholders through special resolution depending upon the limits provided in the section. Since requirement for obtaining approval of Central Government was removed, the following conditions were included in section 372A to protect interests of company and its shareholders:—

- (a) detailed disclosures to be made to the shareholders about particulars of the borrowing company, purpose of loan and specific source of funding etc.;
- (b) prior approval of public financial institution to which a loan may be outstanding in certain cases where any term loan is subsisting;
- (c) loan not to be given at an interest rate lower than the prevailing bank rate being the standard rate made public under section 49 of the RBI Act;
- (d) company making default in acceptance/repayment of deposits not to make loans etc. till the default is subsisting.

Regulation of bank/interest rates is important for healthy and robust development of financial and commercial sector and RBI has been taking all necessary initiatives to prevent any risk to such sectors due to fluctuations in economic parameters. Revision in bank rates/

interest rates therefore has significant implications for the financial sector in the economy. It is felt that making any change in provisions of the Bill affecting finances (through borrowing/lending) amongst companies may require detailed consultation with various stakeholders including Ministry of Finance and RBI. It is also appreciated that frequent fluctuations in Bank/Interest rates brings in an element of uncertainty, thereby affecting the growth of financial and corporate sector. It is requested that the Honourable Committee may kindly provide guidance on the matter.

### **Suggestion to modify 186(11): Exemption clause**

4.11 A suggestion has also been made to exempt 'investments made in securities issued by the Public Sector Undertakings' from the provisions of clause 186, as it would be necessary in context of Tax Free Bond issuances now being undertaken by PSUs engaged in Infrastructure Development/Financing, which have to necessarily carry a coupon interest rate lower than the G-Sec of corresponding maturity and much lower than the bank rate of 9%.

4.12 The Ministry have furnished their comments on this suggestion as follows:—

“Kind Attention is drawn to provisions of clause 186 (11) which provide as under:—

*(11) Nothing contained in this section, except sub-section (1), shall apply—*

*(a) to a loan made, guarantee given or security provided by 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;*

Thus, bonds issued by any company (including Government Company) engaged in the business of financing of companies or of providing infrastructural facilities would be exempted from the requirements of clause 186. Any further relaxation from these provisions for Government Companies, as a class, if required, can be considered through notification under clause 462. (Power to exempt class or classes of companies from provisions of this Act.)”

## **PART II**

### **OBSERVATIONS/RECOMMENDATIONS**

**1. The Committee had examined the Companies Bill, 2009 at length and presented a comprehensive Report to Parliament on 31 August, 2010 after a great deal of deliberation, considering carefully the suggestions/views submitted by different stakeholders and holding extensive discussions with the Ministry of Corporate Affairs, SEBI, RBI, Industry/Trade Associations, Professional bodies like Institute of Chartered Accountants of India, Institute of Company Secretaries of India and Institute of Cost Accountants of India. The Committee also heard the views of some experts on the subject.**

**2. The Committee note with satisfaction that the Companies Bill, 2011, although introduced by Government as a fresh Bill (in view of several amendments required), contains salutary provisions which seek to usher in a contemporaneous corporate law in the country, incorporating most of the recommendations made by the Committee in their Report.**

**3. However, as the Companies Bill, 2011 also included certain new provisions and suggestions, which were not earlier referred to and considered by the Committee, it was referred again to the Committee for examination and report. Accordingly, the Committee decided to invite suggestions from experts/stakeholders on these new proposals in the Bill. In response, the Committee received a large number of suggestions not only on the new proposals, but also on some general issues as well as points already covered and commented upon in their earlier Report. The Committee are happy to note that most of these suggestions, which are not contrary to the Committee's earlier recommendations, have since been accepted by the Ministry. The Committee would expect that these suggestions would be appropriately incorporated in the Bill and the concerned clauses modified accordingly.**

**The Committee further note that the Ministry have not agreed to some of the suggestions and have expressed a contrary view thereon.**

**The Committee would like to deliberate and comment upon these suggestions as follows:—**

**4. On the suggestion that, the term ‘private placement’ (clause 42) be defined, the Ministry have submitted that in view of the detailed treatment of all aspects of the subject and the fact that ‘public offer’ has been defined (Explanation to Clause 23), there is no need to further define the term. The Committee would however strongly recommend that as the Bill seeks to regulate a new and widely adopted method of raising capital, it would be fair and useful that ‘private placement’ is properly defined in the statute. The Committee also desire that the position of Bill as recommended by the Committee in their earlier Report presented to Parliament in August, 2010 needs to be maintained, to allow raising capital/borrowings by way of private placement by corporates/entities so that they can harness their capabilities and resources available with them.**

**5. The Committee note that Clause 61 requires the Company to obtain the approval of the Tribunal to consolidate/sub-divide its share capital. Since consolidation or sub-division of shares does not affect the voting power of the shareholders, the Committee recommend that the said clause be modified to the extent that in cases of consolidation or sub-division of share capital, the approval of the Tribunal would be required only if the voting percentage of shareholder is changed.**

**6. The Committee desire that time lines may be prescribed in the conditions stipulated in regard to purchase of own shares by companies, namely, filing of annual returns/financial statements, timely distribution of dividend etc. in the interest of greater accountability.**

**7. It has been suggested that the provisions of existing Act where shareholders appoint auditors at every Annual General Meeting (AGM) be continued in the interest of accountability to shareholders. The Committee would recommend that the proposal in the Bill [Clause 139(1)] for appointment of auditors for straight five years may be modified to the extent that the process be subject to ratification at every AGM. The Committee believe that the well-established principle of shareholders’ democracy represented by the Annual General Meeting of the company should be preserved, while seeking to provide stability of tenure to auditors.**

**8. Similarly, the Committee desire that the suggestion to review the provision in Clause 139(3) allowing members of a company to pass a resolution requiring the partner in an audit firm to be rotated every**

year may be considered positively by the Ministry by substituting the words 'every year' with 'at such interval as may be resolved by Members'.

9. With a view to achieving the objective of rotation of auditors, the Committee would like to further recommend that the proviso to Clause 141(3)(g) empowering members of a company to pass resolution to reduce number of companies in which auditor/audit firm shall become auditor may be omitted. The Clause may thus clearly provide for the maximum number of companies a person can be appointed as auditor of, as provided for in the case of directors of companies. In this context, the Committee would also like to endorse the provision prescribing liabilities for auditors and extending them to the audit firm as well, since the distinction between the two is rather tenuous. The Committee are of the view that the safeguards provided in the Bill to ensure professionalisation and integrity of the audit process are necessary and optimal.

10. The Committee note that Clause 466 *inter alia* allows Members of Company Law Board (CLB), who are eligible under the new Bill, to be appointed as Members of National Company Law Tribunal (NCLT). According to the Ministry, this provision is required to ensure continuity in functioning. The Committee apprehend that this should not result in defacto conversion of existing CLB benches into NCLT benches. As during the course of examination of the Demands for Grants of the Ministry of Corporate Affairs, the Committee have found the working of the CLB Benches to be far from satisfactory, it would be prudent that the constitution/selection process for NCLT is initiated de novo.

11. It has been suggested that similar to Section 90 of existing Act, a savings provision may be introduced exempting a private company from restrictions with regard to types of share capital/voting etc. to provide flexibility to such companies. According to the Ministry, such exemptions to class of companies can be given through notifications. The Committee would however reiterate their earlier recommendation on this issue that the exemptions available for different classes of companies like private company, one person company etc. may be clarified, as far as possible, in the Bill itself.

12. The Committee note an important suggestion made by the C&AG of India to include in the Companies Bill disclosure provisions in the report of the Board of Directors [Clause 134(3)] indicating the impact/implications of Government directives on the financial position

of a Government Company. Although, the Ministry of Corporate Affairs as well as the Department of Public Enterprises have not agreed with this suggestion, the Committee are of the view that the suggestion of the C&AG is worth considering in the interest of functional autonomy and operational efficiency of PSUs. It will also help minimize Government interference in the management of PSUs.

13. The Committee are of the view that corporates in general are expected to contribute to the welfare of the society in which they operate and wherefrom they draw their resources to generate profits. Accordingly, the Committee recommend that Clause 135(5) of the Bill mandating Corporate Social Responsibility (CSR) be modified by substituting the words 'shall make every endeavour to ensure' with the words 'shall ensure'. Further, the Committee recommend that the said clause shall also provide that CSR activities of the companies are directed in and around the area they operate.

14. The Committee note that in clause 147(2) and clause 147(3), it is provided that if there is a non-compliance by the auditor of the specified provisions and the contravention is with an intent to deceive the company or its shareholders or creditors or any other person concerned or interested in the company, then he shall be liable to a prescribed fine. The Committee further note that the term "any other person concerned or interested in the company" has potential for abuse. The Committee, therefore, are of the view that applying an open-ended test of liability without defined restrictions may result in undesirable situation of creating a liability which is not defined in terms of area, duration and amount and may expose the auditor to uninsurable risk. Accordingly, the Committee recommend that the clause 147(2) and clause 147(3) be suitably modified, clearly defining the term 'or any other person concerned or interested in the company'. Further, in order to provide for punishment under Clause 447 for fraud to those partners of audit firm who acted in a fraudulent manner, the Committee recommend that Clause 147(4) of the Bill be modified to the extent that 'such partner or partners of the audit firm' be replaced by 'such concerned partner or partners of the audit firm'.

15. As regards the suggestion to exempt investments made in securities issued by the PSUs from the provisions of Clause 186 relating to Loan and Investments by companies, the Committee accept the Ministry's clarification that the bonds issued by any company including a government company, engaged in the business of financing of companies or of providing infrastructural facilities would be exempted from the requirements of Clause 186 by virtue of exemption sub-clause 186(11).

**16. With regard to the suggestion that the rate of interest on inter-corporate loans should be linked to the yield on Government of India dated securities of equivalent maturity instead of the prevailing bank rate under the RBI Act, the Ministry have submitted that detailed consultations are required in this regard with Ministry of Finance and RBI. When the bank rate was prescribed as a benchmark for inter-corporate loans/investments, it was the major policy rate at that time and market related benchmarks had not stabilized yet. However, now that the dated government securities market is well developed with enough liquidity precluding any manipulation of yields, this may very well replace the bank rate as the benchmark. The Committee would like the Ministry to consider this suggestion in the current economic perspective.**

**17. The Committee had recommended in their earlier Report that whole-time Director should be included within the definition of Key Managerial Personnel (KMP), even if the company has Managing Director/Manager. According to the Ministry, whole-time directors may not be brought within the purview of KMPs, as they do not exercise substantial powers of management where Managing Directors are in position. The Committee, while disagreeing with the Ministry's view in this case, would like to reiterate their earlier recommendation, as whole-time directors, being important functionaries in a company with substantial role in decision-making, cannot be kept outside the purview of KMPs.**

**18. The Committee in its 21st report on Companies Bill 2009 had emphasized 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. However, the Committee observe that there are many instances in the Bill where criminal liability have been imposed for technical mistakes of law like Clause 157 (failure to file DIN with Registrar of Companies), Clause 56 (delay in registering transfer of shares within the prescribed period), Clause 117(2) (failure to file certain agreements and resolutions with Registrar of Companies), etc. The Committee reiterate the principle enunciated in its previous report that technical defaults which are minor infractions of law should not carry criminal liability. Accordingly, the Committee recommend that all such clauses in the Bill which impose criminal liability for technical defaults may be modified suitably.**

**19. Clause 2(52) of the Bill defines "Listed Company" as a company which has any of its securities listed on any recognized stock exchange. "Securities" would thus include all instruments including**

**bonds, debentures etc. It has been suggested that with a view to accord some freedom and flexibility of operations to Companies, specially when public funds are not involved, the above definition may be amended to limit the applicability only to : (a) Companies where the equity shares or any security convertible into equity shares are listed; or (b) companies where the debt instruments are listed, having been issued to public at large. The Committee find merit in the argument from operational perspective that the scope of above definition of “Listed Company” may be confined to listed securities issued through the process of ‘Public offer’ [as defined in clause 23(1)] only, so that the regulatory framework can focus on such instruments only without dissipating energy and resources on all kinds of instruments, since the unlisted instruments are already subject to scrutiny of Ministry of Corporate Affairs. The Ministry of Corporate Affairs may accordingly consider appropriate modification in the definition of “Listed Company” in consultation with Ministry of Finance.**

NEW DELHI;  
15 June, 2012  

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25 Jyaistha, 1934 (*Saka*)

YASHWANT SINHA,  
*Chairman,*  
*Standing Committee on Finance.*

## NOTE OF DISSENT

**Gurudas Dasgupta, MP**

The companies run their business with the people's money by raising share capital, by sale of shares; they take loans from banks and also corporate loans. The promoters' capital in our country is not more than 7 to 8 per cent. Therefore, it is with people's money that the private managements are running their business with. Above all, they get loan at concessional rate, they get tax exemptions. Therefore, the management may be private but resources are of public. It is necessary to monitor their activity to ensure safe utilisation of the public funds and they do not default in the repayment of loans whether from the banks or the individual citizens. There has to be social accountability. In the background of increasing corporate delinquency all over the world, more so glaring in our country, there is no monitoring system to ensure private utilisation of funds and private corporate governance. This Bill does not provide anything. Most of the companies are violating laws, not paying money to the banks, violating labour laws, and even manipulating balance-sheets. In some cases they are showing less production in order to avoid excise duty. After so many years, the Bill is sought to be passed, it is full of loopholes providing every opportunity for the corporate to become delinquent. Common man seems to be overlooking the basic issue in question, private corporate governance, social responsibility and how to stop this delinquency.

Therefore, I put on record my dissent note.

### **1. Failure to deposit statutory dues like PF, ESI etc.**

The Company's (Auditors Report) Order, 2003 mandates that the statutory auditor of a company should report whether the company is regular in depositing undisputed statutory dues. When the company fails to deposit such statutory dues, the auditor has an obligation to report the same to the shareholders of the company.

The Company's Bill, 2011 provides for a secretarial audit report to be given by the Company Secretaries. The report should include compliance to laws applicable to the company.

## **Way Forward**

The Company's Bill may provide for submission of reports by statutory auditor and the Company Secretary on cases of failure to deposit undisputed statutory dues like PF and ESI to the authorities administering such funds/taxes/duties. Such reporting would facilitate the statutory authorities administering such funds/duties/taxes to take the immediate corrective action.

### **2. Decisions taken by the MD or the Board of Directors of a PSU which is not in the commercial interest of the company**

Audit has highlighted cases wherein certain commercial decisions taken by trading companies like STCL and MSTC resulting in huge outstandings in the companies. The outstandings LCs are even more than 20 times of the paid up capital plus free reserves. To put a stop to such indiscretion it may be advisable to put restrictions on the powers of the board to borrow monies including LCs.

## **Way Forward**

The existing Section 293 of the Companies Act, 1956 puts a ceiling on borrowings which should not exceed the aggregate of the paid up capital and free reserves of the Company. The definitions of borrowings should be expanded to include Letters of Credit also with the ceiling limit duly arrived at.

## **The Companies Bill, 2011**

### **1. Corporate Delinquency**

The Bill fails to address squarely the festering issue of corporate delinquency. The promoters of companies should be held liable for acts of omission and commission by the company together with the senior management including the Board of Directors. Both Civil and criminal liabilities have to be fixed for acts of corporate delinquency. Whistle-blowers, who expose such acts, should be protected by law.

### **2. Corporate Social Responsibility (CSR)**

It is a well-perpetuated fallacy that corporate are run on the promoters' or shareholders' funds alone. The fact of the matter is that most of the capital required by corporate — both long-term and medium-term is provided by the banking/financial system, which is operated out of the public funds. Therefore, if corporate are mandated to undertake CSR, it is very fair and logical and a natural corollary of the nature of

capital invested in them. It need not be over-stated that the corporate owe it to the people and the society to pay them back in terms of social services and by building social capital for common good. This cannot be the sole responsibility of Governments.

### **3. Accountability and Independence of Auditors**

Accountability requires to be fixed for both individual Auditors and their firms. Auditors should be appointed from a panel to be maintained by an independent body, which will help ensure their independence from the management. Their removal should also be vetted by this independent body, so that they can function without any fear.

Sd/-

(GURUDAS DASGUPTA)

MINUTES OF THE NINTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Tuesday, the 24th January, 2012 from  
1130 hrs. to 1430 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Gurudas Dasgupta
3. Shri Nishikant Dubey
4. Shri Chandrakant Khaire
5. Shri Bhartruhari Mahtab
6. Dr. Kavuru Sambasiva Rao
7. Shri Rayapati S. Rao
8. Shri Yashvir Singh
9. Shri Manicka Tagore

*Rajya Sabha*

10. Shri S.S. Ahluwalia
11. Shri Moinul Hassan
12. Dr. Mahendra Prasad
13. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Smt. Meenakshi Sharma — *Deputy Secretary*

## WITNESSES

### **Ministry of Corporate Affairs**

1. Shri Naved Masood — Secretary
2. Shri Sudhir Mital — Additional Secretary
3. Smt. Renuka Kumar — Joint Secretary
4. Shri U.C. Nahta — Director (Inspection and Investigation)
5. Shri Dhan Raj — Director (Inspection and Investigation)

2. The Secretary, Ministry of Corporate Affairs made a power point presentation to brief the Committee about the objectives behind introduction of the revised Companies Bill, 2011, extent to which the recommendations made by the Standing Committee on the previous Companies Bill, 2009 have been incorporated in the new Bill and rationale for introduction of 22 new clauses in the Bill. Members sought clarifications on the issues pertaining to the Bill which *inter-alia* included the rise in corporate delinquency and adequacy of proposals to check the same, steps for better corporate governance and corporate social responsibility, reasons for amending the proposals with regard to appointment of auditors, need for regulating the non-banking financial companies, issues relating to appointment of independent director, reasons for the proposal for having a woman Director, exemptions to the Companies from some provisions of the new legislation etc. The Chairman directed the representatives to furnish written replies to the points raised by the Members within two weeks.

*A verbatim record of proceedings was kept.*

*The witnesses then withdrew.*

MINUTES OF THE EIGHTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 20th April, 2012 from  
1130 hrs. to 1400 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Gurudas Dasgupta
3. Shri Nishikant Dubey
4. Shri Chandrakant Khaire
5. Dr. Kavuru Sambasiva Rao
6. Shri Rayapati S. Rao
7. Shri Sarvey Sathyanarayana
8. Shri Yashvir Singh
9. Dr. M. Thambidurai

*Rajya Sabha*

10. Shri Satish Chandra Misra
11. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
3. Smt. Meenakshi Sharma — *Deputy Secretary*
4. Shri Kulmohan Singh Arora — *Under Secretary*

**Part I**  
**(1130 hrs. to 1300 hrs.)**

WITNESSES

**Ministry of Corporate Affairs**

1. Shri Naved Masood — Secretary
2. Shri Sudhir Mital — Additional Secretary
3. Smt. Renuka Kumar — Joint Secretary
4. Shri U.C. Nahta — Director (Inspection and Investigation)
5. Shri Dhan Raj — Director (Inspection and Investigation)

2. The Secretary, Ministry of Corporate Affairs made a power point presentation to brief the Committee about the objectives behind introduction of the revised Companies Bill, 2011, extent to which the recommendations made by the Standing Committee on the previous Companies Bill, 2009 have been incorporated in the new Bill. Members sought clarifications on the issues pertaining to the Bill which *inter-alia* included the rise in corporate delinquency and adequacy of proposals to check the same, steps for better corporate governance and corporate social responsibility, reasons for amending the proposals with regard to appointment of auditors, provisions in the Bill which seek to take care of interests of labour/employees, reasons for the proposal for having a woman Director, provisions in the Bill to protect interest of minority shareholders, inter corporate loans and investments and Corporate Social Responsibility. The Ministry was also enquired about the impact of Government Directives on the financial position of public sector undertaking etc. The Chairman directed the representatives to furnish written replies to the points raised by the Members within two weeks.

*A verbatim record of proceedings was kept.*

*The witnesses then withdrew.*

**Part II**  
**(1300 hrs. to 1400 hrs.)**

3. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*  
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4. \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*  
\*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

*The Committee then adjourned.*

MINUTES OF THE TWENTIETH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 18th May, 2012 from 1000 hrs.  
to 1030 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Shivkumar Udasi
3. Shri Nishikant Dubey
4. Shri Prem Das Rai
5. Shri G.M. Siddeswara

*Rajya Sabha*

6. Shri Naresh Agrawal
7. Smt. Renuka Chowdhury
8. Shri Ravi Shankar Prasad
9. Shri Piyush Goyal
10. Shri P. Rajeeve
11. Shri Satish Chandra Misra
12. Dr. Mahendra Prasad
13. Shri Yogendra P. Trivedi
14. Shri Naresh Agrawal

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Smt. Meenakshi Sharma — *Deputy Secretary*

2. The Committee took up the following draft Reports for consideration and adoption:—

- (i) The Companies Bill, 2011; and
- (ii) The Benami Transactions (Prohibition) Bill, 2011.

3. As some Members desired more time to consider and formulate their views on the above draft reports, the Committee decided to postpone the adoption of the draft reports to 7 June, 2012.

*The Committee then adjourned.*

MINUTES OF THE TWENTY-FIRST SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Thursday, the 7th June, 2012 from 1130 hrs.  
to 1700 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Nishikant Dubey
3. Shri Bhartruhari Mahtab
4. Shri Prem Das Rai
5. Shri Sarvey Sathyanarayana
6. Shri Yashvir Singh
7. Shri R. Thamaraiselvan

*Rajya Sabha*

8. Shri P. Rajeeve
9. Dr. K.V.P. Ramachandra Rao
10. Shri Vijay Jawaharlal Darda
11. Shri Ravi Shankar Prasad
12. Smt. Renuka Chowdhury
13. Shri Piyush Goyal

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*



AS INTRODUCED IN LOK SABHA

**Bill No. 121 of 2011**

THE COMPANIES BILL, 2011

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ARRANGEMENT OF CLAUSES

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CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent, commencement and application.
2. Definitions.

CHAPTER II

INCORPORATION OF COMPANY AND MATTERS  
INCIDENTAL THERETO

3. Formation of company.
4. Memorandum.
5. Articles.
6. Act to override memorandum, articles, etc.
7. Incorporation of company.
8. Formation of companies with charitable objects, etc.
9. Effect of registration.

## CLAUSES

10. Effect of memorandum and articles.
11. Commencement of business, etc.
12. Registered office of company.
13. Alteration of memorandum.
14. Alteration of articles.
15. Alteration of memorandum or articles to be noted in every copy.
16. Rectification of name of company.
17. Copies of memorandum, articles, etc., to be given to members.
18. Conversion of companies already registered.
19. Subsidiary company not to hold shares in its holding company.
20. Service of documents.
21. Authentication of documents, proceedings and contracts.
22. Execution of bills of exchange, etc.

## CHAPTER III

### PROSPECTUS AND ALLOTMENT OF SECURITIES

#### PART I — *Public offer*

23. Public offer and private placement.
24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.
25. Document containing offer of securities for sale to be deemed prospectus.
26. Matters to be stated in prospectus.
27. Variation in terms of contract or objects in prospectus.

## CLAUSES

28. Offer of sale of shares by certain members of a company.
29. Public offer of securities to be in dematerialised form.
30. Advertisement of prospectus.
31. Shelf prospectus.
32. Red herring prospectus.
33. Issue of application forms for securities.
34. Criminal liability for mis-statements in prospectus.
35. Civil liability for mis-statements in prospectus.
36. Punishment for fraudulently inducing persons to invest money.
37. Action by affected persons.
38. Punishment for personation for acquisition, etc., of securities.
39. Allotment of securities by company.
40. Securities to be dealt with in stock exchanges.
41. Global depository receipt.

### PART II — *Private placement*

42. Offer or invitation for subscription of securities on private placement.

## CHAPTER IV

### SHARE CAPITAL AND DEBENTURES

43. Kinds of share capital.
44. Nature of shares or debentures.
45. Numbering of shares.
46. Certificate of shares.

## CLAUSES

47. Voting rights.
48. Variation of shareholders' rights.
49. Calls on shares of same class to be made on uniform basis.
50. Company to accept unpaid share capital, although not called up.
51. Payment of dividend in proportion to amount paid-up.
52. Application of premiums received on issue of shares.
53. Prohibition on issue of shares at discount.
54. Issue of sweat equity shares.
55. Issue and redemption of preference shares.
56. Transfer and transmission of securities.
57. Punishment for personation of shareholder.
58. Refusal of registration and appeal against refusal.
59. Rectification of register of members.
60. Publication of authorised, subscribed and paid-up capital.
61. Power of limited company to alter its share capital.
62. Further issue of share capital.
63. Issue of bonus shares.
64. Notice to be given to Registrar for alteration of share capital.
65. Unlimited company to provide for reserve share capital on conversion into limited company.
66. Reduction of share capital.

## CLAUSES

67. Restrictions on purchase by company or giving of loans by it for purchase of its shares.
68. Power of company to purchase its own securities.
69. Transfer of certain sums to capital redemption reserve account.
70. Prohibition for buy-back in certain circumstances.
71. Debentures.
72. Power to nominate.

## CHAPTER V

### ACCEPTANCE OF DEPOSITS BY COMPANIES

73. Prohibition on acceptance of deposits from public.
74. Repayment of deposits, etc., accepted before commencement of this Act.
75. Damages for fraud.
76. Acceptance of deposits from public by certain companies.

## CHAPTER VI

### REGISTRATION OF CHARGES

77. Duty to register charges, etc.
78. Application for registration of charge.
79. Section 77 to apply in certain matters.
80. Date of notice of charge.
81. Register of charges to be kept by Registrar.
82. Company to report satisfaction of charge.

## CLAUSES

83. Power of Registrar to make entries of satisfaction and release in absence of intimation from company.
84. Intimation of appointment of receiver or manager.
85. Company's register of charges.
86. Punishment for contravention.
87. Rectification by Central Government in register of charges.

## CHAPTER VII

### MANAGEMENT AND ADMINISTRATION

88. Register of members, etc.
89. Declaration in respect of beneficial interest in any share.
90. Investigation of beneficial ownership of shares in certain cases.
91. Power to close register of members or debenture holders or other security holders.
92. Annual return.
93. Return to be filed with Registrar in case promoters' stake changes.
94. Place of keeping and inspection of registers, returns, etc.
95. Registers, etc., to be evidence.
96. Annual general meeting.
97. Power of Tribunal to call annual general meeting.
98. Power of Tribunal to call meetings of members, etc.
99. Punishment for default in complying with provisions of sections 96 to 98.

## CLAUSES

100. Calling of extraordinary general meeting.
101. Notice of meeting.
102. Statement to be annexed to notice.
103. Quorum for meetings.
104. Chairman of meetings.
105. Proxies.
106. Restriction on voting rights.
107. Voting by show of hands.
108. Voting through electronic means.
109. Demand for poll.
110. Postal ballot.
111. Circulation of members' resolution.
112. Representation of President and Governors in meetings.
113. Representation of corporations at meeting of companies and of creditors.
114. Ordinary and special resolutions.
115. Resolutions requiring special notice.
116. Resolutions passed at adjourned meeting.
117. Resolutions and agreements to be filed.
118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.
119. Inspection of minute-books of general meeting.
120. Maintenance and inspection of documents in electronic form.
121. Report on annual general meeting.
122. Applicability of this Chapter to One Person Company.

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

123. Declaration of dividend.
124. Unpaid Dividend Account.
125. Investor Education and Protection Fund.
126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.
127. Punishment for failure to distribute dividends.

CHAPTER IX

ACCOUNTS OF COMPANIES

128. Books of account, etc., to be kept by company.
129. Financial statement.
130. Re-opening of accounts on court's or Tribunal's orders.
131. Voluntary revision of financial statements or Board's report.
132. Constitution of National Financial Reporting Authority.
133. Central Government to prescribe accounting standards.
134. Financial Statement, Board's report, etc.
135. Corporate Social Responsibility.
136. Right of member to copies of audited financial statement.
137. Copy of financial statement to be filed with Registrar.
138. Internal Audit.

CHAPTER X

AUDIT AND AUDITORS

139. Appointment of auditors.
140. Removal, resignation of auditor and giving of special notice.
141. Eligibility, qualifications and disqualifications of auditors.
142. Remuneration of auditors.
143. Powers and duties of auditors and auditing standards.
144. Auditor not to render certain services.
145. Auditors to sign audit reports, etc.
146. Auditors to attend general meeting.
147. Punishment for contravention.
148. Central Government to specify audit of items of cost in respect of certain companies.

CHAPTER XI

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

149. Company to have Board of Directors.
150. Manner of selection of independent directors and maintenance of data bank of independent directors.
151. Appointment of director elected by small shareholders.
152. Appointment of directors.
153. Application for allotment of Director Identification Number.
154. Allotment of Director Identification Number.
155. Prohibition to obtain more than one Director Identification Number.

## CLAUSES

156. Director to intimate Director Identification Number.
157. Company to inform Director Identification Number to Registrar.
158. Obligation to indicate Director Identification Number.
159. Punishment for contravention.
160. Right of persons other than retiring directors to stand for directorship.
161. Appointment of additional director, alternate director and nominee director.
162. Appointment of directors to be voted individually.
163. Option to adopt principle of proportional representation for appointment of directors.
164. Disqualifications for appointment of director.
165. Number of directorships.
166. Duties of directors.
167. Vacation of office of director.
168. Resignation of director.
169. Removal of directors.
170. Register of directors and key managerial personnel and their shareholding.
171. Members' right to inspect.
172. Punishment.

## CHAPTER XII

### MEETINGS OF BOARD AND ITS POWERS

173. Meetings of Board.
174. Quorum for meetings of Board.

## CLAUSES

175. Passing of resolution by circulation.
176. Defects in appointment of directors not to invalidate actions taken.
177. Audit Committee.
178. Nomination and remuneration committee and stakeholders relationship committee.
179. Powers of Board.
180. Restrictions on powers of Board.
181. Company to contribute to *bona fide* and charitable funds, etc.
182. Prohibitions and restrictions regarding political contributions.
183. Power of Board and other persons to make contributions to national defence fund, etc.
184. Disclosure of interest by director.
185. Loan to directors, etc.
186. Loan and investment by company.
187. Investments of company to be held in its own name.
188. Related party transactions.
189. Register of contracts or arrangements in which directors are interested.
190. Contract of employment with managing or whole-time directors.
191. Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.
192. Restriction on non-cash transactions involving directors.
193. Contract by One Person Company.

## CLAUSES

194. Prohibition on forward dealings in securities of company by director or key managerial personnel.
195. Prohibition on insider trading of securities.

## CHAPTER XIII

### APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

196. Appointment of managing director, whole-time director or manager.
197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.
198. Calculation of profits.
199. Power of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.
200. Central Government or company to fix limit with regard to remuneration.
201. Forms of, and procedure in relation to, certain applications.
202. Compensation for loss of office of managing or whole-time director or manager.
203. Appointment of key managerial personnel.
204. Secretarial audit for bigger companies.
205. Functions of company secretary.

## CHAPTER XIV

### INSPECTION, INQUIRY AND INVESTIGATION

206. Power to call for information, inspect books and conduct inquiries.

## CLAUSES

207. Conduct of inspection and inquiry.
208. Report on inspection made.
209. Search and seizure.
210. Investigation into affairs of company.
211. Establishment of Serious Fraud Investigation Office.
212. Investigation into affairs of company by Serious Fraud Investigation Office.
213. Investigation into company's affairs in other cases.
214. Security for payment of costs and expenses of investigation.
215. Firm, body corporate or association not to be appointed as inspector.
216. Investigation of ownership of company.
217. Procedure, powers, etc., of inspectors.
218. Protection of employees during investigation.
219. Power of inspector to conduct investigation into affairs of related companies, etc.
220. Seizure of documents by inspector.
221. Freezing of assets of company on inquiry and investigation.
222. Imposition of restrictions upon securities.
223. Inspector's report.
224. Actions to be taken in pursuance of inspector's report.
225. Expenses of investigation.
226. Voluntary winding up of company, etc., not to stop investigation proceedings.
227. Legal advisers and bankers not to disclose certain information.

## CLAUSES

- 228. Investigation, etc., of foreign companies.
- 229. Penalty for furnishing false statement, mutilation, destruction of documents.

## CHAPTER XV

### COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

- 230. Power to compromise or make arrangements with creditors and members.
- 231. Power of Tribunal to enforce compromise or arrangement.
- 232. Merger and amalgamation of companies.
- 233. Merger or amalgamation of certain companies.
- 234. Merger or amalgamation of company with foreign company.
- 235. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.
- 236. Purchase of minority shareholding.
- 237. Power of Central Government to provide for amalgamation of companies in public interest.
- 238. Registration of offer of schemes involving transfer of shares.
- 239. Preservation of books and papers of amalgamated companies.
- 240. Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

## CHAPTER XVI

### PREVENTION OF OPPRESSION AND MISMANAGEMENT

- 241. Application to Tribunal for relief in cases of oppression, etc.

## CLAUSES

- 242. Powers of Tribunal.
- 243. Consequence of termination or modification of certain agreements.
- 244. Right to apply under section 241.
- 245. Class action.
- 246. Application of certain provisions to proceedings under section 241 or section 245.

## CHAPTER XVII

### REGISTERED VALUERS

- 247. Valuation by registered valuers.

## CHAPTER XVIII

### REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

- 248. Power of Registrar to remove name of company from register of Companies.
- 249. Restrictions on making application under section 248 in certain situations.
- 250. Effect of company notified as dissolved.
- 251. Fraudulent application for removal of name.
- 252. Appeal to Tribunal.

## CHAPTER XIX

### REVIVAL AND REHABILITATION OF SICK COMPANIES

- 253. Determination of sickness.
- 254. Application for revival and rehabilitation.
- 255. Exclusion of certain time in computing period of limitation.
- 256. Appointment of interim administrator.

## CLAUSES

- 257. Committee of creditors.
- 258. Order of Tribunal.
- 259. Appointment of administrator.
- 260. Powers and duties of company administrator.
- 261. Scheme of revival and rehabilitation.
- 262. Sanction of scheme.
- 263. Scheme to be binding.
- 264. Implementation of scheme.
- 265. Winding up of company on report of company administrator.
- 266. Power of Tribunal to assess damages against delinquent directors, etc.
- 267. Punishment for certain offences.
- 268. Bar of jurisdiction.
- 269. Rehabilitation and Insolvency Fund.

## CHAPTER XX

### WINDING UP

- 270. Modes of winding up.

#### PART I — *Winding up by the Tribunal*

- 271. Circumstances in which company may be wound up by Tribunal.
- 272. Petition for winding up.
- 273. Powers of Tribunal.
- 274. Directions for filing statement of affairs.
- 275. Company Liquidators and their appointments.
- 276. Removal and replacement of liquidator.

## CLAUSES

277. Intimation to Company Liquidator, provisional liquidator and Registrar.
278. Effect of winding up order.
279. Stay of suits, etc., on winding up order.
280. Jurisdiction of Tribunal.
281. Submission of report by Company Liquidator.
282. Directions of Tribunal on report of Company Liquidator.
283. Custody of company's properties.
284. Promoters, directors, etc., to co-operate with Company Liquidator.
285. Settlement of list of contributories and application of assets.
286. Obligations of directors and managers.
287. Advisory Committee.
288. Submission of periodical reports to Tribunal.
289. Power of Tribunal on application for stay of winding up.
290. Powers and duties of Company Liquidator.
291. Provision for professional assistance to Company Liquidator.
292. Exercise and control of Company Liquidator's powers.
293. Books to be kept by Company Liquidator.
294. Audit of Company Liquidator's accounts.
295. Payment of debts by contributory and extent of set-off.
296. Power of Tribunal to make calls.
297. Adjustment of rights of contributories.

## CLAUSES

298. Power to order costs.
299. Power to summon persons suspected of having property of company, etc.
300. Power to order examination of promoters, directors, etc.
301. Arrest of person trying to leave India or abscond.
302. Dissolution of company by Tribunal.
303. Appeals from orders made before commencement of Act.

### PART II — *Voluntary winding up*

304. Circumstances in which company may be wound up voluntarily.
305. Declaration of solvency in case of proposal to wind up voluntarily.
306. Meeting of creditors.
307. Publication of resolution to wind up voluntarily.
308. Commencement of voluntary winding up.
309. Effect of voluntary winding up.
310. Appointment of Company Liquidator.
311. Power to remove and fill vacancy of Company Liquidator.
312. Notice of appointment of Company Liquidator to be given to Registrar.
313. Cesser of Board's powers on appointment of Company Liquidator.
314. Powers and duties of Company Liquidator in voluntary winding up.
315. Appointment of committees.
316. Company Liquidator to submit report on progress of winding up.

CLAUSES

- 317. Report of Company Liquidator to Tribunal for examination of persons.
- 318. Final meeting and dissolution of company.
- 319. Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company.
- 320. Distribution of property of company.
- 321. Arrangement when binding on company and creditors.
- 322. Power to apply to Tribunal to have questions determined, etc.
- 323. Costs of voluntary winding up.

PART III — *Provisions applicable to every mode of winding up*

- 324. Debts of all descriptions to be admitted to proof.
- 325. Application of insolvency rules in winding up of insolvent companies.
- 326. Overriding preferential payments.
- 327. Preferential payments.
- 328. Fraudulent preference.
- 329. Transfers not in good faith to be void.
- 330. Certain transfers to be void.
- 331. Liabilities and rights of certain persons fraudulently preferred.
- 332. Effect of floating charge.
- 333. Disclaimer of onerous property.
- 334. Transfers, etc., after commencement of winding up to be void.
- 335. Certain attachments, executions, etc., in winding up by Tribunal to be void.

## CLAUSES

336. Offences by officers of companies in liquidation.
337. Penalty for frauds by officers.
338. Liability where proper accounts not kept.
339. Liability for fraudulent conduct of business.
340. Power of Tribunal to assess damages against delinquent directors, etc.
341. Liability under sections 339 and 340 to extend to partners or directors in firms or companies.
342. Prosecution of delinquent officers and members of company.
343. Company Liquidator to exercise certain powers subject to sanction.
344. Statement that company is in liquidation.
345. Books and papers of company to be evidence.
346. Inspection of books and papers by creditors and contributories.
347. Disposal of books and papers of company.
348. Information as to pending liquidations.
349. Official Liquidator to make payments into public account of India.
350. Company Liquidator to deposit monies into scheduled bank.
351. Liquidator not to deposit monies into private banking account.
352. Company Liquidation Dividend and Undistributed Assets Account.
353. Liquidator to make returns, etc.
354. Meetings to ascertain wishes of creditors or contributories.

## CLAUSES

- 355. Court, Tribunal or person, etc., before whom affidavit may be sworn.
- 356. Powers of Tribunal to declare dissolution of company void.
- 357. Commencement of winding up by Tribunal.
- 358. Exclusion of certain time in computing period of limitation.

### PART IV — *Official liquidators*

- 359. Appointment of Official Liquidator.
- 360. Powers and functions of Official Liquidator.
- 361. Summary procedure for liquidation.
- 362. Sale of assets and recovery of debts due to company.
- 363. Settlement of claims of creditors by Official Liquidator.
- 364. Appeal by creditor.
- 365. Order of dissolution of company.

## CHAPTER XXI

### PART I — *Companies authorised to register under this Act*

- 366. Companies capable of being registered.
- 367. Certificate of registration of existing companies.
- 368. Vesting of property on registration.
- 369. Saving of existing liabilities.
- 370. Continuation of pending legal proceedings.
- 371. Effect of registration under this Part.
- 372. Power of Court to stay or restrain proceedings.

## CLAUSES

- 373. Suits stayed on winding up order.
- 374. Obligation of Companies registering under this Part.

## PART II — *Winding up of unregistered companies*

- 375. Winding up of unregistered companies.
- 376. Power to wind up foreign companies although dissolved.
- 377. Provisions of Chapter cumulative.
- 378. Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases.

## CHAPTER XXII

### COMPANIES INCORPORATED OUTSIDE INDIA

- 379. Application of Act to foreign companies.
- 380. Documents, etc., to be delivered to Registrar by foreign companies.
- 381. Accounts of foreign company.
- 382. Display of name, etc., of foreign company.
- 383. Service on foreign company.
- 384. Debentures, annual return, registration of charges, books of account and their inspection.
- 385. Fee for registration of documents.
- 386. Interpretation.
- 387. Dating of prospectus and particulars to be contained therein.
- 388. Provisions as to expert's consent and allotment.
- 389. Registration of prospectus.
- 390. Offer of Indian Depository Receipts.

## CLAUSES

391. Application of sections 34 to 36 and Chapter XX.
392. Punishment for contravention.
393. Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

## CHAPTER XXIII

### GOVERNMENT COMPANIES

394. Annual reports on Government companies.
395. Annual reports where one or more State Governments are members of companies.

## CHAPTER XXIV

### REGISTRATION OFFICES AND FEES

396. Registration offices.
397. Admissibility of certain documents as evidence.
398. Provisions relating to filing of applications, documents, inspection, etc., in electronic form.
399. Inspection, production and evidence of documents kept by Registrar.
400. Electronic form to be exclusive, alternative or in addition to physical form.
401. Provision of value added services through electronic form.
402. Application of provisions of Information Technology Act, 2000.
403. Fee for filing, etc.
404. Fees, etc., to be credited into public account.

CLAUSES

CHAPTER XXV

COMPANIES TO FURNISH INFORMATION OR STATISTICS

405. Power of Central Government to direct companies to furnish information or statistics.

CHAPTER XXVI

NIDHIS

406. Power to modify Act in its application to *Nidhis*.

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL AND  
APPELLATE TRIBUNAL

407. Definitions.
408. Constitution of National Company Law Tribunal.
409. Qualification of President and Members of Tribunal.
410. Constitution of Appellate Tribunal.
411. Qualification of Chairperson and members of Appellate Tribunal.
412. Selection of Members of Tribunal and Appellate Tribunal.
413. Term of office of President, Chairperson and other Members.
414. Salary, allowances and other terms and conditions of service of Members.
415. Acting President and Chairperson of Tribunal or Appellate Tribunal.

CLAUSES

416. Resignation of Members.
417. Removal of Members.
418. Staff of Tribunal and Appellate Tribunal.
419. Benches of Tribunal.
420. Orders of Tribunal.
421. Appeal from Orders of Tribunal.
422. Expeditious disposal by Tribunal and Appellate Tribunal.
423. Appeal to Supreme Court.
424. Procedure before Tribunal and Appellate Tribunal.
425. Power to punish for contempt.
426. Delegation of powers.
427. President, Members, officers, etc., to be public servants.
428. Protection of action taken in good faith.
429. Power to seek assistance of Chief Metropolitan Magistrate, etc.
430. Civil court not to have jurisdiction.
431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.
432. Right to legal representation.
433. Limitation.
434. Transfer of certain pending proceedings.

CLAUSES

CHAPTER XXVIII

SPECIAL COURTS

- 435. Establishment of Special Courts.
- 436. Offences triable by Special Courts.
- 437. Appeal and revision.
- 438. Application of Code to proceedings before Special Court.
- 439. Offences to be non-cognizable.
- 440. Transitional provisions.
- 441. Compounding of certain offences.
- 442. Mediation and conciliation penal.
- 443. Power of Central Government to appoint company prosecutors.
- 444. Appeal against acquittal.
- 445. Compensation for accusation without reasonable cause.
- 446. Application of fines.

CHAPTER XXIX

MISCELLANEOUS

- 447. Punishment for fraud.
- 448. Punishment for false statements.
- 449. Punishment for false evidence.
- 450. Punishment where no specific penalty or punishment is provided.
- 451. Punishment in case of repeated default.
- 452. Punishment for wrongful withholding of property.

## CLAUSES

453. Punishment for improper use of “Limited” or “Private Limited”.
454. Adjudication of penalties.
455. Dormant company.
456. Protection of action taken in good faith.
457. Non-disclosure of information in certain cases.
458. Delegation by Central Government of its powers and functions.
459. Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.
460. Condonation of delay in certain cases.
461. Annual report by Central Government.
462. Power to exempt class or classes of companies from provisions of this Act.
463. Power of court to grant relief in certain cases.
464. Prohibition of association or partnership of persons exceeding certain number.
465. Repeal of certain enactments and savings.
466. Dissolution of Company Law Board and consequential provisions.
467. Power of Central Government to amend Schedules.
468. Powers of Central Government to make rules relating to winding up.
469. Power of Central Government to make rules.

CLAUSES

470. Power to remove difficulties.

SCHEDULE I

SCHEDULE II

SCHEDULE III

SCHEDULE IV

SCHEDULE V

SCHEDULE VI

SCHEDULE VII

AS INTRODUCED IN LOK SABHA

**Bill No. 121 of 2011**

THE COMPANIES BILL, 2011

A

BILL

*to consolidate and amend the law relating to  
companies.*

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

**1. (1)** This Act may be called the Companies Act, 2011.

Short title,  
extent,  
commence-  
ment and  
application.

**(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 of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

**(4)** The provisions of this Act shall apply to—

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

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999; 4 of 1938.  
41 of 1999.

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949; 10 of 1949.

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003; 36 of 2003.

(e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

(f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Definitions. **2.** In this Act, unless the context otherwise requires,—

(1) “abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;

(2) “accounting standards” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

(3) “alter” or “alteration” includes the making of additions, omissions and substitutions;

(4) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under section 410;

(5) "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;

(6) "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 and includes a joint venture company.

*Explanation.*—For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

(7) "auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;

(8) "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;

(9) "banking company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;

(10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;

(11) "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, specify in this behalf;

(12) “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;

(13) “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) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

(14) “branch office”, in relation to a company, means any establishment described as such by the company;

(15) “called-up capital” means such part of the capital, which has been called for payment;

(16) “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;

(17) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

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

(19) “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a company;

(20) “company” means a company incorporated under this Act or under any previous company law;

(21) “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;

(22) “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;

(23) “Company Liquidator”, in so far as it relates to the winding up of a company, means a person appointed by—

(a) the Tribunal in case of winding up by the Tribunal; or

(b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;

(24) “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 who is appointed by a company to perform the functions of a company secretary under this Act; 56 of 1980.

(25) “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.

(26) “contributory” means a person liable to contribute towards the assets of the company in the event of its being wound up.

*Explanation.*—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) “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;

(28) “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; 23 of 1959.

(29) “court” means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company

concerned is situated, 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 situated 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 435;

(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;

(30) “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;

(31) “deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) “depository” means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;

22 of 1996.

(33) “derivative” means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(34) “director” means a director appointed to the Board of a company;

(35) “dividend” includes any interim dividend;

(36) “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;

(37) “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 to subscribe for, the shares of the company at a future date at a pre-determined price;

(38) “expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost 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;

(39) “financial institution” includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;

2 of 1934.

(40) “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;

(iv) a statement of changes in equity; and

(v) any explanatory note attached to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

(41) “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 is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(42) “foreign company” means any company or body corporate incorporated outside India which,—

(a) has a place of business in India whether by itself or through an agent,

physically or through electronic mode;  
and

(b) conducts any business activity in India in any other manner.

(43) “free reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

(44) “Global Depository Receipt” means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

(45) “Government company” means any company in which not less than fifty-one per cent. of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company;

(46) “holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

(47) “independent director” means an independent director referred to in sub-section (5) of section 149;

(48) “Indian Depository Receipt” 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;

(49) “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;

(50) “issued capital” means such capital as the company issues from time to time for subscription;

(51) “key managerial personnel”, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the Chief Financial Officer if the Board of Directors appoints him; and

(iv) such other officer as may be prescribed;

(52) “listed company” means a company which has any of its securities listed on any recognised stock exchange;

(53) “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;

(54) “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 substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

*Explanation.*—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) “member”, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(56) “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;

(57) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities 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;

(58) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) “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 any of the following officers of a company, namely:—

(i) whole-time director;

(ii) 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, registrars and merchant bankers to the issue or transfer;

(61) “Official Liquidator” means an Official Liquidator appointed under sub-section (1) of section 359;

(62) “One Person Company” means a company which has only one person as a member;

(63) “ordinary or special resolution” means an ordinary resolution, or as the case may be, special resolution referred to in section 114;

(64) “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 and also includes any amount of money credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

(65) “postal ballot” means voting by post or through any electronic mode;

(66) “prescribed” means prescribed by rules made under this Act;

(67) “previous company law” means any of the laws specified below:—

- 10 of 1866.                   (i) Acts relating to companies in force before the Indian Companies Act, 1866;
- 10 of 1866.                   (ii) the Indian Companies Act, 1866;
- 6 of 1882.                   (iii) the Indian Companies Act, 1882;
- 7 of 1913.                   (iv) the Indian Companies Act, 1913;
- Ord. 54 of 1942.               (v) the Registration of Transferred Companies Ordinance, 1942;
- 1 of 1956.                   (vi) the Companies Act, 1956; and
- (vii) any law corresponding to any of the aforesaid Acts or the Ordinances 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

(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 (Sikkim) Act, 1961;

Sikkim Act 8 of 1961.

(68) “private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

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;

(69) “promoter” means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clauses (b) and (c) shall apply to a person who is acting in a professional capacity;

(70) “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) “public company” means a company which—

(a) is not a private company;

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

Provided that a company which is a subsidiary of a company, not being a private

company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

(72) “public financial institution” means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; 31 of 1956.

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; 1 of 1956.

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; 58 of 2002.

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; 1 of 1956.

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act; or

(B) not less than fifty-one per cent. of the paid-up share capital is held or controlled 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;

(73) “recognised stock exchange” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(74) “register of companies” means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

(75) “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

(76) “related party”, with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

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

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

(v) 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;

(vi) 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;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

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

(viii) 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;

(ix) such other person as may be prescribed;

(77) “relative”, with reference to any person, means any one who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;

(78) “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.

(79) “Schedule” means a Schedule annexed to this Act;

(80) “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.

(81) “securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(82) “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.

(83) “Serious Fraud Investigation Office” means the office referred to in section 211;

(84) “share” means a share in the share capital of a company and includes stock;

(85) “small company” means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which 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 8; or

(C) a company or body corporate governed by any special Act;

(86) “subscribed capital” means such part of the capital which is for the time being subscribed by the members of a company;

(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say 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 share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

*Explanation.*—For the purposes of this clause,—

(a) 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;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

(88) "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 providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(89) "total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof having a right to vote on that matter are present at the meeting and cast their votes;

(90) “Tribunal” means the National Company Law Tribunal constituted under section 408;

(91) “turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

(92) “unlimited company” means a company not having any limit on the liability of its members;

(93) “voting right” means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

(94) “whole-time director” includes a director in the whole-time employment of the company;

(95) 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 those Acts.

1 of 1956.

15 of 1992.  
22 of 1996.

## CHAPTER II

### INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

**3. (1)** A company may be formed for any lawful purpose by— Formation  
of company.

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

(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 One Person Company that is to say, a private company,

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

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person 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.

4. (1) The memorandum of a company shall state— Memorandum.

(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;

Provided that nothing in this clause shall apply to a company registered under section 8;

(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 in 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, that liability of its members is limited to the amount unpaid, if any, on 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, 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, as the case may be; 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;

(f) in the case of One Person Company, the name of the person who in the event of death of the subscriber shall become the member of the company.

(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 Government 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) (i)* Upon receipt of an application under sub-section *(4)*, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

*(ii)* Where after reservation of name under clause *(i)*, it is found that name was applied by furnishing wrong or incorrect information, then,—

*(a)* if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section *(4)* shall be liable to a penalty which may extend to one lakh rupees;

*(b)* if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

*(i)* either direct the company to change its name within a period of three months, after passing an ordinary resolution;

(ii) take action for striking off the name of the company from the register of companies; or

(iii) make a petition for winding up of the company.

(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

(7) Any provision in the memorandum or articles, 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.

Articles.

5. (1) The articles of a company shall contain the regulations for management of 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 as that 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 in such form and manner as may be prescribed.

(6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(7) A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(8) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

(9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

**6.** Save as otherwise expressly provided in this Act—

Act to  
override  
memoran-  
dum,  
articles, etc.

(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 shall, to the extent to which it is

repugnant to the provisions of this Act, become or be void, as the case may be.

Incorporation of company.

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 in practice, who is engaged in the formation of the company, and 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 the 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 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 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 body corporate, such particulars as may be prescribed;

*(f)* the particulars of the persons mentioned in the articles as the 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 the 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)* The Registrar on the basis of documents and information filed under sub-section *(1)* shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation 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)* If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which

he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved 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 the first directors of the company and the persons making declaration under clause (b) of sub-section (1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a 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 Tribunal may, on an application made to it, on being 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 of companies; or

(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

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, if any, contracted or payment of any liability.

**8. (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—

Formation of companies with charitable objects, etc.

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such 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”, and thereupon the Registrar shall, on application, in the prescribed form, register 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) (i) 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.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(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" from its name and thereupon the Registrar shall, on application, in the prescribed form, register 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", 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, in the prescribed form, register the company accordingly:

Provided that no such order shall be made 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, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(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, 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 remains, after the satisfaction of its debts and liabilities, any asset, 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 269.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If 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 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:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Effect of registration.

**9.** 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.

**10.** (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.

**11.** (1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

Commence-  
ment of  
business,  
etc.

(a) a declaration is filed by a director 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 the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(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 of companies under Chapter XVIII.

Registered  
office of  
company.

**12.** (1) A company shall, on and from the fifteenth day 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 a period of thirty 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 legible letters, 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, if any, e-mail and website addresses, if any, 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:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be,

along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

Provided further that the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(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:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the

Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

(7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of sub-section (5) have been complied with and the change shall take effect from the date of the certificate.

(8) 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 memo-  
randum.

**13.** (1) Save as provided in section 61, 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 4 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", consequent on the conversion of any one 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 of companies 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 in such form and manner as may be prescribed.

(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) Save as provided in section 64, 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.

(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) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised,

shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) 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.

**14.** (1) Subject to the provisions of this Act and 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

(b) a public company into 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 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 the 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.

**15. (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.

Alteration of memorandum or articles to be noted in every copy.

(2) If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

**16. (1)** If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a

Rectification of name of company.

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 to 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 or change of name 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 to 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 maybe, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the 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.

**17.** (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 fees as may be prescribed, a copy of each of the following documents, namely:

Copies of memorandum, articles, etc., to be given to members.

(a) the memorandum;

(b) the articles; and

(c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.

(2) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

**18.** (1) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

Conversion of companies already registered.

(2) Where the conversion 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 certificate 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 conversion 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.

**19.** (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 the 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.

**20.** (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 registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Service of documents.

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 or other mode.

(2) Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post under a certificate of posting or by registered post or by speed post or by courier or by delivering at his office or address, or 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 shall pay such fees as may be determined by the company in its annual general meeting.

*Explanation.*—For the purposes of this section, the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

**21.** Save as otherwise provided in this Act,—

Authentica-  
tion of  
documents,  
proceedings  
and  
contracts.

(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.

Execution of bills of exchange, etc.

**22. (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 of or on account of, the company by any person acting under its authority, express or implied.

(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 or outside India.

(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

#### PART I — *Public offer*

Public offer and private placement.

**23. (1)** A public company may issue securities—

(a) to public through prospectus (herein referred to as “public offer”) by complying with the provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or

(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder. 15 of 1992.

(2) A private company may issue securities only through private placement by

complying with the provisions of Part II of this Chapter.

*Explanation.*—For the purposes of this Chapter, “public offer” includes initial public offer or further public offer of securities by a company to the public or an offer for sale of securities to the public by an existing shareholder.

**24. (1)** The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

(a) in so far as they relate to—

(i) issue and transfer of securities; and

(ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

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

*Explanation.*—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.

Document containing offer of securities for sale to be deemed prospectus.

**25.** (1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for 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 prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(3) Section 26 as applied by this section shall have effect as if—

(i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received

by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

**26.** (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, Chief Financial Officer, 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 previous 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 securities;

(viii) capital structure of the company in the prescribed manner;

(ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(x) main objects and present business of the company and its location, schedule of implementation of the project;

(xi) particulars relating to—

(A) management perception of risk factors specific to the project;

(B) gestation period of the project;

(C) extent of progress made in the project;

(D) deadlines for completion of the project; and

(E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(*xii*) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

(*xiii*) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(*xiv*) disclosures in such manner as may be prescribed about sources of promoter's contribution;

(*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 its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(*iii*) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business 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 issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; 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, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and

42 of 1956.  
15 of 1992.

(d) state such other matters and set out such other reports, as may be prescribed.

(2) Nothing in sub-section (1) shall apply—

(a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

(3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

*Explanation.*—The date indicated in the prospectus shall be deemed to be the date of its publication.

(4) 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.

(5) 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.

(6) 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 (4); 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.

(7) 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.

(8) 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 (4).

(9) If 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.

Variation in terms of contract or objects in prospectus.

**27. (1)** 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 in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

**28.** (1) 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 such procedure as may be prescribed.

Offer of sale of shares by certain members of a company.

(2) 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 laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

**29.** (1) Notwithstanding anything contained in any other provisions of this Act,—

Public offer of securities to be in dematerialised form.

(a) every company making public offer; and

(b) such other class or classes of public companies as may be prescribed, shall issue

the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. 22 of 1996.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder. 22 of 1996.

Advertise-  
ment of  
prospectus.

**30.** 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.

**31. (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.

*Explanation.*—For the purposes of this section, the expression “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.

**32.** (1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

Red herring 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 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 the Securities and Exchange Board.

*Explanation.*—For the purposes of this section, the expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Issue of application forms for securities.

**33.** (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 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) If 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.

Criminal liability for misstatements in prospectus.

**34.** Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447:

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.

**35. (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 (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, 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 damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Punishment for fraudulently inducing persons to invest money.

**36.** 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 liable for action under section 447.

Action by affected persons.

**37.** A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 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.

**38.** (1) Any person who—

Punishment  
for  
personation  
for  
acquisition,  
etc., of  
securities.

(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 a 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 liable for action under section 447.

(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 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.

**39.** (1) No allotment of any securities of a company offered to the public for subscription 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 by cheque or other instrument.

Allotment  
of securities  
by com-  
pany.

(2) The amount payable on application on every security shall not be less than five per cent.

of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

(4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(5) 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 each day during which such default continues or one lakh rupees, whichever is less.

Securities to be dealt with in stock exchanges.

**40.** (1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain 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 in which the securities shall be dealt with.

(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 time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, 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) If 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 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 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.

**41.** A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

Global  
depository  
receipt.

PART II.—*Private placement*

Offer or invitation for subscription of securities on private placement.

**42.** (1) Subject to the provisions of this section, but without prejudice to the provisions of section 25, a company may make an offer or invitation of securities to a section of the public otherwise than through issue of a prospectus by way of private placement basis in such form and manner as may be prescribed, if the conditions indicated in sub-section (2) and other provisions of this section are complied with.

(2) An offer or invitation of securities mentioned in sub-section (1) may be made under the following conditions, namely:—

(a) the offer or invitation in a financial year, shall be made to such number of persons, excluding qualified institutional buyers, and on such conditions (including the maximum amount to be raised) as may be prescribed;

(b) the value of such offer or invitation shall be with an investment size of such amount as may be prescribed; and

(c) the company shall not issue any prospectus for such offer or invitation and such offer or invitation shall be made through a private placement offer letter.

*Explanation I.*—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons under clause (a), whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of clause (a) of section 23.

*Explanation II.*— For the purposes of this section, the term “qualified institutional buyer” means the “qualified institutional buyer” as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.

(3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed.

42 of 1956. (4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

15 of 1992.

(5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not cash.

(6) A company making an offer or invitation under this section shall allot its securities within sixty 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 to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

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.

(7) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.

(8) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) The Central Government may make rules in relation to offer or invitation of securities to be made by the companies under this section.

(11) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

## CHAPTER IV

### SHARE CAPITAL AND DEBENTURES

**43.** The share capital of a company limited by shares shall be of two kinds, namely:—

Kinds of share capital.

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

*Explanation.*—For the purposes of this section,—

(i) “equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;

(ii) “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, whether

or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Nature of shares or debentures.

**44.** 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.

**45.** 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.

**46.** (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 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 or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.

22 of 1996.

(6) Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

47. (1) Subject to the provisions of section 43 and sub-section (2) of section 50,—

Voting rights.

(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 and, any resolution for the winding up of the company or for the repayment or reduction of its equity or 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 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 dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Variation of shareholders' rights.

**48.** (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,—

(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:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(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:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

(4) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

(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 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 twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Calls on shares of same class to be made on uniform basis.

**49.** 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.

*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.

Company to accept unpaid share capital, although not called up.

**50.** (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.

(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 paidup.

**51.** A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Application of premiums received on issue of shares.

**52.** (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 securities premium account were the paid-up share capital of the company.

(2) Notwithstanding anything contained in sub-section (1), the securities 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 68.

(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

(a) in paying up unissued 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; or

(c) for the purchase of its own shares or other securities under section 68.

**53.** (1) Except as provided in section 54, a company shall not issue shares at a discount.

Prohibition on issue of shares at 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.

**54. (1)** Notwithstanding anything contained in section 53, 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.

**55. (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 infrastructure projects, 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, 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) (i) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be

provided for out of the profits of the company, before the shares are redeemed:

Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company 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.

(ii) in a case not falling under sub-clause (i) above, 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 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.

(4) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

*Explanation.*—For the purposes of sub-section (2), the term “infrastructure projects” means the infrastructure projects specified in Schedule VI.

**56.** (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 a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Transfer and transmission 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 a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of 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 a period of six months from the date of allotment in the case of any allotment of debenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(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 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), 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.

57. If any person deceitfully personates as an owner of any share or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such share or interest or any such share warrant or 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.

Punishment for personation of shareholder.

58. (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 a period of thirty days 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.

Refusal of registration and appeal against refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of

transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a public company without sufficient cause refuses to register the transfer of shares within a period of thirty days 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 a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either 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 a period of 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.

(6) If a 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.

**59.** (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 a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(3) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, 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 or records concerned.

42 of 1956.  
15 of 1992.

(5) If any default is made in complying with the order of the Tribunal under 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 one lakh rupees but which may extend to three lakh rupees, or with both.

Publication of authorised, subscribed and paid-up capital.

**60.** (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 pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

Power of limited company to alter its share capital.

**61.** (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 authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares, after making application to the Tribunal in such manner as may be prescribed and after obtaining the approval of the Tribunal;

(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 subsection (1) shall not be deemed to be a reduction of share capital.

**62.** (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—

Further issue of share capital.

(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 paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or

any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company;

(b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, 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) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

(3) Nothing in this section shall apply to the increase of the subscribed capital of a 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.

*(4)* Notwithstanding anything contained in sub-section *(3)*, 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.

*(5)* In determining the terms and conditions of conversion under sub-section *(4)*, 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.

*(6)* Where the Government has, by an order made under sub-section *(4)*, 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 *(4)* 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.

Issue of  
bonus  
shares.

**63.** (1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—

(a) it is authorised by its articles;

(b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

(f) it complies with such conditions as may be prescribed.

(3) The bonus shares shall not be issued *in lieu* of dividend.

**64.** (1) Where—

(a) a company alters its share capital in any manner specified in sub-section (1) of section 61;

(b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing 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 a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

(2) If 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 may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

**65.** 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

Notice to be given to Registrar for alteration of share capital.

Unlimited company to provide for reserve share capital on conversion into limited company.

the purposes of the company being wound up.

Reduction  
of share  
capital.

**66.** (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,

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, Registrar 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, Registrar, 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, Registrar, 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 of share capital 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, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(4) The order of confirmation of the reduction of share capital 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 68.

(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 271, 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 liable under section 447.

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

**67.** (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.

(3) Nothing in sub-section (2) 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 approved by company through special resolution and in accordance with such requirements as may be prescribed, 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 held by trustees for the benefit of the employees or such shares held by the employee of the company;

(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:

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

(4) 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.

(5) If 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.

Power of company to purchase its own securities.

**68.** (1) Notwithstanding anything contained in this Act, but subject to the provisions of subsection (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

(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, ten per cent. or less 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 twenty-five per cent. or less of the aggregate of 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 paid-up 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 closure 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 a period of one year from the date of passing of

the special resolution, or as the case may be, the resolution passed by the Board under clause (b) 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) 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 62 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) If 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 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 one lakh

rupees but which may extend to three lakh rupees, or with both.

*Explanation I.*—For the purposes of this section and section 70, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

*Explanation II.*—For the purposes of this section, “free reserves” includes securities premium account.

**69.** (1) Where a company purchases its own shares out of free reserves or securities premium account, 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.

(2) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

**70.** (1) 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:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

Debentures.

**71.** (1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

(2) No company shall issue any debentures carrying any voting rights.

(3) Secured debentures may be issued by a company 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 in accordance with such rules as may be prescribed.

(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 in so far 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 due 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) If 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 the procedure, 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, quantum of debenture redemption reserve required to be created and such other matters.

Power to  
nominate.

**72.** (1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

(2) Where the securities 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 securities 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 securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the

death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, 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 securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

## CHAPTER V

### ACCEPTANCE OF DEPOSITS BY COMPANIES

**73.** (1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner 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, if any, 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 within 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, and kept in a scheduled bank in a separate bank account to be called as 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 committed any default 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 security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(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) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

74. (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—

Repayment of deposits, etc., accepted before commencement of this Act.

(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 remaining 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.

(2) The Tribunal may on 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) If 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.

**75.** (1) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 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 and liability under section 447, 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.

**76. (1)** Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe:

Acceptance of deposits from public by certain companies.

Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits:

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(2) The provisions of this Chapter shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.

## CHAPTER VI

### REGISTRATION OF CHARGES

**77. (1)** It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the chargeholder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be

Duty to register charges, etc.

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 fees as may be prescribed:

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

(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.

**78.** Where a company fails to register the charge within the period specified in section 77, 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 a period of 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 fees, 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 fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

**79.** The provisions of section 77 relating to registration of charges shall, so far as may be, apply to—

Section 77 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 or conditions or the extent or operation of any charge registered under that section.

**80.** Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, 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.

**81.** (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 fees as may be prescribed for each inspection.

Company  
to report  
satisfaction  
of  
charge.

**82.** (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 a period of thirty days from the date of such payment or satisfaction and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section.

(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 81 and shall inform the company that he has done so:

Provided that the notice referred to in this sub-section shall not be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.

(3) If any cause is shown, the Registrar shall record a note to that effect in the register of charges and shall inform the company.

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company.

**83.** (1) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

(2) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under sub-section (1) of section 81.

**84.** (1) If any person obtains an order for the appointment of a receiver of, 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 a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

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.

**85.** (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:

Provided that a copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

(2) The register of charges and instrument of charges, kept under sub-section (1) shall be open for inspection during business hours—

(a) by any member or creditor without any payment of fees; or

(b) by any other person on payment of such fees as may be prescribed,

subject to such reasonable restrictions as the company may, by its articles, impose.

Punishment for contravention.

**86.** If 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 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.

Rectification by Central Government in register of charges.

**87.** (1) The Central Government on being satisfied that—

(i) (a) the omission to file with the Registrar the particulars of any charge created

by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

(b) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

(c) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

(ii) on any other grounds, it is just and equitable to grant relief,

it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

## CHAPTER VII

### MANAGEMENT AND ADMINISTRATION

Register of  
members,  
etc.

**88.** (1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—

(a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(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) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may

extend to one thousand rupees for every day, after the first during which the failure continues.

**89.** (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and 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.

Declaration  
in respect  
of beneficial  
interest in  
any share.

(2) Every person who holds or acquires a beneficial interest in share 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, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of 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) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(6) 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 fees or additional fees as may be prescribed, within the time specified under section 403.

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company 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 and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) 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.

**90.** Where it appears to the Central Government that there are 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 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

**91. (1)** A company may 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 any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

Power to close register of members or debenture holders or other security holders.

*(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 subject to a maximum of one lakh rupees during which the register is kept closed.

**92. (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—

Annual return.

*(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 previous financial year;

*(e)* its promoters, directors, key managerial personnel along with changes

therein since the close of the previous 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) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(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; and

(k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice;

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

(4) Every company shall file with the Registrar a copy of the annual return, 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, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 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 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 fifty thousand rupees but which may extend to five lakh rupees, or with both.

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

**93.** Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

Return to be filed with Registrar in case promoters' stake changes.

Place of  
keeping  
and  
inspection  
of registers,  
returns,  
etc.

**94.** (1) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 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 number of 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:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

(2) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all 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 fees and by any other person on payment of such fees 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 fees as may be prescribed.

(4) 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 subject to a maximum of

one lakh rupees during which the refusal or default continues.

(5) 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.

**95.** The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be *prima facie* evidence of any matter directed or authorised to be inserted therein by or under this Act.

Registers, etc., to be evidence.

**96. (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:

Annual general meeting.

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:

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.

*Explanation.*—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

Power of Tribunal to call annual general meeting.

**97.** (1) If any default is made in holding the annual general meeting of a company under section 96, 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.

**98.** (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 or 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 or 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 subsection (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

**99.** If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, 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.

Punishment for default in complying with provisions of sections 96 to 98.

**100.** (1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company. (2) The Board shall, at the requisition made by,—

Calling of extraordinary general meeting.

(a) in the case of a company having a share capital, such number of members who 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 who 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.

*(5)* A meeting under sub-section *(4)* by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

*(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 section 197 payable to such of the directors who were in default in calling the meeting.

Notice of meeting.

**101.** *(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.

**102.** (1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

Statement to be annexed to notice.

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(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 financial statements 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 promoter, 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 promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, 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 other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

(5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel 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 promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

**103.** (1) Unless the articles of the company provide for a larger number,—

Quorum for meetings.

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(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 100, shall stand cancelled:

Provided that in case of an adjourned meeting 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 publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(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.

**104.** (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.

**105.** (1) 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: Proxies.

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:

Provided further that, unless the articles of a company otherwise provide, this sub-section shall not apply in the case of a company not having a share capital:

Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(4) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show

the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(7) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(8) Every member entitled to vote at a meeting of the company, or on any resolution to

be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

**106.** (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.

Restriction on voting rights.

(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, where allowed, 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.

**107.** (1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

Voting by 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.

**108.** The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Demand for poll.

**109.** (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, where allowed, 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 or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, 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 scrutinise 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.

**110.** (1) Notwithstanding anything contained in this Act, a company— Postal ballot.

(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.

**111.** (1) A company shall, on requisition in writing of such number of members, as required in section 100,— Circulation of members' resolution.

(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 proposed resolution or 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 every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

**112.** (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.

Representa-  
tion of  
President  
and  
Governors  
in meetings.

(2) A person appointed to act under subsection (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.

**113.** (1) A body corporate, whether a company within the meaning of this Act or not, may,—

Representa-  
tion of  
corporations  
at meeting  
of compa-  
nies 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.

Ordinary  
and special  
resolutions.

**114.** (1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and 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, so entitled and voting.

(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 by proxy or by postal ballot, 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.

**115.** Where, by any provision contained in this Act or in the articles of a company, 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 holding not less than one per cent. of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

Resolutions requiring special notice.

**116.** Where a resolution is passed at an adjourned meeting of—

Resolutions passed at adjourned meeting.

(a) a company; or

(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.

**117. (1)** A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, 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 such manner and with such fees as may be prescribed within the time specified under section 403:

Resolutions and agreements to be filed.

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

(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 403 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 of the company 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.

(3) The provisions of this section shall apply to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of directors of any of the powers under clause

(a) and clause (c) of sub-section 25 (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

**118.** (1) Every company shall cause minutes of the proceedings of every general 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, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

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 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; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) The Chairman shall exercise 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) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(8) Where the minutes have been kept in accordance with sub-section (1) 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 secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, 56 of 1980.

and approved as such by the Central Government.

(11) If any default is made in complying with the provisions of this section 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.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

**119.** (1) The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall—

Inspection of minute-books of general meeting.

(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 Tribunal 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.

Maintenance and inspection of documents in electronic form.

**120.** Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc.,—

(a) required to be kept by a company; or

(b) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

Report on annual general meeting.

**121.** (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 fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.

(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified under section 403 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.

**122.** (1) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company.

Applicability of this Chapter to One Person Company.

(2) The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (3).

(3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

(4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

## CHAPTER VIII

### DECLARATION AND PAYMENT OF DIVIDEND

Declaration  
of divi-  
dend.

**123.** (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 by the company 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 where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

(3) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

(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 paid 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 sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

**124.** (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 date 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) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

(3) 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.

(4) 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.

(5) 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 along with interest accrued, if any, thereon to the Fund established under sub-section (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

(6) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

(7) 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 but which may extend to five lakh rupees.

**125.** (1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund) .

Investor  
Education  
and  
Protection  
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 Account of companies transferred to the Fund under sub-section (5) of section 124;

(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; 1 of 1956.  
21 of 1999.

(e) the amount lying in the Investor Education and Protection Fund under section 205C 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 38;

(h) the application money received by companies for allotment of any securities and due for refund;

(i) matured deposits with companies other than banking companies;

(j) matured debentures with companies;

(k) interest accrued on the amounts referred to in clauses (h) to (j);

(l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

(m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and

(n) such other amount as may be prescribed:

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(3) The Fund shall be utilised for—

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

(b) promotion of investors' education, awareness and protection;

(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;

(d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and

(e) any other purpose incidental thereto,

in accordance with such rules as may be prescribed:

Provided that the shareholders, whose unclaimed and unpaid dividends have been transferred to Investor Education and Protection Fund, after the expiry of the period of seven years

as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section. 1 of 1956.

*Explanation.*—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

(4) Any person claiming to be entitled to the amount referred in clauses (c) and (d) of sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.

(5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.

(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

(7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

(8) 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 India.

(9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).

(10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India

at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.

(11) 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 of India to be laid before each House of Parliament.

**126.** 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 of transfer of shares.

(a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 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 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.

**127.** 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

Punishment for failure to distribute dividends.

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:—

(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 and the same has been communicated to him;

(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.

**128.** (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year 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 in India or outside India, 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 the 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 Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, wilfully contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company 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.

**129.** (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under

the Act governing such class of company:

Provided also that the financial statements 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—

4 of 1938.                   (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

10 of 1949.                   (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

36 of 2003.                   (c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and 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 also attach along with its financial statement, a separate

statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

*Explanation.*—For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, apply to the consolidated financial statements referred to in sub-section (3).

(5) Without prejudice to sub-section (1), 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.

(6) 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.

(7) If a 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 notes or documents annexed or attached thereto, giving information required to be given and allowed to be given in the form of such notes or documents by this Act.

**130.** (1) A company shall not re-open its books of account and not recast its financial statements, unless an order in this regard is made by a court of competent jurisdiction or the Tribunal to the effect that—

Re-opening of accounts on court's or Tribunal's orders.

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

(2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

**131.** (1) If it appears to the directors of a company that—

Voluntary revision of financial statements or Board's report.

(a) the financial statement of the company; or

*(b)* the report of the Board,

do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Provided that the Tribunal shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

*(2)* Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

*(a)* the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and

*(b)* the making of any necessary consequential alternation.

*(3)* The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a

revised director's report and such rules may, in particular—

(a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;

(c) require the directors to take such steps as may be prescribed.

**132.** (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

Constitution  
of National  
Financial  
Reporting  
Authority.

(2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

(i) make recommendations to 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;

(ii) monitor and enforce the compliance with accounting and auditing standards recommended by it in such manner as may be prescribed;

(iii) oversee the quality of service of the professionals associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and

(iv) perform such other functions as may be prescribed.

(3) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance, business administration, business law, economics or similar disciplines, to be nominated by the Central Government and such other members not exceeding fifteen as may be prescribed:

Provided that the terms and conditions of appointment of the chairperson and members shall be such as may be prescribed:

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.

(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

(i) have the power to investigate, either *suo moto* or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, cost accountants or company secretaries in practice constituted under the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 respectively or any other profession as may be prescribed: 38 of 1949. 23 of 1959. 56 of 1980.

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

(ii) have the same powers as are vested in a civil court under the Code of Civil

5 of 1908.

Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;

(b) summoning and enforcing the attendance of persons and examining them on oath;

(c) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;

(d) issuing commissions for examination of witnesses or documents;

(iii) where professional or other misconduct is proved, have the power to make order for—

(a) imposing penalty of not less than one lakh rupees in case of individuals and not less than ten lakh rupees in case of firms;

(b) debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority;

Provided that the Appellate Authority constituted under section 22A of the Chartered Accountants Act, 1949, under section 22A of the Cost and Works Accountants Act, 1959 and under section 22A of the Company Secretaries Act, 1980 shall be deemed to the appellate authority against any order made by the National Financial Reporting Authority and any person aggrieved by any order of the National Financial Reporting

38 of 1949.

23 of 1959.

56 of 1980.

Authority shall have the right to appeal before the appellate authority in such manner as may be prescribed.

*Explanation.*—For the purposes of this section, the expression “professional or other misconduct” shall have the same meaning respectively assigned to it under section 22 of the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980.

38 of 1949.  
23 of 1959.  
56 of 1980.

(5) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

(6) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

(7) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

(8) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

(9) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and

Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

(10) The National Financial Reporting 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 of India to be laid before each House of Parliament.

**133.** The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Central Government to prescribe accounting standards.

38 of 1949.

**134.** (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, if any, and Chief Executive Officer, if any, if he is a director in the company and by Chief Financial Officer and company secretary of the company, or, in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

Financial Statement, Board's report, etc.

(2) The auditors' report shall be attached to every financial statement.

(3) There shall be attached to statements 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 (3) of section 92;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement;

(d) a statement on declaration given by independent directors under sub-section (6) of section 149;

(e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

(i) by the auditor in his report; and

(ii) by the company secretary in his secretarial audit report;

(g) particulars of loans, guarantees or investments under section 186;

(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;

(i) the state of the company's affairs;

(j) the amounts, if any, which it proposes to carry to any reserves;

(k) the amount, if any, which it recommends should be paid by way of dividend;

*(l)* 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 financial statements relate and the date of the report;

*(m)* the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

*(n)* 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;

*(o)* the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

*(p)* 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;

*(q)* such other matters as may be prescribed.

*(4)* The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

*(5)* The Directors' Responsibility Statement referred to in clause *(c)* of 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 are adequate and were operating effectively;

*Explanation.*—For the purposes 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 all applicable laws and that such systems were adequate and operating effectively.

(6) 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.

(7) 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 129;

(b) the auditor's report; and

(c) the Board's report referred to in sub-section (3).

(8) If a company contravenes 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 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 or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

**135.** (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Corporate  
Social  
Responsibility.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall make every endeavour to ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

**136.** (1) A copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, 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 persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Right of member to copies of audited financial statement.

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further 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:

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto,

on its website, which is maintained by or on behalf of the company:

Provided also that every company having a subsidiary or subsidiaries shall,—

(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;

(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(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.

**137.** (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements 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 fees or additional fees as may be prescribed within the time specified under section 403:

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements 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 statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statements 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 fees or such additional fees as may be prescribed within the time specified under section 403:

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

(2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be 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 fees or additional fees as may be prescribed within the time specified, under section 403.

(3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one

thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, 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.

Internal  
Audit.

**138.** (1) Such class or classes 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, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

## CHAPTER X

### AUDIT AND AUDITORS

Appoint-  
ment of  
auditors.

**139.** (1) Subject to the provisions of this Chapter, every company shall, at the first 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 its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

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, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided further that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

Provided also that the company shall inform the auditor concerned of his or its 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) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately

preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act:

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

(3) Subject to the provisions of this Act, members of a company may resolve to provide that—

(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated every year; or

(b) the audit shall be conducted by more than one auditor.

(4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

*Explanation.*—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

6 of 2009.

(5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or 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 conclusion of the annual general meeting.

(6) 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 within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or 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 first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty 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 the next thirty days; and in the case of failure of the Board to appoint such auditor within next thirty days, it shall inform the members of the company who shall appoint such auditor within sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(8) 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 recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

(ii) in the 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 the Comptroller and Auditor-General of India within thirty days:

Provided that in case the 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.

(9) 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.

(10) 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.

(11) Where a company is required to constitute an Audit Committee under section 177, 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.

**140.** (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Removal, resignation of auditor and giving of special notice.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

(3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or as the case may be, ten years, as provided under sub-section (2) of section 139.

(ii) On receipt of notice of such a resolution, the company shall forthwith send

a copy thereof to the retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either *suo motu* or on an application made to it by the

Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, 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:

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

*Explanation.*—For the purposes of this Chapter the word “auditor” includes a firm of auditors.

**141.** (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Eligibility, qualifications and disqualifications of auditors.

Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(3) The following persons shall not be eligible for appointment as an auditor of a company,

namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; 6 of 2009.

(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 or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum 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, in excess of such amount as may be prescribed; 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, whether directly or indirectly, 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 a director or 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:

Provided that the members of a company may, by ordinary resolution, specify the number of companies beyond which the auditor or audit firm of a company shall not become auditor;

(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;

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

(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.

**142. (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.

Remuneration of auditors.

(2) The remuneration under sub-section (1) shall, 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 any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

**143.** (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 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 amongst other matters inquire into the following matters, namely:—

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading;

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 statements 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 statements 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 (II ) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(3) The auditor's report shall also state—

(a) 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 and if not, the details thereof and the effect of such information on the financial statements;

(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's 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;

(f) the observations or comments of the auditors on financial transactions or matters 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 164;

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

(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 India under sub-section (5) or sub-section (7) of section 139 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 India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to—

(a) 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; and

(b) comment upon or supplement such audit report:

Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report or, on the report of the supplementary 20 audit conducted by him shall be sent by the company to every person entitled to copies of audited financial statements under sub-section (1) of section 136 and also 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 India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and 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.

(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein 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 139, 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 any 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 prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority: 38 of 1949.

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, in consultation with the National Financial Reporting Authority, 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.

(12) Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

(13) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

(14) The provisions of this section shall *mutatis mutandis* apply to—

(a) the cost accountant in practice conducting cost audit under section 148; or

(b) the company secretary in practice conducting secretarial audit under section 204.

(15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

**144.** An auditor appointed under this Act shall provide to 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 (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company or

Auditor not to render certain services.

associate company), 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;
- (h) management services; and
- (i) any other kind of services as may be prescribed.

*Explanation.*—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor,—

(i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

(ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

**145.** 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 qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in 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.

Auditor to sign audit reports, etc.

**146.** 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.

Auditors to attend general meeting.

**147. (1)** If any of the provisions of sections 139 to 146 (both inclusive) 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 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 ten thousand rupees but which may extend to one lakh rupees, or with both.

Punishment for contravention.

**(2)** If an auditor of a company contravenes any of the provisions of section 143, section 144 or section 145, the auditor 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 if an auditor has contravened such provisions with the intention to deceive the company or its shareholders or creditors or any other person concerned or interested in the

company, 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.

(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.

(4) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm 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 the time being in force, for such act shall be of the partner or partners of the audit firm and of the firm jointly and severally and such partner or partners of the audit firm shall also be punishable in the manner as provided in section 447.

Central Government to specify audit of items of cost in respect of certain companies.

**148.** (1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that 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, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(3) The audit under sub-section (2) shall be conducted by a Cost Accountant 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 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

*Explanation.*—For the purposes of this sub-section, the expression “cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

23 of 1959.

(4) An audit conducted under this section shall be in addition to the audit conducted under section 143.

(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) If any default is made in complying with the provisions of this section,—

(a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;

(b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

## CHAPTER XI

### APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Company  
to have  
Board of  
Directors.

**149.** (1) Every company shall have a Board of Directors consisting of 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 fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

(2) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

(3) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

*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 date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (3).

(5) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

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

(b) (i) who is or was not a promoter of

the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

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

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor 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;

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

(iv) 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 receipts 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

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

(6) 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 circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (5).

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

(7) The company and independent directors shall abide by the provisions specified in Schedule IV.

(8) Subject to the provisions of section 198, an independent director shall not be entitled to

any remuneration, other than a fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

(9) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(10) Notwithstanding anything contained in sub-section (9), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

*Explanation.*—For the purposes of sub-sections (9) and (10), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(11) Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(12) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

**150.** (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

Manner of selection of independent directors and maintenance of data bank of independent directors.

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

Appoint-  
ment of  
director  
elected by  
small  
sharehold-  
ers.

**151.** A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

*Explanation.*—For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Appoint-  
ment of  
directors.

**152.** (1) Where no provision is made in the articles of a company for the appointment of the first director, 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 and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member 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 under section 154.

(4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number 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 director and such consent has been filed with the Registrar within thirty days of his appointment 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 for such appointment, attached to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

(6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 is applicable to the case.

*Explanation.*—In this section, the expression “retiring director” means a director retiring by rotation.

**153.** 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 fees as may be prescribed.

Application for allotment of Director Identification Number.

**154.** The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as may be prescribed.

Allotment of Director Identification Number.

**155.** No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

Prohibition to obtain more than one Director Identification Number.

**156.** 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.

**157. (1)** Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed within the time specified under section 403 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)** If a company fails to furnish Director Identification Number under sub-section (1), before the expiry of the period specified under section 403 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 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.

Obligation to indicate Director Identification Number.

**158.** 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.

Punishment for contravention.

**159.** If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty 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 the contravention continues.

Right of persons other than retiring directors to stand for directorship.

**160. (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 registered 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 one lakh rupees or such higher amount as may be prescribed which 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 valid votes cast either on show of hands or on poll on such resolution.

(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.

**161.** (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.

Appoint-  
ment of  
additional  
director,  
alternate  
director  
and  
nominee  
director.

(2) The Board of Directors of a company 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 no person shall be appointed as an alternate director for an independent director unless he is 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 of a company, 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 the State Government by virtue of its shareholding in a Government company.

(4) In the case 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.

Appoint-  
ment of  
directors to  
be voted  
individu-  
ally.

**162.** (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 as a motion for his appointment.

Option to  
adopt  
principle of  
proportional  
representa-  
tion for  
appoint-  
ment of  
directors.

**163.** 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 161.

**164.** (1) A person shall not be eligible for appointment as a director of a company, if —

Disqualifications for appointment of director.

(a) he is of unsound mind and stands so declared by a competent court;

(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, whether involving moral turpitude or otherwise, 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:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(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 under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

(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 company for a period of five years from the date on which the said company fails to do so.

(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 off; 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 off.

Number of directorships.

**165.** (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 ten.

*Explanation.*— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

(2) Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

(3) Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year 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;

(b) resign his office as director in the other remaining 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 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 despatch thereof to the company concerned.

(5) No such person shall act as director in more than the specified number of companies,—

(a) after despatching 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 one year from the commencement of this Act, whichever is earlier.

(6) If 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 after the first during which the contravention continues.

Duties of directors.

**166.** (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(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 interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(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 and if such director is found guilty of making any undue gain under sub-section (7), he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

**167.** (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 164;

(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 of section 184 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 in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) he is removed in pursuance of the provisions of this Act;

(h) 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, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in 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 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).

(5) The provisions of this section shall not apply to a person whose case has been disposed of as plea bargaining provided under section 265E of Chapter XXI-A of the Code of Criminal Procedure, 1973.

2 of 1974.

Resignation  
of director.

**168.** (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 the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such 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:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, 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.

**169.** (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Removal of directors.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A 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:

Provided that such notice to remove a director shall be given by at least,—

(a) in the case a company having a share capital, by any member or members 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 having not less than one-tenth of the total voting power.

(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) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) 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 at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), 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.

(8) 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 that 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.

**170.** (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, subsidiary of company's holding company 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.

**171.** (1) The register kept under sub-section (1) of section 170:—

(a) 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; and

(b) 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.

(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause 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.

**172.** If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

## CHAPTER XII

### MEETINGS OF BOARD AND ITS POWERS

**173.** (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 one hundred and twenty days shall intervene between two consecutive meetings of the Board:

Meetings of 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 other audio visual 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 along with date and time:

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 audio visual means.

(3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

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 shall be final only on ratification thereof by at least one independent director, if any.

(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.

(5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

Quorum for meetings of Board.

**174.** (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 audio visual means shall also be counted for the purposes of quorum under this sub-section.

(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

(3) 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 subsection, “interested director” means a director within the meaning of sub-section (2) of section 184.

(4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company 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 national holiday, till the next succeeding day, which is not a national 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.

**175.** (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 addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution:

Passing of resolution by circulation.

Provided that, where not less than one-third of the total number of directors of the company

for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

(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.

**176.** 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 of the company:

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.

Audit committee.

**177.** (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

(2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

(3) 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-section (2).

(4) Every Audit Committee shall act in accordance with the terms of reference specified

in writing by the Board which shall *inter alia*, include,—

(i) the recommendation for appointment, remuneration and terms of appointment 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 statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties;

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

(5) 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 of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) 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.

(7) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

(8) The Board's report under sub-section (3) of section 134 shall disclose the 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.

(9) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

(10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Nomination and remuneration committee and stakeholders relationship committee.

**178. (1)** The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors.

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance

with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) 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; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

(5) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

(7) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

(8) In case of any contravention of the provisions of section 173 and 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:

Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

*Explanation.*— The expression “senior management” means 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 the functional heads.

Powers of Board.

**179.** (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:

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, 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 regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

(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 68;

(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

(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 Board'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;

(k) any other matter which may be prescribed:

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:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

*Explanation I.*—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

*Explanation II.*—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(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.

**180.** (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:—

Restrictions  
on powers  
of Board.

(a) to sell, lease or otherwise dispose of the whole or substantially 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) “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, where the money to be borrowed, together with the money already borrowed by the company will exceed 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:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

*Explanation.*—For the purposes of this clause, 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;

(d) to remit, or give time for the repayment of, any debt due from a director.

(2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(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.

**181.** The Board of Directors of a company may contribute to bona fide charitable and other funds:

Company to contribute to bona fide and charitable funds, etc.

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

**182.** (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 to any political party:

Prohibitions and restrictions regarding political contributions.

Provided that the amount referred to in sub-section (1) 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 seven and a half 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 amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(4) If 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 of the company 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.

**183.** (1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Power of Board and other persons to make contributions to national defence fund, etc.

(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in subsection (1) during the financial year to which the amount relates.

**184.** (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 such 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.

Disclosure of interest by director.

(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 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) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director 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) 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.

**185.** (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 the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Loan to directors, etc.

Provided that nothing contained in this subsection 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; or

(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.

*Explanation.*—For the purposes of this section, the expression “to any other person in whom director is interested” means—

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(2) If 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.

**186.** (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Loan and investment by company.

Provided that the provisions of this sub-section shall not affect,—

(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;

(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

(2) 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, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

(5) 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 (2), 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.

(6) 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 and such company shall furnish in its financial statement the details of the loan or deposits. 15 of 1992.

(7) 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.

(8) 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 give any guarantee or provide any security or make an acquisition till such default is subsisting.

(9) 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.

(10) The register referred to in sub-section (9) 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 fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by 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;

(b) to any acquisition —

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in

respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(12) The Central Government may make rules for the purposes of this section.

(13) If a company contravenes 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 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 and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

*Explanation.*—For the purposes of this section,—

(a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities;

(b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.

Investments of company to be held in its own name.

**187.** (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 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—

(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 repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

(d) 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 clause (d) of subsection (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 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) If a company contravenes 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 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.

Related  
party  
transactions.

**188.** (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no 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 agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate 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 no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

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.

*Explanation.*— In this sub-section,—

(a) the expression “office or place of profit” means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such 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 receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression “arm's length transaction” means a transaction between two

related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report 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 any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

(5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—

(i) in case of listed 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; and

(ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

**189.** (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 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Register of contracts or arrangements in which directors are interested.

(2) Every director or key managerial personnel shall, within a period of 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 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section.

(3) Every 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 referred to in 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 fees as may be prescribed.

(5) The register 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 contained 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.

**190.** (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) The 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.

**191.** (1) No director of a company shall, in connection with—

Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.

(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 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) If a director of the company contravenes the provisions of this section, such director 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 law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

Restriction on non-cash transactions involving directors.

**192.** (1) No company shall enter into an arrangement by which —

(a) a director of the company or its holding, subsidiary or associate 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 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.

**193.** (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the 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 entering into contract:

Contract by  
One Person  
Company.

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 a period of fifteen days of the date of approval by the Board of Directors.

Prohibition on forward dealings in securities of company by director or key managerial personnel.

**194.** (1) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—

(a) a right to call for delivery or 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

(b) a right, as he may elect, to call for delivery 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) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term 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.

(3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in 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 and such securities, in both the cases, shall continue to remain in the names of the transferors.

*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 personnel or shares and debentures of its holding and subsidiary companies.

**195.** (1) No person including any director or key managerial personnel of a company shall enter into insider trading:

Prohibition on insider trading of securities.

Provided that nothing contained in this subsection 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,—

(a) “insider trading” means—

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) “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 person 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 twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

## CHAPTER XIII

### APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

Appoint-  
ment of  
managing  
director,  
whole-time  
director or  
manager.

**196.** (1) No company shall appoint or employ at the same time a managing director and a 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 or continue the employment of any person as managing director, whole-time director or manager 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 in which case the explanatory statement annexed to the notice for

such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at any time been adjudged as 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 and sentenced for a period of more than one month.

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a special resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

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, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

(5) 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.

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

**197. (1)** The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, 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 section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent. of the net profits in any other case.

(2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, 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 (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.

(4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

(a) the services rendered are of a professional nature; and

(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

(5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

*(6)* A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

*(7)* Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration only by way of commission or fees payable under sub-section *(5)*.

*(8)* The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

*(9)* If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

*(10)* The company shall not waive the recovery of any sum refundable to it under sub-section *(9)* unless permitted by the Central Government.

*(11)* In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by

the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

*(12)* Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

*(13)* 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:

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

*(14)* Subject to the provisions of this section, 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.

*(15)* Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statement due to fraud or non-compliance with any requirement under this Act and the rules

made thereunder, the company shall recover from any past or present managing director or whole-time director or manager who, during the period for which the financial statements are required to be re-stated, the remuneration received (including stock option) arisen due to such statement or non-compliance in excess of what would have been paid to the managing director, whole-time director or manager under such re-stated financial statements.

(16) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Calculation  
of profits.

**198.** (1) In computing the net profits of a company in any financial year for the purpose of section 197,—

(a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and

(b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—

(a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;

(b) profits on sales by the company of forfeited shares;

*(c)* profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

*(d)* profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;

*(e)* any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

*(4)* In making the computation aforesaid, the following sums shall be deducted, namely:—

*(a)* all the usual working charges;

*(b)* directors' remuneration;

*(c)* bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;

*(d)* any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

*(e)* any tax on business profits imposed for special reasons or in special circumstances

and notified by the Central Government in this behalf;

(f) interest on debentures issued by the company;

(g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

(h) interest on unsecured loans and advances;

(i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

(j) outgoings inclusive of contributions made under section 181;

(k) depreciation to the extent specified in section 123;

(l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

(m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;

(n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);

(o) debts considered bad and written off or adjusted during the year of account.

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

43 of 1961.

(a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);

(b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);

(c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

(d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

**199.** (1) Where the Central Government or the Tribunal is required or authorised by any provision of this Act,—

(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter; or

(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 such or any other provision of this Act, the Central Government or the Tribunal may accord, give or

Power of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

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 expressly 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; or

(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 fees as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies.

Central Government or company to fix limit with regard to remuneration.

**200.** Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the

Central Government or the company shall have regard to—

(a) the financial position of the company;

(b) the remuneration or commission drawn by the individual concerned in any other capacity;

(c) the remuneration or commission drawn by him from any other company;

(d) professional qualifications and experience of the individual concerned;

(e) such other matters as may be prescribed.

**201.** (1) Every application made to the Central Government under this Chapter shall be in such form as may be prescribed.

Forms of, and procedure in relation to, certain applications.

(2) (a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Compensation for loss of office of managing or whole-time director or manager.

**202.** (1) A company may make payment 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 or whole-time 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 167;

(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.

**203.** (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,

Appoint-  
ment of  
key  
managerial  
personnel.

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; and

(ii) company secretary:

Provided that unless the articles of such a company provide otherwise, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time.

(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 except in its subsidiary company at the same time:

Provided that nothing contained in this subsection shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time 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) If 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 director and key managerial personnel of the company who is in default shall be

punishable with fine which may extend to fifty 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.

**204.** (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

Secretarial  
audit for  
bigger  
companies.

(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 related records of the company.

(3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or 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.

**205.** (1) The functions of the company secretary shall include,—

Functions  
of company  
secretary.

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

*Explanation.*—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. 56 of 1980.

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson, managing director or whole-time director under this Act, or any other law for the time being in force.

## CHAPTER XIV

### INSPECTION, INQUIRY AND INVESTIGATION

Power to call for information, inspect books and conduct inquiries.

**206.** (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 subsection (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 if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, 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 or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, 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 after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant,

direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

(6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.

(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

Conduct of  
inspection  
and inquiry.

**207.** (1) Where a Registrar or inspector calls for the books of account and other books and papers under section 206, 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.

(2) The Registrar or inspector, making an inspection or inquiry under section 206 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) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;

(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.

(4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment 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.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer

shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Report on inspection made.

**208.** The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, 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.

**209.** (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 key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, 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 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.

2 of 1974.

(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.

**210.** (1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

Investigation into affairs of company.

(a) on the receipt of a report of the Registrar or inspector under section 208;

(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 persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

**211.** (1) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company:

Establishment of Serious Fraud Investigation Office.

Provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm.-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.

(2) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—

(i) banking;

(ii) corporate affairs;

(iii) taxation;

(iv) forensic audit;

(v) capital market;

(vi) information technology;

(vii) law; or

(viii) such other fields as may be prescribed.

(3) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

(4) The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.

(5) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.

**212.** (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

Investigation into affairs of company by Serious Fraud Investigation Office.

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central

Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-sections (5) and (6) of section 46, sub-section (10) of section 66, sub-section (5) of section 140, proviso to sub-section (2) and sub-section (4) of section 147, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

2 of 1974.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Frauds Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

2 of 1974.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken

or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

**213.** 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

Investigation into company's affairs in other cases.

(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 person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to 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 of being heard 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:

Provided that if after investigation it is proved 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 that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

**214.** Where an investigation is ordered by the Central Government in pursuance of clause (b) of sub-section (1) of section 210, or in pursuance of an order made by the Tribunal under section 213, the Central Government may before appointing an inspector under sub-section (3) of section 210 or clause (b) of section 213, require the applicant to give such security not exceeding twenty-five thousand rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution.

Security for payment of costs and expenses of investigation.

**215.** No firm, body corporate or other association shall be appointed as an inspector.

Firm, body corporate or association not to be appointed as inspector.

**216.** (1) Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—

Investigation of ownership of company.

(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 proceeding 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.

**217.** (1) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, 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 by 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 corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).

(5) 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 Chapter 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) the discovery and production of books of account and other documents, at such place and 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.

(6) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment 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.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

(7) The 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.

(8) 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 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 (7),

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.

(9) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.

(10) 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 and 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.

(11) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 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. 2 of 1974.

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.

(12) 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 and 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.

**218.** (1) Notwithstanding anything contained in any other law for the time being in force if,—

Protection of employees during investigation.

(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 210, section 212, section 213 or section 219 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, other body corporate or person, under section 216; 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, other body corporate or person proposes—

(i) to discharge or suspend any employee; or

(ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise;

(iii) to change the terms of employment to his disadvantage, the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal 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 making of application under sub-section (1), the approval of 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 a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.

(4) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

(5) For the removal of doubts, 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.

**219.** If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—

Power of inspector to conduct investigation into affairs of related companies, etc.

(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.

**220.** (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—

Seizure of documents by inspector.

(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 and 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. 2 of 1974.

Freezing of assets of company on inquiry and investigation.

**221.** (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 this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe 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, or 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 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 fifty thousand rupees but which may extend to five lakh rupees, or with both.

**222.** (1) Where it appears to the Tribunal, in connection with any investigation under section 216 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.

Imposition  
of restric-  
tions upon  
securities.

(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 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.

Inspector's report.

**223.** (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) A copy of the report made under sub-section (1) may be obtained by making an application in this regard to the Central Government.

(4) The report of any inspector appointed under this Chapter shall be authenticated either—

(a) by the seal of the company whose affairs have been investigated; or

(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872,

1 of 1872.

and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

(5) Nothing in this section shall apply to the report referred to in section 212.

Actions to be taken in pursuance of inspector's report.

**224.** (1) If, from an inspector's report, made under section 223, 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 this Chapter 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 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, 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;

(b) an application under section 241; 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 this Chapter—

(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).

(5) 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.

Expenses of  
investiga-  
tion.

**225.** (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 214 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 224, 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 224,—

(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 213,

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.

**226.** 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—

Voluntary winding up of company, etc., not to stop investigation proceedings.

(a) an application has been made under section 241;

(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 of the 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 certain information.

**227.** 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.

**228.** 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, destruction of documents.

**229.** 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 unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal 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 for fraud in the manner as provided in section 447.

## CHAPTER XV

### COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

**230.** (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,

Power to compromise or make arrangements with creditors and members.

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 subsection, 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 the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(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, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter 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 such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further 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.

(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 by postal ballot 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 income-tax authorities, 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 a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, 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 preference 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 48;

(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 including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

*(8)* The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

*(9)* The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

*(10)* No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

*(11)* Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

*(12)* An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of

companies other than listed companies in such 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 66 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.

**231.** (1) Where the Tribunal makes an order under section 230 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 230 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 273.

(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.

**232.** (1) Where an application is made to the Tribunal under section 230 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 230 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,

key managerial personnel, promoters and non-promoter 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.

(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:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(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 share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner 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,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) 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:

Provided that the amount of payment or valuation under this clause for any share shall

not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(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:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(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) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall

be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, 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 transferor or transferee 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 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.

**233.** (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(b) the objections and suggestions 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 holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) the scheme is approved by majority representing nine-tenths 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 Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(4) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days:

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.

(5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

(6) On receipt of an application from the Central Government 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 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

(7) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

(8) The registration of the scheme under sub-section (3) or sub-section (7) 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) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

(11) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees 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.

(12) The provisions of this section shall *mutatis mutandis* apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of sub-section (1) of section 232.

(13) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.

(14) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

Merger or amalgamation of company with foreign company.

**234.** (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, 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:

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

(2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

*Explanation.*—For the purposes of sub-section (2), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

**235.** (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 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 off, 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.

**236.** (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) shall offer to the minority shareholders 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 at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty

days, fail to receive or claim payment arising out of such disbursement.

(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 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 despatch 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.

(9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—

(a) the shares of the company of the residual minority equity shareholder had been delisted; and

(b) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

15 of 1992.

**237.** (1) Where the Central Government is satisfied that it is essential in the 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.

Power of Central Government to provide for amalgamation of companies in public interest.

(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 a period of 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 off; 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 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) The 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.

**238.** (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 section 237,—

Registration of offer of schemes involving transfer of shares.

(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 companies.

**239.** 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 respect of offences committed prior to merger, amalgamation, etc.

**240.** Notwithstanding anything in any other law for the time being in force, 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.

**241.** (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 in a manner prejudicial to the interests of the company; 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 244, 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.

**242.** (1) If, on any application made under section 241, the Tribunal is of the opinion—

Powers of  
Tribunal.

(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 or in a manner prejudicial to the interests of the company; 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 conduct of affairs of the company in future;

(b) the purchase of 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 or allotment 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 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)* recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

*(j)* 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)*;

*(k)* 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;

*(l)* imposition of costs as may be deemed fit by the Tribunal;

*(m)* 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) If a company contravenes 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.

Conse-  
quence of  
termination  
or modifica-  
tion of  
certain  
agreements.

**243.** (1) Where an order made under section 242 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 of the company 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.

**244.** (1) The following members of a company shall have the right to apply under section 241, namely:—

Right to apply under section 241.

(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 241.

*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 any members of a company are entitled to make an application under sub-section (1), any one 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.

**245.** (1) Such number of member or members, depositor or depositors 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 conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors 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 depositors;

(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;

(g) to claim damages or compensation or demand any other suitable action from or against—

(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

(ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

(iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

(h) to seek any other remedy as the Tribunal may deem fit.

(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 such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed,

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 depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

(3) In considering an application under sub-section (1), the Tribunal shall take into account, in particular—

(a) whether the member or depositor is acting in good faith in making the application for seeking an order;

(b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of sub-section (1);

(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

(d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

(e) where the cause of action is an act or omission that is yet to occur, whether the act

or omission could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs; or

(ii) ratified by the company after it occurs;

(f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

(4) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—

(a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

(b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;

(c) two class action applications for the same cause of action shall not be allowed;

(d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

(5) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or

expert or consultant or advisor or any other person associated with the company.

(6) 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.

(7) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

(8) Nothing contained in this section shall apply to a banking company.

(9) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

Application of certain provisions to proceedings under section 241 or section 245.

**246.** The provisions of sections 337 to 341 (both inclusive) shall apply *mutatis mutandis*, in relation to a fraudulent application made to the Tribunal under section 241 or section 245.

## CHAPTER XVII

### REGISTERED VALUERS

Valuation by registered valuers.

**247. (1)** Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other

assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(2) The valuer appointed under sub-section (1) shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;

(b) exercise due diligence while performing the functions as valuer;

(c) make the valuation in accordance with such rules as may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, 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 five lakh rupees.

(4) Where a valuer has been convicted under sub-section (3), 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 person for loss arising out of incorrect or misleading statements of particulars made in his report.

## CHAPTER XVIII

### REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Power of Registrar to remove name of company from register of Companies.

**248.** (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 11 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 two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, 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 of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent.

members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies 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 8.

(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 off its name from the register of companies, 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 of companies.

(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 from the register of companies.

Restrictions on making application under section 248 in certain situations.

**249.** (1) An application under sub-section (2) of section 248 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 or shifted its registered office from one State to another;

(b) 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;

(c) 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;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) 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 248 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 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

**250.** Where a company stands dissolved under section 248, 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.

Effect of company notified as dissolved.

**251.** (1) Where it is found that an application by a company under sub-section (2) of section 248 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—

Fraudulent application for removal of name.

(a) 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; and

(b) be punishable for fraud in the manner as provided in section 447.

(2) Without prejudice to the provisions contained in 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 248.

**252.** (1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, 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 of companies 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 of companies:

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 of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 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 of companies, order the name of the company to be restored to the register of companies, 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 from the register of companies.

## CHAPTER XIX

### REVIVAL AND REHABILITATION OF SICK COMPANIES

**253.** (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 a period of 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.

Determina-  
tion of  
sickness.

(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 proceeding 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 sub-sections (1) and (2) above.

(5) Without prejudice to the provisions of sub-sections (1) to (4), the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any company has become, for the purposes of this Act, a sick company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any company by—

(a) the Government of any State unless all or any of the undertakings belonging to such company are situated in such State;

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

(6) 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 obligation 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.

(7) The Tribunal shall, within a period of 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.

(8) If the Tribunal is satisfied that a company has become a sick company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts referred to in sub-section (1) within a reasonable time.

(9) If the Tribunal deems fit under sub-section (8) that it is practicable for a sick company to pay its debts referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make repayment of the debt.

**254.** (1) On the determination of a company as a sick company by the Tribunal under section 253, 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:

Application for revival and rehabilitation.

Provided that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted, such reference shall abate if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken 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:

54 of 2002.

Provided further that no reference shall be made under this section if the secured creditors

representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken 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:

54 of 2002.

Provided also 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 securitisation company or reconstruction company which has acquired such assets.

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 fees 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 a period of sixty days from the date of determination of the company as a sick company by the Tribunal under section 253.

**255.** 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 for which an application has been made to the Tribunal under sub-section (1) of section 253, for a determination to be declared as a sick company or at any stage thereafter, the period during which the stay order as provided under sub-section (3) of section 253, was applicable shall be excluded.

Exclusion of certain time in computing period of limitation.

**256.** (1) On the receipt of an application under section 254, the Tribunal shall, not later than seven days from such receipt,—

Appointment of interim administrator.

(a) fix a date for hearing not later than ninety days from date of its receipt;

(b) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 257 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 254, 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.

**257.** (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 that 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 chairperson, shall be decided by the interim administrator.

(3) The interim 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.

**258.** On the date of hearing fixed by the Tribunal and on consideration of the report of the interim administrator filed under subsection (1) of section 256, 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 thinks fit, appoint an interim administrator as the company administrator.

**259.** (1) The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government.

Appoint-  
ment of  
administra-  
tor.

(2) The terms and conditions of the appointment of interim and company administrators 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.

**260.** (1) The company administrator shall perform such functions as the Tribunal may direct.

Powers and  
duties of  
company  
adminis-  
trator.

(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) proforma 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 in sub-section (3) of section 325.

Scheme of revival and rehabilitation.

**261.** (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 254.

(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 the sick company;

(b) the proper management of the sick company by any change in, or by taking over, the management of such company;

(c) the amalgamation of—

(i) the 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 the 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 sick 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).

**262.** (1) The scheme prepared by the company administrator under section 261 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.

Sanction of scheme.

(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 owed 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) (i) The scheme prepared by the company administrator shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick company and the company administrator and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(ii) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(iii) The Tribunal may make such modifications, if any, in the draft scheme as

it may consider necessary in the light of the suggestions and objections received from the sick company and the company administrator and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies.

(4) On the receipt of the scheme under sub-section (3), 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.

(5) 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.

(6) The Tribunal may review any sanctioned scheme and make such modifications, as it may deem fit, or may by order in writing direct company administrator, to prepare a fresh scheme providing for such measures as the company administrator may consider necessary.

(7) The sanction accorded by the Tribunal under sub-section (4) 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.

(8) A copy of the sanctioned scheme referred to in sub-section (4) 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.

**263.** 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 employees, shareholders, creditors and guarantors of the said companies.

Implementation of scheme.

**264. (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 259 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:

Provided that debtors and creditors shall have the power to scrutinise and make an appeal for review of the value before final order of fixing value.

(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.

54 of 2002.

**265.** (1) If the scheme is not approved by the creditors in the manner specified in sub-section (2) of section 262, the company administrator shall submit a report to the Tribunal within fifteen days and the Tribunal shall order for the winding up of the sick company.

Winding up of company on report of company administrator.

(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.

**266.** (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 director, manager, officer or employee of the sick company who are or have been in employment of such 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, non-feasance 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, non-feasance 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 including any punishment for fraud in the manner as provided in section 447.

(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.

**267.** 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 with 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.

Punishment for certain offences.

**268.** 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.

Bar of jurisdiction.

**269.** (1) There shall be formed a Fund to be called the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies.

Rehabilitation and Insolvency Fund.

(2) There shall be credited to the Fund—

(a) the grants made by the Central Government for the purposes of the Fund;

(b) the amount deposited by the companies as contribution to the Fund;

(c) the amount given to the Fund from any other source; and

(d) the income from investment of the amount in the Fund.

(3) A company which has contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX, may 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 administrator to be appointed by the Central Government in such manner as may be prescribed.

## CHAPTER XX

### WINDING UP

Modes of winding up.

**270.** (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 company may be wound up by Tribunal.

**271.** (1) A company may, on a petition under section 272, 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.

(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.

**272.** (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 (c) of sub-section (1) of section 271, 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 271, except on the grounds specified in clause (b), clause (d) or clause (g) 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 210 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 unless the company has been given a reasonable opportunity of making representations.

(5) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such 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.

(7) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

Powers of  
Tribunal.

**273.** (1) The Tribunal may, on receipt of a petition for winding up under section 272 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 the other remedy.

**274.** (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 within thirty days of the order in such form and in such manner as may be prescribed:

Directions for filing statement of affairs.

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Provided further 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 liable for punishment under 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 273, shall, within a period of thirty 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) If any director or officer of the company contravenes the provisions of this section, the director or the 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.

(5) The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.

Company Liquidators and their appointments.

**275.** (1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.

(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 accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost 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.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(4) 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 the panel shall give him or it a reasonable opportunity of being heard.

(5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

(6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment 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 appointment.

(7) 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 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

Removal  
and  
replacement  
of liquidator.

**276.** (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:—

(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 provisional liquidator or as the case may be, Company Liquidator;

(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 provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it 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 or its 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 being heard to the provisional liquidator or, as the case may be, Company Liquidator.

**277.** (1) Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.

Intimation  
to Com-  
pany  
Liquidator,  
provisional  
liquidator  
and  
Registrar.

(2) On receipt of the copy of order of appointment of provisional liquidator or 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 and in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.

(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.

(4) Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—

(i) Official Liquidator attached to the Tribunal;

(ii) nominee of secured creditors; and

(iii) a professional nominated by the Tribunal.

(5) The Company Liquidator shall be the convener of the meetings of the winding up

committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—

*(i)* taking over assets;

*(ii)* examination of the statement of affairs;

*(iii)* recovery of property, cash or any other assets of the company including benefits derived therefrom;

*(iv)* review of audit reports and accounts of the company;

*(v)* sale of assets;

*(vi)* finalisation of list of creditors and contributories;

*(vii)* compromise, abandonment and settlement of claims;

*(viii)* payment of dividends, if any; and

*(ix)* any other function, as the Tribunal may direct from time to time.

*(6)* The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

*(7)* The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.

*(8)* The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

**278.** 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.

**279.** (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:

Stay of suits, etc., on winding up order.

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.

**280.** The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

Jurisdiction of Tribunal.

(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 233;

(d) any scheme submitted under section 262;

(e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations

or in any matter arising out of, or in relation to winding up of the company,

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

Submission  
of report by  
Company  
Liquidator.

**281.** (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 matters 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 fees.

Directions  
of Tribunal  
on report of  
Company  
Liquidator.

**282.** (1) The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be 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 or any other interested person, 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 be 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 or any other interested person, 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 subsection.

(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 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

(4) The Tribunal may order for taking such steps and measures, 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.

**283.** (1) Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or 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.

Custody of company's properties.

(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 or appears to be entitled.

**284.** (1) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.

Promoters, directors, etc., to cooperate 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 fifty thousand rupees, or with both.

Settlement of list of contributories and application of assets.

**285.** (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:

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 person, who is or has been a member, who shall be liable to contribute to the assets of the company 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 person who has been a 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 person who has been a 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 person who has been a 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 person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any person, who is or has been a 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.

**286.** In the case of a limited company, any person who is or has been a director or manager, 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:

Obligations of directors and managers.

Provided that—

(a) a person who has been a 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 person who has been a 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;

(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.

Advisory  
Committee.

**287.** (1) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

(2) The advisory committee 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 advisory committee.

(4) The advisory committee 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 advisory committee shall be such as may be prescribed.

(6) The meeting of advisory committee shall be chaired by the Company Liquidator.

**288.** (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 manner as may be prescribed.

Submission of periodical reports to Tribunal.

(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.

**289.** (1) The Tribunal may, at any time after making a winding up order, on an application of promoter, shareholders or creditors or any other interested 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 but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit:

Power of Tribunal on application for stay of winding up.

Provided that an order under this sub-section shall be made by the Tribunal only when the application is accompanied with a scheme for rehabilitation.

(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 an 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, 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.

**290.** (1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company 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 any money required on the security of the assets of the company;

*(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, employees or any other claimant and distribute sale proceeds in accordance with priorities established under 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 negotiable instruments including cheque, 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 such instruments 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 from any person or appoint any professional, in discharge of his duties, obligations and responsibilities 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 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) for distribution of assets;

(iii) in discharge of his duties and obligations and functions as Company Liquidator; 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 other duties as the Tribunal may specify in this behalf.

Provision  
for  
professional  
assistance  
to Com-  
pany  
Liquidator.

**291.** (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 on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this 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.

**292.** (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 advisory committee.

Exercise and control of Company Liquidator's powers.

(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 advisory committee.

(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 of the 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 and proper in the circumstances.

**293.** (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.

Books to be kept by Company Liquidator.

(2) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

**294.** (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 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 such form and manner as may be prescribed.

(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 to 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 which 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.

**295.** (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.

Payment of debts by contributory and extent of set-off.

(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.

**296.** 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.

**297.** The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Power to order costs.

**298.** 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 and proper.

Power to summon persons suspected of having property of company, etc.

**299.** (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 or on affidavit and may, in the first 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 debt or property of the company in possession of other persons.

(5) If the 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 in possession of 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 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.

5 of 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.

**300.** (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, formation, business or conduct of affairs of 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 report of the Company Liquidator; 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 432,

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, a copy be supplied to him and may thereafter be used in evidence against him, and shall be open to 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).

**301.** 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 leave India or otherwise

Arrest of  
person  
trying to  
leave India  
or abscond.

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 detained 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.

**302.** (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 of the order within the period specified in sub-section (3), the Company Liquidator 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  
commence-  
ment of Act.

**303.** 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*

**304.** A company may be wound up voluntarily,—

Circumstances in which 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.

**305.** (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.

Declaration of solvency in case of proposal to wind up voluntarily.

(2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act, unless—

(a) it is made within 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 assets and liabilities of the company 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.

**306.** (1) The company shall 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 304.

(2) The Board of Directors of the company shall—

(a) cause to be presented a full statement of the position of the affairs of the Company together with a list of creditors of the company, if any, copy of declaration under section 305 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 may 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 shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal.

(4) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.

(5) If a company contravenes 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 the director 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 fifty thousand rupees but which may extend to two lakh rupees, or with both.

Publication of resolution to wind up voluntarily.

**307.** (1) Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (3) of section 306 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 a newspaper which is in circulation in the district where the registered office or the principal office of the company is situated.

(2) If a company contravenes the provisions of 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.

**308.** A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up under section 304.

Effect of voluntary winding up.

**309.** 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:

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

Appointment of Company Liquidator.

**310.** (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 306, 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 within seven days of the date of appointment 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.

**311.** (1) A Company Liquidator appointed under section 310 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.

Power to remove and fill vacancy of Company Liquidator.

(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 310, 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.

**312.** (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) If a company contravenes the provisions of 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 hundred rupees for every day during which such default continues.

Cesser of Board's powers on appointment of Company Liquidator.

**313.** 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.

**314.** (1) The Company Liquidator shall perform such functions and discharge such duties as may be 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 prepare quarterly statement of accounts in such form and manner as may be prescribed and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

(6) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(7) The Company Liquidator shall observe due care and diligence in the discharge of his duties.

(8) If the Company Liquidator fails to comply with the provisions of this section except subsection (5) he shall be punishable with fine which may extend to ten lakh rupees.

**315.** Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

Appoint-  
ment of  
committees.

Company Liquidator to submit report on progress of winding up.

**316.** (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 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 in 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 of each such failure, with fine which may extend to ten lakh rupees.

Report of Company Liquidator to Tribunal for examination of persons.

**317.** (1) Where the Company Liquidator is of the opinion that a fraud has been committed by any person in respect of the company, he shall immediately make a report to the Tribunal and the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210 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 300 shall *mutatis mutandis* apply in relation to any examination directed under sub-section (1).

Final meeting and dissolution of company.

**318.** (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 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 along with the books and papers of the company relating to the winding up, 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 just and fair, 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 forthwith publish a notice in the

Official Gazette that the company is dissolved.

(8) If 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.

**319.** (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 of 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.

**320.** Subject to the provisions of this Act as to overriding preferential payments under section 326, 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.

Distribution of property of company.

**321. (1)** Any arrangement other than the arrangement referred to in section 319 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.

Arrangement when binding on company and creditors.

(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.

**322.** (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 fair, 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.

**323.** 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*

**324.** In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, proof ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

Debts of all descriptions to be admitted to proof.

**325.** (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

Application of insolvency rules in winding up of insolvent companies.

(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 326.

(2) All persons under sub-section (1) shall be entitled to prove and receive dividends out of the assets of the company under 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 326 and section 327,—

(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:—

14 of 1947.      *(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;

*(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;

8 of 1923.      *(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;

*(iv)* all sums due to any workman from the provident fund, the pension fund, the 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.

**326.** (1) Notwithstanding anything contained in 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 325 *pari passu* with such dues,

shall be paid in priority to all other debts:

Provided that in case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (i) of clause (b) of sub-section (3) of section 325, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are

insufficient to meet them, in which case they shall abate in equal proportions.

**327.** (1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—

Preferential  
payments.

(a) all revenues, taxes, cesses and rates due from the company to the Central Government 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 notified;

(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 period of 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;

(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 the provident fund, the pension fund, the 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 213 and 216, 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 under 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 under 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) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

*Explanation.*—For the purposes of this section,—

(a) 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;

(b) the expression “employee” does not include a workman; and

(c) 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.

**328.** (1) Where a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company, 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 that, such transaction is a fraudulent preference 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.

**329.** 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.

Transfers not in good faith to be void.

**330.** 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.

Certain transfers to be void.

**331.** (1) Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 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.

Liabilities and rights of certain persons fraudulently preferred.

(2) The value of the interest of the person preferred under sub-section (1) 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 debt of the company 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.

**332.** 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.

Disclaimer of onerous property.

**333.** (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 not saleable 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 and proper.

(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 under 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 proper, 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 proper, 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 covenants of the lessee 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  
commence-  
ment of  
winding up  
to be void.

**334.** (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  
attach-  
ments,  
executions,  
etc., in  
winding up  
by Tribunal  
to be void.

**335.** (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 liquida-  
tion.

**336.** (1) If any person, who is or has been an 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 the property is in the ordinary course of 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 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.

**337.** 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 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 three lakh rupees.

Liability where proper accounts not kept.

**338.** (1) Where a company is being wound up, 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 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 three lakh rupees.

(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.

**339.** (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 person, who is or has been a 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:

Liability for fraudulent conduct of business.

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 liable for action under section 447.

(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.

**340.** (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 person, who is or has been a director, manager, Company Liquidator or officer of the company—

Power of Tribunal to assess damages against delinquent directors, etc.

(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 and proper, 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 and proper.

(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 criminally liable.

Liability under sections 339 and 340 to extend to partners or directors in firms or companies.

**341.** Where a declaration under section 339 or an order under section 340 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 339, or pass an order under section 340, 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.

**342.** (1) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an 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 person, who is or has been an 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 subsection (2) to the Registrar,—

(a) if he thinks fit, he 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,

he 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 person, who is or has been an 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 person, who is or has been an officer and agent of the company 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 include any banker or legal adviser of the company and any person employed by the company as auditor.

(6) If a 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.

**343.** (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.

**344.** (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 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.

Statement that company is in liquidation.

(2) If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

**345.** 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.

Books and papers of company to be evidence.

**346.** (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.

Inspection of books and papers by creditors and contributories.

(2) Nothing contained in sub-section (1) shall exclude or restrict 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.

Disposal of books and papers of company.

**347.** (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:—

(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 direct.

(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 it 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 rule framed or an order made under sub-section (3), 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.

**348.** (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 such form containing such particulars as may be prescribed, 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 294 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 contravenes the provisions of this section, the Company Liquidator 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, the Company Liquidator 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.

**349.** Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

Official Liquidator to make payments into public account of India.

**350.** (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 monies 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 Tribunal;

(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 and proper, disallowed, or may also be removed from his office.

**351.** 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.

**352.** (1) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—

(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 the Registrar, 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 348, indicate the sum of money which is payable under sub-sections (1) and (2) of this section during the six months preceding the date on 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 may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due:

Provided that the Registrar shall settle the claim of such person within a period of sixty days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

(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 and proper, to be disallowed, and to be removed from his office by the Tribunal.

Liquidator to make returns, etc.

**353.** (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.

**354.** (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) While ascertaining the wishes of creditors under sub-section (1), regard shall be had to the value of each debt of the creditor.

(3) While ascertaining the wishes of contributories under sub-section (1), regard shall be had to the number of votes which may be cast by each contributory.

**355.** (1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—

Court, Tribunal or person, etc., before whom affidavit 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.

**356.** (1) Where a company has been dissolved, whether in pursuance of this Chapter or of section 232 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 Company Liquidator or 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 the Company Liquidator or the person fails so to do, the Company Liquidator or the person 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.

**357.** (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.

**358.** Notwithstanding anything 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

36 of 1963.

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.

PART IV.—*Official Liquidators*

**359.** (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, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.

Appoint-  
ment of  
Official  
Liquidator.

(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 and Assistant Official Liquidator shall be paid by the Central Government.

**360.** (1) The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.

Powers and  
functions of  
Official  
Liquidator.

(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; and

(b) conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings.

**361.** (1) Where the company to be wound up under this Chapter,—

Summary  
procedure  
for  
liquidation.

(i) has assets of book value not exceeding one crore rupees; and

*(ii)* belongs to such class or classes of companies as may be prescribed,

the Central Government 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 Central Government 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 his appointment, submit a report to the Central Government 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 Central Government 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 Central Government 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.

**362.** *(1)* The Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable 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 Central Government may, on an application made to it by the Official Liquidator, pass such orders as it thinks fit.

(4) The amount recovered under this section by the Official Liquidator shall be deposited in accordance with the provisions of section 349.

**363.** (1) The Official Liquidator within thirty days of his appointment shall call upon the creditors of the company to prove their claims in such manner as may be prescribed, within thirty days of the receipt of such call.

Settlement  
of claims of  
creditors by  
Official  
Liquidator.

(2) The Official Liquidator shall prepare a list of claims of creditors in such manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing.

**364.** (1) Any creditor aggrieved by the decision of the Official Liquidator under section 363 may file an appeal before the Central Government within thirty days of such decision.

Appeal by  
creditor.

(2) The Central Government may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator.

(3) The Official Liquidator shall make payment to the creditors whose claims have been accepted.

(4) The Central Government may, at any stage during settlement of claims, if considers necessary, refer the matter to the Tribunal for necessary orders.

Order of  
dissolution  
of company.

**365.** (1) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—

(i) the Central Government, in case no reference was made to Tribunal under sub-section (4) of section 364; and

(ii) in any other case, the Central Government and Tribunal.

(2) The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved.

(3) Where an order is made under sub-section (2), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

## CHAPTER XXI

### PART I.— *Companies Authorised to Register under this Act*

Companies  
capable of  
being  
registered.

**366.** (1) For the purposes of this Part, the word “company” includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

(2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has

taken place with a view to the company's being wound up:

Provided that—

6 of 1982.  
7 of 1913.  
1 of 1956.

(i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

(iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or

where proxies are allowed, by proxy, at the meeting;

(vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute 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, 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 of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Certificate of registration of existing companies.

**367.** On compliance with the requirements of this Chapter with respect to registration, and on payment of such fees, if any, as are payable under section 403, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

Vesting of property on registration.

**368.** All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

**369.** The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Saving of existing liabilities.

**370.** All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:

Continuation of pending legal proceedings.

Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

**371.** (1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

Effect of registration under this Part.

(2) All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all

respects as if it had been formed under this Act, subject as follows:—

(a) Table F in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;

(c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to—

(a) the registration of an unlimited company as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of section 242) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, or limited liability partnership.

**372.** The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall,

Power of Court to stay or restrain proceedings.

in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

Suits stayed on winding up order.

**373.** Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Tribunal and except on such terms as the Tribunal may impose.

Obligations of Companies registering under this Part.

**374.** Every company which is seeking registration under this Part shall,—

(a) ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;

(b) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;

(c) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

(d) comply with such other conditions as may be prescribed.

PART II.—*Winding up of unregistered companies*

**375.** (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (4).

Winding up of unregistered companies.

(2) No unregistered company shall be wound up under this Act voluntarily.

(3) An unregistered company may be wound up under the following circumstances, namely:—

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.

(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand,

neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,—

(i) paid, secured or compounded for the debt or demand;

(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.

*Explanation.*—For the purposes of this Part, the expression “unregistered company”—

(a) shall not include—

(i) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and

(b) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal.

**376.** Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

Power to wind up foreign companies although dissolved.

**377. (1)** The provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, any provisions herein before in this Act contained with respect to the winding up of companies by the Tribunal.

Provisions of Chapter cumulative.

(2) The Tribunal or Official Liquidator may exercise any powers or do any act in the case of

unregistered companies which might be exercised or done by the Tribunal or Official Liquidator in winding up of companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases.

**378.** Nothing in this Part, shall affect the operation of any enactment which provides for any partnership firm, limited liability partnership or society or co-operative society, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1956, or any Act repealed by that Act:

1 of 1956.

Provided that references in any such enactment to any provision contained in the Companies Act, 1956 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act.

1 of 1956.

## CHAPTER XXII

### COMPANIES INCORPORATED OUTSIDE INDIA

Application of Act to foreign companies.

**379.** 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.

**380.** (1) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

Documents, etc., to be delivered to Registrar by foreign companies.

(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;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

(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.

**381.** (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 as may be prescribed; 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.

**382.** Every foreign company shall—

Display of  
name, etc.,  
of foreign  
company.

(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 legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

**383.** 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 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Service on  
foreign  
company.

Debentures,  
annual  
return,  
registration  
of charges,  
books of  
account and  
their  
inspection.

**384.** (1) The provisions of section 71 shall apply *mutatis mutandis* to a foreign company.

(2) The provisions of section 92 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 128 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 docu-  
ments.

**385.** 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, as may be prescribed.

Interpreta-  
tion.

**386.** For the purposes of the foregoing provisions 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 registration office.

**387.** (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—

Dating of prospectus and particulars to be contained therein.

(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 can be inspected;

(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 26:

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 388:

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 —

(a) shall not apply 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.

**388.** (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,—

Provisions as to expert's consent and allotment.

(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 33 and 40, 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.

**389.** 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

Registration of prospectus.

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 388 and such documents as may be prescribed.

Offer of  
Indian  
Depository  
Receipts.

**390.** 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.

Application  
of sections  
34 to 36  
and  
Chapter  
XX.

**391.** (1) The provisions of sections 34 to 36 (both inclusive) shall apply to—

(i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;

(ii) the issue of Indian Depository Receipts by a foreign company.

(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.

**392.** Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign 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 after the first during which the contravention continues and every officer of the foreign 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.

Punishment for contravention.

**393.** 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 XXIII

### GOVERNMENT COMPANIES

**394.** (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 of India and the audit report is placed under the proviso to sub-section (6) of section 143; 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 comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(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 in sub-section (1).

Annual reports where one or more State Governments are members of companies.

**395.** (1) 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) of section 394; and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

(2) The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

## CHAPTER XXIV

### REGISTRATION OFFICES AND FEES

**396.** (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.

Registration  
offices.

(2) The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions 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.

**397.** 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

Admissibil-  
ity of  
certain  
documents  
as evidence.

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.

**398.** (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—

21 of 2000.

(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 the 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 the 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 the 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 the 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 the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the 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.

**399.** (1) Save as otherwise provided elsewhere in this Act, any person may—

(a) inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on

Inspection,  
production  
and  
evidence of  
documents  
kept by  
Registrar.

payment for each inspection of such fees as may be prescribed;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed:

Provided that the rights conferred by this sub-section shall be exercisable—

(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 26, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 388, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

**400.** The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.

Electronic form to be exclusive, alternative or in addition to physical form.

**401.** The Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed.

Provision of value added services through electronic form.

21 of 2000.

**402.** 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 398.

Application of provisions of Information Technology Act, 2000.

**403. (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:

Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the time specified in first proviso on payment of fee and additional fee specified under this section.

(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 the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Fees, etc., to be credited into public account.

**404.** 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 India.

## CHAPTER XXV

### COMPANIES TO FURNISH INFORMATION OR STATISTICS

Power of Central Government to direct companies to furnish information or statistics.

**405.** (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.

(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 or companies in pursuance of any order under sub-section (1) is correct and complete, the Central Government may by order require such

company or companies 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 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 three lakh 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 XXVI

### NIDHIS

**406.** (1) In this section, "*Nidhi*" means a company which has been incorporated as a *Nidhi* 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 complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Power to modify Act in its application to *Nidhis*.

(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* or

*Nidhis* of any class or description as may be specified in that notification.

(3) 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 XXVII

### NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

Definitions. **407.** In this Chapter, unless the context otherwise requires,

(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.

**408.** 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.

**409.** (1) The President shall be a person who is or has been a Judge of a High Court for five years.

Qualifica-  
tion of  
President  
and  
Members of  
Tribunal.

(2) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, a judge of a High Court; or

(b) is, or has been, a District Judge for at least five years; or

(c) has, for at least ten years been an advocate of a court.

(3) A person shall not be qualified for appointment as a Technical Member unless he—

(a) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or

(b) is, or has been, in practice as a chartered accountant for at least fifteen years; or

(c) is, or has, been, in practice as a cost accountant for at least fifteen years; or

(d) is, or has been, in practice as a company secretary for at least fifteen years; or

(e) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or

(f) 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.

Constitution of Appellate Tribunal.

**410.** 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.

**411.** (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 proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment,

accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

**412.** (1) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal, shall be appointed after consultation with the Chief Justice of India.

Selection of  
Members of  
Tribunal  
and  
Appellate  
Tribunal.

(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) a senior Judge of the Supreme Court or a 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; and

(e) Secretary in the Department of Financial Services in the Ministry of Finance— 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.

Term of  
office of  
President,  
Chairperson  
and other  
Members.

**413.** (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 for another term of five years.

(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 person who has not completed fifty 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 a person who has not completed fifty 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.

**414.** 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:

Salary, allowances and other terms and conditions of service of Members.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

**415.** (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.

Acting President and Chairperson of Tribunal or Appellate Tribunal.

(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.

**416.** The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Resignation of Members.

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 earliest.

**417. (1)** The Central Government may, after consultation with the Chief Justice of India, remove from office the President, 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, the Chairperson, or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the 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, the 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, the Chairperson or

Member 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) .

**418.** (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 Chairperson, 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.

**419.** (1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

Benches of  
Tribunal.

(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 Judicial 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, majority necessarily being of Judicial Members.

(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.

**420.** (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon 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.

**421.** (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

Appeal  
from  
Orders of  
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 fees, 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, confirming, 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.

**422.** (1) Every application or petition 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 such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(2) Where any application or petition or appeal is not disposed off within the period specified in sub-section (1), the Tribunal or, as the case may be the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

Appeal to Supreme Court.

**423.** 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 receipt 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.

**424.** (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

5 of 1908. 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;

1 of 1872.

(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;

(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.

(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 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 situated; 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 court 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.

**425.** 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, which shall have the effect subject to 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, specify in this behalf.

Delegation of powers.

**426.** 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.

45 of 1860. **427.** 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.

President, Members, officers, etc., to be public servants.

**428.** No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employees, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof 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.

Protection of action taken in good faith.

**429.** (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 or 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,—

Power to seek assistance of Chief Metropolitan Magistrate, etc.

(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 Collector 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.

**430.** 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.

**431.** 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.

**432.** 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.

Limitation.

**433.** The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings 36 of 1963.

or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

**434.** On the date of the constitution of the Tribunal,—

Transfer of certain pending proceedings.

1 of 1956.

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein 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;

(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 lain, as if the Companies Act, 1956 had continued to be in force. 1 of 1956.

(d) any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated: 1 of 1986.  
Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

## CHAPTER XXVIII

### SPECIAL COURTS

**435.** (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(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.

2 of 1974. **436.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences triable by Special Courts.

(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;

2 of 1974. (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:

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 perusal 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: 2 of 1974.

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.

2 of 1974. **437.** 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.

Appeal and revision.

2 of 1974. **438.** 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.

Application of Code to proceedings before Special Court.

2 of 1974. **439.** (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

Offences to be non-cognizable.

(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 officer 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.*—The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).

Transitional provisions.

**440.** 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: 2 of 1974.

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.

Compound-  
ing of  
certain  
offences.

**441.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by— 2 of 1974.

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

*Explanation.*—For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) “Regional Director” means a person appointed by the Central Government as a

Regional Director for the purposes of this Act.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar

any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

2 of 1974. (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) any offence which is punishable under this Act, with imprisonment or fine, or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

**442.** (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or

Mediation  
and  
Conciliation  
Penal.

the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along-with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party not aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

2 of 1974. **443.** 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. **444.** 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.

2 of 1974. **445.** The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session. Compensation for accusation without reasonable cause.

**446.** 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 XXIX

### MISCELLANEOUS

**447.** Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term Punishment for fraud.

which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

*Explanation.*—For the purposes of this section—

(i) “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 the 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 its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

Punishment  
for false  
statements.

**448.** Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

(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 liable under section 447.

**449.** 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.

**450.** If a company or any officer of 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 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 where no specific penalty or punishment is provided.

**451.** If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

Punishment in case of repeated default.

Punishment for wrongful withholding of property.

**452.** (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 member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) The Court trying an offence under subsection (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, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

Punishment for improper use of "Limited" or "Private Limited".

**453.** 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 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, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

Adjudication of penalties.

**454.** (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 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 fees 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, 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.

(ii) Where an officer of a company who is 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, such officer shall be punishable with imprisonment 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.

Dormant  
company.

**455.** (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” means any transaction other than—

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfil the requirements of this Act or any other law;

(c) allotment of shares to fulfil the requirements of this Act; and

(d) 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.

**456.** No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the 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.

Protection of action taken in good faith.

**457.** Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the 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 210; or

(b) is or has been material or relevant in connection with such investigation.

Delegation by Central Government of its powers and functions.

**458.** (1) The Central Government may, by notification, and subject to such 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:

Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.

(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.

Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

**459.** (1) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—

(a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter,

then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or

any other provision of this Act, 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 a 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; or

(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 fees 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.

**460.** 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

Condonation of delay in certain cases.

(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.

**461.** 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 exempt class or classes of companies from provisions of this Act.

**462.** (1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

(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.

Power of court to grant relief in certain cases.

**463.** (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default,

breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit:

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

**464.** (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:

Prohibition of association or partnership of persons exceeding certain number.

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 punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

Repealed of certain enactments and savings.

**465.** (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: 1 of 1956. Sikkim Act 8 of 1961.

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 until a special Act is enacted for Producer Companies: 1 of 1956. 1 of 1956.

Provided further that until the constitution of the Tribunal or 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.

Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant 1 of 1956. 6 of 2009.

corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

(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; and 1 of 1956.

(i) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal. 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. 10 of 1897. Sikkim Act 8 of 1961.

**466.** (1) Notwithstanding anything contained in section 465, 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:

Dissolution of Company Law Board and consequential provisions.

Provided that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall continue to function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal:

Provided further that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—

(i) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and

(ii) stand reverted to his parent cadre, Ministry or Department, in any other case:

Provided also that every officer and the 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 Tribunal or the Appellate Tribunal 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 Tribunal or the Appellate Tribunal is duly terminated or until his

remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be:

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 Tribunal or the Appellate Tribunal 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: 14 of 1947.

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 Tribunal or the Appellate Tribunal 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 Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.

(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 who are not covered under proviso to sub-section (1) 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.

**467.** (1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.

Power of Central Government to amend Schedules.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs:

Provided that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.

(3) Every alteration 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 alteration, or both Houses agree that the alteration should not be made, the alteration 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 in pursuance of that alteration.

**468.** (1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

Powers of Central Government to make rules relating to winding up.

5 of 1908.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;

(ii) for the voluntary winding up of companies, whether by members or by creditors;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital;

(v) generally for all applications to be made to the Tribunal under the provisions of this Act;

(vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

(viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(ix) the making of calls; and

(x) the fixing of a time within which debts and claims shall be proved.

(3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

**469.** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(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 under this section and every regulation made by Securities and Exchange Board under this Act, 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 regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

**470.** (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

Power to remove difficulties.

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.

SCHEDULE I

(See sections 4 and 5)

**TABLE-A**

MEMORANDUM OF ASSOCIATION OF A  
COMPANY LIMITED BY SHARES

- 1st The name of the company is “.....Limited/Private Limited”.
- 2nd The registered office of the company will be situated in the State of.....
- 3rd (a) The objects to be pursued by the company on its incorporation are:—  
  
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.
- 5th The share capital of the company is.....rupees, divided into.....shares of.....rupees each.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
(1)	(2)	(3)	(4)
A.B. of.....Merchant .....			Signed before me: Signature.....

(1)	(2)	(3)	(4)
C.D. of.....Merchant .....			Signed before me: Signature.....
E.F. of.....Merchant .....			Signed before me: Signature.....
G.H. of.....Merchant .....			Signed before me: Signature.....
I.J. of.....Merchant .....			Signed before me: Signature.....
K.L. of.....Merchant .....			Signed before me: Signature.....
M.N. of.....Merchant .....			Signed before me: Signature.....
Total shares taken:	_____	_____	

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, addresse, description and occupation of subscriber	Signature of subscriber	Signature, name, addresse, descriptions and occupation of witness
A.B. of.....Merchant		Signed before me: Signature.....

8th Shri/Smt....., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of .....

### TABLE-B

#### MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

1st The name of the company is “.....Limited/Private Limited”.

- 2nd The registered office of the company will be situated in the State of.....
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
- (b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:
- (i) 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, 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
- (ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves), such amount as may be required, not exceeding.....rupees.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association:—

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
1	2	3
A.B. of.....Merchant		Signed before me: Signature.....
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of..... Merchant		Signed before me: Signature.....

1	2	3
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....
7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—		
Name, addresse, description and occupation of subscriber	Signature of subscriber	Signature, name, addresse, description and occupation of witness
A.B. of.....Merchant		Signed before me: Signature.....
8th Shri/Smt. ...., son/daughter of ..... , resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)		
Dated..... the day of .....		

**TABLE-C**

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

- 1st The name of the company is “.....Limited/Private Limited”.
- 2nd The registered office of the company will be situated in the State of..... .
- 3rd (a) The objects to be pursued by the company on its incorporation are:—  
  
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:  
  
(i) 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, 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

(ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves)

such amount as may be required, not exceeding.....rupees.

6th The share capital of the company is.....rupees, divided into.....shares of.....rupees each.

7th We, the several persons, whose names, addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant .....			Signed before me: Signature.....
C.D. of.....Merchant .....			Signed before me: Signature.....
E.F. of.....Merchant .....			Signed before me: Signature.....
G.H. of.....Merchant .....			Signed before me: Signature.....
I.J. of.....Merchant .....			Signed before me: Signature.....
K.L. of.....Merchant .....			Signed before me: Signature.....
M.N. of.....Merchant .....			Signed before me: Signature.....

8th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. of.....Merchant		Signed before me: Signature.....

9th Shri/Smt. ...., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of.....

**TABLE-D**

MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

- 1st The name of the company is “.....Company”.
- 2nd The registered office of the company will be situated in the State of..... .
- 3rd (a) The objects to be pursued by the company on its incorporation are:—  
  
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th We, the several persons, whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association:—

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
1	2	3
A.B. of.....Merchant		Signed before me: Signature.....

1	2	3
C.D. of.....Merchant		Signed before me: Signature.....
E.F. of.....Merchant		Signed before me: Signature.....
G.H. of.....Merchant		Signed before me: Signature.....
I.J. of..... Merchant		Signed before me: Signature.....
K.L. of.....Merchant		Signed before me: Signature.....
M.N. of.....Merchant		Signed before me: Signature.....

6th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, addresse, description and occupation of subscriber	Signature of subscriber	Signature, name, addresse, description and occupation of witness
A.B. of.....Merchant		Signed before me: Signature.....

7th Shri/Smt. ...., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of.....

**TABLE-E**

**MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING SHARE CAPITAL**

- 1st The name of the company is “.....Company”.
- 2nd The registered office of the company will be situated in the State of..... .

3rd (a) The objects to be pursued by the company on its incorporation are:—

(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—

4th The liability of the member(s) is unlimited.

5th The share capital of the company is.....rupees, divided into.....shares of.....rupees each.

6th We, the several persons, whose names, and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of.....Merchant .....			Signed before me: Signature.....
C.D. of.....Merchant .....			Signed before me: Signature.....
E.F. of.....Merchant .....			Signed before me: Signature.....
G.H. of.....Merchant .....			Signed before me: Signature.....
I.J. of.....Merchant .....			Signed before me: Signature.....
K.L. of.....Merchant .....			Signed before me: Signature.....
M.N. of.....Merchant .....			Signed before me: Signature.....

7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. of.....Merchant		Signed before me: Signature.....

8th Shri/Smt. ...., son/daughter of ....., resident of..... aged..... years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of .....

#### **TABLE-F**

#### ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

#### ***Interpretation***

**I. (1)** In these regulations—

(a) “the Act” means the Companies Act, 2011,

(b) “the seal” means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

#### ***Share capital and variation of rights***

**II. 1.** Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at a premium or at par and at such time as they may from time to time think fit.

2. (i) Every person whose name is entered as a member in the register of members shall be entitled to receive within two months after incorporation, in case of subscribers to the memorandum or after allotment or within one month after the application for the registration of transfer or transmission or within such other period as the conditions of issue shall be provided,—

(a) one certificate for all his shares without payment of any charges; or

(b) several certificates, each for one or more of his shares, upon payment of twenty rupees for each certificate after the first.

(ii) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.

(iii) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

3. (i) If any share certificate be worn out, defaced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the company and on execution of such indemnity as the company deem adequate, a new certificate in lieu thereof shall be given. Every certificate under this Article shall be issued on payment of twenty rupees for each certificate.

(ii) The provisions of Articles (2) and (3) shall *mutatis mutandis* apply to debentures of the company.

4. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

5. (i) The company may exercise the powers of paying commissions conferred by sub-section (6) of section 40, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and rules made thereunder.

(ii) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made under sub-section (6) of section 40.

(iii) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

6. (i) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(ii) To every such separate meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question.

7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

8. Subject to the provisions of section 55, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

### ***Lien***

9. (i) The company shall have a first and paramount lien—

(a) on every share (not being a fully paid share), for all monies (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and

(b) on all shares (not being fully paid shares) standing registered in the name of a single person, for all monies presently payable by him or his estate to the company:

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(ii) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares.

**10.** The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien:

Provided that no sale shall be made—

(a) unless a sum in respect of which the lien exists is presently payable; or

(b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

**11.** (i) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.

(ii) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(iii) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

**12.** (i) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(ii) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

### ***Calls on shares***

**13.** (i) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

*(ii)* Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.

*(iii)* A call may be revoked or postponed at the discretion of the Board.

**14.** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.

**15.** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

**16.** *(i)* If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent. per annum or at such lower rate, if any, as the Board may determine.

*(ii)* The Board shall be at liberty to waive payment of any such interest wholly or in part.

**17.** *(i)* Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.

*(ii)* In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

**18.** The Board—

*(a)* may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and

*(b)* upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent. per annum, as may be agreed upon between the Board and the member paying the sum in advance.

### ***Transfer of shares***

**19.** (i) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(ii) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

**20.** The Board may, subject to the right of appeal conferred by section 58 decline to register—

(a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or

(b) any transfer of shares on which the company has a lien.

**21.** The Board may decline to recognise any instrument of transfer unless—

(a) The instrument of transfer is in the form as prescribed in rules made under sub-section (1) of section 56;

(b) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and

(c) The instrument of transfer is in respect of only one class of shares.

**22.** On giving not less than seven days' previous notice in accordance with section 91 and rules made thereunder, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine:

Provided that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

### ***Transmission of shares***

**23.** (i) On the death of a member, the survivor or survivors where the member was a joint holder, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

*(ii)* Nothing in clause *(i)* shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

**24.** *(i)* Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—

*(a)* to be registered himself as holder of the share; or

*(b)* to make such transfer of the share as the deceased or insolvent member could have made.

*(ii)* The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.

**25.** *(i)* If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

*(ii)* If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

*(iii)* All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

**26.** A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share, until the requirements of the notice have been complied with.

**27.** In case of a One Person Company—

(i) on the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member;

(ii) the nominee on becoming entitled to such shares in case of the member's death shall be informed of such event by the Board of the company;

(iii) such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable;

(iv) on becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of the company.

***Forfeiture of shares***

**28.** If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

**29.** The notice aforesaid shall—

(a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and

(b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.

**30.** If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

**31.** (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.

(ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.

**32.** (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

(ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

**33.** (i) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

(ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;

(iii) The transferee shall thereupon be registered as the holder of the share; and

(iv) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**34.** The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

### ***Alteration of capital***

**35.** The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

**36.** Subject to the provisions of section 61, the company may, by ordinary resolution,—

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid up shares of any denomination;

(c) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum;

(d) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

**37.** Where shares are converted into stock,—

(a) the holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit:

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so, however, that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

(b) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

(c) such of the regulations of the company as are applicable to paid-up shares shall apply to stock and the words “share” and “shareholder” in those regulations shall include “stock” and “stockholder” respectively.

**38.** The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law,—

(a) its share capital;

(b) any capital redemption reserve account; or

(c) any share premium account.

### ***Capitalisation of profits***

**39.** (i) The company in general meeting may, upon the recommendation of the Board, resolve—

(a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and

(b) that such sum be accordingly set free for distribution in the manner specified in clause (ii) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(ii) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (iii), either in or towards—

(A) paying up any amounts for the time being unpaid on any shares held by such members respectively;

(B) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid; or

(C) partly in the way specified in sub-clause (A) and partly in that specified in sub-clause (B).

(D) A securities premium account and a capital redemption reserve account may, for the purposes of this regulation, be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(E) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

**40.** (i) Whenever such a resolution as aforesaid shall have been passed, the Board shall—

(a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares if any; and

(b) generally do all acts and things required to give effect thereto.

(ii) The Board shall have power—

(a) to make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares becoming distributable in fractions; and

(b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or as the case may require, for the payment by the company on their behalf, by the application thereto of their respective proportions of profits resolved to be capitalised, of the amount or any part of the amounts remaining unpaid on their existing shares;

(iii) Any agreement made under such authority shall be effective and binding on such members.

### ***Buy-back of shares***

41. Notwithstanding anything contained in these articles but subject to the provisions of sections 68 to 70 and any other applicable provision of the Act or any other law for the time being in force, the company may purchase its own shares or other specified securities.

### ***General meetings***

42. All general meetings other than annual general meeting shall be called extraordinary general meeting.

43. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

### ***Proceedings at general meetings***

44. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

**45.** The chairperson, if any, of the Board shall preside as chairperson at every general meeting of the company.

**46.** If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

**47.** If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

**48.** In case of a One Person Company—

(i) the resolution required to be passed at the general meetings of the company shall be deemed to have been passed if the resolution is agreed upon by the sole member and communicated to the company and entered in the minutes book maintained under section 118.

(ii) such minutes book shall be signed and dated by the member.

(iii) the resolution shall become effective from the date of signing such minutes by the sole member.

### ***Adjournment of meeting***

**49.** (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### ***Voting rights***

**50.** Subject to any rights or restrictions for the time being attached to any class or classes of shares,—

(a) on a show of hands, every member present in person shall have one vote; and

(b) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity share capital of the company.

**51.** A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

**52. (i)** In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

**(ii)** For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

**53.** A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

**54.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

**55.** No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

**56. (i)** No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

**(ii)** Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

### ***Proxy***

**57.** The instrument appointing a proxy and the power-of-attorney or other authority, if any, under which it is signed or a notarised copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

**58.** An instrument appointing a proxy shall be in the form as prescribed in the rules made under section 105.

**59.** A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### ***Board of Directors***

**60.** The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

**61.** (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or

(b) in connection with the business of the company.

**62.** The Board may pay all expenses incurred in getting up and registering the company.

**63.** The company may exercise the powers conferred on it by section 88 with regard to the keeping of a foreign register; and the Board may (subject to the provisions of that section) make and vary such regulations as it may think fit respecting the keeping of any such register.

**64.** All cheques, promissory notes, drafts, *hundis*, bills of exchange and other negotiable instruments, and all receipts for monies paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such person and in such manner as the Board shall from time to time by resolution determine.

**65.** Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

**66. (i)** Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.

*(ii)* Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

### ***Proceedings of the Board***

**67. (i)** The Board of directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

*(ii)* A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

**68. (i)** Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

*(ii)* In case of an equality of votes, the chairperson of the Board, if any, shall have a second or casting vote.

**69.** The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

**70. (i)** The Board may elect a chairperson of its meetings and determine the period for which he is to hold office.

*(ii)* If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.

**71. (i)** The Board may, subject to the provisions of the Act, delegate

any of its powers to committees consisting of such member or members of its body as it thinks fit.

*(ii)* Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

**72.** *(i)* A committee may elect a Chairperson of its meetings.

*(ii)* If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

**73.** *(i)* A committee may meet and adjourn as it thinks fit.

*(ii)* Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.

**74.** All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

**75.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

**76.** In case of a One Person Company—

*(i)* where the company is having only one director, all the businesses to be transacted at the meeting of the Board shall be entered into minutes book maintained under section 118;

*(ii)* such minutes book shall be signed and dated by the director;

*(iii)* the resolution shall become effective from the date of signing such minutes by the director.

***Chief Executive Officer, Manager, Company Secretary or Chief  
Financial Officer***

77. Subject to the provisions of the Act,—

(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;

(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

78. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

***The Seal***

79. (i) The Board shall provide for the safe custody of the seal.

(ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

***Dividends and Reserve***

80. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

81. Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.

82. (i) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied,

including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.

*(ii)* The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve.

**83.** *(i)* Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

*(ii)* No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

*(iii)* All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

**84.** The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

**85.** *(i)* Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

*(ii)* Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

**86.** Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share.

**87.** Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.

**88.** No dividend shall bear interest against the company.

### ***Accounts***

**89.** (i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

(ii) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

### ***Winding up***

**90.** Subject to the provisions of Chapter XX of the Act and rules made thereunder—

(i) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members, in specie or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(ii) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(iii) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories if he considers necessary, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

### ***Indemnity***

**91.** Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

*Note:* The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest

the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:—

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the.....day of .....20.....

Place: .....

**TABLE-G**

**ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY  
GUARANTEE AND HAVING A SHARE CAPITAL**

**1.** The number of members with which the company proposes to be registered is hundred, but the Board of directors may, from time to time, register an increase of members.

**2.** All the articles of Table F in Schedule I annexed to the Companies Act, 2011 shall be deemed to be incorporated with these articles and to apply to the company.

## **TABLE-H**

### **ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL**

#### ***Interpretation***

**I.** (1) In these regulations—

(a) “the Act” means the Companies Act, 2011;

(b) “the seal” means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

#### ***Members***

**II. 1.** The number of members with which the company proposes to be registered is hundred, but the Board of directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

**2.** The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

#### ***General meetings***

**3.** All general meetings other than annual general meeting shall be called extraordinary general meeting.

**4. (i)** The Board may, whenever it thinks fit, call an extraordinary general meeting.

(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

#### ***Proceedings at general meetings***

**5. (i)** No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

**6.** The Chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.

**7.** If there is no such chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

**8.** If at any meeting no director is willing to act as chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

### ***Adjournment of meeting***

**9. (i)** The chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### ***Voting rights***

**10.** Every member shall have one vote.

**11.** A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

**12.** No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

**13. (i)** No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected

to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(ii) Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

**14.** A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

**15.** A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

**16.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

### ***Board of Directors***

**17.** The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

**18.** (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

(ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(a) in attending and returning from meetings of the Board of directors or any committee thereof or general meetings of the company; or

(b) in connection with the business of the company.

### ***Proceedings of the Board***

**19.** (i) The Board of directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

*(ii)* A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

**20.** *(i)* Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

*(ii)* In case of an equality of votes, the chairperson of the Board, if any, shall have a second or casting vote.

**21.** The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

**22.** *(i)* The Board may elect a chairperson of its meetings and determine the period for which he is to hold office.

*(ii)* If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be Chairperson of the meeting.

**23.** *(i)* The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

*(ii)* Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

**24.** *(i)* A committee may elect a chairperson of its meetings.

*(ii)* If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

**25.** *(i)* A committee may meet and adjourn as it thinks proper.

*(ii)* Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

**26.** All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

**27.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

***Chief Executive Officer, Manager, Company Secretary or  
Chief Financial Officer***

**28.** Subject to the provisions of the Act,—

(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.

(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

**29.** A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

***The Seal***

**30.** (i) The Board shall provide for the safe custody of the seal.

(ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Note:* The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the.....day of .....20.....

Place: .....

**TABLE – I**

**ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND  
HAVING A SHARE CAPITAL**

**1.** The number of members with which the company proposes to be registered is hundred, but the Board of directors may, from time to time, register an increase of members.

**2.** All the articles of Table F in Schedule I annexed to the Companies Act, 2011 shall be deemed to be incorporated with these articles and to apply to the company.

## **TABLE - J**

### **ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL**

**1.** The number of members with which the company proposes to be registered is hundred, but the Board of directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

**2.** The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

**3.** All the articles of Table H in Schedule I annexed to the Companies Act, 2011 shall be deemed to be incorporated with these articles and to apply to the company.

## **SCHEDULE II**

*(See section 123)*

### **USEFUL LIVES TO COMPUTE DEPRECIATION**

#### **PART 'A'**

**1.** Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.

**2.** For the purpose of this Schedule, the term depreciation includes amortisation.

**3.** Without prejudice to the, foregoing provisions of paragraph 1,—

*(i)* In case of such class of companies, as may be prescribed and whose financial statements comply with the accounting standards prescribed for such class of companies under section 133 the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.

(ii) In respect of other companies the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.

(iii) For intangible assets, the provisions of the Accounting Standards mentioned under sub-para (i) or (ii), as applicable, shall apply.

### **PART 'B'**

4. The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

### **PART 'C'**

5. Subject to Parts A and B above, the following are the useful lives of various tangible assets:

<b>Nature of assets</b>	<b>Useful Life</b>
<b>I. Buildings [NESD]</b>	
(a) Buildings (other than factory buildings) RCC Frame Structure	60 Years
(b) Buildings (other than factory buildings) other than RCC Frame Structure	30 Years
(c) Factory buildings	-do
(d) Fences, wells, tube wells	5 Years
(e) Others (including temporary structure, etc.)	3 Years
<b>II. Bridges, culverts, bunders, etc. [NESD]</b>	<b>30 Years</b>
<b>III. Roads [NESD]</b>	
(a) Carpeted roads	
(i) Carpeted Roads-RCC	10 Years
(ii) Carpeted Roads-other than RCC	5 Years
(b) Non-carpeted roads	3 Years

#### IV. Plant and Machinery

**(i) General rate applicable to plant and machinery not covered under special plant and machinery**

- (a) Plant and Machinery other than continuous process plant not covered under specific industries 15 Years
- (b) continuous process plant for which no special rate has been prescribed under (ii) below [NESD] 8 Years

**(ii) Special Plant and Machinery**

- (a) Plant and Machinery related to production and exhibition of Motion Picture Films
1. Cinematograph films—Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronizers and studio lights except bulbs 13 Years
  2. Projecting equipment for exhibition of films -do-
- (b) Plant and Machinery used in glass manufacturing
1. Plant and Machinery except direct fire glass melting furnaces — Recuperative and regenerative glass melting furnaces 13 Years
  2. Plant and Machinery except direct fire glass melting furnaces — Moulds [NESD] 8 Years
  3. Float Glass Melting Furnaces [NESD] 10 Years
- (c) Plant and Machinery used in mines and quarries—Portable underground machinery and earth moving machinery used in open cast mining [NESD] 8 Years
- (d) Plant and Machinery used in Telecommunications [NESD]

1. Towers	18 Years
2. Telecom transceivers, switching centres, transmission and other network equipment	13 Years
3. Telecom—Ducts, Cables and optical fibre	18 Years
4. Satellites	-do-
<i>(e) Plant and Machinery used in exploration, production and refining oil and gas [NESD]</i>	
1. Refineries	25 Years
2. Oil and gas assets (including wells), processing plant and facilities	-do-
3. Petrochemical Plant	-do-
4. Storage tanks and related equipment	-do-
5. Pipelines	30 Years
6. Drilling Rig	-do-
7. Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc.	8 Years
8. Loggers	-do-
<i>(f) Plant and Machinery used in generation, transmission and distribution of power [NESD]</i>	
1. Thermal/ Gas/ Combined Cycle Power Generation Plant	40 Years
2. Hydro Power Generation Plant	-do-
3. Nuclear Power Generation Plant	-do-
4. Transmission lines, cables and other network assets	-do-
5. Wind Power Generation Plant	22 Years
6. Electric Distribution Plant	35 Years
7. Gas Storage and Distribution Plant	30 Years

8. Water Distribution Plant including pipelines	-do-
<i>(g)</i> Plant and Machinery used in manufacture of steel	
1. Sinter Plant	20 Years
2. Blast Furnace	-do-
3. Coke ovens	-do-
4. Rolling mill in steel plant	-do-
5. Basic oxygen Furnace Converter	25 Years
<i>(h)</i> Plant and Machinery used in manufacture of non-ferrous metals	
1. Metal pot line [NESD]	40 Years
2. Bauxite crushing and grinding section [NESD]	-do-
3. Digester Section [NESD]	-do-
4. Turbine [NESD]	-do-
5. Equipments for Calcination [NESD]	-do-
6. Copper Smelter [NESD]	-do-
7. Roll Grinder	40 Years
8. Soaking Pit	30 Years
9. Annealing Furnace	-do-
10. Rolling Mills	-do-
11. Equipments for Scalping, Slitting, etc. [NESD]	-do-
12. Surface Miner, Ripper Dozer, etc., used in mines	25 Years
13. Copper refining plant [NESD]	-do-
<i>(i)</i> Plant and Machinery used in medical and surgical operations [NESD]	

1. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc.	13 Years
2. Other Equipments.	15 Years
(j) Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]	
1. Reactors	20 Years
2. Distillation Columns	-do-
3. Drying equipments/Centrifuges and Decanters	-do-
4. Vessel/storage tanks	-do-
(k) Plant and Machinery used in civil construction	
1. Concreting, Crushing, Piling Equipments and Road Making Equipments	12 Years
2. Heavy Lift Equipments— Cranes with capacity of more than 100 tons Cranes with capacity of less than 100 tons	15 Years
3. Transmission line, Tunneling Equipments [NESD]	10 Years
4. Earth-moving equipments	9 Years
5. Others including Material Handling/ Pipeline/Welding Equipments [NESD]	12 Years
(l) Plant and Machinery used in salt works [NESD]	15 Years

**V. Furniture and fittings [NESD]**

(i) General furniture and fittings	10 Years
(ii) Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other	

educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions. 8 Years

## **VI. Motor Vehicles [NESD]**

- |  |          |
|--|----------|
| 1. Motor cycles, scooters and other mopeds   | 10 Years |
| 2. Motor buses, motor lorries, motor cars and motor taxies used in a business of running them on hire    | 6 Years  |
| 3. Motor buses, motor lorries and motor cars other than those used in a business of running them on hire | 8 Years  |
| 4. Motor tractors, harvesting combines and heavy vehicles  | -do-     |
| 5. Electrically operated vehicles including battery powered or fuel cell powered vehicles                | -do-     |

## **VII Ships [NESD]**

- |   |          |
|---|----------|
| 1. Ocean-going ships  |          |
| (i) Bulk Carriers and liner vessels   | 25 Years |
| (ii) Crude tankers, product carriers and easy chemical carriers with or without conventional tank coatings. | 20 Years |
| (iii) Chemicals and Acid Carriers:  |          |
| (a) With stainless steel tanks  | 25 Years |
| (b) With other tanks  | 20 Years |
| (iv) Liquified gas carriers   | 30 Years |
| (v) Conventional large passenger vessels which are used for cruise purpose also                             | -do-     |
| (vi) Coastal service ships of all categories  | -do-     |
| (vii) Offshore supply and support vessels   | 20 Years |

(viii) Catamarans and other high speed passenger for ships or boats	-do-
(ix) Drill ships	25 Years
(x) Hovercrafts	15 Years
(xi) Fishing vessels with wooden hull	10 Years
(xii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	14 Years
2. Vessels ordinarily operating on inland waters—	
(i) Speed boats	13 Years
(ii) Other vessels	28 Years
<b>VIII. Aircrafts or Helicopters [NESD]</b>	20 Years
<b>IX. Railways sidings, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]</b>	15 Years
<b>X. Ropeway structures [NESD]</b>	15 Years
<b>XI. Office equipment [NESD]</b>	5 Years
<b>XII. Computers and data processing units [NESD]</b>	
(i) Servers and networks	6 Years
(ii) End user devices, such as, desktops, laptops, etc.	3 Years
<b>XIII. Laboratory equipment [NESD]</b>	
(i) General laboratory equipment	10 Years
(ii) Laboratory equipments used in educational institutions	5 Years
<b>XIV. Electrical Installations and Equipment [NESD]</b>	10 years
<b>XV. Hydraulic works, pipelines and sluices [NESD]</b>	15 Years

Notes.—

1. “Factory buildings” does not include offices, godowns, staff quarters.

2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.

3. The following information shall also be disclosed in the accounts, namely:—

(i) depreciation methods used; and

(ii) the useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.

4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

5. Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.

6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.

7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—

(a) shall be depreciated over the remaining useful life of the asset as per this Schedule;

(b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.

8. “Continuous process plant” means a plant which is required and designed to operate for twenty-four hours a day.

### SCHEDULE III

(See section 129)

#### GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY

#### **General Instructions**

1. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, *inter se*, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.

2. The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2011. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.

3. (i) Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (a) narrative descriptions or disaggregations of items recognised in those statements; and (b) information about items that do not qualify for recognition in those statements.

(ii) Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.

4. (i) Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded

off as given below:—

**Turnover**

**Rounding off**

- |  |   |
|--|---|
| (a) less than one hundred crore rupees | To the nearest hundreds, thousands, lakhs or millions, or decimals thereof. |
| (b) one hundred crore rupees or more   | To the nearest lakhs, millions or crores, or decimals thereof.              |

(ii) Once a unit of measurement is used, it shall be used uniformly in the Financial Statements.

5. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.

6. For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

*Note:*— This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as “Financial Statements” for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company’s financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.

## PART I — BALANCE SHEET

Name of the Company.....

Balance Sheet as at .....

(Rupees in.....)

Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4

### I. EQUITY AND LIABILITIES

#### (1) Shareholders' funds

(a) Share capital

(b) Reserves and surplus

(c) Money received against share warrants

#### (2) Share application money pending allotment

#### (3) Non-current liabilities

(a) Long-term borrowings

(b) Deferred tax liabilities (Net)

(c) Other Long term liabilities

(d) Long-term provisions

#### (4) Current liabilities

(a) Short-term borrowings

(b) Trade payables

(c) Other current liabilities

(d) Short-term provisions

**TOTAL**

---

**II. ASSETS****Non-current assets**

- (1) *(a)* Fixed assets
  - (i)* Tangible assets
  - (ii)* Intangible assets
  - (iii)* Capital work-in-progress
  - (iv)* Intangible assets under development
- (b)* Non-current investments
- (c)* Deferred tax assets (net)
- (d)* Long-term loans and advances
- (e)* Other non-current assets
- (2) **Current assets**
  - (a)* Current investments
  - (b)* Inventories
  - (c)* Trade receivables
  - (d)* Cash and cash equivalents
  - (e)* Short-term loans and advances
  - (f)* Other current assets

---

**TOTAL**

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See accompanying notes to the Financial Statements.

**Notes****GENERAL INSTRUCTIONS FOR PREPARATION  
OF BALANCE SHEET**

1. An asset shall be classified as current when it satisfies any of the following criteria:—

- (a)* it is expected to be realised in, or is intended for sale or consumption in, the company's normal operating cycle;

*(b)* it is held primarily for the purpose of being traded;

*(c)* it is expected to be realised within twelve months after the reporting date; or

*(d)* it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.

All other assets shall be classified as non-current.

2. An operating cycle is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of twelve months.

3. A liability shall be classified as current when it satisfies any of the following criteria:—

*(a)* it is expected to be settled in the company's normal operating cycle;

*(b)* it is held primarily for the purpose of being traded;

*(c)* it is due to be settled within twelve months after the reporting date; or

*(d)* the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

All other liabilities shall be classified as non-current.

4. A receivable shall be classified as a "trade receivable" if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.

5. A payable shall be classified as a "trade payable" if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.

6. A company shall disclose the following in the notes to accounts.

## **A. Share Capital**

For each class of share capital (different classes of preference shares to be treated separately):

*(a)* the number and amount of shares authorised;

*(b)* the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;

*(c)* par value per share;

*(d)* a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;

*(e)* the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;

*(f)* shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;

*(g)* shares in the company held by each shareholder holding more than 5 per cent. shares specifying the number of shares held;

*(h)* shares reserved for issue under options and contracts/commitments for the sale of shares/disinvestment, including the terms and amounts;

*(i)* for the period of five years immediately preceding the date as at which the Balance Sheet is prepared:

*(A)* Aggregate number and class of shares allotted as fully paid-up pursuant to contract(s) without payment being received in cash.

*(B)* Aggregate number and class of shares allotted as fully paid-up by way of bonus shares.

*(C)* Aggregate number and class of shares bought back.

*(j)* terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date;

(k) calls unpaid (showing aggregate value of calls unpaid by directors and officers);

(l) forfeited shares (amount originally paid-up).

## **B. Reserves and Surplus**

(i) Reserves and Surplus shall be classified as:

(a) Capital Reserves;

(b) Capital Redemption Reserve;

(c) Securities Premium Reserve;

(d) Debenture Redemption Reserve;

(e) Revaluation Reserve;

(f) Share Options Outstanding Account;

(g) Other Reserves—(specify the nature and purpose of each reserve and the amount in respect thereof);

(h) Surplus *i.e.*, balance in Statement of Profit and Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to / from reserves, etc.;

(Additions and deductions since last balance sheet to be shown under each of the specified heads);

(ii) A reserve specifically represented by earmarked investments shall be termed as a “fund”.

(iii) Debit balance of statement of profit and loss shall be shown as a negative figure under the head “Surplus”. Similarly, the balance of “Reserves and Surplus”, after adjusting negative balance of surplus, if any, shall be shown under the head “Reserves and Surplus” even if the resulting figure is in the negative.

## **C. Long-Term Borrowings**

(i) Long-term borrowings shall be classified as:

(a) Bonds/debentures;

(b) Term loans:

(A) from banks.

(B) from other parties.

(c) Deferred payment liabilities;

(d) Deposits;

(e) Loans and advances from related parties;

(f) Long term maturities of finance lease obligations;

(g) Other loans and advances (specify nature).

(ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.

(iv) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by instalments, the date of maturity for this purpose must be reckoned as the date on which the first instalment becomes due.

(v) Particulars of any redeemed bonds/debentures which the company has power to reissue shall be disclosed.

(vi) Terms of repayment of term loans and other loans shall be stated.

(vii) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

#### **D. Other Long-term Liabilities**

Other Long-term Liabilities shall be classified as:

(a) Trade payables;

(b) Others.

#### **E. Long-term Provisions**

The amounts shall be classified as:

(a) Provision for employee benefits;

(b) Others (specify nature).

## **F. Short-term borrowings**

(i) Short-term borrowings shall be classified as:

(a) Loans repayable on demand;

(A) from banks.

(B) from other parties.

(b) Loans and advances from related parties;

(c) Deposits;

(d) Other loans and advances (specify nature).

(ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.

(iv) Period and amount of default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

## **G. Other current liabilities**

The amounts shall be classified as:

(a) Current maturities of long-term debt;

(b) Current maturities of finance lease obligations;

(c) Interest accrued but not due on borrowings;

(d) Interest accrued and due on borrowings;

(e) Income received in advance;

(f) Unpaid dividends;

(g) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the

company has sufficient authorised capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable, *i.e.*, the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under “Other current liabilities”;

- (h) Unpaid matured deposits and interest accrued thereon;
- (i) Unpaid matured debentures and interest accrued thereon;
- (j) Other payables (specify nature).

#### **H. Short-term provisions**

The amounts shall be classified as:

- (a) Provision for employee benefits.
- (b) Others (specify nature).

#### **I. Tangible assets**

(i) Classification shall be given as:

- (a) Land;
- (b) Buildings;
- (c) Plant and Equipment;
- (d) Furniture and Fixtures;
- (e) Vehicles;
- (f) Office equipment;
- (g) Others (specify nature).

(ii) Assets under lease shall be separately specified under each class of asset.

*(iii)* A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.

*(iv)* Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

## **J. Intangible assets**

*(i)* Classification shall be given as:

*(a)* Goodwill;

*(b)* Brands/trademarks;

*(c)* Computer software;

*(d)* Mastheads and publishing titles;

*(e)* Mining rights;

*(f)* Copyrights, and patents and other intellectual property rights, services and operating rights;

*(g)* Recipes, formulae, models, designs and prototypes;

*(h)* Licences and franchise;

*(i)* Others (specify nature).

*(ii)* A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.

*(iii)* Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by

way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

#### **K. Non-current investments**

(i) Non-current investments shall be classified as trade investments and other investments and further classified as:

- (a) Investment property;
- (b) Investments in Equity Instruments;
- (c) Investments in preference shares;
- (d) Investments in Government or trust securities;
- (e) Investments in debentures or bonds;
- (f) Investments in Mutual Funds;
- (g) Investments in partnership firms;
- (h) Other non-current investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(ii) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof;

(iii) The following shall also be disclosed:

- (a) Aggregate amount of quoted investments and market value thereof;
- (b) Aggregate amount of unquoted investments;
- (c) Aggregate provision for diminution in value of investments.

## **L. Long-term loans and advances**

(i) Long-term loans and advances shall be classified as:

(a) Capital Advances;

(b) Security Deposits;

(c) Loans and advances to related parties (giving details thereof);

(d) Other loans and advances (specify nature).

(ii) The above shall also be separately sub-classified as:

(a) Secured, considered good;

(b) Unsecured, considered good;

(c) Doubtful.

(iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

## **M. Other non-current assets**

Other non-current assets shall be classified as:

(i) Long-term Trade Receivables (including trade receivables on deferred credit terms);

(ii) Others (specify nature);

(iii) Long-term Trade Receivables, shall be sub-classified as:

(A) (a) Secured, considered good;

(b) Unsecured, considered good;

(c) Doubtful.

(B) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(C) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

## **N. Current Investments**

(i) Current investments shall be classified as:

- (a) Investments in Equity Instruments;
- (b) Investments in Preference Shares;
- (c) Investments in Government or trust securities;
- (d) Investments in debentures or bonds;
- (e) Investments in Mutual Funds;
- (f) Investments in partnership firms;
- (g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate [indicating separately whether such bodies are: (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities] in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(ii) The following shall also be disclosed:

- (a) The basis of valuation of individual investments;
- (b) Aggregate amount of quoted investments and market value thereof;
- (c) Aggregate amount of unquoted investments;
- (d) Aggregate provision made for diminution in value of investments.

## **O. Inventories**

*(i)* Inventories shall be classified as:

*(a)* Raw materials;

*(b)* Work-in-progress;

*(c)* Finished goods;

*(d)* Stock-in-trade (in respect of goods acquired for trading);

*(e)* Stores and spares;

*(f)* Loose tools;

*(g)* Others (specify nature).

*(ii)* Goods-in-transit shall be disclosed under the relevant sub-head of inventories.

*(iii)* Mode of valuation shall be stated.

## **P. Trade Receivables**

*(i)* Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.

*(ii)* Trade receivables shall be sub-classified as:

*(a)* Secured, considered good;

*(b)* Unsecured, considered good;

*(c)* Doubtful.

*(iii)* Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

*(iv)* Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

## **Q. Cash and cash equivalents**

*(i)* Cash and cash equivalents shall be classified as:

- (a)* Balances with banks;
- (b)* Cheques, drafts on hand;
- (c)* Cash on hand;
- (d)* Others (specify nature).

*(ii)* Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.

*(iii)* Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.

*(iv)* Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.

*(v)* Bank deposits with more than twelve months maturity shall be disclosed separately.

## **R. Short-term loans and advances**

*(i)* Short-term loans and advances shall be classified as:

- (a)* Loans and advances to related parties (giving details thereof);
- (b)* Others (specify nature).

*(ii)* The above shall also be sub-classified as:

- (a)* Secured, considered good;
- (b)* Unsecured, considered good;
- (c)* Doubtful.

*(iii)* Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

*(iv)* Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

**S. Other current assets (specify nature)**

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

**T. Contingent liabilities and commitments (to the extent not provided for)**

(i) Contingent liabilities shall be classified as:

(a) Claims against the company not acknowledged as debt;

(b) Guarantees;

(c) Other money for which the company is contingently liable.

(ii) Commitments shall be classified as:

(a) Estimated amount of contracts remaining to be executed on capital account and not provided for;

(b) Uncalled liability on shares and other investments partly paid;

(c) Other commitments (specify nature).

**U.** The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.

**V.** Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of note how such unutilized amounts have been used or invested.

**W.** If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

## PART II – STATEMENT OF PROFIT AND LOSS

*Name of the Company Profit and loss Statment for the Year Ended*

*(Rupees in.....)*

Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4
I. Revenue from operations		xxx	xxx
II. Other income		xxx	xxx
III. Total Revenue (I + II)		xxx	xxx
IV. Expenses:			
Cost of materials consumed			
Purchases of Stock-in-Trade			
Changes in inventories of finished goods work-in-progress and Stock-in-Trade		xxx xxx	xxx xxx
Employee benefits expense		xxx	xxx
Finance costs			
Depreciation and amortisation expense			
Other expenses			
Total expenses		xxx	xxx
V. Profit before exceptional and extraordinary items and tax (III - IV)		xxx	xxx
VI. Exceptional items		xxx	xxx
VII. Profit before extraordinary items and tax (V - VI)		xxx	xxx
VIII. Extraordinary items		xxx	xxx
IX. Profit before tax (VII - VIII)		xxx	xxx
X. Tax expense:			
(1) Current tax		xxx	xxx
(2) Deferred tax		xxx	xxx

	1	2	3	4
XI. Profit (Loss) for the period from continuing operations (VII-VIII)			xxx	xxx
XII. Profit/(loss) from discontinuing operations			xxx	xxx
XIII. Tax expense of discontinuing operations			xxx	xxx
XIV. Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)			xxx	xxx
XV. Profit (Loss) for the period (XI + XIV)			xxx	xxx
XVI. Earnings per equity share:				
(1) Basic			xxx	xxx
(2) Diluted			xxx	xxx

See accompanying notes to the financial statements.

### **GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS**

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-clause (ii) of clause (40) of section 2 in like manner as they apply to a statement of profit and loss.

2. (A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from—

- (a) Sale of products;
- (b) Sale of services;
- (c) Other operating revenues;

*Less:*

- (d) Excise duty.

(B) In respect of a finance company, revenue from operations shall include revenue from—

- (a) Interest; and
- (b) Other financial services.

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.

### 3. Finance Costs

Finance costs shall be classified as:

- (a) Interest expense;
- (b) Other borrowing costs;
- (c) Applicable net gain/loss on foreign currency transactions and translation.

### 4. Other income

Other income shall be classified as:

- (a) Interest Income (in case of a company other than a finance company);
- (b) Dividend Income;
- (c) Net gain/loss on sale of investments;
- (d) Other non-operating income (net of expenses directly attributable to such income).

### 5. Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:—

(i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].

(b) Depreciation and amortisation expense;

(c) Any item of income or expenditure which exceeds one per cent. of the revenue from operations or Rs. 1,00,000, whichever is higher;

(d) Interest Income;

### NOTES

(e) Interest expense;

*(f)* Dividend income;

*(g)* Net gain/loss on sale of investments;

*(h)* Adjustments to the carrying amount of investments;

*(i)* Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);

*(j)* Payments to the auditor as *(a)* auditor; *(b)* for taxation matters; *(c)* for company law matters; *(d)* for management services; *(e)* for other services; and *(f)* for reimbursement of expenses;

*(k)* In case of Companies covered under section 135, amount of expenditure incurred on corporate social responsibility activities;

*(l)* Details of items of exceptional and extraordinary nature;

*(m)* Prior period items;

*(ii) (a)* In the case of manufacturing companies,—

(1) Raw materials under broad heads.

(2) Goods purchased under broad heads.

*(b)* In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.

*(c)* In the case of companies rendering or supplying services, gross income derived from services rendered or supplied under broad heads.

*(d)* In the case of a company, which falls under more than one of the categories mentioned in *(a)*, *(b)* and *(c)* above, it shall be sufficient compliance with the requirements herein if purchases, sales and consumption of raw material and the gross income from services rendered is shown under broad heads.

*(e)* In the case of other companies, gross income derived under broad heads.

*(iii)* In the case of all concerns having works in progress, works-in-progress under broad heads.

*(iv) (a)* The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions

made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance sheet is made up.

*(b)* The aggregate, if material, of any amounts withdrawn from such reserves.

*(v) (a)* The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.

*(b)* The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

*(vi)* Expenditure incurred on each of the following items, separately for each item:—

*(a)* Consumption of stores and spare parts;

*(b)* Power and fuel;

*(c)* Rent;

*(d)* Repairs to buildings;

*(e)* Repairs to machinery;

*(f)* Insurance;

*(g)* Rates and taxes, excluding, taxes on income;

*(h)* Miscellaneous expenses,

*(vii) (a)* Dividends from subsidiary companies.

*(b)* Provisions for losses of subsidiary companies.

*(viii)* The profit and loss account shall also contain by way of a note the following information, namely:—

*(a)* Value of imports calculated on C.I.F basis by the company during the financial year in respect of—

I. Raw materials;

II. Components and spare parts;

III. Capital goods;

*(b)* Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;

(c) Total value if all imported raw materials, spare parts and components consumed during the financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;

(d) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;

(e) Earnings in foreign exchange classified under the following heads, namely:—

- I. Export of goods calculated on F.O.B. basis;
- II. Royalty, know-how, professional and consultation fees;
- III. Interest and dividend;
- IV. Other income, indicating the nature thereof.

Note:— Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements.

#### GENERAL INSTRUCTIONS FOR THE PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, i.e., consolidated balance sheet and consolidated statement of profit and loss, the company shall *mutatis mutandis* follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the following:

(i) Profit or loss attributable to “minority interest” and to owners of the parent in the statement of profit and loss shall be presented as allocation for the period.

(ii) “Minority interests” in the balance sheet within equity shall be presented separately from the equity of the owners of the parent.

2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

Name of the entity in the	Net Assets, i.e., total assets minus total liabilities		Share in profit or loss	
	As % of consolidated net assets	Amount	As % of consolidated profit or loss	Amount
1	2	3	4	5
Parent				
Subsidiaries				
Indian				
1.				
2.				
3.				
.				
.				
Foreign				
1.				
2.				
3.				
.				
.				
Minority Interests in all subsidiaries				
Associates (Investment as per the equity method)				
Indian				
1.				
2.				
3.				
.				
.				
Foreign				
1.				
2.				
3.				
.				
.				

	1	2	3	4	5
Joint Ventures (as per proportionate consolidation/ investment as per the equity method)					
Indian					
1.					
2.					
3.					
.					
.					
Foreign					
1.					
2.					
3.					
.					
.					
TOTAL					

3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.

4. An entity shall disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.

#### SCHEDULE IV

[See section 149(7)]

### CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

#### I. Guidelines of professional conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;

(2) act objectively and constructively while exercising his duties;

(3) exercise his responsibilities in a *bona fide* manner in the interest of the company;

(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;

(5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;

(6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;

(7) refrain from any action that would lead to loss of his independence;

(8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;

(9) assist the company in implementing the best corporate governance practices.

## **II. Role and functions:**

The independent directors shall:—

(1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

(4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

(5) safeguard the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

### **III. Duties:**

The independent directors shall—

(1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;

(2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

(3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

(4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;

(5) strive to attend the general meetings of the company;

(6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

(7) keep themselves well informed about the company and the external environment in which it operates;

(8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

(9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions

and assure themselves that the same are in the interest of the company;

(10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

(11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;

(12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;

(13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

#### **IV. Manner of appointment:**

(1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.

(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.

(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

(4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out:

(a) the term of appointment;

(b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;

(c) the fiduciary duties that come with such an appointment along with accompanying liabilities;

(d) provision for Directors and Officers (D and O) insurance, if any;

(e) the Code of Business Ethics that the company expects its directors and employees to follow;

(f) the list of actions that a director should not do while functioning as such in the company; and

(g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

## **V. Reappointment**

The re-appointment of independent director shall be on the basis of report of performance evaluation.

## **VI. Resignation or removal**

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

## **VII. Separate meetings**

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:

(a) review the performance of non-independent directors and the Board as a whole;

(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

### **VIII. Evaluation mechanism:**

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

## SCHEDULE V

(See sections 196 and 197)

### **PART I**

#### CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

##### APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction

of an offence under this Act or any of the following Acts, namely:—

- (i) the Indian Stamp Act, 1899 (2 of 1899);
- (ii) the Central Excise Act, 1944 (1 of 1944);
- (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
- (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
- (v) the Essential Commodities Act, 1955 (10 of 1955);
- (vi) the Companies Act, 2011;
- (vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (viii) the Wealth-tax Act, 1957 (27 of 1957);
- (ix) the Income-tax Act, 1961 (43 of 1961);
- (x) the Customs Act, 1962 (52 of 1962);
- (xi) the Competition Act, 2002 (12 of 2003);
- (xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xv) the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
- (xvi) the Prevention of Money-Laundering Act, 2002 (15 of 2003);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years:

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;

(e) he is resident of India.

*Explanation I.*—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

(i) for taking up employment in India; or

(ii) for carrying on a business or vacation in India.

*Explanation II.*—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

## PART II

### REMUNERATION

#### **Section I.— Remuneration payable by companies having profits:**

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

**Section II.— Remuneration payable by companies having no profit or inadequate profit without Central Government approval:**

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A):

Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rs.)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

*Explanation.*—It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In the case of a managerial person who was not a shareholder, employee or a director of the company at any time during the two years prior to his appointment as a managerial person,—2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

(i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;

(iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:—

I. General Information:

(1) Nature of industry.

(2) Date or expected date of commencement of commercial production.

(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.

(4) Financial performance based on given indicators.

(5) Foreign investments or collaborations, if any.

II. Information about the appointee:

(1) Background details.

(2) Past remuneration.

(3) Recognition or awards.

(4) Job profile and his suitability.

(5) Remuneration proposed.

(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)

(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:

- (1) Reasons of loss or inadequate profits.
- (2) Steps taken or proposed to be taken for improvement.
- (3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

(i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;

(ii) details of fixed component and performance linked incentives along with the performance criteria;

(iii) service contracts, notice period, severance fees; and

(iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

**Section III.— Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:**

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company—

(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or

(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

(i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;

(ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196; and

(iii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

(d) A company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2,40,00,000 per annum.

#### **Section IV.— Perquisites not included in managerial remuneration:**

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on

remuneration specified in Section II and Section III:—

(a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961),

(b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service, and

(c) encashment of leave at the end of the tenure.

2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—

(a) *Children's education allowance:* In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.

(b) *Holiday passage for children studying outside India or family staying abroad:* Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.

(c) *Leave travel concession:* Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

*Explanation I.*— For the purposes of Section II of this Part, “effective capital” means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

*Explanation II.*— (a) Where the appointment of the managerial person

is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;

(b) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

*Explanation III.*— For the purposes of this Schedule, “family” means the spouse, dependent children and dependent parents of the managerial person.

*Explanation IV.*— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—

(a) take into account, financial position of the company, trend in the industry, appointee’s qualification, experience, past performance, past remuneration, etc.;

(b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

*Explanation V.*— For the purposes of this Schedule, “negative effective capital” means the effective capital which is calculated in accordance with the provisions contained in Explanation I of this Part is less than zero.

*Explanation VI.*— For the purposes of this Schedule:—

(A) “current relevant profit” means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (l) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.

(B) “Remuneration” means remuneration as defined in clause 78 of section 2 and includes reimbursement of any direct taxes to the managerial person.

**Section V. —Remuneration payable to a managerial person in two companies:**

Subject to the provisions of sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher

maximum limit admissible from any one of the companies of which he is a managerial person.

### **PART III**

#### **Provisions Applicable to Parts I and II of this Schedule**

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

### **PART IV**

The Central Government may, by notification, exempt any clause or clauses of companies form any of the requirements contained in this Schedule.

### **SCHEDULE VI**

(See sections 55 and 186)

The term “infrastructural projects” or “infrastructural facilities” includes the following projects or activities:—

(1) Transportation (including inter modal transportation), includes the following:—

(a) roads, national highways, State highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;

(b) rail system, rail transport providers, metro rail roads and other railway related services;

(c) ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;

(d) aviation, including airports, heliports, airlines and other airport related services;

(e) logistics services.

- (2) Agriculture, including the following, namely:—
- (a) infrastructure related to storage facilities;
  - (b) construction relating to projects involving agro-processing and supply of inputs to agriculture;
  - (c) construction for preservation and storage of processed agro-products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.
- (3) Water management, including the following, namely:—
- (a) water supply or distribution;
  - (b) irrigation;
  - (c) water treatment.
- (4) Telecommunication, including the following, namely:—
- (a) basic or cellular, including radio paging;
  - (b) domestic satellite service (*i.e.*, satellite owned and operated by an Indian company for providing telecommunication service);
  - (c) network of trunking, broadband network and internet services.
- (5) Industrial, commercial and social development and maintenance, including the following, namely:—
- (a) real estate development, including an industrial park or special economic zone;
  - (b) tourism, including hotels, convention centres and entertainment centres;
  - (c) public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;
  - (d) construction of educational institutions and hospitals;
  - (e) other urban development, including solid waste management systems, sanitation and sewerage systems.
- (6) Power, including the following:—
- (a) generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;

(b) transmission, distribution or trading of power by laying a network of new transmission or distribution lines.

(7) Petroleum and natural gas, including the following:—

(a) exploration and production;

(b) import terminals;

(c) liquefaction and re-gasification;

(d) storage terminals;

(e) transmission networks and distribution networks including city gas infrastructure.

(8) Housing, including the following:—

(a) urban and rural housing including public / mass housing, slum rehabilitation, etc.;

(b) other allied activities such as drainage, lighting, laying of roads, sanitation and facilities.

(9) Other miscellaneous facilities/services, including the following:—

(a) mining and related activities;

(b) technology related infrastructure;

(c) manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices;

(d) environment related infrastructure;

(e) disaster management services;

(f) preservation of monuments and icons;

(g) emergency services (including medical, police, fire and rescue).

(10) such other facility service as may be prescribed.

## SCHEDULE VII

(See sections 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.

## STATEMENT OF OBJECTS AND REASONS

The Companies Act, 1956 had been enacted with the object to consolidate and amend the law relating to the companies and certain other associations. The said Act has been in force for about fifty-five years and had been amended several times.

2. In view of changes in the national and international economic environment and expansion and growth of economy of our country, the Central Government after due deliberations decided to repeal the Companies Act, 1956 and enact a new legislation to provide for new provisions to meet the changed national and international, economic environment and further accelerate the expansion and growth of our economy. And for this purpose a Bill, namely, the Companies Bill, 2009 was introduced on 3rd August, 2009 in the Lok Sabha along with the Statement of Objects and Reasons appended to the said Bill outlining its salient features. The said Bill was referred to the Parliamentary Standing Committee on Finance for examination and report and the Committee gave its Report on the 31st August, 2010.

3. Subsequent to the introduction of the Companies Bill, 2009 in the Lok Sabha, the Central Government received several suggestions for amendments in the said Bill. The Parliamentary Standing Committee on Finance also made numerous recommendations in its Report. The Central Government has accepted in general the recommendations of the Standing Committee and also considered the suggestions received by it from various stakeholders.

4. In view of large amendments to the Companies Bill, 2009 arising out of the recommendations of the Parliamentary Standing Committee on Finance and suggestions of the stakeholders, the Central Government decided to withdraw the Companies Bill, 2009 and introduce a fresh Bill incorporating therein the recommendations of Standing Committee and suggestions of the stakeholders.

5. Paragraph 7 of the Statement of Objects and Reasons appended to the Companies Bill, 2009 states the salient features of the said Bill. The notes on clauses appended to the aforesaid Bill also explain the provisions of the Companies Bill, 2009, pending in this august House. The revised Bill, namely, the Companies Bill, 2011, *inter alia*, makes the following amendments to the Companies Bill, 2009 which broadly

include—

(i) **E-Governance**:-Maintenance and allowing inspection of documents by companies in electronic form being allowed for the first time.

(ii) Concept of Corporate **Social Responsibility** is being introduced.

**(iii) Enhanced Accountability on the part of Companies:**

(a) In addition to the concept of Independent Directors (IDs) introduced, the provisions in respect of their tenure and liability, etc., have been provided. Code for IDs provided in a new Schedule to the Bill. Data bank for IDs proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of IDs.

(b) Corporate Social Responsibility (CSR) Committee of the Board proposed in addition to other Committees of the Board viz. Audit Committee, Nomination and Remuneration and Stakeholders Relationship Committee. These Committees shall have IDs/non-executive directors to bring more independence in Board functioning and for protection of interests of minority shareholders.

(c) Definition of “promoter” also included along with his liability in certain cases.

(d) Provisions in respect of vigil mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices.

(e) The Central Government has been empowered to prescribe restrictions in respect of layers of subsidiaries for any class or classes of companies.

(f) New provisions suggested for allowing re-opening of accounts in certain cases with due safeguards.

**(iv) Additional Disclosure Norms:**

(a) New disclosures like development and implementation of risk management policy, Corporate Social Responsibility Policy, manner of formal evaluation of performance of Board of Directors and individual directors included in the Board report in addition

to disclosures proposed in such report in the Companies Bill, 2009.

*(b)* Consolidation of accounts: Accounts of Foreign subsidiaries to be attached for filing them with the Registrar. Subsidiary to include “associate” and “joint venture” for the purpose of consolidation.

*(c)* Every listed company required to file a return with the Registrar regarding change in the shareholding position of promoters and top ten shareholders of such company.

***(v) Facilitating raising of capital by companies:***

*(a)* Provisions for offer or invitation for subscription of securities on private placement basis revised to ensure more transparency and accountability.

*(b)* Companies being allowed to issue equity shares with differential voting rights.

*(c)* Central Government empowered to prescribe, through rules, the requirements in connection with provision for money made by a company for allowing purchase of company’s shares by its employees under a scheme for their benefit. Disclosure to be made in the Board’s report in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates.

***(vi) Audit Accountability:***

*(a)* Rotation of auditors and audit firms being provided for.

*(b)* Stricter and more accountable role for auditor being retained. Provisions relating to prohibiting auditor from performing non-audit services revised to ensure independence and accountability of auditor. Subject to the maximum prescribed number of companies, the members of a company may resolve that the auditor or audit firm of such company shall not become auditor in companies beyond the number as may be specified in such resolution.

*(c)* National Advisory Committee on Accounting and Auditing Standards (NACAAS) proposed to be renamed as National Financial Reporting Authority (NFRA) with a mandate to ensure monitoring and compliance of accounting and auditing standards and to oversee quality of service of professionals associated with compliance.

The Authority shall consider the International Financial Reporting Standards and other internationally accepted accounting and auditing policies and standards while making recommendations on such matters to the Central Government which will improve the competitiveness of our companies with other companies. The Authority is also proposed to be empowered with quasi judicial powers to ensure independent oversight over professionals.

(d) Cost Audit: Cost records to be mandated for companies engaged in production of such goods or rendering of such services as may be prescribed. The concept of “cost auditing standards” being mandated.

(e) Secretariat Audit: Prescribed class of companies would need to attach with the Board’s Report, a Secretarial Audit Report given by a company secretary in practice.

**(vii) Managerial Remuneration:**

(a) Provisions relating to limits on remuneration provided in the existing Act (11% of net profits) included.

(b) For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration annexed to the Bill and in case a company is not able to comply with such Schedule, approval of Central Government would be necessary. Individual limits for remuneration enhanced in the Bill *vis-à-vis* the existing limits. Concept of payment of periodic fees which shall include sitting fees to directors being included in the Bill.

(c) Independent Directors (IDs) not to get stock option: IDs not to get stock option but may get payment of fees and profit linked commission subject to limits specified in the Bill/rules. Central Government may prescribe amount of fees under the rules.

**(viii) Facilitating Mergers/ Acquisitions:**

Simplified procedure (through confirmation by the Central Government), laid down for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiary(ies), between two or more small companies and for such other class or classes of companies as may be prescribed. This would result into faster decisions on approvals for mergers and amalgamations resulting effective

restructuring in companies and growth in the economy. For other companies, such matters would be approved by Tribunal.

**(ix) Protection for Minority Shareholders:**

(a) Exit option to shareholders in case of dissent to change in object for which public issue was made.

(b) Specific disclosure regarding effect of merger on creditors, key managerial personnel, promoters and non-promoter shareholders is being provided. The Tribunal is being empowered to provide for exit offer to dissenting shareholders in case of compromise or arrangement.

(c) The Board may have a director representing small shareholders who may be elected in such manner as may be prescribed by rules.

**(x) Investor Protection:**

(a) Acceptance of deposits from public subject to a more stringent regime.

(b) Central Government to have power to prescribe class or classes of companies which shall not be permitted to allow use of proxies. The Bill also to have provisions to provide that a person shall have proxies for such number of members /such shares as may be prescribed.

(c) Provisions for Class Action Suits revised to provide minimum number of persons who may apply for such suits. Safeguards against misuse of these provisions also being included.

**(xi) Serious Fraud Investigation Office (SFIO):** Statutory status to SFIO proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill. Definition of 'Fraud' provided. Stringent penalty provided for fraud related offences.

**(xii) Woman Director:** At least one woman director being made mandatory in the prescribed class or classes of companies.

**(xiii) National Company Law Tribunal (Tribunal):** Keeping in view the Supreme Court's judgment, on the 11th May, 2010 on the

composition and constitution of the Tribunal, modifications relating to qualification and experience, etc., of the members of the Tribunal have been made. Appeals from Tribunal shall lie to National Company Law Appellate Tribunal.

**(xiv) Mediation and Conciliation Panel:** It is proposed to create and maintain as “Mediation and Conciliation Panel” for facilitating mediation and conciliation between parties during any proceeding under the proposed Legislation before the Central Government or Tribunal.

**(xv)** Central Government to have power to exempt/modify provisions of the Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of thirty days.

6. The notes on clauses explain, in detail, provisions of the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 2nd December, 2011.*

M. VEERAPPA MOILY

### *Notes on Clauses*

*Clause 1.* — It has been made flexible to enforce various sections on different dates and different states. 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 or private (including One Person Company) (OPC) for any lawful purpose, by subscribing their names to the Memorandum. Memorandum of OPC shall indicate the name of a person who shall become member, in the event of death of the single member. However, the other person whose name would reflect in the Memorandum of OPC shall be required to give prior written consent in this regard. He shall have the right to withdraw his consent. It shall be duty of the member of the OPC to intimate the Registrar any change in name of person already mentioned in Memorandum. The companies formed under this clause may be limited by shares or limited by guaran-tee or an unlimited company.

*Clause 4.* — 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. The memorandum of a company shall be in respective forms as per Tables A, B, C, D and E specified in Schedule I. Any provision in memorandum or articles of a company not having share capital shall not give any right to participate in the divisible profits otherwise than as member of the company.

*Clause 5.*— 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. Model articles for different types of companies shall be as per Tables F, G, H, I and J in Schedule I.

*Clause 6.* — This clause corresponds to section 9 of the Companies Act, 1956 and seeks to provide that the provisions of this Act shall have

overriding effect on provisions contained in memorandum and articles of the company.

*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 shall be liable for punishment prescribed for fraud. Where a company has got incorporated by furnishing any false or incorrect information, the Tribunal may pass order as it thinks fit including removal of name from register or winding up of the company.

*Clause 8.* — 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, protection of environment, etc., without adding to its name the words 'Limited', 'Private 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 the event of any violation of conditions on which a licence is issued, the Central Government may revoke the licence and order the company, after giving a reasonable opportunity of being heard, to be wound up or amalgamated with another company having similar objects. A firm may be allowed to become a member of such company. Where it is proved that the affairs of the company were conducted fraudulently, penal action for fraud shall be applicable to every officer of the company.

*Clause 9.* — 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 10.* — 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 members to the company shall be debt due from him to the company.

*Clause 11.* — 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 (minimum five lakh rupees for public company and minimum one lakh rupees for private company) and the company has filed with the Registrar the verification of its registered office. The Registrar of companies may remove the name of the company from the register, if a company has not filed declaration within a period of one hundred and eighty two days of the date of incorporation and if he has reasonable cause to believe that the company is not carrying on business or operations.

*Clause 12.* — 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. Where a company has changed its name in last two years, the company shall paint or affix its former names along with the name of the company. A private company which is OPC shall mention the words “OPC” in bracket below its name. 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. Any change of registered office of a company from the jurisdiction of one Registrar to another Registrar in the same State shall require confirmation of the Regional Director. The clause further provides that if a default is made in complying with the requirement in this clause the company and every officer of the company shall be liable to penalty.

*Clause 13.* — 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. This clause further provides that a company, which has raised money from public for one or more objects mentioned in the prospectus and is still having some unutilised money shall not change its object unless a special resolution is passed and exist option is given to dissenting shareholders.

*Clause 14.* — 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 alter-ations having effect of conversion of a private company into a public company or a public company into private company with the approval of members through special resolution. Approval of the Tribunal shall be also required in case of conversion of a public company into a private company. A copy of order of Tribunal shall be filed with the Registrar together with a printed copy of the altered articles.

*Clause 15.* — 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 and articles of association.

*Clause 16.* — 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 resembling to a registered trade mark. The clause further provides that if default is made in complying with any direction given under sub-clause (1) the company and every officer who is in default shall be punishable with fine.

*Clause 17.* — 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 18.* — This clause corresponds to section 32 of the Companies Act, 1956 and seeks to provide that a company may convert itself in some

other class of company by altering its memorandum and articles of association. The conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by the company.

*Clause 19.* — This clause corresponds to section 42 of the Companies Act, 1956 and seeks to provide that 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 20.* — This clause corresponds to section 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, on the members and also on the Registrars.

*Clause 21.* — This clause corresponds to section 54 of the Companies Act, 1956 and seeks to provide for authentication of documents, proceedings and contracts, etc.

*Clause 22.* — 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 23.* — This is a new clause and seeks to provides the ways in which a public company or a private company may issue securities.

*Clause 24.* — This clause corresponds section 55A of the Companies Act, 1956, and seeks to provide that issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed shall be administered by the Securities and Exchange Board of India and in other cases shall be administered by Central Government.

*Clause 25.*— This clause corresponds to section 64 of the Companies Act, 1956 and seeks to provide that any document by which the offer or sale of shares or debentures to the public is made shall for all purposes be treated as prospectus.

*Clause 26.* — 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 in formation 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. The clause further provides that if the prospectus is issued in contravention of this clause the company and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine on imprisonment.

*Clause 27.* — This clause corresponds to section 61 of the Companies Act, 1956 and seeks to provide a company shall not vary terms of a contract referred to in the prospectus or objects for which the prospectus was issued except by way of special resolution. Dissenting shareholders shall be given an exit offer by promoters or controlling shareholders subject to such manner and conditions as may be specified by Securities and Exchange Board of India.

*Clause 28.*— This is a new clause and seeks to provide for that member or members of a company, in consultation with Board of Directors, may offer a part of their holding of shares to the public. The document by which the offer of sale to the public is made shall be treated as prospectus issued by company.

*Clause 29.* — This clause corresponds to section 68B of the Companies Act, 1956 and seeks to provide that public company making public offer and such other class or classes of companies as may be prescribed, shall issue the securities only through dematerialised form. Other companies may issue securities in physical or in dematerialised form.

*Clause 30.* — 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 31.* — 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 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 32.* — 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. Upon closing of the offer of securities, the details of information to be filed with the Registrar and Securities and Exchange Board of India.

*Clause 33.* — 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. If a company makes any default the company shall be punishable with fine.

*Clause 34.* — This clause corresponds to section 63 of the Companies Act, 1956 and provides for criminal liability for mis-statements in prospectus. The person who authorises the issue of such prospectus shall be punishable for fraud.

*Clause 35.* — 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 36.* — This clause corresponds to section 68 of the companies Act, 1956 and seeks to provide that such persons who fraudulently induces persons to invest money by making statement which is false, deceptive, misleading or deliberately conceals any facts, shall be punishable for fraud.

*Clause 37.* — 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 38.* — This clause corresponds to section 68A of the Companies Act, 1956 and seeks to provide that those persons who apply in fictitious name or makes multiple applications or otherwise induces companies to allot shares in fictitious name, shall be punishable for fraud. The clause further provides that Court may order disgorgement of any gains and seizure and disposal of such securities.

*Clause 39.* — This clause corresponds to section 69 of the Companies Act, 1956 prohibiting allotment of securities where the minimum amount has not been subscribed, the amount is to be refunded to all the applicants within a given time frame. This clause further provides that whenever a company having a share capital makes any allotment of securities, it shall file return of allotment with the registrar. In case of any default under sub-clause (3) and (4) the company and its officers who are in default shall be liable to fine.

*Clause 40.* — 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. After allotment of shares, a return shall be filed with the Registrar. 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 41.* — This is a new clause which provides that a company may issue global depository receipts to be dealt with in a depository mode in any foreign country.

*Clause 42.* — This clause corresponds to section 67 of the Companies Act, 1956 and seeks to provide that without prejudice to provisions of section 25, a company may make an offer or invitation of securities by way of Private Placement. The clause further provides the conditions through which invitation can be made. The clause also provides that no fresh allotment to be made unless earlier allotment is completed, provisions of this Act, SCRA, SEBI shall apply to this placement. The monies payable on subscription of securities not to be made in cash. The clause further provides that company shall allot securities within 60 days from date of receipt of application money, if does not allot within 60 days then repay application money within 15 days after expiry of 60 days and if company does not pay money after the aforesaid period the company is liable to repay the money with interest at 12% per annum from expiry

of 60th day. The monies received shall be kept in separate bank account with a scheduled bank and to be used for some specific purposes only. The clause further provides that offer to be made only to such persons whose name is recorded prior to the invitation to subscribe, and complete record of offer and acceptance shall be given to Registrar within period of 30 days of circulation of private placement offer. Public at large about the offer and file a return of allotment with registrar in the prescribed manner. The clause further provides that Central Government may make rules under this clause.

*Clause 43.* — This clause corresponds to section 85 and seeks to provide that there shall be two kinds of share capital namely equity share capital ( includes equity shares with voting rights or equity shares with differential rights as to dividend, voting or otherwise) 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 44.* — 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 45.* — 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 46.* — 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. If a company issues duplicate shares with an intention to defraud public, penal provisions for fraud would be attracted for such violations.

*Clause 47.* — 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.

*Clause 48.* — This clause corresponds to section 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 to have the variation cancelled. If default is made in complying with the provision of this clause the company and every officer of the company who is in default shall be punishable with fine or imprisonment or with both.

*Clause 49.* — 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 50.* — 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 he will not be entitled to any voting rights on the amount paid by him unless amount has been called up.

*Clause 51.* — 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 52.* — 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 securities premium to securities premium account and state the means in which the amount in the account can be applied. Provisions on reduction of share capital shall apply to securities premium account. This Clause also seeks to provide the purpose for which Securities Premium Account can be applied by companies.

*Clause 53.* — 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 and also provides that where a company contravenes the provisions of this clause, the company and every officer of the company in default shall be punishable with fine and imprisonment.

*Clause 54.* — 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 55.* — This clause corresponds to section 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 56.* — This clause corresponds to section 108, 109B and 110 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 57.* — This clause corresponds to section 116 of the Companies Act, 1956 and seeks to provide penalty for a person who deceitfully personates the owner of any share or interest.

*Clause 58.* — 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 Tribunal. It is also provided that the securities of a public company, etc., are freely transferable subject to the provisions that any contract or arrangement between two or more persons shall be enforceable as contract.

*Clause 59.* — 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. 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. The clause also provides for the provisions of this clause shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled for voting rights unless suspended by the Tribunal. The Tribunal may direct any company or a depository to set right any contravention and rectify register. The clause further provides that if any default is made in complying with the order of the Tribunal, the company and every officer who is in default shall be punishable with fine and imprisonment.

*Clause 60.* — 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 and the clause further provides penalty for the company and every officer of company in default in case of any contravention.

*Clause 61.* — 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 capital clause of memorandum in its general meeting.

*Clause 62.* — 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 by sending a letter of offer, containing certain conditions, to employees through employee's stock option, subject to approval by special resolution, or to the general public, after having the shares valued by registered valuers. This provision does not apply to conversion of debentures or loans into shares of the company in certain cases.

*Clause 63.* — This is a new clause, which provides for condition and manner of issue of fully paid-up bonus shares to its members.

*Clause 64.* — 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 alongwith an altered memorandum.

*Clause 65.* — This clause corresponds to section 32 of the Companies Act, 1956 and seeks to provide that an unlimited company having a share capital may be converted 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 66.* — 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 provides that the Tribunal shall give notice to the Registrar, 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. The clause further provides

that if a company does not comply with the provision of this clause the company shall be punishable with fine.

*Clause 67.* — 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. If a company contravenes the provision of this clause the company and every officer in default shall be punishable with fine and imprisonment.

*Clause 68.* — 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 ROC and Securities and Exchange Board of India. After buying back, the company shall physically destroy all the shares. If a company makes any default in complying with the provisions of this clause the company and every officer in default shall be punishable with fine and imprisonment.

*Clause 69.* — 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. The said account may be applied in paying up unissued shares of the company to be issued to the company as fully paid bonus shares.

*Clause 70.* — 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 71.* — This clause corresponds to sections 117, 117A, 117B and 117C of the Companies Act, 1956 and seeks to provide that a company may issue debentures with an option to convert into shares, wholly or partly, 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 matured debenture holders and interest due thereon. If any default is made in complying with the order of the Tribunal under this clause every officer of the company shall be punishable with fine or imprisonment or both.

*Clause 72.* — 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 73.* — 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 pay for any loss or damage incurred by him.

*Clause 74.* — This is a new clause which seeks to provide that the deposit accepted before this Act comes into force by the 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 75.* — This is a new clause, which 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 76.* — This is a new clause, which seeks to provide that a public company, having net worth and turnover of certain amount as provided in the clause, may accept deposits from persons other than its members subject to compliance with provisions of Clause 73 (2) and the rules, to be prescribed, after consultation with the Reserve Bank of India.

*Clause 77.* — 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 78.* — This clause corresponds to section 134 of the Companies Act 1956, 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 79.* — This clause corresponds to sections 127 and 135 of the Companies Act, 1956 and seeks to provide that the requirement of registering the charge 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 80.* — This clause corresponds to section 126 of the Companies Act, 1956 and seeks to provide that if any person acquires a property, assets or 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 81.* — 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 82.* — 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 83.* — This is a new clause, which seeks to provide that the Registrar on being satisfied may enter in the register of charges that the charges are satisfied and also inform affected parties about the satisfaction in the absence of intimation from the company.

*Clause 84.* — 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, within thirty days, 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 85.* — 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 or creditors without fee and by any other person with fee. A copy of instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

*Clause 86.* — 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 87.* — This clause corresponds to section 141 of the companies Act, 1956 and seeks to provide that Central government on being satisfied that on omission to file with Registrar any particulars of charge created or modified, omission of registration within time period or omission to give intimation about satisfaction of charge, omission or misstatement of any particular of charge created, modified and memorandum of satisfaction or any other entry was accidental or due to inadvertence or other sufficient cause or in nature of being prejudice to creditors and shareholders, on any ground, it is just and equitable to grant relief it may on the application direct the extension of time for filling particulars of creating charge, any modification or satisfaction of charge and misstatement to be rectified. The clause further provides that the order for extension of time shall not be prejudice any right in the property before the charge is actually registered.

*Clause 88.* — 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. If a company does not maintain the register under this clause the company and every officer of the company who is in default shall be punishable with the fine.

*Clause 89.* — 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. Where a company required to file a return under clause 403 the company and every officer of the company in default shall be punishable with fine.

*Clause 90.* — 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 with regard to any share or class of shares.

*Clause 91.* — 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 or such lesser period as may be specified by SEBI. If default is made in complying with the provisions of this clause the company and every officer of the company shall be punishable with fine.

*Clause 92.*— This clause corresponds to sections 159, 161 and 162 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, key managerial personnel alongwith changes therein, penalty or punishment imposed in company directors appeals made against such penalty or punishment details of shares held by or on behalf of Foreign Institutional Investors etc. The annual return shall be signed by a director and a Company Secretary. Where there is no Company Secretary the return shall be signed by the Company Secretary in whole-time practice. In case of a listed company or the company having such paid-up capital and turnover as may be prescribed, annual return shall be required to be certified by company secretary in practice in the prescribed form. Company Secretary in practice shall be punished if he certifies otherwise than in conformity of this section or relevant rules.

*Clause 93.* — This is a new clause which seeks to provide that in case of change in number of shares held by promoters and top ten shareholders in a listed company, then such company shall file a return with the Registrar about such change.

*Clause 94.* — 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 number of members reside, if approved by special resolution. The clause provides for Central Government to have power to prescribe rules for the period for which the registers, returns, records etc. have to be kept. 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 or can also get copies thereof with payment of fee and if it is refused the company and every officer of the company shall be punishable with fine. The Central Government may by order direct inspection of documents and to have an extract or copy of such registers by any person.

*Clause 95.*— This clause corresponds to section 164 of the Companies Act, 1956 and seeks to provide that the registers, indices and copies of annual return shall be *prima facie* evidence of any matter.

*Clause 96.*— 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 of closure of financial years 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 within the city, town or village where the registered office of the company is situated. The clause defines the term 'National Holiday'. The Central Government may exempt any company from compliance of this clause subject to any conditions.

*Clause 97.*— 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 98.*— 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 99.*— 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 Tribunal, the company and every officer of the company who is in default shall be punishable with fine.

*Clause 100.*— 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 and shall call such meeting in case of company having share capital 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 may 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 101.*— 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 clear twenty-one days' notice to all members, legal representative of any deceased member or the assignee 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 102.*— 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 the businesses that shall be deemed to be special. In case of non-disclosure or insufficient disclosure in any statement made by promoter, director, manager or other key managerial personnel which results into any benefit for themselves or their relatives, shall have to be compensated. Penal provision has been provided for any default in compliance.

*Clause 103.*— 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, in case of a public company the quorum shall depend on number of members as on the date of a meeting. In case such number is not more than one thousand, then quorum shall

be five members personally present. If such number is more than one thousand but upto five thousand, then quorum shall be fifteen members personally present. If such number exceeds five thousand, then thirty members personally present shall be the quorum. In case of a private company, two members personally present 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 104.*— 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 105.*— 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. However, proxy shall not have the right to speak at a meeting and shall not be entitled to vote except on poll. The members of prescribed class of companies shall not be entitled to appoint proxy. A person appointed as proxy shall act on behalf of prescribed number of members not exceeding fifty and prescribed number of shares. The clause also provides for the manner of appointing proxy.

*Clause 106.*— This clause corresponds to sections 181, 182 and 183 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 107.*— This clause corresponds to sections 177 and 178 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 108.*— This is a new clause and it provides that a member in the prescribed class of companies may exercise his right to vote by electronic means.

*Clause 109.*— This clause corresponds to sections 179, 180, 184 and 185 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 specified 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 scrutinizer 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 110.*— 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 111.*— 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. If default is made the company and every officer of the company shall be punishable with fine.

*Clause 112.*— 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 113.*— 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 including a holder of debentures 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 114.*— 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 115.*— 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 holding not less than one per cent. of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid-up in such manner as may be prescribed.

*Clause 116.*— 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 117.*— This clause corresponds to section 192 of the Companies Act, 1956 and seeks to provide that a copy of every resolution and an agreement in respect of matters specified therein together with an explanatory statement shall be filed with the Registrar within thirty days of its passing. The Registrar shall register the same and in case of any default, a company and every officer who is in default including the liquidator shall be liable for punishment.

*Clause 118.*— 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 shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. 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.

The clause also provides penalty for the company as well as the person who is found guilty of tampering with the minutes of the meeting.

*Clause 119.* — 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 subject to such restrictions as the company may impose. 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 Tribunal 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 120.* — This is a new clause which seeks to provide that any document, record, register or minute, etc., required to be kept or allowed to be inspected or copies given may be kept or inspected or copies given in the electronic form in the prescribed manner.

*Clause 121.*— 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. The clause also provide penalty if company fails to file the report under this clause before the expiry of the period specified under clause 403.

*Clause 122.*— This new clause seeks to provide that the provisions of some sections of Chapter VII *i.e.* Management and Administration, shall be applicable to One Person Company to the extent and the manner as provided under the clause.

*Clause 123.* — 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 and no dividend shall be declared or paid by company from its reserves other than free reserves. However, before the declaration of any dividend certain percentage of profit may be transferred to the reserves of the company. In case of inadequacy of profits or absence of profit in any financial year subject to dividend can be declared out of accumulated profits transferred

to reserves such rules as may be made by the Central Government in this behalf. The clause provides that the depreciation shall be provided in accordance with Schedule II to the Act. 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 may 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. Capitalization of profits for issuing bonus shares is not prohibited.

*Clause 124.* — 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 a Unpaid Dividend Account to be opened by the company in a scheduled bank. The company shall prepare a statement of names and unpaid dividend and place on the website of the company and also on any other website approved by Central Government in the prescribed manner. 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 along with interest accrued thereon 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 administering the Fund. The shares in respect of which unpaid or unclaimed dividend has been transferred shall be transferred in the name of investor education and protection fund. Any claimant of shares so transferred shall be entitled to claim them in accordance with prescribed procedure. If company fails to comply with the provisions of this clause the company and every officer of the company who is in default shall be punishable with fine.

*Clause 125.*— 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 credited with amounts specified in the clause. 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, distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses due to wrong actions by any person in accordance with the Court order, reimbursement of legal expenses incurred in pursuing class action. The shareholders shall be entitled to get refund of unclaimed and unpaid dividend from the fund in accordance with the rules. To administer the fund, the Central Government shall constitute an authority consisting of Chairperson and maximum of seven members. The manner of

administration of the fund, appointment of Chairperson, members and chief executive officer, shall be as prescribed under rules. The Accounts of the Fund would be audited by Comptroller and Auditor General of India. 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 given by the Comptroller and Auditor General of India to be laid before each House of Parliament by the Central Government.

*Clause 126.* — 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 127.*— 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 and with fine and the company shall be liable to pay interest of eighteen per cent. per annum thereon.

*Clause 128.*— 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 and financial statements annually 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. The inspection of books of accounts of subsidiaries companies can be done only by any person duly authorised by the board. 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. The clause also provides penalty for the Managing director, Whole time director, Chief finance officer or any other person charged by board with a duty to comply with the provisions and if he does not comply with.

*Clause 129.*— 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 companies in the form as may be provided for different class or classes in Schedule III and shall comply with accounting standards. Insurance companies, banking company, companies engaged in generation / supply of electricity or any other class of companies shall make financial statements in the form as has been specified in or under the Act governing such companies. 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 financial statement of the Company and 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. The clause also provide the penalty where company contravenes the provision of this section.

*Clause 130.* – This is a new clause which seeks to provide for the re-opening of books of accounts and recasting its financial statements on an order by the competent court or Tribunal if it was found that earlier accounts were prepared in fraudulent manner or financial statements are not reliable due to mismanagement of affairs of the company.

*Clause 131.*—This is a new clause which allows the directors to prepare revised financial statement or a revised Board's report if it appears to them that the company's financial statement or the Board's Report did not comply with the requirement of clause 129 or clause 134 after obtaining approval of the Tribunal. Tribunal shall take into account the representations if any, of the Central Government and of the Income Tax Department. Such revised financial statement or report shall not be prepared or filed more than once in financial year. Further, where copies of financial statement or report has been sent out to members or delivered to registrar or laid before general meeting, the revisions must be confined to specified limits provided in the Clause. Such revised financial statement or report shall be subject to rules prepared by Central Government.

*Clause 132.*— This clause corresponds to section 210A of the Companies Act, 1956 and seeks to provide that the Central Government may by notification constitute the National Financial Reporting Authority to provide for matters relating to accounting and auditing standards. It shall perform the functions as specified under the clause including monitoring the compliance and overseeing the quality of service of professionals associated with ensuring the compliance with such standards. The authority shall have power to investigate the matters of misconduct committed by any member of Institute of Chartered Accountants of India, Institute of Cost and Work Accountants of India

or Institute of Company Secretaries of India or any other prescribed profession. The clause further provides for the members, their qualification, terms and conditions of appointment, who shall constitute the Authority. The clause also provides maintenance of books of accounts and other books in relation of its accounts in the manner prescribed by the Central Government in consultation with Comptroller and Auditor General of India.

*Clause 133.*— 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 National Financial Reporting Authority, prescribe the accounting standards as recommended by the Institute of Chartered Accountants of India for adoption by companies.

*Clause 134.*—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 attached 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's report. The clause also provides for penal provisions for the company and every officer of the company in case of any contravention.

*Clause 135.*—This new clause seeks to provide that every company having specified networth or turnover or net profit during any financial year shall constitute the Corporate Social Responsibility Committee of the Board. The composition of the Committee shall be included in the Board's Report. The Committee shall formulate policy including the activities specified in Schedule VII. The Board shall disclose the content of policy in its report and place on website, if any of the company. The clause further provides that the Board shall endeavour to ensure that atleast two per cent of average net profits of the company made during three immediately preceding financial years shall be spent on such policy every year. If the company fails to spend such amount the Board shall give in its report the reasons for not spending.

*Clause 136.*— This clause corresponds to section 219 of the Companies Act, 1956 and seeks to provide that a copy of financial statement including consolidated financial statement, if any, auditor's report along with annexure/ attachments shall be sent to every member,

every trustee for the debenture holder, and all other persons who are so entitled twenty one days before the date of general meeting. A specific manner of circulation may be prescribed by the Central Government. Listed company shall place its financial statement including consolidated financial statement on its website. Every company having subsidiary company shall place separate audited accounts of each of its subsidiary on the website. 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. This clause also provided for penal provisions in case of any default.

*Clause 137.* — This clause corresponds to section 220 of the Companies Act, 1956 and seeks to provide that copies of financial statement including consolidated financial statement, if any, 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. This clause further provides that in case the accounts are not adopted at annual general meeting or in adjourned meeting, the un-adopted accounts shall be filed with the Registrar and the Registrar shall take them in his records as provisional till the final accounts are filed. The clause further provides penalty for company and Managing director and Chief Finance Officer of the company or any director in a company fails to comply with the provision of this clause.

*Clause 138.* — This is a new clause and seeks to provide that prescribed Companies shall be required to conduct internal audit of functions and activities of the company by internal auditor appointed by the company. Manner of conducting internal audit shall be prescribed by the Central Government.

*Clause 139.* — 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 sixth annual general meeting. The manner and procedure of selection committee shall be prescribed by the Central Government. A notice of appointment should be filed with the Registrar. The clause provides for the provisions for rotation of auditors. The Central Government may prescribe the manner in which the companies shall rotate their auditors. The Comptroller and Auditor General of India appoints auditor of Government Companies. First auditor of a company, other than a Government company is appointed by Board within 30 days of registration and in case of failure to appoint, the members at a general meeting shall appoint. In case of a Government

Company or a Company owned or controlled by Government Comptroller and Auditor General of India shall appoint auditor. In case of their failure, the Board shall appoint first auditor and in case of failure members of company in general meeting will appoint.

*Clause 140.*— This clause corresponds to Clause 225 of the Companies Act, the Clause seeks to provide for the provisions for removal of auditor before the expiry of his terms. It provides that the auditor concerned shall be given a reasonable opportunity of being heard. The Clause provides for the provisions for resignation by auditor. It further provides that special notice shall be required for appointing a person as auditor other than a retiring auditor. The tribunal is empowered to change the auditor of a Company in case of in any fraudulent activities by auditor. An Auditor, Company Secretary in practice, or Cost Accountant in practice shall immediately report to the Central Government, if they have reason to believe in pursuance of their duties that an offence involving fraud is being committed against the company.

*Clause 141.* — This clause corresponds to sections 224(1B) and 226 of the Companies Act, 1956 and seeks to provide for appointment of only Chartered Accountant in practice as auditors. The firm whereof majority of partners practicing in India are qualified for appointment, may be appointed by its firm name to be auditor of a company. The clause further provides for the persons who are not eligible for appointment as an auditor of a company. The clause further provides that the members of the company may restrict the number of companies beyond which the auditor or audit firm shall not be auditor. An auditor who is disqualified subsequent to his appointment, has to vacate office.

*Clause 142.*— 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 143.*— 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 including the particular matters specified in the clause. 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, about the company having adequate internal financial controls system in place and other specified matters . 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. This clause further provides that the Central Government may in respect of specified class of companies direct to include a statement on specified matters in the auditor's report. The clause also provides penalty for the auditor, cost accountant or company secretary in practice for non-compliance.

*Clause 144.* — 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, directly or indirectly to the company or its holding company, subsidiary company or associate company.

*Clause 145.* — 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 146.*— 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 147.* — 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 139 to 146. In case an auditor contravenes the provisions with the intention to deceive the company or its shareholders or creditors or any other person concerned, he shall be punishable with imprisonment and with fine. 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. In case the audit is being conducted by an audit firm and the partners of audit firm acted in a fraudulent manner, then partners shall be punishable in the manner as provided in section 447 relating to fraud.

*Clause 148.* — This clause corresponds to section 233B of the Companies Act, 1956 and seeks to empower the Central Government after consultation with regulatory body to direct class of companies engaged in production of such goods or providing such services as may

be prescribed 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 auditor conducting the cost audit shall comply with the cost auditing standards. 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. The clause further defines cost auditing standards. The clause also provides penalty for the company, every officer of the company, cost auditor of the company who is in default, if any default is made in compliance with the provision.

*Clause 149.*— 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. Prescribed class or classes of companies shall have atleast one women director. The clause also seeks to provide that every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty –two days in the previous calendar year. The clause further provides the minimum number of independent directors in the prescribed companies. The clause also seeks to define the terms “independent director”. The company and independent director shall abide by the provisions specified in Schedule IV. The clause 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 as approved by the members. The clause further provides for the provisions of rotation of independent director. Further the provision of retirement of directors by rotation shall not be applicable to appointment of independent directors. The clause also provides that an independent director or a Non-executive director who is not a promoter or key managerial personnel shall be held liable for acts of omission or commission by a company which has occurred by his knowledge.

*Clause 150.*— This is a new clause which seeks to provide the manner and selection of independent directors and maintenance of databank by any body, institute or association as may be notified by the Central Government. The responsibility of exercising due diligence before selecting a person from the databank shall lie with the company making such appointment. This clause also provide for prescription power to Central Government for manner and procedure of selection of independent directors.

*Clause 151.*— This clause corresponds to the proviso to sub-section (1) of section 252 of the Companies Act, 1956. The clause seeks to provide for appointment of a small shareholder's director in every listed company.

*Clause 152.* — 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 Director Identification Number 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 explanatory statement for his appointment shall provide that in the opinion of the Board, 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 153.* — 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 154.*— 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 155.*— 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 156.*— 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 157.*— 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. The clause further provides penal provision for company if company fails to furnish Director Identification Number under sub-clause (1).

*Clause 158.*— 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 in case of any reference of any director.

*Clause 159.*— 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 152, 155 and 156 shall be punishable with imprisonment or fine and where the contravention is a continuing one, with a further fine.

*Clause 160.*— 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 161.*— 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 162.*— 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 163.* — 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 164.*— 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 165.*— 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 twenty companies at the same time. Further the clause provides for the maximum number of public companies and private companies in which a person can be appointed as director. The members may restrict the number of companies in which a director may act as director. The clause further provides penal provision for the person who accepts an appointment as director in contravention of sub-clause (1).

*Clause 166.*— 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. The clause further provides penalty for director of a company if he contravenes provisions of this clause.

*Clause 167.*— 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 imprisonment or 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 168.* — 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 take note of the same and the company shall intimate the Registrar and place such resignation in the subsequent general meeting of the company. The director shall also forward copy of resignation with reasons to Registrar. The clause further provides for the date on which the notice of resignation shall take effect. The director shall be liable for the offences occurred during his tenure.

*Clause 169.*— This clause corresponds to section 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 242). Where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation, then the provisions of this section shall not apply. Special notice by specified number of members 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 reappointed as a director by the Board of Directors.

*Clause 170.* — 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, subsidiary of company's holding company 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 171.*—This clause corresponds to section 304 of the Companies Act, 1956 and also seeks to provide the manner in which register kept under clause 170 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 172.*— 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, and every officer who is in default shall be punishable with fine.

*Clause 173.*— 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 audio visual 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 failing which officers shall be liable for penalty. 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 174.*— 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 audio visual 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 175.*— 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 registered

with the company 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 176.* — 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 177.* — This clause contains some provisions of section 292A of the Companies Act, 1956 and seeks to provide the requirement and manner of constituting audit committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members must have ability to read and understand, financial statement. The clause further provides the functions of audit committee. The clause also provides for the establishment of vigil mechanism in every listed and prescribed class of companies. The establishment of such mechanism shall be disclosed at the website of the company and in the Board's report of the company.

*Clause 178.* — This is a new clause and seeks to provide requirement and manner of constituting nomination and Remuneration Committee and Stakeholders Relationship Committees of the Board. Nomination and Remuneration Committee shall consist of three or more non-executive directors as appointed by the Board out of which not less than one half shall be an independent director. Such Nomination and Remuneration Committee shall determine the company's policies relating to the nomination and evaluation of every director's performance. It shall also determine company's policies relating to remuneration of the directors, key managerial personnel and other employees. The clause further provides that the Board having a combined membership of the shareholders, debenture holders, deposit 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 securities holders. The clause further provides punishment for company and every officer of the company in case of contravention of provisions of clause 173 and this clause.

*Clause 179.* — 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 180.* — 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 181.* — This clause corresponds to section 293(1)(e) of the Companies Act, 1956. It seeks to provide that the Board of Directors of the company may contribute to *bona fide* charitable and other funds. It requires prior permission of company in general meeting if such contribution exceeds certain limits specified in the clause.

*Clause 182.*— 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. This clause further provides penal provision in case company contravenes the provision.

*Clause 183.* — This clause corresponds to section 293B of the Companies Act, 1956. It seeks to provide any person or authority authorized by Board of Directors or by general meeting may contribute such amount as it thinks fit to National Defence Fund for the purpose of national defence. Every company shall disclose the amount so contributed in its profits and loss account.

*Clause 184.*— 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. This clause further provides for penal provision for director of the company in case of any contravention.

*Clause 185.*— 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. The clause also defines the expression 'to any other person in whom director is interested'. The clause also provides for penal provision for the company and for the director to whom the loans is advanced in case of contravention of sub-clause (1).

*Clause 186.* — 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 and 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. For the purpose of this section, the Central Government may prescribe rules. This clause also provides for punishment for the company and every officer of the company in case of any contravention.

*Clause 187.* — 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 provides certain exemptions to these provisions. 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. The clause also provides for punishment for company and every officer in default in case of any contravention.

*Clause 188.*— 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 provides that the member who is related party to the any contract or arrangement shall not vote on the special resolution for approval of such contract or arrangement. It also provides 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. The clause also provides penalty for director or other employee of a company who had entered into or authorized the contract or agreement in violation of the provisions in case of listed company or unlisted company.

*Clause 189.*— 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 also provides that such registers shall be placed before next board meeting, after entering the particulars and signed by all the directors present at the meeting. 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. The clause further provides penalty for the directors who fails to comply with the provisions.

*Clause 190.*— 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 wholetime 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. The clause also provides penalty for company and every officer of the company, if default is made in complying with the provisions of this clause.

*Clause 191.*— This clause corresponds to sections 319 and 320 of the Companies Act, 1956 and seeks to provide the circumstances and manner in 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. The clause further provides penalty for director of a company who receives payment at any amount in contravention of sub-clause (1).

*Clause 192.*— 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 contra-vention of the provisions is voidable at the instance of the company.

*Clause 193.*— 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 194.*— 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 has also provided for punishment for contravention of the requirement this clause and 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 195.*— 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 non-public price-sensitive information to any person. This clause further provided for penal provision in case of contravention.

*Clause 196.*— 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 provides the disqualification in respect of appointment of managing director, whole-time director or manager. It also seeks to provide the manner in which a managing director, whole-time director or manager shall be appointed.

*Clause 197.*— This clause corresponds to sections 198 and 309 of the Companies Act, 1956 seeks to provide that remuneration to managerial personnel shall not exceed eleven per cent. of the net profits of the company computed in the manner as provided in clause 198. The clause further provides limit of remuneration payable to one managing director, whole-time director or manager. The limit of remuneration to the directors who are neither managing directors nor whole-time directors is provided. Further, the clause provides manner of remuneration in case of no profits or inadequate profits. Director may receive remuneration by way of fee for attending meetings of the Board or Committees thereof, which shall not exceed the prescribed amount. 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. 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. Every listed company to disclose in its Board's report, the ratio of remuneration of each director to median employee's remuneration. 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. The clause further provides penalty if any person contravenes the provisions of this clause.

*Clause 198.*— This clause corresponds to section 349 of the Companies Act, 1956 and seeks to provide manner of calculation of net profits of company.

*Clause 199.* — This clause corresponds to section 637A of the Companies Act, 1956 and seeks to provide power of Central Government or Tribunal to accord approval, sanction, consent, confirmation in relation to any matter subject to conditions and to prescribe fees on applications.

*Clause 200.* — This clause corresponds to section 637AA of the Companies Act, 1956 and seeks to provide the power of the Central Government or company to fix limit with regard to remuneration within the limits specified in this Act.

*Clause 201.* — This clause corresponds to section 640B of the Companies Act, 1956 and seeks to provide forms of and procedure in relation to certain applications made to Central Government.

*Clause 202.*— 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 203.*— This is a new clause and seeks to provide that every company belong-ing to such class or description of companies, as prescribed by the Central Government, shall have managing director, or chief executive officer or manager and in their absence, a whole time director and a Company Secretary, as 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 except in a subsidiary at the same time except that of a director if company permits him in this regard. This clause further provides for punishment in case of contravention.

*Clause 204.* — This is a new clause and seeks to provide that every listed company and companies belonging to prescribed class or classes of companies shall annex a secretarial audit report given by a Company Secretary in practice with its Board's report. The form of such report shall be prescribed by the Central Government. The Board in its report shall explain any qualifications or other remarks made by the Company Secretary in practice. The clause further provides penalty for the company or any officer of the company or the Company Secretary in practice.

*Clause 205.* — This is a new clause and seeks to provide the functions of company secretary appointed by the company. The functions are inclusive in nature and *inter alia* provides for ensuring compliance with the applicable secretarial standards. The clause further provides that specified functions shall not affect the duties and functions of Board of Directors, chairperson, managing director or whole-time director.

*Clause 206.* — 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 account of the company, etc. The company and its officers shall furnish the information or explanation in documents within the specific 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. The Central Government may authorize any authority to inspect books of account of specified companies. Stringent punishment for fraud has been proposed. The clause further provides penalty for the company and every officer of the company who is in default.

*Clause 207.* — 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 of the company 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 discovery and production of books of account and other documents, summoning, examining on oath, inspection of books and other documents, etc. If any director wilfully disobeys the directions issued by the Registrar, punishment with imprisonment is provided for. The clause further provides penalty for the director or officer of the company who disobeys the directions issued by the Registrar.

*Clause 208.* — 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 account 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 209.* — This clause corresponds to section 234A of the Companies Act, 1956 and seeks to provide for search and 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 210.* — 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 211.* — This is a new clause and seeks to provide that the Central Government shall constitute Serious Fraud Investigation Office (SFIO). The SFIO will be headed by a director and will consist of experts from various disciplines. The Central Government shall also appoint a Director in the SFIO not below the rank of Joint Secretary and may also appoint such experts and other officers as it considers necessary for efficient discharge of functions.

*Clause 212.* — This is a new clause and seeks to provide statutory status to SFIO. It shall investigate into such cases of companies involved in frauds as may be assigned to it by Central Government. It shall have adequate powers to investigate cases referred to it. The clause further provides that the investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer under the Code of Criminal Procedure, 1973. It is also proposed that SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. It is also being proposed that such offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions as provided in this clause.

*Clause 213.* — 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. Stringent punishment for fraud has been proposed.

*Clause 214.* — 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 an amount not exceeding twenty-five thousand as security towards the cost and expenses of investigation. It provides that on completion of investigation, the cost of investigation

and security amount would be refundable if the investigation results into prosecution.

*Clause 215.* — 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 216.* — 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 217.* — This clause corresponds to section 240 of the Companies Act, 1956 and seeks to provide that it shall be the duty of all officer 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. Further the inspector shall have the powers of civil court in respect of discovery and production of documents, summoning and enforcing the attendance of persons, examining of persons on oath, inspection of books and register. In case of failure to furnish information or to appear for examination on oath, the offence is punishable with imprisonment and fine. In case of default in meeting the requirements of this section, the company and officer shall be punishable with fine and imprisonment. Further in case of conviction under this section, a director or officer shall be deemed to have vacated his office from the date of conviction and shall also be disqualified from holding office in any company. Also a court in India may also issue a letter of request to a court in a country outside India to record a statement of person who is supposed to be acquainted with the case and also to direct him to produce a document or thing in his possession pertaining to the case.

*Clause 218.* — This is a new clause and seeks to provide protection to the employees of the company during investigation. If a company during the pendency of any investigation into the affairs of the company or during the pendency of any proceeding against the company, proposes to discharge or suspend, terminate, change the terms of employment, dismiss or reduce in rank any employee, it shall send by post to the Tribunal previous intimation in writing of the action proposed to be taken against the concerned employee. If the Tribunal has any objection to the proposed action then it may give notice to the company. If the company does not receive within thirty days any notice of objection from

the company, it may proceed to take against the employee the action proposed.

*Clause 219.* — 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 220.* — 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 221.* — 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 such number of members as prescribed under sub-section (1) of section 241 or a creditor having one lakh amount outstanding against the company or any other person having reasonable ground to believe 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 that such transfer, removal or disposal shall not take place for a maximum period of three years subject to such conditions as it may deem fit.

*Clause 222.* — 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 223.*— 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. A copy of the report may be obtained by making application in this regard to the Central Government. Such report shall be authenticated by the seal of the company or by public officer having custody of the report in accordance with Evidence

Act. Further, such a report can be submitted as evidence in any legal proceedings.

*Clause 224 .—* 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. Where a investigation report states that a fraud has taken place and any director, key managerial personnel or officer has taken undue advantage or benefit, then the Central Government may file an application before Tribunal with regard to disgorgement and such director, key managerial personnel or officer may be held personally liable without any limitation of liability.

*Clause 225 .—* 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 226.—* 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 227.—* 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 Registrar or to the Inspector any information as to the affairs of any of their customers, other than such company or body corporate.

*Clause 228.—* 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 229.—* This clause is a new clause which seeks to provide punishment for furnishing false statements, mutilation or destruction,

concealment, tampering or unauthorized removal of documents during the course of inspection or investigation.

*Clause 230.*— 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. The accounting treatment proposed in the scheme of compromise or arrangement should not be in violation of clause 133. 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 231.* — 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 230. 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 232.*— 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. The accounting treatment proposed in the scheme of compromise or arrangement should not be in violation of clause 133. Every company shall file a certified copy of the order within thirty days with the Registrar for registration. Further the company shall also file a statement in prescribed form and time every year duly certified by a chartered accountant or cost accountant or a

company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not. The clause further provides penalty for transferor or transferee company in case transferor or transferee company contravenes provisions of the clause.

*Clause 233.* — 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 or prescribed class or class of companies by giving a notice of the proposed scheme inviting comments or objections or suggestions by both the transferor and the transferee company and Registrar, Official Liquidator or persons affected by the scheme. The scheme is to be approved by the respective members at a general meeting holding ninety per cent of total number of shares and also by nine-tenth in value of the creditors of respective companies. Both the transferor and transferee company has to file declaration of solvency. Transferee company shall file a copy of the approved scheme with the Central Government. If the Central Government is of the opinion that such a scheme is not in public interest or in interest of the creditors, it may file an application before the Tribunal stating its objections and requesting it to consider the scheme under clause 232. On registration of the scheme, the transferor company shall be deemed to be dissolved. This clause also provides for effects of registration of the scheme with the Registrar. The Central Government may make rules for merger or amalgamation of companies.

*Clause 234.*— 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. The Central Government may, in consultation with Reserve Bank make rules for the purpose of merger or amalgamation provided under this clause. This clause further provides that foreign company, subject to the prior approval of Reserve Bank, 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 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 235.* — 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 236.*—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, con-version 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 237.*—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 238.*—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 239.*—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 240.*—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 241.*—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 242.*—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 mismanagement. 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. The company shall be punishable with fine.

*Clause 243.*—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. Any of the above person who acts in contravention of this clause shall be punishable with imprisonment or fine or with both.

*Clause 244.*—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 mismanagement. The clause further provides that the Tribunal may waive all or any of the requirements specified therein.

*Clause 245.*—This is a new clause and seeks to provide that in case of company having a share capital not less than one hundred members of the company or not less than such present as may be prescribed of

the total number of its members, whichever is less, or any member or members holding not less than such present as may be prescribed of the issued share capital of the company, and in the case of a company not having a share capital, not less than one-fifth of the total number of its members or may file an application before the Tribunal 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 depositors to restrain the company from oppression or mismanagement. The order passed by the Tribunal shall be binding on the company and all its members, depositors, auditor including audit firm or expert or consultant or advisor or any other person associated with the company. Stringent imprisonment and fine shall be imposed on the company in case of default. An application for class action may also be filed by a person or association of persons representing the affected persons.

*Clause 246.*—This clause seeks to provide that clauses 337 to 341 (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 mismanagement.

*Clause 247.*—This is a new clause and seeks to provide that valuation in respect of any property, stocks, shares, debentures, securities, goodwill or any other assets or net worth of a company or its assets or liabilities shall be valued by a person having such qualification and experience and registered as a valuer, in accordance with such rules as may be prescribed. Such valuer shall be appointed by the audit Committee or in its absence by the Board of Directors of the company. The valuer shall make an impartial valuation and exercise due diligence in making valuation. Stringent fine and punishment for fraud by valuer has been provided for.

*Clause 248.*—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 of companies. The clause further provides that a company may by a special resolution or with the consent of seventy-five per cent. members in terms of paid up share capital may also file an application to the Registrar for removing the name of the company from the register of companies. 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 of companies, 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 249.*—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 248 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 250.*—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 251.*—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 of companies with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons. Stringent punishment for fraud has been provided for. Further, the Registrar may also recommend prosecution against the persons responsible for the filing of such applications.

*Clause 252.*—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 248 can file an appeal to the Tribunal within 3 years for restoration of the name of the company in the register of companies. 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 Incorporation. The clause further provides that where the name of the company is struck off from the register of companies, 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 of companies before the expiry of twenty years.

*Clause 253.*—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. The Central Government or State Government or Reserve Bank or public financial institution or State level financial institution or scheduled Bank, if it has sufficient reasons to believe may also make a reference under this clause for determination of measures with respect to 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 a period of sixty days. If the Tribunal is satisfied that the company is a sick company, it may make order whether it is practicable for the company to make repayment of debts within a reasonable time and if it makes such order it shall give such time to the company as it may deem fit to make repayment of debt.

*Clause 254.*—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 provides for certain situations under which such reference shall abate or shall not be made under this clause. Further it 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 255.*—This is a new clause and seeks to provide that in computing the period of limitation specified for any suit or application for which an application has been made to the Tribunal under sub-clause (1) of clause 253, the period during which the stay order as provided under sub-clause (3) of clause 253, was applicable, shall be excluded.

*Clause 256.*—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 257.*—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 258.*—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 259.*—This is a new clause and seeks to provide that the interim administrator or company administrator shall be appointed by the Tribunal from a databank maintained by Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants, or other professionals. 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 suitable experts with the approval of the Tribunal.

*Clause 260.*— 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 261.*—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 262.*—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. The scheme shall be examined by the Tribunal and it may also cause the draft scheme to be published in newspapers, etc., for objections and suggestions, if any. The Tribunal may also make necessary modifications in the scheme in the light of suggestions and objections. On the receipt of the scheme, the Tribunal after satisfying that the scheme had been validly approved pass an order sanctioning such scheme. The Tribunal may review any sanctioned scheme and may make such modifications in such scheme as it may deem fit or it may also direct the company administrator to prepare a fresh 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 263.*—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, employees, creditors and guarantors of the said companies.

*Clause 264.*—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 authorize 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. Further if the secured creditors representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the sick company have taken any measures to recover their secured debt, such application shall abate.

*Clause 265.*—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 within fifteen days and the Tribunal shall order for the winding up of the sick company.

*Clause 266.*—This clause corresponds to section 424K of the Companies Act, 1956 and seeks to provides 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 non-feasance 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 267.*—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 makes a false statement or gives false evidence or attempts to tamper with the records of reference or appeal filed under this Act.

*Clause 268.*—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 is empowered.

*Clause 269.*—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 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 270.*—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 271.* — This clause corresponds to sections 433 and 434 of the Companies Act, 1956. The clause 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 272.*—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, 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 273.*—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 provides that when a petition is presented on just and equitable ground, the Tribunal may refuse it if it is of opinion that any other remedy is available.

*Clause 274.*—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 audited books of account of the company. The clause further provides that the complaint may be filed before Special Court by Registrar, Provisional Liquidator, Company Liquidator or any authorised person.

*Clause 275.*—This clause corresponds to sections 448,449 and 450 of the Companies Act, 1956 and seeks to provide for the appointment of official liquidator or the liquidator for the purpose of winding up of a company from a panel of professionals maintained by the Central Government. Such professional must be having at least 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 276.*—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 on the grounds of misconduct, fraud or misfeasance. 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 authorizes 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 277.*—This clause corresponds to sections 444 and 445 of the Companies Act, 1956 and seeks to provide for the order for the tribunal for the appointment of provisional liquidator or for winding up of a company intimation to be sent to the Company Liquidator and the registrar within a period of seven days from the date of passing of such order. The registrar on receipt of orders shall 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 278.* — 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 contributories of the company.

*Clause 279.* — 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. However, this opinion shall not apply to any proceedings pending in appeal before the Supreme Court or a High Court.

*Clause 280.* — This clause seeks to provide the jurisdiction of Tribunal to entertain or dispose of any suit or proceedings, any claim by or against the company and also to entertain or dispose of any question of law or fact or any other matter arising out of or in relation to winding up of the Company.

*Clause 281.* — 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, liabilities, debts, etc., 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 maximizing the values of the assets of the company. The clause also entitles the creditor or a contributory of the company to inspect the report submitted and to take copies thereof or extract therefrom on payment of the fee.

*Clause 282.* — 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 after hearing the Company Liquidator, Creditors or Contributories, to order for sale of assets of the company or appoint 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 283.* — 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 to be 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 affects 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 filling of an application by the company liquidator seeking directions of the Tribunal with regard to surrender or transfer any money, property, books and papers by any trustee, receiver, banker, agent, officer of other employee to the company in liquidation.

*Clause 284.* — 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 285.* — 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 286.* — This is a new clause and seeks to put obligations on directors and managers of limited company whose liability is unlimited and seeks to provide that such a director or manager, shall, in addition to his liability to contribute as an ordinary member, be liable to make further contribution as if he were at the commencements of winding up a member of an unlimited company.

*Clause 287.* — This clause corresponds to section 284 and 285 of the Companies Act, 1956 and seeks to provide for the constitution of advisory committee to advice 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 not more than twelve, being creditors or contributories or 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 advisory committee. It finally seeks to provide that the meeting of advisory committee shall be chaired by the Company Liquidator.

*Clause 288.* — 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 289.* — 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 also provides that before making an order, the Tribunal may require the Company Liquidator to furnish a report to 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 290.* — 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 291.* — 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 292.* — 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 advisory committee. 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 advisory committee. The clause further seeks to empower the Company Liquidator to summon 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 293.* — 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 294.* — 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 Government in case of a Government Company.

*Clause 295.* — This clause corresponds to section 469 of the Companies Act, 1956 and seeks to provide that the contributory shall 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 296.*— 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 297.*— This clause corresponds to section 475 of the Companies Act, 1956 and seeks to empower the Tribunal to adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled.

*Clause 298.*— This clause corresponds to section 476 of the Companies Act, 1956 and seeks to empower the Tribunal to 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 299.*— This clause corresponds to section 477 of the Companies Act, 1956 and seeks to empower the Tribunal to summon and examine 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 and the Tribunal may examine the person on oath either by word of mouth or on written investigation or on an affidavit as may in the first case, reduce his answers to writing and enquire him to sign them. 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 the 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 300.*— This clause corresponds to section 478 of the Companies Act, 1956 and seeks to empower the Tribunal to 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 affairs of the company. The person shall be examined on oath and shall answer all the questions as put by the Tribunal. It provides that the Company Liquidator shall take part in the examination and undertake such legal assistance as may be sanctioned by the Tribunal.

*Clause 301.*— 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 detain 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 302.*— 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 303.*— 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 304.*— 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 305.*— 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 306.*— 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 company may not be able to pay for its debts full from the proceeds of assets sold in voluntary winding up and pass the resolution that company is wound up by the tribunal in accordance with the provision of part 1 of the chapter. The resolution so passed at a creditors meeting is required to be filed with the Registrar within ten days of the passing thereof. This clause seeks to provide punishment with fine or imprisonment or with both.

*Clause 307.*— 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. Company and every officer of the company who is in default shall be punishable with fine.

*Clause 308.*— 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 309.*— 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 310.*— 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 within 7 days of the date of appointment 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 311.*— 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 occurring as a result of death, resignation, removal or otherwise.

*Clause 312.*— 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 alongwith the name and particulars of the Company Liquidator. In case of contravention company and every officer of the company who is in default shall be punishable with fine.

*Clause 313.*— 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 314.*— 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, prepare quarterly statement of accounts, 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. This clause seeks to provide for punishment with fine on the part of Company Liquidator in case of failure to comply with the provisions.

*Clause 315.*— This clause corresponds to section 503 of the Companies Act, 1956 and seeks to provide for appointment of committee by the company in general meeting or by the creditors as the case may be to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.

*Clause 316.*— 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 317.*— 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 318.*— 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 alongwith the books and papers of the company relating to the winding up 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. This clause seeks to provide punishment with fine on the part of Company Liquidator, if, he fails to comply with the provisions.

*Clause 319.*—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 320.*—This clause corresponds to section 511 of the Companies Act, 1956 and seeks to provide for distribution of property of the company

on its winding up in satisfaction of its liabilities *pari passu* unless the articles of the company otherwise provides.

*Clause 321.*—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 322.*—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 323.*—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 324.*—This clause corresponds to section 528 of the Companies Act, 1956 and seeks to provide to admit all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained otherwise shall be admissible as proof against the company, subject to the provision of clause 325.

*Clause 325.*—This clause corresponds to section 529 of the Companies Act, 1956 and seeks to provide for application of insolvency rules 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 326.*—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 327.*—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 subject to the condition that the amount payable shall not exceed such amount as may be notified. The debts mentioned in this clause shall be paid in full forthwith. If the goods of the company being distrained by any person, such debts shall be given first priority.

*Clause 328.*—This clause corresponds to section 531 of the Companies Act, 1956 and seeks to empower the Tribunal, after satisfying itself, to 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 fraudulent preference and restore the position as if the company had not given that preference.

*Clause 329.*—This clause corresponds to section 531A of the Companies Act, 1956 and seeks to empower the Tribunal to 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 330.*—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 shall be void.

*Clause 331.*—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 332.*—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 333.*—This clause corresponds to section 535 of the Companies Act, 1956 and seeks to provide to save an insolvent company's assets from further losses and 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 334.*—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 335.*—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 impost or any dues payable to the Government.

*Clause 336.*—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 delivering books and papers of the company, not giving true disclosures, being 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 and with fine.

*Clause 337.*—This clause corresponds to section 540 of the Companies Act, 1956 and seeks to provide that if any person who 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 and with fine.

*Clause 338.*—This clause corresponds to section 541 of the Companies Act, 1956 and seeks to provide that a company is being wound up should keep proper books of account throughout the period of two years

immediately preceding the commencement of the winding up this clause further provided for the situation where it will be deemed as no proper books of account have kept.

*Clause 339*—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 and that shall be liable for option under clause 444.

*Clause 340*.—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 341*.—This clause corresponds to section 544 of the Companies Act, 1956 and seeks to confer power upon the Tribunal to extend the liability of partners or directors of the company under clause 339 relating to fraudulent conduct of business or under clause 340 relating to misfeasance or breach of trust.

*Clause 342*.—This clause corresponds to section 545 of the Companies Act, 1956 and seeks to empower the Tribunal to prosecute the delinquent officers and members of the company for being guilty of offence in relation to the company. The clause also provides for fine on the part of person who fails or neglect to give assistance.

*Clause 343*.—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, settling, collecting debts and paying out claims, etc., subject to the sanction of the Tribunal.

*Clause 344*.—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. In case of any contravention company and every officer of the company who is in default, Company Liquidator and every receiver or manager who permits noncompliance shall be punishable with fine.

*Clause 345*.—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 346.*—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 347.*—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. Any contravention of this clause by a person shall be punishable with imprisonment or fine or with both.

*Clause 348.*—This clause corresponds to section 551 of the Companies Act, 1956 and seeks to provide for furnishing of information or statement in such form containing such particulars as may be prescribe 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 be filed by the Company Liquidator. This clause further provide for punishment for Company Liquidator in case of contravention.

*Clause 349.*—This clause corresponds to section 552 of the Companies Act, 1956 and seeks to provide for making payments into the Public Accounts of India in the Reserve Bank of India by the Official Liquidator.

*Clause 350.*—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 351.*—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 sector banks.

*Clause 352.*—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 Registrar. This clause also seeks to provide that the Liquidator shall be given a receipt from the Reserve Bank of India for the money paid by him. This clause also seeks to provide that the Registrar may pass an order for the payment of required sum to the claimant out of the said account.

*Clause 353.*—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, or by the Registrar.

*Clause 354.*—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 355.*—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 356.*—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 the Company Liquidator such person fails so to do, he shall be punishable with fine.

*Clause 357.*—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 the 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 358.*—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 359.*—This is a new clause which seeks to empower the Central Government for appointment of as many Official Liquidators Joint Deputy or Assistant Official Liquidator 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 360.*—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 361.*—This is a new clause which seeks to provide for winding up of company through Summary procedure having assets of book value not exceeding one crore and in any other case, it obtains the consent of all the creditors whether secured or unsecured. This clause also seeks to empower the Central Government to appoint Official Liquidator as the Liquidator of the company, who shall submit a report to the Central Government indicating whether any fraud has been committed in promotion, formation or management of affairs of the company. It also seeks to provide that the Central Government if satisfied that fraud has been committed, may order for the investigation of the affairs of the company.

*Clause 362.*—This is a new clause which seeks to provide that the Official Liquidator shall dispose of all the assets whether movable or

immovable 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 363.*—This is a new clause which seeks to provide for settlement of claims in such manner as may be prescribe of creditors by the Official Liquidator within 30 days of his appoint.

*Clause 364.*—This is a new clause which seeks to provide that any creditor aggrieved by the decision of the Official Liquidator may apply to the Central Government 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. The clause further provides at any stage during settlement of claim Central Government may refer case to Tribunal.

*Clause 365.*—This is a new clause which seeks to provide for submission of final report to the Central Government if the reference made to Tribunal by the Official Liquidator when he is satisfied that the company can be finally wound up. The Central Government or as the case may be, 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 366.*—This clause corresponds to section 565 of the companies Act, 1956 and seeks to provide that any company, whether before or after the commencement of the Act, in pursuance of any Act of parliament, duly constituted according to law and consisting of seven or more members may at any time register under this Act as unlimited Company, company limited by share or as company limited by guarantee. The clause further provides that in computing any majority, regard shall be to the number of vote to which each member is entitled.

*Clause 367.*—This clause corresponds to section 574 of companies Act, 1956 and seeks to provide that on compliance of the requirements and payment of fee the registrar shall certify the company to be incorporate under this Act and in the case of Limited Companies that it is limited and thereupon the company shall be so incorporated.

*Clause 368.*—This clause corresponds to section 575 of companies Act, 1956 and seeks to provide that all the property movable or immovable belongs/vests to the company which is in pursuance of registration shall

after the registration pass to the company as incorporated under this Act for all estate and interest of the company therein.

*Clause 369.*—This clause corresponds to section 576 of the companies Act, 1956 and seeks to provide that all the rights or liabilities of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of the company before the registration shall not be affected by the registration.

*Clause 370.*—This clause corresponds to section 577 of the companies Act, 1956 and seeks to provide that all suits and other legal proceedings by or against the company shall be unaffected by the registration. The clause also provides that execution shall not issue against the property or member of the company on any decree or order obtained in any suit or proceeding, but if property of company is being insufficient winding up order may be obtained.

*Clause 371.*—This clause corresponds to 578 of the Companies Act, 1956 and seeks to provide that all the provision of any Act of Parliament or other constituting or regulating the company including a company limited by guarantee, the resolution declaring the amount of the guarantee shall be the conditions and regulations of the company, in the same manner, if the company had been formed under this Act. This clause further provides that all the provisions to apply to contributories and creditors in same manner as if the company is formed under this Act with some exceptions mention under the clauses. The clause further provides that the provision related to registration of Unlimited Company as a Limited Company, to increase in the nominal amount of share capital, power of limited company to determine portion of share capital that shall not be called up except in the event of winding up shall apply, notwithstanding to any provision contained in any Act of parliament or other Indian law or other instrument constituting or regulating the company. The clause further provides that company shall not alter any provision that required to be contained in memo-randum. The clause further provides that none of the provision shall derogate from any power of altering its constitution or regulations by company. This clause also provides the expression “instrument” includes deed of settlement, deed of partnership or Limited Liability Partnership.

*Clause 372.*—This clause corresponds to section 586 of the companies Act, 1956 and seeks to provide that staying and restraining of suits and other legal proceedings against a company at any time after making petition of winding up but before winding up order, shall, in case of registered company and where the application to stay is by a

creditor, extend to suits and other legal proceedings against any contributory of the company.

*Clause 373.*—This clause corresponds to section 587 of the companies Act, 1956 seeks to provide that where order for winding up has been made or provisional liquidator has been appointed for a company registered under this Act, no suits or other legal proceedings can be proceeded or commenced against company or any contributory, except by leave of tribunal with such terms as Tribunal may impose.

*Clause 374.*—This is a new clause. This clause seeks to provide that every company which is seeking registration under this part of the Bill shall have to meet certain obligations provided under this clause and also proposed to cover through rules.

*Clause 375.*—This clause corresponds to section 583 of Companies Act, 1956 and seeks to provide that every Unregistered Company may be wound up under this Act with such exceptions and some additions.

*Clause 376.*—This clause corresponds to section 584 and seeks to provide that a body corporate incorporated outside India may be wound up as an unregistered company if it ceases to carry on business in India. Whether the body corporate has been dissolved or otherwise ceased to exist as per the law under which it was incorporated.

*Clause 377.*—This clause corresponds to section 589 of the companies Act, 1956 and seeks to provide that the provision of this clause is in addition only to the provisions related to winding up of the company previously in this Act. The clause further provides the Tribunal or official Liquidator may exercise same power as exercised by them in respect of winding up of companies registered under this Act.

The clause also provides that a unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act only.

*Clause 378.*—This clause seeks to provide that nothing in this part shall affect the operation of any enactment or any partnership, limited liability partnership or society or cooperative society, association or company being wound up as a company or as an unregistered company under Companies Act, 1956, or any Act repealed by the Act.

*Clause 379.*—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 a foreign company is held by one or more citizens

of India such company shall comply with provisions as if it were a company incorporated in India.

*Clause 380.*—This clause corresponds to sections 592 and 593 of the Companies Act, 1956 and seeks to provide 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 381.*—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 in such forma and containing such particulars an including or having annexed or attached thereto such documents as may be prescribe 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 382.*—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 383.*—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 384.*—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 385.*—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 386.*— 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 387.*—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 388.*— 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 389.*— 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 390.*— 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 391.*— This clause corresponds to sections 606 and 607 of the Companies Act, 1956, provides that provisions of clauses 34 to 36 shall apply to applicability of clause 389 for issue of prospectus by a company incorporated outside India or apply to Indian Company and

issue of Indian Depository Receipt by foreign Company. The clause further provides that Chapter XX shall apply *mutatis mutandis* to the foreign companies closing its place of business in India.

*Clause 392.*— This clause corresponds to section 598 of the Companies Act, 1956 and seeks to provide that where a foreign company fails to comply with any of the provisions relating to companies incorporated outside India, the company and every officer of in foreign company shall be punishable with fine.

*Clause 393.*—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 394.*—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 395.*—This clause corresponds to section 620 of the Companies Act, 1956 and states to provide that every State Government or one State Government who is a member of a company where no Central Government is a member shall cause annual reports to be prepared within time specified in clause 394 and lay before both the house of State Legislature. The clause further provides that provisions of clauses 395 and 394 to apply to Government Company in liquidation as they apply to any other Government Company.

*Clause 396.*—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 such number of officers as it considers necessary, for the registration of companies and discharge of various function under this Act. 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 397.*— 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 398.*— 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 through the electronic form.

*Clause 399.*— This clause corresponds to section 610 of the Companies Act, 1956 which provides that the documents in electronic form kept by Registrar may be inspected or making a record, etc., from such documents on payment of fees or obtaining certificate from Registrar in respect of incorporation of companies. This clause further provides that any document issued by Court and kept by Registrar may not be shared or part with except with the leave of Court. Any certified document issued by Registrar shall admissible as evidence.

*Clause 400.*— This clause corresponds to section 610D of the Companies Act, 1956 and seeks to provide that the Central Government may provide in the rules made under clause 398 and clause 399 such value added services through the electronic form and levy fee thereon.

*Clause 401.*— 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 402.*— 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 403.*— This clause provides that any documents 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 within specific time with specific fee or with additional fee after 270 days after the specified time.

The clause further provides the penalty if default is made to submit, file, register or record any document, fact or information.

*Clause 404.*— 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 405.*—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 or companies 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. Failure to comply with an order under this clause or knowingly furnishing of any incorrect or incomplete information will lead to imposition of fine on company and every officer of the company who is in default shall be punishable with imprisonment or fine or both.

*Clause 406.*— 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 and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. The Central Government may also notify the

provisions of this Act which shall not apply or shall apply with such exception or modification and adoption as may be specified in that notification to a Nidhi Company or Nidhi of any class or description as may be specified in that notification. This clause finally provides that the notification proposed to be issued shall be laid before each House of Parliament.

*Clause 407.*— This clause corresponds to sections 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 408.*— 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 the Central Government may deem necessary.

*Clause 409.*— 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 410.*— 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 411.*—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 at least experience of 25 years in banking, management, economics, etc.

*Clause 412.*—This clause provides that the President, Chairperson and Judicial Member of the Tribunal shall be appointed in consultation with Chief Justice of India. It further provides that the members of the tribunal and the technical members of the Appellate Tribunal shall be appointed on the recommendation of Selection Committee.

*Clause 413.*— 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 414.*— 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 415.*— 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 416.*— This clause corresponds to sections 10FI and 10FU of the Companies Act, 1956 and seeks to deal with the resignation of President, Members. It provides that President, Chairperson or Member may address his resignation to the Central Government.

*Clause 417.*— 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 418.*— This clause corresponds to sections 10FK and 10GA of the Companies Act, 1956 and seeks to deal with the staff of the Tribunal and Appellate Tribunal. It provides that the Central Government in consultation with Tribunal and Appellate Tribunal 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 or Members, as the case may be.

*Clause 419.*— This clause corresponds to section 10FL of the Companies Act, 1956 and seeks to deal with the number of 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 Central Government in consultation with the President may for disposal of the such class or classes of case(s) as may be prescribed 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 420.*— This clause corresponds to section 10FM of the Companies Act, 1956 and seeks to deal with orders passed by the Tribunal. It provides that the Tribunal may rectify any mistake within two years from the date of order. This clause further provides that a copy of each order shall be sent to all the concerned parties by the Tribunal.

*Clause 421.*— 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 422.*— This is a new clause which deals with 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. If any application or petition or appeal is not disposed off within the period specified, the Tribunal/Appellate Tribunal shall record the reasons for not disposing the same and President/Chairperson may take into consideration in reasons and extend the period not exceeding ninety days.

*Clause 423.*— 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 424.*— This clause corresponds to section 10FZA of the Companies Act, 1956 and seeks to deal with 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 425.*— 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 426.*— This clause deals with delegation of powers. It provides 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 427.*— 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 428.*— This clause corresponds to section 10FZ of the Companies Act, 1956 and seeks to deal with the protection of action taken in good faith by the President, Chairperson, members, officers, etc., of the Tribunal or Appellate Tribunal.

*Clause 429.*— This clause corresponds to section 10FP of the Companies Act, 1956 and seeks to deal with the power to take the assistance of Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector by the Tribunal for taking into custody all property, books of account, etc. The above acts shall not be questioned in any court or before any authority in case of a sick company or winding up of any company.

*Clause 430.*— This clause corresponds to section 10GB of the Companies Act, 1956. This clause deals with exclusive jurisdiction of the Tribunal or the Appellate Tribunal and provides that no civil court shall have jurisdiction in respect of any matters that are assigned to the Tribunal or the Appellate Tribunal.

*Clause 431.*— 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 432.*— 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 Practitioner to present the case before the Tribunal or the Appellate Tribunal.

*Clause 433.*— 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 434.*— 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 CLB 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 435.*— 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 is to be appointed. It further provides that person so appointed as Judge of Special Court shall be one who immediately before such appointment was a Sessions Judge or an Additional Sessions Judge.

*Clause 436.*— 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 proceedings for offences punishable with imprisonment for a term not exceeding three years although it may order for the regular trial.

*Clause 437.*— This is a new clause which seeks to deal with appeal and revision. It provides that 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 438.*— This is a new clause which deal with application of code to the proceed-ings 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 439.*— 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. Court shall take cognizance only on complaint made by Registrar, shareholder of the company or a person authorised by Central Government.

*Clause 440.*— This is a new clause which deals with transitional power. It 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 441.*— This clause provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. This clause also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

*Clause 442.*— In this clause Central Government is authorised to maintain a panel of experts to be called as 'Mediation Panel' for mediation between parties during the pendency of any proceedings before the Central Government or Tribunal. The clause further provides that any of the parties to proceeding or Central Government or Tribunal *Suo Motu* refer any matter pertaining to proceeding to such number of experts from the mediation panel as they deem fit. The clause further provides that any person not agreed with recommendation of the mediation panel may file objection to Central Government or Tribunal.

*Clause 443.*— This clause corresponds to section 624A of the Companies Act, 1956 and seeks to provide that the Central Governments may appoint any number of Company Prosecutors who shall have the same powers and privileges as that of Public Prosecutor.

*Clause 444.*— In this clause the Central Government is authorised to direct any company prosecutor or any authorised person to present and appeal from an order of acquittal passed by any court other than High Court.

*Clause 445.* — This is a new clause which deals with compensation for accusation without reasonable cause before the Special Court or Court of Session.

*Clause 446.* — 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 447.* — This clause provides penalty for the person who is found to be guilty of fraud and this clause also provides definitions for fraud, wrongful gain and wrongful loss.

*Clause 448.*— This clause corresponds to section 628 of the Companies Act, 1956 and seeks to deal with penalty for false statement. It provides that if in any return, report, etc., required by, or for, the purpose of the provisions of this Act, any person who makes a false statement or omits material facts, shall be liable for action under section 444.

*Clause 449.*— 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 450.* — This clause corresponds to section 629A of the Companies Act, 1956 and seeks to provide penalty where no specific penalty is provided elsewhere in the Companies Act.

*Clause 451.*— This clause seeks to provide that if any default is committed for the second or subsequent occasion within a period of 3 years, it shall be punishable with imprisonment as provided and twice the amount of fine for such default.

*Clause 452.*— This clause corresponds to section 630 of the Companies Act, 1956 and seeks to provide penalty for wrongful procession or holding of the property of the company by any officer or employee of company. The clause further provides the refund of the benefits that have been derived from such property or cash or in default to undergo imprisonment for a term which may extend to two years.

*Clause 453.*— 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' with fine which shall not be less than five hundred but may extend to two thousand for everyday on which that name has been used.

*Clause 454.* — 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 455.*— 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. This clause also provides all the definition of inert company, and significant accounting transaction.

*Clause 456.*— 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 457.* — This clause corresponds to section 635AA of the Companies Act, 1956 and seeks to provide that no official 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 458.* — 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. This clause also provides for that SEBI to have power under relevant provisions of this Act to file

a complaint in court of competent jurisdiction for listed companies in respect of forward dealing and insider trading.

*Clause 459.*— 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 thinks fit subject to the payment of fee.

*Clause 460.*— 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 461.*— 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 lay before both the Houses of Parliament.

*Clause 462.*— This clause gives power to Central Government by notification directs that any provisions of this Act to apply or not to apply to such class or classes of companies as specified in the public interest. The notification to be laid in both the Houses of Parliament for modification and such shall be issued.

*Clause 463.* — This clause corresponds to section 633 of the Companies Act, 1956 and seeks to provide about the power of Court to grant relief to an officer of a company in respect of negligence, default, breach of duty, misfeasance or breach of trust provided that he has acted honestly and reasonably and having regard to all the circumstances of the case.

*Clause 464.*— 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. The provision shall not apply to Hindu Undivided Family.

*Clause 465.*— 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 466.*— 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 467.*— This clause gives power to Central Government to amend Schedule to this Act. The alteration laid by the Central Government shall be made before both Houses of Parliament for any modification or annulment to have effect.

*Clause 468.* — This clause corresponds to section 643 of Companies Act, 1956 and seeks to provide that Central Government may make rules relating to the matters of winding up of companies. The clause further provides that without prejudice to the generality of the foregoing power, the rule may provide for the matters specified in clause. The clause also provides the Rules made by Supreme Court on the matter referred in this clause shall continue to be in force till Central Government makes Rules.

*Clause 469.* — This clause corresponds to section 642 of Companies Act, 1956 and seeks to provide that Central Government may make rules for the purpose of this Act. This Clause further provides that Central Government may make rule 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 made. The clause further provides the penalty for the contravention and clause also provides that every rule made under this section and regulation made by Security Exchange Board of India to be laid before each House of Parliament for any modification or annulment.

*Clause 470.* — This is a new clause and seeks to empower Central Government to remove difficulty by publishing order in the Official Gazette in case of any difficulty arises in giving effect to the provision of this Act before the expiry of 3 years from the date of commencement of clause 1 of this Act. The clause further provides that every order made to be laid before each House of Parliament as soon as possible.

## FINANCIAL MEMORANDUM

Clause 125 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 132 provides for constitution of National Financial Reporting Authority (NFRA) to advise the Central Government on matters relating to formulation and laying down of accounting and auditing policies and standards, and monitoring & enforcing compliance with such standards and overseeing the quality of service of the concerned professions. The terms and conditions of appointment of the chairperson, members, secretary and employees of the Authority shall be such as may be prescribed. This clause is broadly similar to section 210A of the existing Act with reference to National Advisory Committee on Accounting Standards (NACAS).

Clause 210 of the Bill empowers the Central Government to appoint inspectors to investigate the affairs of companies. Clause 224 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 206 empowers the Registrars and the officers/authorities 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 211 provides for establishment of Serious Fraud Investigation Office to investigate frauds relating to a company. Serious Fraud Investigation Office already set up by the Central Government (in terms of the Government of India Resolution No. 45011/16/2003-Adm. I dated 2nd July, 2003) shall be deemed to be the Serious Fraud Investigation Office till such time the Serious Fraud Investigation Office under the proposed legislation is established.

Clause 269 empowers the Central Government to appoint an independent administrator to manage the Rehabilitation and Insolvency Fund. This clause is similar to sections 441A to 441D of the Companies Act, 1956 with some modifications.

Clause 359 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 359 is similar to the provisions of section 448 of the existing Act.

Clause 396 of the Bill empowers the Central Government to establish registration offices to appoint Registrars, Additional, Joint, Deputy and Assistant Registrars and to prescribe terms and conditions of their service. Clause 396 is similar to the provisions of section 609 of the existing Act.

Clauses 408, 410 and 414 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 10 FG and 10FR to 10 FX of the Companies Act, 1956. For establishment of these institutions, the funds are already being provided by the Parliament.

Clause 435 of the Bill empowers the Central Government to establish or designate, 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 443 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 454 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 Financial Reporting Authority, inspecting officers, Serious Fraud Investigation Office, 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 Registrars, Additional, Joint, Deputy and Assistant Registrars, constitution of National Company Law Tribunal and National Company Law Appellate Tribunal, Special Courts, appointment of Company Prosecutors and appointment of adjudicating officers 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 REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 1 proposes to empower the Central Government to prescribe different dates to be appointed for bringing into force different provisions of the Act.

Item (f) of sub-clause (4) of clause 1 proposes to empower the Central Government to specify any body corporate to which provisions of the Act shall apply subject to exceptions, modifications or adaptations.

Sub-clause (1) of clause 2 proposes to empower the Securities and Exchange Board of India to specify the salient features of a prospectus to be contained in an abridged prospectus.

Item (ii) of sub-clause (11) of clause 2 proposes to empower the Central Government to specify by notification any other body corporate not to be a body corporate or corporation.

Item (iv) of sub-clause (13) of clause 2 proposes to empower the Central Government to prescribe items of cost for companies covered under clause 148.

Item (ii) of sub-clause (29) of clause 2 proposes to empower the Central Government to notify any district court to exercise all or any of the jurisdictions conferred upon the High Court.

Sub-clause (31) of clause 2 proposes to empower the Central Government to prescribe in consultation with the Reserve Bank of India any categories of amount which shall not be included in deposits.

Item (iv) of sub-clause (51) of clause 2 empower the Central Government to prescribe any officer to be key managerial personnel of a company.

Sub-clause (68) of clause 2 proposes to empower the Central Government to prescribe higher amount of paid-up share capital in case of a private company.

Item (b) of sub-clause (71) of clause 2 proposes to empower the Central Government to prescribe higher amount of paid-up share capital in case of a public company.

Item (v) of sub-clause (72) of clause 2 proposes to empower the Central Government to notify institutions to be public financial institutions.

Item (ix) of sub-clause (76) of clause 2 proposes to empower the Central Government to prescribe any other person as a related party with reference to a company.

Item (iii) of sub-clause (77) of clause 2 proposes to empower the Central Government to prescribe the manner in which a person may become relative of any other person.

Item (i) of sub-clause (85) of clause 2 proposes to empower the Central Government to prescribe any higher amount of paid-up share capital in case of company to be treated as a 'small company'.

Item (ii) of sub-clause (85) of clause 2 proposes to empower the Central Government to prescribe any higher amount of turnover in case of a company to be treated as a 'small company'.

Proviso to item (ii) sub-clause (87) of clause 2 proposes to empower the Central Government to prescribe any class or classes of companies which shall not have layers of subsidiaries beyond such number as may be prescribed.

Proviso 1 to 4 to sub-clause (1) of clause 3 propose to empower the Central Government to prescribe form of written consent of nominee of sole member, manner of withdrawal of consent by nominee, manner of giving notice regarding change of nominee by sole member and manner of intimating to registrar about such nominations or changes therein.

Item (b) of sub-clause (3) of clause 4 proposes to empower the Central Government to prescribe any words or expression which may be part of the name of a company.

Sub-clause (4) of clause 4 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 (2) of clause 5 proposes to empower the Central Government to prescribe matters which may be included in the articles.

Sub-clause (5) of clause 5 proposes to empower the Central Government to prescribe form and manner of giving notice to registrar regarding entrenched articles.

Item (a) of sub-clause (1) of clause 7 proposes to empower the Central Government to prescribe the manner in which the memorandum shall be signed by all the 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 empower the Central Government to prescribe the particulars of the persons mentioned in the articles as the first directors 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 consent to act as first directors of the company and the particulars of the interests of persons mentioned in the articles.

Sub-clause (1) of clause 8 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.

Sub-clause (2) of clause 7 proposes to empower the Central Government to prescribe the form of certificate of incorporation of a company.

Sub-clause (6) of clause 8 empower the Central Government by Order to revoke license granted to a company registered under clause 8 if company contravenes any requirement of this Clause and further direct the company to add word 'Limited' or 'Private Limited' to its name.

Item (a) sub-clause (1) of clause 11 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.

Sub-clause (2) of clause 12 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 12 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 12 proposes to empower the Central Government to prescribe the manner for verification of change in the situation of the company's registered office.

Proviso to Sub-clause (5) of clause 12 proposes to empower the Central Government to prescribe the manner in which application shall be made for change of registered office from jurisdiction of one registrar to another with in the same State.

Sub-clause (4) of clause 13 proposes to empower the Central Government to prescribe form and manner of application for approval for change of registered from one State to another.

Sub-clause (7) of clause 13 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.

Item (i) to sub-clause (8) to clause 13 proposes to empower the Central Government to prescribe details in respect of resolution to be published in newspapers in case of change of objects by a Company which has raised money from public.

Item (ii) to sub-clause (8) to clause 13 proposes to empower SEBI to make regulations regarding exit opportunity to be given to dissenting share holders.

Sub-clause (2) of clause 14 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 17 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 117, on his request.

Sub-clause (1) of clause 20 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 20 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 26 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 26 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 26 proposes to empower the Central Government to prescribed manner of disclosure about details of monies, *i.e.* utilised and unutilised out of previous issue.

Sub-item (v) of item (a) of sub-clause (1) of clause 26 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 26 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 26 proposes to empower the Central Government to prescribe such other main objects of public offer, terms of the present issue and other particulars which are to be given in prospectus.

Sub-item (xiii) of item (a) of sub-clause (1) of clause 26 proposes to empower the Central Government to prescribe details of directors including their appointments and remuneration and extent of their interests in the company, in prospectus.

Sub-item (xiv) of item (a) of sub-clause (1) of clause 26 proposes to empower the Central Government to prescribe manner of discloser about sources of promoter contribution.

Sub-item (i) of item (b) of sub-clause (1) of clause 26 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 26 proposes to empower the Central Government to prescribe matters relating to company's subsidiaries, in prospectus.

Proviso to Sub-item (ii) of item (b) of sub-clause (1) of clause 26 proposes to empower the Central Government to prescribed manner to set out the prospectus for a company whose period of five years has not elapsed from the date of incorporation.

Sub-item (iii) of item (b) of sub-clause (1) of clause 26 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 26 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.

Proviso to sub-clause (1) of clause 27 proposes to empower the Central Government to prescribe details to be included in notice in reference of resolution relating to varying the terms of a contract.

Sub-clause (1) of clause 28 proposes to empower the Central Government to prescribe the procedure with respect to offer of shares by existing numbers to the public.

Item (b) of sub-clause (1) of clause 29 proposes to empower the Central Government to prescribe the class or classes of public companies which shall issue the securities in dematerialised form only.

Sub-clause (2) of clause 31 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 39 proposes to empower the Central Government to prescribe the manner and time within which the amount received shall be returned if the minimum amount has not been subscribed

within time specified. This sub-clause also empowers SEBI to prescribe period within which minimum amount can be subscribed.

Sub-clause (4) of clause 39 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 40 proposes to empower the Securities and Exchange Board of India to specify time, in which the monies received from applicant in pursuance of the prospectus, has to be returned.

Sub-clause (6) of clause 40 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 41 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 (1) of clause 42 proposes to empower the Central Government to prescribe form and manner of making an offer of private placement by a company.

Item (a) of sub-clause (2) proposes to empower the Central Government to prescribe number of persons to whom private placement offer can be made and conditions with regard to private placement offer.

Item (b) of sub-clause (2) proposes to empower the Central Government to prescribe the investment size amount to be allowed under any private placement offer.

Sub-clause (7) proposes to empower the Central Government to prescribe the manner of record of offers to be kept by a company with regard to offers made in clause 42.

Sub-clause (9) proposes to empower the Central Government to prescribe manner of filing with the registrar a return of allotment and to prescribe the information which may be included in the list of security holders who have been allotted securities under this clause.

Sub-Item (ii) of item (a) of clause 43 proposes to empower the Central Government to prescribe rules regarding equity share capital with different rights as to dividend voting or otherwise which may be issued by companies.

Sub-clause (3) of clause 46 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.

Sub-clause (3) of clause 52 proposes to empower the Central Government to prescribe class of companies and the accounting standards which may be complied with by such companies which may apply securities premium account for the purposes provided in this clause.

Item (d) of sub-clause (1) of clause 54 proposes to empower the Central Government to prescribe rules for issuing sweat equity shares by unlisted companies.

Sub-clause (2) of clause 55 proposes to empower the Central Government to prescribe conditions for issuing and redeeming preferential shares which are liable to be redeemed after 20 years.

First proviso to sub-clause (2) of clause 55 proposes to empower the Central Government to prescribe the percentage of shares which shall be redeemed on an annual basis by companies engaged in infrastructure projects.

Item (d) of second proviso of sub-clause (2) of clause 55 proposes to empower the Central Government to prescribe a class of companies and accounting standards prescribed for such companies under clause 133, in whose case securities premium account shall not be allowed for redemption of preference shares.

Sub-clause (1) of clause 56 proposes to empower the Central Government to prescribe share transfer form.

Sub-clause (3) of clause 56 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 59 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 proposes to empower Central Government to notify competent court outside India in respect of foreign members or debenture holders residing outside India.

Item (b) of sub-clause (1) of clause 61 proposes to empower the Central Government to prescribe manner of making application to tribunal regarding consolidation and division of share capital.

Item (b) of sub-clause (1) of clause 62 proposes to empower the Central Government to prescribe conditions with respect to issue of shares to employees under the scheme of employee stock option.

Item (c) of sub-clause (1) of clause 62 proposes to empower the Central Government to prescribe the conditions for valuation report of a registered valuer to determine the price of shares.

Item (f) of sub-clause (2) of clause 63 proposes to empower the Central Government to prescribe conditions which shall be followed by a company before issuing bonus shares.

Sub-clause (1) of clause 64 proposes to empower the Central Government to prescribe the form for filing notice for alteration of share capital to the Registrar.

Item (b) of sub-clause (3) of clause 67 proposes to empower the Central Government to prescribe the requirements with regard to scheme for purchase / subscription of shares to be held by trustees for the benefit of employees. Proviso to item (c) of sub-clause (3) of clause 67 empowers Central Government to prescribe the manner of disclosure in respect of voting rights not exercised directly by employees.

Proviso to item (d) of sub-clause (2) of clause 68 proposes to empower the Central Government to notify ratio of debt to capital and free reserves for a class or classes of companies.

Item (g) of sub-clause (2) of clause 68 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 68 proposes to empower the Central Government to prescribe the form of declaration of solvency by directors of a company.

Sub-clause (9) of clause 68 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 68 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 India after completion of buy-back of securities.

*Explanation I* to clause 68 proposes to empower the Central Government to notify securities as specified securities other than employees' stock option.

Sub-clause (3) of clause 71 proposes to empower the Central Government to prescribe terms and conditions with respect to issue of secured debentures.

Sub-clause (5) of clause 71 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 (6) of clause 71 proposes to empower the Central Government to prescribe rules for debenture trustee to redress grievances of debenture holders.

Sub-clause (13) of clause 71 proposes to empower the Central Government to prescribe procedure for securing of the issue of debentures, the form of debenture trust deed, the quantum of debenture redemption reserve required to be created, the procedure for debenture holder to inspect trust deed and to obtain copies thereof and other related matters.

Sub-clause (1) of clause 72 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 72 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 72 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 72 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 73 proposes to empower the Central Government to make rules in consultation with the Reserve Bank of India with respect to acceptance of deposits by a company from members.

Item (a) of sub-clause (2) of clause 73 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 73 proposes to empower the Central Government to prescribe the manner and extent for providing insurance against deposits.

Sub-clause (1) of clause 76 proposes to empower the Central Government to prescribe the amount of networth or turnover for public companies which may accept deposits from public. It also seeks to empower Central Government to prescribe rules, in consultation with Reserve Bank of India, to be complied with by companies accepting public deposits. Second proviso to this sub-clause empowers the Central Government to make rules regarding creation of charge on its assets by a company against deposits being accepted from public.

Sub-clause (1) of clause 77 proposes to empower the Central Government to prescribe the form and manner in which a charge can be created and the fee to be paid to the Registrar.

Proviso of sub-clause (1) of clause 77 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 77 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 78 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 which Registrar may charge for such registration.

Sub-clause (1) of clause 81 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 81 proposes to empower the Central Government to prescribe fee to be paid by a person for inspecting the register of charges kept by the Registrar.

Sub-clause (1) of clause 82 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 (2) of clause 82 proposes to empower the Central Government to specify the notice to call upon the show cause notice to be sent to the charge holder within not exceeding fourteen days by Registrar as to why payment or satisfaction in full should not be recorded as intimated to Registrar.

Sub-clause (1) of clause 84 proposes to empower the Central Government to prescribe fee for registering particulars of the receiver, person or instrument with the Registrar.

Sub-clause (1) of clause 85 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 85 proposes to empower the Central Government to prescribe fee for inspecting the register of charges by a person other than a member or creditor.

Sub-clause (1) of clause 88 proposes to empower the Central Government to prescribe the form and manner in which following registers are to be maintained.

Sub-clause (4) of clause 88 proposes to empower the Central Government to prescribe the manner in which part of the register referred to in sub-clause (1) of clause 88 called "foreign register" is to be kept in any country outside India.

Sub-clause (1) of clause 89 proposes to empower the Central Government to prescribe the form and time 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 89 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 89 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 under sub-clause (1) or sub-clause (2) of clause 89.

Sub-clause (4) of clause 89 proposes to empower the Central Government to make rules to provide manner of holding and disclosing beneficial ownership.

Sub-clause (6) of clause 89 proposes to empower the Central Government to prescribe the form of return in which declarations made under this clause shall be filed by the Company with the Registrar.

Sub-clause (1) of clause 91 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 other security holders.

Sub-clause (1) of clause 92 proposes to empower the Central Government to prescribe form containing the particulars in respect of annual return.

Item (i) of sub-clause (1) of clause 92 proposes to empower the Central Government to prescribe matters relating to certification of compliances and disclosures to be included in the annual return.

Item (j) of sub-clause (1) of clause 92 proposes to empower the Central Government to prescribe details in respect of shares held by or on behalf of the Foreign Institutional Investors to be included in the annual return.

Item (k) of sub-clause (1) of clause 92 proposes to empower the Central Government to prescribe other matters which may be included in the annual return.

Sub-clause (2) of clause 92 proposes to empower the Central Government to prescribe the amount of paid up capital and turnover of a company whose annual return shall be certified by a company secretary in practice. It also empowers Central Government to prescribe form of certificate to be given by such company secretary.

Sub-clause (3) of clause 92 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 (4) of clause 92 proposes to empower the Central Government to prescribe fee and additional fee for filing annual return with the Registrar.

Clause 93 proposes to empower the Central Government to prescribe the form of a return to be filed with Registrar with respect of change in number of shares held by promoters and top 10 Shareholders.

Second proviso of sub-clause (1) of clause 94 proposes to empower the Central Government to prescribe the period for which registers, returns and records are required to be kept.

Sub-clause (2) of clause 94 proposes to empower the Central Government to prescribe fee for inspecting the registers maintained under sub-clause (1) of clause 88 by a person who is not a member or a debenture holder of company.

Item (b) of sub-clause (3) of clause 94 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 88.

Sub-clause (1) of clause 101 proposes to empower the Central Government to prescribe the manner of notice to be given for calling a general meeting of the company.

Third proviso of sub-clause (1) of Clause 105 proposes to empower the Central Government to prescribe a class or classes of companies whose member shall not appoint proxy.

Fourth proviso of sub-clause (1) of clause 105 proposes to empower the Central Government to prescribe the number of members and number of shares for which a person may act as proxy.

Sub-clause (7) of clause 105 proposes to empower the Central Government to prescribe the form of proxy.

Clause 108 proposes to empower the Central Government to prescribe the class or classes of companies and manner in which a member may exercise his right to vote at a meeting by electronic means.

Item (a) of sub-clause (1) of clause 109 proposes to empower the Central Government to prescribe higher amount (not less than Rs. 5 lakh) of paid-up share capital to be held by members for being eligible to demand poll.

Sub-clause (5) of clause 109 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 110 proposes to empower the Central Government to prescribe the manner and notify the matters on which a business can be transacted at a general meeting through postal ballot.

Clause 115 proposes to empower the Central Government the manner in which notice shall be given by a Company to its member for resolutions requiring special notice.

Item (h) of sub-clause (3) of clause 117 proposes to empower the Central Government to prescribe any other resolutions or agreements which are to be filed with the Registrar.

Sub-clause (1) of clause 118 proposes to empower the Central Government to prescribe the manner in which, minutes of proceedings of every general meeting, meeting of creditors, resolution passed by postal ballot and meetings of the Board and any of its committees shall be prepared and signed.

Sub-clause (2) of clause 119 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.

Item (b) of clause 120 proposes to empower the Central Government to prescribe form and manner of keeping or inspecting or giving copies of any document, record or register or minutes.

Sub-clause (1) of clause 121 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 121 proposes to empower the Central Government to prescribe fee and additional fee to be paid by the company for filing report on AGM with the Registrar.

Second proviso of item (b) of sub-clause (1) of clause 123 proposes to empower the Central Government to make rules with

regard to declaration of dividends out of post profits (transferred to reserves).

Sub-clause (2) of clause 124 proposes to empower the Central Government to prescribe the form and manner and other particulars of placing of statement referred to in such clause on website of the company or any other website approved by the Central Government.

Sub-clause (5) of clause 124 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.

Sub-clause (6) of clause 124 proposes to empower the Central Government to prescribe details to be included in the statement to be sent by company to authority at the time of transfer of shares in respect of which unpaid/unclaimed dividend has been transferred to fund.

Item (n) of sub-clause (2) of clause 125 proposes to empower the Central Government to prescribe other amounts which shall be transferred to Investor Education and Protection Fund.

Sub-clause (3) of clause 125 proposes to empower the Central Government to prescribe rules for utilisation of Investor's Education and Protection Fund.

Sub-clause (6) of clause 125 proposes to empower the Central Government to prescribe rules for manner of administration of fund, appointment of Chairpersons and CEO and holding of meetings of authority.

Sub-clause (7) of clause 125 proposes to empower the Central Government to prescribe rules for providing to authority offices, officers and employees and other resources.

Sub-clause (8) of clause 125 proposes to empower the Central Government to prescribe the form in which authority shall maintain separate accounts and other relevant records after consulting Comptroller and Auditor General of India.

Sub-clause (11) of clause 125 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 128 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 128 proposes to empower the Central Government to prescribe the conditions for making available financial information maintained outside the country.

First proviso of sub-clause (3) of clause 129 proposes to empower the Central Government to prescribe statement containing salient features of the financial statement of the subsidiary of a company to be attached along with the financial statement of the company.

Second proviso of sub-clause (3) of clause 129 proposes to empower the Central Government to prescribe manner of consolidation of accounts of companies.

Sub-clause (1) of clause 131 proposes to empower the Central Government to prescribe the form and manner of application to be made by a company for obtaining approval of Tribunal.

Sub-clause (3) of clause 131 proposes to empower the Central Government to prescribe rules for steps which may be taken by directors in relation to revised financial statements.

Item (ii) of sub-clause (2) of clause 132 proposes to empower the Central Government to prescribe the manner in which National Financial Reporting Board shall monitor and enforce the compliance of accounting and auditing standards.

Item (iii) of sub-clause (2) of clause 132 proposes to empower the Central Government to prescribe other related matters for overseeing by National Financial Reporting Board.

Item (iv) of sub-clause (2) of clause 132 proposes to empower the Central Government to prescribe such other functions to be performed by National Financial Reporting Board.

Sub-clause (3) of clause 132 proposes to empower the Central Government to prescribe the composition, qualification of Chairperson of National Financial Reporting Board and intimation to be made by the Central Government and members.

Item (i) of sub-clause (4) of clause 132 proposes to empower the Central Government to prescribe class of bodies corporate or persons for which the National Financial Reporting Authority shall have the power

to investigate the matters of professional misconduct and also to prescribe the manner of such investigation. This item also empowers the Central Government to prescribe any other profession in addition to Chartered Accountant, Cost and Works Accountant, Company Secretary to which these provisions may apply.

Item (iii) of sub-clause (4) of clause 132 proposes to empower the Central Government to prescribe the manner in which any person aggrieved by any order of the National Financial Reporting Authority shall appeal before the Appellate authority.

Sub-clause (5) of clause 132 proposes to empower the Central Government to prescribe the rules for procedure in respect to transaction of business at meetings of National Financial Reporting Authority.

Sub-clause (6) of clause 132 proposes to empower the Central Government to prescribe the terms and conditions of service of secretary and employees of National Financial Reporting Authority.

Sub-clause (8) of clause 132 proposes to empower the Central Government in consultation with the comptroller and Auditor-General of India to prescribe form and manner of maintenance of books of account and other books by National Financial Reporting Authority.

Sub-clause (10) of clause 132 proposes to empower the Central Government to prescribe the form and time for preparing Annual Report by National Financial Reporting Authority giving full account of its activities during the financial year.

Clause 133 proposes to empower the Central Government to prescribe standards of accounting or any addendum thereto.

Item (h) of sub-clause (3) of clause 134 proposes to empower the Central Government to prescribe the form for particulars of contracts or arrangements with related parties to be included in Board's Report.

Item (m) of sub-clause (3) of clause 134 proposes to empower the Central Government to prescribe the manner of conservation of energy, technology absorption, foreign exchange earnings and outgo to be included in Board Report.

Item (p) of sub-clause (3) of clause of 134 proposes to empower the Central Government to prescribe the sum of paid up share capital of public companies which shall be required to include a statement of formal annual evaluation in the Board's Report.

Item (q) of sub-clause (3) of clause 134 proposes to empower the Central Government to prescribe other matters which may be included in Board's Report.

Item (a) of sub-clause (4) of clause 135 proposes to empower the Central Government to prescribe the manner of disclosure of contents of Corporate Social Responsibility Policy in the Board's Report and on the company's website.

First Proviso to sub-clause (1) of clause 136 proposes to empower the Central Government to prescribe the form of Statement containing salient features of documents referred to in this sub-clause.

Second Proviso to sub-clause (1) of clause 136 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 137 proposes to empower the Central Government to prescribe the manner to file the financial statements with the Registrar within thirty days of the date of annual meeting of the company alongwith filing fee.

Second proviso to sub-clause (1) of clause 137 proposes to empower the Central Government to prescribe such additional fees for filing of the financial statements adopted in adjourned annual general meeting.

Sub-clause (2) of clause 137 proposes to empower the Central Government to prescribe the manner of filing (with the Registrar) the financial statements and where annual general meeting has not been held, along with the statement of facts indicating the reasons for not holding the annual general meeting.

Sub-clause (1) of clause 138 proposes to empower the Central Government to prescribe class of companies which shall be required to appoint internal auditor.

Sub-clause (2) of clause 138 proposes to empower the Central Government to prescribe rules regarding manner and intervals in which internal audit shall be conducted and reported to Board.

First proviso of sub-clause (1) of clause 139 proposes to empower the Central Government to prescribe the conditions for making an appointment of an auditor in a company.

Sub-clause (2) of clause 139 proposes to empower the Central Government to prescribe class or classes of companies to which requirement regarding rotation of auditors shall be applicable.

Sub-clause (4) of clause 139 proposes to empower the Central Government to prescribe manner in which the companies shall rotate their Auditors in pursuance of sub-clause (2) of clause 139.

Sub-clause (1) of clause 140 proposes to empower the Central Government to prescribe manner in which approval shall be obtained for removal of an auditor before his term.

Sub-clause (2) of clause 140 proposes to empower the Central Government to prescribe form of statement to be filed by auditor who has resigned.

Sub-item (i) of item (d) of sub-clause (3) clause 141 proposes to empower the Central Government to prescribe such sum beyond which a person or his relative or partner shall not hold any securities or interests of the company or its subsidiary, etc., for being eligible for appointment as an auditor of a company.

Sub-item (ii) of item (b) of sub-clause (3) of clause 141 proposes to empower the Central Government to prescribe the amount beyond which the auditor cannot be indebted to the company or its subsidiary, holding or associate company in order to be eligible to be appointed as an auditor.

Sub-item (iii) of item (d) of sub-clause (3) of clause 141 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 indebtedness 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 141 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 141 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 (2) of clause 143 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 143 proposes to empower the Central Government to prescribe additional matters to be included in auditors' report.

Sub-clause (8) of clause 143 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 (10) of clause 143 proposes to empower the Central Government to prescribe the standards of auditing of any addendum thereto.

Sub-clause (12) of clause 143 proposes to empower the Central Government to prescribe the time and manner in which the auditor shall report the matters relating to frauds in a company to the Central Government.

Sub-clause (i) of clause 144 proposes to empower the Central Government to prescribe other kind of services which shall not be provided by an auditor.

Sub-clause (1) of clause 148 proposes to empower the Central Government to prescribe goods and services, productions/provisions of which shall require the companies producing/ providing them to include/ maintain cost records in the books of account.

Sub-clause (1) of clause 148 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 148 proposes to empower the Central Government to prescribe amount of networth or turnover in respect of companies required to maintain cost records so that companies having networth or turnover beyond such amount are covered in the class for which cost audit may be directed by the Central Government. It also proposes to empower Central Government to specify the manner in which audit of cost records of a company shall be conducted.

Sub-clause (3) of clause 148 proposes to empower the Central Government to prescribe the manner in which a Cost Accountant shall be appointed in a company.

Second proviso to item (b) of sub-clause (1) of clause 149 proposes to empower the Central Government to prescribe class or classes of companies who shall have at least one woman director.

Sub-clause (3) of clause 149 proposes to empower the Central Government to prescribe minimum number of independent directors in any class or classes of public companies.

Item (d) of sub-clause (5) of clause 149 proposes to empower the Central Government to prescribe amount beyond which having pecuniary relationship with the company, its holding, subsidiary company, etc., will make a person in-eligible for appointment as independent director.

Sub item (f) of Sub-clause (5) of clause 149 proposes to empower the Central Government to prescribe other qualification for a person to be appointed as independent director.

Sub-clause (1) of clause 150 proposes to empower the Central Government to notify any body, institute or association to maintain data bank containing particular of the independent directors from where an Independent director may be selected.

Sub-clause (3) of clause 150 proposes to empower the Central Government to prescribe the rules in accordance with which data bank shall be created and maintained.

Clause 151 proposes to empower the Central Government to prescribe terms and conditions and manner in which a listed company may have one director elected by such small shareholders.

*Explanation* to clause 151 proposes to empower the Central Government to prescribe the sum of nominal value up to which holding of shares shall make a person as a “small shareholders”.

Sub-clause (5) of clause 152 proposes to empower the Central Government to prescribe the manner in which consent given by a director shall be filed with the registrar.

Clause 153 proposes to empower the Central Government to prescribe the form, manner and the fees payable in respect of application for Director Identification Number.

Clause 154 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 157 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. This sub-clause also empowers the Central Government to prescribe the form, manner and fees with which intimation regarding Director Identification Number of all its directors shall be furnished by a company to the Central Government.

Sub-clause (1) of clause 160 proposes to empower the Central Government to prescribe the amount higher than one Lakh Rupees which shall be accompanied with notice referred to under such clause.

Sub-clause (2) of clause 160 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 168 proposes to empower the Central Government to prescribe manner, time and form in which Company shall intimate Registrar in respect of notice of resignation given by a director under this sub-clause.

Proviso to sub-clause (1) of clause 168 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 170 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 170 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 173 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 173 proposes to empower the Central Government to prescribe other audio visual 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 173 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 audio visual means.

Sub-clause (1) of clause 175 proposes to empower the Central Government to prescribe electronic means through which resolution may be circulated for passing it through circulation.

Sub-clause (1) of clause 177 proposes to empower the Central Government to prescribe class or classes of companies which shall have to constitute an audit committee of the board.

Sub-clause (9) of clause 177 proposes to empower the Central Government to prescribe class or classes of companies which shall establish a vigil mechanisms and the manner in which such mechanism shall be established.

Sub-clause (1) of clause 178 proposes to empower the Central Government to prescribe class or classes of companies in which shall constitute the nomination and remuneration committee of the Board.

Item (k) of sub-clause (3) of clause 179 proposes to empower the Central Government to prescribe other matters in respect of powers which shall be exercised by Board by means of resolution passed at meetings of Board.

Sub-clause (1) of clause 184 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 (6) of clause 186 proposes to empower the Central Government to prescribe class or classes of companies, which are registered under section 12 of Securities and Exchange Board of India

Act, 1992, for the purpose of applying the provisions of such sub-clause to them. The clause also empowers the Central Government to prescribe the limits within which such companies shall take inter corporate loans or deposits.

Sub-clause (9) of clause 186 proposes to empower the Central Government to prescribe the particulars which shall be included and the manner in which the register shall be kept by company giving loan or guarantee or providing security or making an acquisition.

Item (b) of sub-clause (10) of clause 186 empower the Central Government to prescribe the fees payable for taking extracts or obtaining copies of any part of register maintained under sub-section (9) by any company.

Sub-clause (12) of clause 186 proposes to empower the Central Government to prescribe rules for the purposes of clause 186.

Sub-clause (3) of clause 187 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.

Sub-clause (1) of clause 188 proposes to empower the Central Government to prescribe the conditions subject to which a company may enter into any contract or arrangement referred to in such sub-clause.

First proviso to sub-clause (1) of clause 188 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 189 proposes to empower the Central Government to prescribe particulars and manner in which register(s) in respect of contracts or arrangements to which sub-clause (2) of clause 184 or clause 188 applies shall be kept by every company.

Sub-clause (4) of clause 189 proposes to empower the Central Government to prescribe the extent, manner and fees payable for inspection of register and taking copies of extracts therefrom by any member of the company maintained under sub-clause (1).

Sub-item (iv) of item (b) of sub-clause (1) of clause 191 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 191 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.

Second proviso to sub-clause (4) of clause 196 proposes to empower the Central Government to prescribe the form of return regarding appointment of managerial personnel with the Registrar.

First proviso of sub-clause (5) of clause 197 proposes to empower the Central Government to prescribe the maximum amount of fee that a director may receive by way of fee for attending meetings of boards or committees or for any other purpose.

Second proviso to such clause proposes to empower the Central Government to prescribe different fees for different classes of companies and for independent directors.

Sub-clause (12) of clause 197 proposes to empower the Central Government to prescribe details in respect of remuneration of directors to be disclosed in the Board's Report.

Sub-clause (2) of clause 199 proposes to empower the Central Government to prescribe fee for filing application to the Central Government or tribunal for any approval, sanction, consent, confirmation any direction or exemption in relation to any matter. It also empowers the Central Government to prescribe different fees for different classes of companies.

Item (e) of clause 200 proposes to empower the Central Government to prescribe other matter to which regard shall be had by Central Government while according approval under sections 196 or 197.

Sub-clause (1) of clause 201 proposes to empower the Central Government to prescribe form for making application to the Central Government under chapter XIII.

Sub-clause (1) of clause 203 proposes to empower the Central Government to prescribe class or classes of companies who shall be required to have whole-time key managerial personnel.

Sub-clause (1) of clause 204 proposes to empower the Central Government to prescribe class of companies which shall annex secretarial audit report given by a company secretary in practice with the Board's report. It also empowers the Central Government to prescribe form of secretarial audit report.

Item (c) of sub-clause (1) of clause 205 proposes to empower the Central Government to prescribe other duties which may be discharged by a company secretary.

Sub-clause (2) of clause 211 proposes to empower the Central Government to prescribe other fields of expertise for appointment of experts in Serious Fraud Investigation Office.

Sub-clause (5) of clause 211 proposes to empower the Central Government to prescribe the terms and conditions of service of director, experts and other officers and employees of Serious Fraud Investigation Office.

Clause 212 (9) proposes to empower the Central Government to prescribe the manner of forwarding of copy of order of arrest of a person and the material in his possession. It also empowers the Central Government to prescribe the periods for which Serious Fraud Investigation Office shall keep such order and material.

Clause 214 proposes to empower the Central Government to prescribe amount which shall be given as security for payment of costs and expenses of investigation.

Proviso to sub-clause (11) of clause 217 proposes to empower Central Government to specify the manner in which letter of request shall be transmitted.

Sub-clause (3) of clause 218 proposes to empower the Central Government to prescribe the manner and fees to be paid for preferring an appeal to Appellate Tribunal in case of dissatisfaction with objection raised by Tribunal.

Sub-item (i) of item (c) of sub-clause (2) of clause 230 proposes to empower the Central Government to prescribe the form of creditors' responsibility statement.

Sub-clause (3) of clause 230 proposes to empower the Central Government to prescribe the other matters which shall be disclosed in the statement apart from the disclosure indicated in the said sub-clause.

First Proviso to sub-clause (3) of clause 230 proposes to empower the Central Government to prescribe the manner in which notice/ other documents shall be placed on website and published in newspapers.

Sub-clause (5) of clause 230 proposes to empower the Central Government to prescribe the form in which a notice alongwith accompanied documents shall be sent under sub-clause (3) of the said clause.

Sub-clause (11) of clause 230 proposes to empower the Central Government to prescribe the manner of making takeover offer in case of unlisted companies.

Sub-clause (12) of clause 230 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 (7) of clause 232 proposes to empower the Central Government to prescribe form and time within which the statement regarding compliance with the order of Tribunal shall be filed.

Sub-clause (1) of clause 233 proposes to empower the Central Government to prescribe class or classes of companies which shall be allowed to follow the provision of such clause for any scheme of merger of amalgamation.

Item (c) of sub-clause (1) of clause 233 proposes to empower the Central Government to prescribe form of declaration of solvency to filed by each company using provisions of this clause.

Sub-clause (2) of clause 233 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 Central Government, Registrar and the Official Liquidator.

Sub-clause (11) of clause 233 proposes to empower the Central Government to prescribe fees 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 234 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 235 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 shareholder that the transferee company desires to acquire his shares.

Sub-clause (2) of clause 236 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 236 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 237 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 238 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 Item (a) of item (i) of sub-clause (2) of clause 245 proposes to empower the Central Government to prescribe percentage of total number of members and percentage of issued share capital to determine number of member eligible to apply for class action suit.

Item (ii) of sub-clause (2) of clause 245 proposes to empower the Central Government to prescribe percentage of total number of depositors and percentage of total deposits to determine number of depositors eligible to apply for class action suits.

Item (a) of sub-clause (4) of clause 245 proposes to empower the Central Government to prescribe manner of serving public notice on admission of application relating to class action.

Sub-clause (1) of clause 247 proposes to empower the Central Government to prescribe qualifications, experience of the valuer as well as the manner of registration, terms and conditions of appointment of the valuer.

Item (c) of sub-clause (2) of clause 247 proposes to empower the Central Government to prescribe rules in accordance with which the valuation shall be made by valuers.

Sub-clause (2) of clause 248 proposes to empower the Central Government to prescribe the manner of making application to the Registrar for removal of names of the company and the format of public notice to be issued by the Registrar after receiving the application from a company after extinguishing all its liabilities.

Sub-clause (4) of clause 248 proposes to empower the Central Government to prescribe the manner in which public notice shall be published by the Registrar and also in the Official Gazette for the information of the general public.

Sub-clause (1) of clause 253 proposes to empower the Central Government to prescribe the manner in which an application is to be filed to the Tribunal by any secured creditor, if the company failed to pay the debt.

Item (b) of sub-clause (2) of clause 254 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 254 proposes to empower the Central Government to prescribe manner of the draft scheme of revival and rehabilitation.

Sub-clause (1) of clause 259 proposes to empower the Central Government to prescribe the manner of appointment of interim administrator or company administrator from a data bank and to notify other professionals whose names may be included in data bank.

Sub-clause (4) of clause 269 proposes to empower the Central Government to prescribe the rules regarding the manner in which the rehabilitation and insolvency fund shall be managed by an administrator.

Sub-clause (5) of clause 272 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 274 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 275 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 (6) of clause 275 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 281 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 287 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 advisory committee.

Sub-clause (1) of clause 288 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 291 proposes to empower the Central Government to prescribe the form in which the person appointed to assist Company Liquidator shall disclose information relating to any conflict of interest or lack of independence in respect of his appointment.

Sub-clause (1) of clause 293 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 294 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 294 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 310 proposes to empower the Central Government to prescribe the form and manner in which a declaration shall be filed 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 314 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 empowers the Central Government to authorise any officer, apart from members and creditors and to inspect such books of account.

Sub-clause (5) of clause 314 proposes to empower the Central Government to prescribe the form and manner in which Company Liquidator shall prepare the quarterly statement of account.

Sub-clause (1) of clause 316 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 members or creditors.

Sub-clause (2) of clause 318 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 318 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 322 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.

Proviso to sub-clause (1) of clause 326 proposes to empower the Central Government to prescribe the period for which outstanding sums towards wages or shall be referred to in such proviso shall be paid in priority and also to prescribe the charge over the security of secure creditor to which such sums shall be subject to.

Item (b) of sub-clause (1) of clause 327 proposes to empower the Central Government to notify 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 343 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 343 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 346 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 348 proposes to empower the Central Government to prescribe the form and manner and intervals in which a statement is to be filed duly audited by a person qualified to act as auditor of the company, in relation to the company where winding up is not concluded within one year after its commencement.

Sub-clause (4) of clause 348 proposes to empower the Central Government to prescribe the fee on payment of which any creditor or contributory of the company may inspect the statement and receive a copy thereof or an extract therefrom.

Clause 349 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 company, into the public account of India in the Reserve Bank of India.

Sub-clause (1) of clause 350 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 352 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 360 proposes to empower the Central Government to prescribe the power and duties of Official Liquidator.

Item (ii) of sub-clause (1) of clause 361 proposes to empower the Central Government to prescribe the class or classes of company for which the Central Government may order winding up by summary procedure.

Sub-clause (4) of clause 361 proposes to empower the Central Government to prescribe the form and manner of the report to be submitted by Official Liquidator within thirty days of appointment to the Central Government on any fraud which has been committed in promotion, formation or management of the affairs of the company.

Sub-clause (1) of clause 363 proposes to empower the Central Government to prescribe the manner in which Official Liquidator shall call upon the creditors to prove their claims.

Sub-clause (2) of clause 363 proposes to empower the Central Government to prescribe the manner in which the Official Liquidator shall prepare a list of claims of creditors.

Sub-clause (2) of clause 366 proposes to empower the Central Government to prescribe the manner in which the company specified in such clause may be registered under the Act.

Sub-clause (b) of clause 374 proposes to empower the Central Government to prescribe the form of advertisement to be published by the company giving notice about registration under Part II, Chapter XXI.

Sub-clause (d) of clause 374 proposes to empower the Central Government to prescribe other conditions which shall be complied with by a company seeking registration under Part I, Chapter XXI.

Sub-clause (1) of clause 375 proposes to empower the Central Government to prescribe the manner in which any unregistered may be wound up under Part II, Chapter XXI.

Clause 379 proposes to empower the Central Government to prescribe other provisions of the Act which shall have to be complied with by companies indicated in such clause with regard to the business carried on by them in India as if they were companies incorporated in India.

Item (c) of sub-clause (1) of clause 380 proposes to empower the Central Government to prescribe particulars to be contained in the list of the directors and secretary to be filed by foreign companies.

Item (h) of sub-clause (1) of clause 380 proposes to empower the Central Government to prescribe other information which shall be provided by a foreign company to Registrar.

Sub-clause (3) of clause 380 proposes to empower the Central Government to prescribe the form in which the alteration made or occurred in documents filed with Registrar has to be delivered by the foreign company to the Registrar for registration.

Item (a) of sub-clause (1) of clause 381 proposes to empower the Central Government to prescribe the form of balance sheet and profit and loss account and the documents which may be annexed or attached thereto.

Sub-clause (3) of clause 381 proposes to empower the Central Government to prescribe the 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 385 proposes to empower the Central Government to prescribe the fee for registering documents with the Registrar by foreign companies.

Clause 389 proposes to empower the Central Government to prescribe documents, of foreign companies whether or not they have established a place of business in India, which shall be filed for the purpose of registration of prospectus.

Clause 390 proposes to empower the Central Government to frame rules for following:—

(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.

Sub-clause (1) of clause 396 proposes to empower the Central Government to establish such number of offices 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 396 proposes to empower the Central Government to appoint such Registrars, Additional Registrars, etc., as it considers necessary for registration of companies and discharge of various functions under this Act and to prescribe power which shall be exercisable by such officers.

Sub-clause (3) of clause 396 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 396 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 397 proposes to empower the Central Government to prescribe the manner of authentication of documents filed by company with the Registrar in electronic form, etc., for the purpose of their admissibility in any proceedings.

Item (a) of sub-clause (1) of clause 398 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 398 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 398 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 398 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 398 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 398 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 398 proposes to empower the Central Government to frame, by notification, a scheme to carry out the provisions of sub-clause (1) of this clause.

Item (a) of sub-clause (1) of clause 399 proposes to empower the Central Government to prescribe the amount of fees for inspection of any document kept by the Registrar.

Item (b) of sub-clause (1) of clause 399 proposes to empower the Central Government to prescribe the amount of fees for obtaining a certificate of incorporation.

Clause 401 proposes to empower the Central Government to provide value-added services through electronic form and levy fee thereon.

Sub-clause (1) of clause 403 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.

First proviso to sub-clause (1) of clause 403 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 405 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 constitution or working or to produce records or documents in its or their possession or allow inspection thereof by any officer or furnish such further information as that Government may consider necessary.

Sub-clause (1) of clause 406 proposes to empower the Central Government to prescribe rules which shall be complied with by Nidhi Companies.

Sub-clause (2) of clause 406 proposes to empower the Central Government to give directions, by notification in the Official Gazette, that any of the provisions of the Act shall not apply or shall apply to any *Nidhi or nidhis* of any class or description with such exception, modification and adaptation as may be specified in the notification.

Clause 408 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 410 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 Members thereof.

Clause 414 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 418 proposes to empower the Central Government to prescribe salary, allowances and other conditions of service of the officers/employees of the Tribunal/ Appellate Tribunal.

Clause 419 proposes to empower the Central Government to prescribe the number of benches of National Company Law Tribunal.

Sub-clause (3) of clause 421 proposes to empower the Central Government to prescribe the form and fee for filing an appeal to the Appellate Tribunal against the order of the Tribunal.

Item (h) of sub-clause (2) of clause 424 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 have the same powers as are vested in a civil court.

Sub-clause (1) of clause 435 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 442 proposes to empower the Central Government to prescribe number of experts and their qualification who may be included in the mediation and conciliation panel.

Sub-clause (2) of clause 442 proposes to empower the Central Government to prescribe the form and fees of application to be made by any of the party for referring the matter to mediation and conciliation panel.

Sub-clause (4) of clause 442 proposes to empower the Central Government to prescribe the fees payable to and terms and conditions of functioning of experts of mediation and conciliation panel.

Sub-clause (5) of clause 442 proposes to empower the Central Government to prescribe procedure to be followed by mediation of conciliation panel.

Sub-clause (1) of clause 454 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 454 proposes to empower the Central Government to prescribe the form, manner and fee for filing an appeal by the aggrieved person against the order made by adjudicating officer.

Sub-clause (1) of clause 455 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 455 proposes to empower the Central Government to prescribe the form of certificate to be issued by Registrar allowing the status of a dormant company.

Sub-clause (3) of clause 455 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 455 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 the form of application, documents and fee to be paid to Registrar for becoming an active company.

Sub-clause (2) of clause 459 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 464 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.

Fifth proviso to sub-clause (1) of clause 466 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.

Sub-clause (1) of clause 468 proposes to empower the Central Government to prescribe rules consistent with Code of Civil Procedure, 1908, for matter relating to winding up of the companies.

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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BILL

to consolidate and amend the law relating to companies.

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*(Shri M. Veerappa Moily, Minister of Corporate Affairs)*

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