

BACKGROUND ON THE COMPANIES BILL, 2012



**THE INSTITUTE OF
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PREFACE

The 8th of August, 2013 would be remembered as a historic day in the history of Corporate India. For, on this very day the Rajya Sabha passed the much-awaited, the much-needed, a modern and contemporary company law. It would become the law of the land on receiving the assent of the Honourable President of India and on notification in Gazette of India, will replace the Companies Act, 1956.

The new Law is a progressive and forward looking which promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors, protection of interest of investors particularly small and minority investors, better shareholder democracy, facilitation of corporate social responsibility (CSR) and stricter enforcement processes.

The new law also transits company secretaries to corporate governance professionals. It brackets them in the category of key managerial personnel and holds them responsible for implementation of all relevant laws applicable to the companies. It envisages a much larger role for them in the areas of secretarial audit, restructuring, liquidation, valuation and much more.

While the corporates and professionals have been gearing themselves up for this watershed event, it is our bounden duty to build human resource capacity in general and to prepare the company secretaries in particular, to implement the new law in letter and spirit. Under the guidance of the Corporate Laws Committee of the Institute, the ICSI has decided to take a number of initiatives in the next three months towards this end.

This Backgrounder on Companies Bill, 2012 is the stepping stone towards more elaborate and more focused capacity building exercise by the Institute.

I commend the dedicated efforts put in by the team of the Directorate of Professional Development of the Institute comprising Mr. Saurabh Jain, Assistant Director, Ms. Deepa Khatri, Education Officer, Mr. Krishan Paul Dutt, Assistant Education Officer, Mr. Mahesh Airen, Assistant Education Officer, Mr. Sudhir Kumar Saklani, Assistant Education Officer in bringing out this Backgrounder in a short period of time under the guidance of Ms. Alka Kapoor, Director, Professional Development, ICSI.

I wish to place on record my sincere thanks to the Mr. Sanjay Grover, Chairman, Corporate Laws Committee for reviewing and making value additions in the Backgrounder.

I sincerely believe that the readers would find the contents of this Backgrounder useful in understanding the new Company Law.

Place : New Delhi
Date : 14th August, 2013

S N Ananthasubramanian
President

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HIGHLIGHTS OF THE COMPANIES BILL, 2012

(as passed by the Lok Sabha on 18.12.12 and by the Rajya Sabha on 08.08.13)

- The Bill has 470 clauses as against 658 Sections in the existing Companies Act, 1956.
- The entire bill has been divided into 29 chapters.
- Many new chapters have been introduced, viz., Registered Valuers (ch.17); Government companies (ch. 23); Companies to furnish information or statistics (ch. 25); Nidhis (ch. 26); National Company Law Tribunal & Appellate Tribunal (ch. 27); Special Courts (ch. 28).
- The Bill is forward looking in its approach which empowers the Central Government to make rules, etc. through delegated legislation (clause 469 and others).
- The Companies Bill is the result of detailed consultative process adopted by the Government.

The salient and unique features of the Bill are as under:

1. DEFINITIONS

- **New definitions are introduced** in the Bill, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc.
- **Definition of private company changed** - the limit on maximum number of members increased from 50 to 200.
- Private company which is a subsidiary of a public company shall be deemed to be a public company.
- **Listed company** - A company which has any of its securities listed on any recognised stock exchange.
- **Associate Company** - A company is considered to be an associate company of the other, if the other company has significant influence over such company (not being a subsidiary) or is a joint venture company. Significant influence means control of at least 20 per cent. of total share capital of a company or of business decisions under an agreement.
- **Dormant Company** - 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 for obtaining the status of a dormant company.
- **"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.

- **"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.
- **"Key Managerial Personnel (KMP)"**, in relation to a company, means-
 - (i) the Chief Executive Officer or the Managing Director or the Manager,
 - (ii) the Company Secretary;
 - (iii) the whole-time director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed
- **"officer who is in default"**, 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.

- Bill defines the term '**promoter**' to mean a person -
 - (a) who has been named as such in a prospectus or is identified by the company in the annual return, 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 is accustomed to act.

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

- **Subsidiary company** in relation to any other company (that is holding company), means a company in which the holding company -
 - Controls the composition of the Board of Directors; or
 - Exercises or controls more than one half of the total share capital (instead of equity share capital as prescribed under the 1956 Act) 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.

- **Small company** has been defined as a company other than a public company having a paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [clause 2(85)].
- The number of persons in any association or partnership not to exceed such number of persons as may be prescribed (not exceeding one hundred). The restriction not to apply to an association or partnership, constituted by professionals who are governed by special Acts. (clause 464)

2. CLASSIFICATION & REGISTRATION

- Concept of One Person Company (OPC limited) introduced [Clause 2(62)].
- Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework [Clause 2(85)].
- Provision for Conversion of Companies already registered has been introduced [Clause 18].
- Registration process has been made faster and compatible with e-governance.
- For the first time, articles may contain provisions for entrenchment [clause 5(3)].
- A declaration, in the prescribed form, required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been

complied with, will be required to signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company. (clause 7)

Registered office

- A company shall, on and from the 15th 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.
- Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner.
- Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.
- Notice of change, verified in the manner prescribed, shall be given to the Registrar, within 15 days of the change, who shall record the same.

Commencement of business

- A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
 - every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
 - Paid-up capital is not less than Rs. five lakhs in the case of public company and one lakh in case of a private company.
 - the company has filed with the Registrar the verification of its registered office.

3. PROSPECTUS AND ALLOTMENT OF SECURITIES

- This chapter is divided into two parts. Part I relates to 'Public offer' and Part II relates to 'Private Placement'
- "Public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.'
- The term 'private placement' has been defined to bring clarity. "Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.
- Detailed disclosures are provided in the Bill itself. It includes disclosures about sources of promoter's contribution.
- In case of variation in the terms of contract referred to in the prospectus or objects for which the prospectus was issued, the dissenting shareholders shall be given exit opportunity by promoters or controlling shareholders.

Punishment for fraudulently inducing persons to invest money (clause 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 any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for punishment for fraud. This provision is proposed to help in curbing a major source of corporate delinquency.

4. SHARE CAPITAL AND DEBENTURES

- 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 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or rupees 10 crores, whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company. [clause 46(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be liable under section 447 i.e. provisions for punishment for fraud.[clause 56(7)] _ Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 52(2)(e)]
- Except as provided in section 54 (Issue of sweat equity shares), a company shall not issue shares at a discount [Clause(53)]
- A company limited by shares cannot issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.
- A company may issue preference shares for a period exceeding twenty years for infrastructural projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Clause 55].
- Every company shall deliver debenture certificate within six months of allotment. [Clause 56(4)(d)].
- Reduction of share capital to be made subject to confirmation by the Tribunal. The Tribunal on receiving an application for reduction of share capital, shall give notice to the Central Government, Registrar and to the SEBI and consider the representations received in this behalf. (Clause 66)

5. E-GOVERNANCE

E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

6. BOARD AND GOVERNANCE

Number of directors

- Minimum : Public company - 3 Private - 2 , OPC - 1.
- Maximum : limit increased to 15 from 12 .
- More directors can be added by passing of special resolution without getting the approval of Central Government as earlier required.

Woman director

At least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

Resident Director

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. [clause 149(2)].

Appointment of Key Managerial Personnel [Clause 203(1)]

- Every company belonging to such class or classes of companies as may be prescribed shall have the wholetime key managerial personnel.
- Unless the articles of a company provide otherwise or the company does not carry multiple businesses, 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 [Proviso to Clause 203(1)]
Provided that nothing contained above shall apply to such class of companies engaged in multiple businesses and which has appointed one or more chief executive officers for each such business as may be notified by the Central Government.
- Every Company Secretary being a whole-time KMP shall be appointed by a resolution of the Board which shall contain the terms and conditions of appointment including the remuneration.

- If the office of any whole-time KMP is vacated, the same 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 [Clause 203 (2) & (4)].
- If a company does not appoint a Key Managerial Personnel, the penalty proposed is :
 - On company - one lakh rupees which may extend to five lakh rupees.
 - On every director and KMP who is in default - 50,000 rupees and 1,000 rupees per day if contravention continues.

Independent Directors

- Concept of independent directors has been introduced for the first time in Company Law: [clause 149(5)]
- All listed companies shall have at least one-third of the Board as independent directors.
- Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
- The independent director has been clearly defined in the Bill.
- Nominee director nominated by any financial institution, or in pursuance of any agreement, or appointed by any government to represent its shareholding shall not be deemed to be an independent director.
- An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- An Independent director shall not be entitled to any stock option.
- Only an independent director can be appointed as alternate director to an independent director. [clause 161(2)].

Person other than retiring director

- If a person other than retiring director stands for directorship but fails to get appointed, he or the member intending to propose him as a director, as the case may be, shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total valid votes [clause 160(1)].

Resignation of director

- A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice, intimate the Registrar and also place such resignation in the subsequent general meeting of the company. [clause 168(1)]. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar.
- The notice shall become effective 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. [clause 168(2)].

- If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting [clause 168(3)].

Participation of directors through video-conferencing

- Participation of directors at Board Meetings has been permitted through video-conferencing or other electronic means, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out [clause 173(2)].
- The Central Government may however, by notification, specify such matters which shall not be dealt with in the meeting through video-conferencing and such other electronic means as may be prescribed. [clause 173(2)]

Notice of Board Meeting

- At least seven days' notice is required to be given for a Board meeting. The notice may be sent by electronic means to every director at his address registered with the company. [clause 173(3)].
- A Board Meeting may be called at shorter notice subject to the condition that at least one independent director, if any, shall be present at the meeting. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director. [clause 173(3)].

Duties of directors (clause 166)

For the first time, duties of directors have been defined in the Bill. A director of a company shall :

- act in accordance with the articles of the company.
- 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.
- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 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.
- 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, he shall be liable to pay an amount equal to that gain to the company.

- not assign his office and any assignment so made shall be void.

Penalty

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.

Board Committees

- Besides the Audit Committee, the constitution of Nomination and Remuneration Committee has also been made mandatory in the case of listed companies and such other class or classes of companies as may be prescribed. [clause 178(1)].
- The Audit committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members including its Chairperson shall be persons with ability to read and understand the financial statement. [clause 177(2)].
- 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 [Clause 178(3)].
- The Nomination and Remuneration Committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent directors. [clause 178(1)].
- Where the combined membership of the shareholders, debenture holders, deposit holders and any other security holders is more than one thousand at any time during the financial year, the company shall constitute a Stakeholders Relationship Committee. [clause 178(5)].

Managerial Remuneration [clause 197]

- Provisions relating to limits on remuneration provided in the existing Act being included in the Bill. Maximum limit of 11% (of net profits) being retained.
- For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration (Schedule V) and in case a company is not able to comply with Schedule V, approval of Central Government would be necessary.

Certain Insurance Premium not to be treated as part of the remuneration

- The premium paid on any insurance 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, shall not be treated as part of the remuneration payable to any such personnel. [Clause 197 (13)]

7. DISCLOSURES

Annual return [clause 92]

- 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;
 - 1) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
 - 2) its shares, debentures and other securities and shareholding pattern;
 - 3) its indebtedness;
 - 4) its members and debenture-holders along with changes therein since the close of the previous financial year;
 - 5) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;
 - 6) meetings of members or a class thereof, Board and its various committees along with attendance details;
 - 7) remuneration of directors and key managerial personnel;
 - 8) penalties imposed on the company, its directors or officers and details of compounding of offences;
 - 9) matters related to certification of compliances, disclosures as may be prescribed;
 - 10) details in respect of shares held by foreign institutional investors; and
 - 11) such other matters as may be prescribed.

The prescribed disclosures under the Annual Return shows significant transformation in non financial annual disclosures and reporting by companies as compared to the existing format.

Similar to the existing compliance certificate as stipulated under section 383A of Companies Act, 1956 certification of compliances has been prescribed under clause 92(1)(ix).

- Annual Return is required to be signed by :
 - (i) A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.
It means that now in respect of all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary

in employment or by a company secretary in practice i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

- (ii) in addition to the above, 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 that the annual return discloses the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

It means, in case of a listed company and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.

- (iii) In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

Penalty

In case a Company Secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Changes in shareholding of promoters and top ten shareholders

- A return to be filed with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders (to ensure audit trail of ownership) by a listed company.

Board's report (Clause 134)

- Board's Report has been made more informative and includes extensive disclosures like -
 - (i) extract of annual return in the prescribed form;
 - (ii) company's policy on director's appointment and remuneration including the criteria for determining qualifications, positive attributes, independence of a director etc. ;
 - (iii) a statement of declaration by independent directors;
 - (iv) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report;
 - (v) particulars of loans, guarantees, or investments made;

- (vi) particulars of contracts or arrangements entered into;
 - (vii) the conservation of energy, technology absorption, foreign exchange earnings and outgo in the prescribed manner;
 - (viii) 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;
 - (ix) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year in case of listed companies and other prescribed class of companies, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of committees and individual directors.
- The Directors' Responsibility Statement shall also include the statement that 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.
 - The Boards' Report is to be signed by the Chairperson of the company if he is authorized by the Board and where he is not so authorized, it 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. (Clause 134).

Related Party Transactions

- Every contract or arrangement entered into with a related party shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement [Clause 188(2)].
- Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash 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 [Clause 192].
- 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 its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes (Clause 193).

8. CORPORATE SOCIAL RESPONSIBILITY (CLAUSE 135)

- Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 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.

- The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.
- The Board of every company shall ensure that the company spends in every financial year atleast 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.
- Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to 'comply or explain'.
- The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

9. DEPOSITS (CLAUSE 173)

- A company may, subject to the passing of a resolution in general meeting and subject to the prescribed rules, accept deposits from its members subject to fulfillment of the following specified conditions:
 - i. passing of resolution in a general meeting.
 - ii. issue of circular to members including therein a statement showing the financial position of the company, the credit ratings 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.
 - iii. filing a copy of the circular along with such statement with the registrar within 30 days before the date of issue of the circular.
 - iv. Providing deposit insurance.
 - v. Certification by the company that it has not defaulted in the repayment of deposits.
 - vi. Provision of security in respect of deposit and interest and creation of charge on company's properties and assets. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.
- A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to compliance of rules as may be prescribed by Central Government in consultation by Reserve Bank of India. (Clause 76).

- The penalty for failure to repay deposit has been made extremely stringent. Where a company fails to repay the deposit 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 liability under section 447 i.e. punishment for fraud), 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 (Clause 75).
- Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration. (Clause 127)

10. INVESTMENT COMPANIES (CLAUSE 186)

- A company can make investment through not more than two layers of investment companies, unless otherwise prescribed.
- This shall not affect
 - 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;
 - 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.
- The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.

11. COMPANY SECRETARY

Functions of Company Secretary (clause 205)

- The functions of the company secretary shall include -
 - to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
 - to ensure that the company complies with the applicable secretarial standards;
 - to discharge such other duties as may be prescribed.

Secretarial Audit (Clause 204)

- Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be prescribed.

- 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.
- The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in his report.
- 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.

Secretarial Standards Introduced [Clause 118(10) & 205]

- For the first time, the Secretarial Standards has been introduced and provided statutory recognition
- Clause 118(10) reads as:
- "Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."
- Clause 205 casts duty on the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.
- It is the beginning of a new era where non financial standards have been given importance and statutory recognition besides Financial Standards.

12. GENERAL MEETINGS

- To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [clause 108].
- One person companies have been given the option to dispense with the requirement of holding an AGM. [clause 96(1)].

Report on annual general meeting [clause 121]

- Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under.

The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.

13. AUDITORS

- A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of sixth annual general meeting.
- However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.
- 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:
 - Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.
 - The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (clause 141)
 - Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:
 - Accounting and book-keeping service
 - Internal audit
 - Design and implementation of any financial information system
 - Actuarial services
 - Investment advisory services
 - Investment banking services
 - Rendering of outsourced financial services
 - Management services
 - Other prescribed services

Internal Audit

- Prescribed class of companies shall be required to appoint an internal auditor to conduct internal audit of the functions and activities of the company. (clause 138)

Cost Audit (clause 148)

- The Central Government after consultation with regulatory body may 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.
- If the Central Government is of the opinion, that it is necessary to do so, it may, direct that the audit of cost records of class of companies, which are required to maintain cost records 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.
- 'cost auditing standards' have been mandated.

14. FINANCIAL STATEMENT (CLAUSE 2(40)]

- For the first time, the term 'financial statement' has been defined to include:-
 - (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, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to subclause (iv):
- the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Signing of financial statement (Clause 134)

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 Chairperson of the company authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the

company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

15. NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (CLAUSE 132)

- The Central Government may be notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
 - (a) 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;
 - (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
 - (c) oversee the quality of service of the professions 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
 - (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
 - (a) 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, registered under the Chartered Accountants Act, 1949:
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;
 - (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.

- (c) where professional or other misconduct is proved, have the power to make order for-
 - (A) imposing penalty of -
 - (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, 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.
- Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted by the Central Government.

16. INVESTOR PROTECTION MEASURES

- Issue and transfer of securities and non-payment of dividend by listed companies, shall be administered by SEBI by making regulations.(Clause 24)
- An act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than three times the amount involved in fraud.(Clause 36)
- A suit may be filed by a person who is affected by any misleading statement or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement. (Clause 37).

Class action

- For the first time, a provision has been made for class action. It is provided that specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.
- Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

- The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. (clause 245)

Serious Fraud Investigation Office (clause 211)

Statutory status to SFIO has been 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.

Stringent penalty provided for fraud related offences.

Fraud defined (Clause 447)

- The term "Fraud" has for the first time been defined in the Bill. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term 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. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years

Prohibition of insider trading

New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included [clause 195].

Prohibition on Forward dealings

Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company. (clause 194).

17. INSPECTION, ENQUIRY AND INVESTIGATION

- A new clause has been added to provide that where in connection with enquiry or investigation into the affairs of the company or reference by the Central Government, or on complaint by specified number of members or creditors or any other person having a reasonable any person that the transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of the company, then the Tribunal may order for the freezing of such transfer, removal or disposal of assets for a period of three years. [clause 221]

- Another new clause seeks to provide that the provisions of inspection or investigation applicable to Indian companies shall also apply mutatis-mutandis to inspection or investigation of foreign companies. (clause 228).

18. RESTRUCTURING AND LIQUIDATION

- The entire rehabilitation and liquidation process has been made time bound.
- Winding up is to be resorted to only when revival is not feasible. (clause 258).
- The Tribunal may appoint an interim administrator or a company administrator from the panel of Company Secretaries, CAs, CWAs, etc. maintained by the Central Government. [clause 259(1)].
- The Company Administrator shall prepare a scheme of revival and rehabilitation. [clause 261(1)].
- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company. (clause 258).
- No civil court shall have jurisdiction in respect of any matter on which Tribunal or Appellate Tribunal is empowered. (clause 268).

19. COMPANY LIQUIDATORS (CLAUSE 275)

The Tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost Accountants.

On an appointment as provisional liquidator or Company Liquidator, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

Professional assistance to Company Liquidator (CLAUSE 291)

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act.

20. COMPOUNDING OF CERTAIN OFFENCES (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. It 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.

21. NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (CLAUSE 408 AND 410)

The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.

22. SPECIAL COURTS

- For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. (clause 435).
- All offences under this Act shall be triable 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. (clause 436)
- 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 436).

23. MEDIATION AND CONCILIATION PANEL (CLAUSE 442)

- The Central government shall maintain a panel of experts to be called Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

24. CROSS - BORDER MERGERS (CLAUSE 234)

- The Bill has allowed cross border mergers with any foreign company;
- The cross border merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

25. REGISTERED VALUERS (CLAUSE 247)

- A new chapter has been inserted in relation to registered valuers.
- Valuation in respect of any property, stock, shares, debentures, securities, goodwill, networth or assets of a company shall be valued by a person registered as a valuer.
- The Central Government shall maintain a register of valuers.
- The valuer shall be a person having such qualification and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed.

26. POWER TO EXEMPT CLASS OR CLASSES OF COMPANIES FROM PROVISIONS OF THIS ACT (CLAUSE 462)

- The Central Government may in the public interest, by notification direct that any provisions of this Act:
 1. shall not apply to such class or classes of companies; or
 2. shall apply to class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.
- The notification in draft to be laid in both the Houses of Parliament for a period of 30 days.
- Houses may disapprove or modify.

27. ADJUDICATION OF PENALTY (CLAUSE 454)

The Central government may by an order publish in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudicating penalty under the provisions of this Bill in the manner as may be prescribed.

MAJOR OMISSIONS /DELETIONS

S. No.	Sections of Companies Act, 1956	Provisions of the Companies Act, 1956 which have been deleted in the Companies Bill, 2012
1.	43A	Private company to become public company in certain cases
2.	44	Filing of Prospectus or statement in lieu of prospectus by private company on ceasing to be private company
3.	58AA	The provisions of section 58AA relating to acceptance of deposits from small shareholders and intimation of default in repayment of deposits thereof has been dropped. Similarly section 58AAA making any offence connected with or arising out of acceptance u/s 58A or 58AA as cognizable has been done away with.
4.	117, 120, 121	Perpetual debentures, re-issue of the debentures
5.	153A	Appointment of public trustee
6.	165	Statutory meeting and statutory report of company
7.	188	Requirement of getting approval from Central Government in case of related party transactions exceeding the limits has been dispensed with.
8.	224A	Auditor not to be appointed except with the approval of the company by special resolution in certain cases

9.	233A	Power of Central Government to direct special audit in certain cases
10.	258	Right of company to increase or reduce the number of directors
11.	270	Time within which share qualification is to be obtained and maximum amount thereof
12.	294	Appointment of sole selling agents to require approval of company in general meeting
13.	294A	Prohibition of payment of compensation to sole selling agents for loss of office in certain cases
14.	294AA	Power of Central Government to prohibit the appointment of sole selling agents in certain cases
15.	417	Employees' securities to be deposited in post office savings bank or Scheduled Bank

NEW INSERTIONS

S. No.	Clauses	New insertions
1.	3	One Person Company
2.	5	Articles may contain “Provisions of entrenchment “in the articles of association
3.	37	A suit may be filed or an action may be taken in case of misleading statement or the inclusion or omission of any matter in the prospectus
4.	38	Disgorgement Provisions
5.	42	Definition of ‘Private Placement’.
6.	108	Voting through electronic means by members at meetings.
7.	118	Secretarial Standards made applicable
8.	120	Maintenance and inspection of documents in electronic form.
9.	129	Consolidated financial statements mandatory if company has one or more subsidiaries.
10.	130	Re-opening of accounts on Court’s or Tribunal’s orders.
11.	131	Voluntary Revision of financial statements or Board’s Report with Tribunal’s consent.
12.	132	Constitution of National Financial Reporting Authority.

13.	135	Requirement for specified companies to constitute a Corporate Social Responsibility Committee of the Board to formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.
14.	138	Requirement for specified companies to appoint an internal auditor.
15.	139	Mandatory rotation of auditors for listed companies and other prescribed classes of companies.
16.	141	LLPs may be appointed as auditors.
17.	143	Auditing Standards to be made mandatory.
18.	143	Duty to Report Fraud to Central Government. if an auditor of a company, in the course of the performance of his duties as auditor, or the cost accountant in practice conducting cost audit or the company secretary in practice conducting secretarial audit, 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.
19.	144	Auditor not to render certain services.
20.	149	Mandatory for prescribed classes of companies to have at least one woman director.
21.	149	Every listed company and other prescribed classes of companies to have independent directors.
22.	150	Maintenance of databank of independent directors.
23.	166	Duties of directors.
24.	168	Resignation of director.

25.	177	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.
26.	178	Following Committees of directors mandatory for listed companies and other classes of companies : (i) Audit Committee (ii) Nomination and Remuneration Committee (iii) Stakeholder's Relationship Committee
27.	154	Participation of directors in board meetings by video conferencing or by electronic means
28.	194	Prohibition on forward dealings in securities of company by director or key managerial personnel.
29.	195	Prohibition on Insider Trading of securities.
30.	203	Appointment of key managerial personnel compulsory in specified companies - (i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) Company secretary; and (iii) Chief Financial Officer :
31.	204	Mandatory Secretarial audit for bigger companies (listed companies and such other classes of companies as may be prescribed) by a company secretary in practice
32.	205	Functions of company secretary.
33.	211	Investigation in to the affairs of companies by Serious Fraud Investigation Office (SFIO)

34.	233	A single forum for approval of mergers and acquisitions along with a simple and shorter merger process for holding and wholly owned subsidiary companies or between two or more small companies.
35.	234	Cross Border mergers.
36.	236	“Squeeze out provisions” – Purchase of minority shareholding by acquirer on becoming registered holder of 90% or more of issued share capital of company.
37.	245	Class action against oppression/mismanagement by member/members by creditor(s).
38.	247	Registered Valuers
39.	435	Special Courts to deal with offences
40.	455	Dormant Company
41.	442	Maintenance of Mediation and Conciliation Panel.
42.	447	Definition of “Fraud”
43.	Chapter XIX	Time bound procedure for Revival and Rehabilitation of sick companies.

MATTERS REQUIRING SANCTION BY SPECIAL RESOLUTION

Clause 114 (2) provides that 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.

The following matters require sanction by special resolution :

S. No.	Clause	Item/Particulars
1.	5 (4)	To make entrenchment provisions in the articles of association of a public company.
2.	12(5)	To shift the registered office outside the local limits of any city, town or village where such office is situated.
3.	13 (1) & (8)	(1) To alter the provisions contained in Memorandum of the company (8) To Change the objects for which the money has been raised from public through prospectus and still has any unutilized amount out of the money so raised.
4.	14(1)	To alter the 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.
5.	27 (1)	To vary the terms of contract referred to in the prospectus or objects for which the prospectus was issued.

6.	41	To issue depository receipts in any foreign country. (Global depository receipts).
7.	48 (1)	To vary the rights attached to the shares of any class
8.	54	To issue sweat equity shares of a class of shares already issued.
9.	62(1)(b)	To increase subscribed capital by the issue of further shares to employees under a scheme of employees' stock option.
10.	62(1)(c)	To increase subscribed capital by the issue of further shares to any person whether or not those persons include the existing members or employees 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.
11.	62(3) Proviso	To approve terms of issue of debentures or loan containing an option to convert such debentures or loans into shares.
12.	66	To reduce the share capital subject to the confirmation of the Tribunal.
13.	67(3)(b)	To approve any scheme for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company.
14.	68(2)	To authorise the company to purchase its own securities.
15.	71	To issue debentures with an option to convert whole or part of the debentures into Shares at the time of redemption.
16.	94	To keep and maintain the registers and the copies of annual return filed, at any other place than the registered office, where more than one-tenth of the total number of members reside.
17.	140	To Remove the auditor before the expiry of his term after obtaining the previous approval of the Central Government.
18.	149(1) Proviso	To appoint more than fifteen directors by a company.

19.	149(10)	To re-appoint an independent director after expiry of a term of five consecutive years.
20.	165(2)	To specify any lesser number of companies in which director of the company may act as director. No person, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Further the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
21.	180	To exercise some of the powers as provided under section 180, by the Board of directors only with the consent of company.
22.	185	To approve a scheme pursuant to which any loan may be given to a managing or whole -time director.
23.	186	To approve giving of loan any loan or guarantee or providing any security or the acquisition exceeding limits of 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.
24.	188	To approve entering into contract or arrangement with a related party, 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
25.	196	To appoint the person as a managing director, whole-time director or manager who has attained the age of 70 years.
26.	197(4)	To determine the remuneration payable to the directors of a company, including any managing or whole-time director or manager if Articles of the company, so require.
27.	210	To resolve that the affairs of the company ought to be investigated.
28.	212	To resolve that the affairs of the company are required to be investigated by the Serious Fraud Investigation Office.
29.	248	To file an application before the Registrar to remove the name of company from the register of companies.

30.	262	To approve the Scheme of amalgamation of the sick company with any other company by the shareholders of both companies.
31.	271	To resolve that the company be wound up by the Tribunal.
32.	304	To resolve that the company be wound up voluntarily.
33.	319(1)	To confer general authority or an authority in respect of any particular arrangement on the liquidator to (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.
34.	321	To sanction 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.
35.	343	To sanction exercise of certain powers to Company Liquidator.
36.	347	To direct the manner of disposing of company's books and papers when the affairs of a company have been completely wound up and it is about to be dissolved.
37.	371	To adopt Table F in Schedule I, if required.

POWERS OF NATIONAL COMPANY LAW TRIBUNAL (NCLT)

S. No.	Clause no.	Powers
1.	7(7)	To pass appropriate orders, in case a company got incorporated by furnishing any false or misleading information.
2.	55(3)	To give consent to issue of further redeemable preference shares in line of irredeemable preference shares.
3.	58(3)	To refuse registration and appeal against refusal.
4.	59(1)	To order rectification of register on transfer.
5.	71(9)	To order redemption of debentures forthwith by payment of principal and interest.
6.	73 (4)	To direct the company to make repayment of the matured deposits or for any loss or damage incurred by him as a result of non-payment.
7.	98(1)	To call meetings, i.e.extra ordinary general meetings in case it is impracticable to call a meeting.
8.	99	To impose penalty for default in complying with section 96 (to conduct AGM) to 98.
9.	210(2)	Investigation into the affairs of the company.
10.	213(b)	To order Investigation into the affairs of the company in other cases on application.
11.	214	To order to submit security for payment of cost and expenses of investigation before appointing a inspector.
12.	221(1)	To order Freezing of assets of company on inquiry and investigation in case of complaint made by its members.
13.	222(1)	To provide for imposition of restrictions in connection with securities.

14.	230(1)	To sanction the scheme of compromise or arrangement of the company with its creditors or members.
15.	231(1)	To enforce compromise and arrangement as sanctioned under section 230.
16.	232(1)	To sanction the scheme of merger and amalgamation.
17.	235(2)	To entertain the application made by the dissenting shareholders of the scheme approved by the majority.
18.	241(1)	To grant relief in case of mismanagement, oppression, etc.on application by members.
19.	242(1)(a)	To look whether 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.
20.	243(1)	To grant leave in case of termination or modification of certain agreements by the company with managing directors or other directors.
21.	245(1)	To pass specified order in receipt of application by members/depositors or any class of them in case if they are of the opinion that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.
22.	252(1)	To entertain the appeal of Any person aggrieved by an order of the Registrar, in case 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 under section 248.
23.	253(1)	To entertain the application made by the secured creditors of a company representing fifty per cent.or more of its outstanding amount of debt and the company has failed to pay the debt within a period of thirty days of the service of the notice of demand.

24.	260	To direct the functions and duties of the company administrator.
25.	262	To sanction the scheme of revival and rehabilitation of sick industrial companies as prepared in Section 261.
26.	264	To implement the scheme of revival and rehabilitation of sick industrial companies.
27.	266	To assess damages against delinquent Directors in the course of the scrutiny or implementation of any scheme or proposal.
28.	267	To punish in case of making a false or incorrect evidence to the tribunal or the appellate tribunal.
29.	270	To pass order of winding up of the company.
30.	273	To pass an order either by dismissing the petition for winding up or make an order for winding up.
31.	275	To appoint official liquidator from the panel maintained under company liquidators
32.	276	To remove official liquidator in case of reasonable cause being shown and for reasons to be recorded in writing under specified grounds.
33.	277(4)	To constitute winding up committee on application of company liquidator.
34.	279(1)	To put stay on suits, legal proceedings etc. on winding up order.
35.	282(1)	To give directions on report of company liquidator.
36.	283(1)	To have the custody of companies property during liquidation.
37.	285(1)	To settle the list of contributories and application of assets in all cases where rectification is required.

38.	287(1)	To constitute an advisory committee to advise the Company Liquidator and to report to the Tribunal
39.	289(1)	To stay the proceedings of winding up on application of promoter, shareholders or creditors or any other interested person.
40.	291(1)	To sanction the appointment of processionalists for assistance to Company Liquidator
41.	294(1)	To order the audit of Company Liquidator's account for better accountability in company's winding up.
42.	295(1)	To pass an order requiring any contributory for the time being on the list of contributories to pay 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.
43.	296(1)	To make calls to the contributories on the list for payment of money 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.
44.	297	To adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.
45.	298	To make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up.
46.	299	To summon persons suspected of having property of company in case the person is capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.
47.	300	To order examination of promoters, directors in case the Company Liquidator is of the opinion that a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation.

48.	301	To detain and Arrest of person trying to leave India or abscond. In case such person is having property, accounts or papers of the company in his possession.
49.	302	To order dissolution of the company on application by company liquidator.
50.	322(1)	To determine the questions arising out of winding up of the company in case of dispute.
51.	335(1)	To grant permission to enforce any attachment, distress or execution after the commencement of winding up.
52.	339(1)	To direct Liability for Fraudulent conduct of business to any person on application of Company Liquidator.
53.	340	To Assess damages against delinquent directors, manager, liquidator or officer of the company for misapplication, retainer, misfeasance or breach of trust.
54.	341	To extend the liability of partners or directors of the company under section 339 relating to fraudulent conduct of business or under section 340 relating to misfeasance or breach of trust.
55.	342	To prosecute the delinquent officers and members of the company for being guilty of offence in relation to the company.
56.	354	To ascertain the wishes of creditors or contributories by calling their meetings in all matters relating to winding up of the company.
57.	356	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 2 years from the date of dissolution.
58.	420	To rectify any mistake within 2 years from the date of order.
59.	425	Shall have same powers of contempt as that of High Court under the provisions of the Contempt of Courts Act,1971

60.	426	To delegate his powers to any person to inquire in to the matter connected with any proceeding and report to it.
61.	441	To compound certain offences in certain cases before the investigation has been initiated or pending.
62.	459	To impose such conditions or restrictions as it thinks fit subject to the payment of fee, while according approval, sanction, consent, confirmation etc. giving directions or granting exemptions.

POWERS OF CENTRAL GOVERNMENT

S.No.	Clause No.	Powers
1.	2(23)	To maintain a panel of professionals.
2.	8(1)	To register an association as limited company having charitable objects without adding to its name the words “limited”, “private limited”.
3.	8(6)	To revoke the licence granted to a company where affairs of the company are conducted fraudulently or violates the objects or prejudicial to the public interest.
4.	16(1)(a)	To direct the company to change its name which is identical with or too nearly resembles the name by which a company have been previously registered.
5.	16(1)(b)	To rectify the name of the company on an application by a registered proprietor of a trademark
6.	87(1)	To Rectify the register of charges on receipt of application of the company or any person interested in the affairs of the company.
7.	94(5)	To order immediate inspection of document of the company
8.	Proviso to 96(2)	To Exempt any class of company to hold Annual general Meeting
9.	111(3)	To restrict the circulation of statement with respect to any proposed resolution on an application by company or any person aggrieved to secure needless publicity.
10.	124	To approve declaration of dividend out of reserves not in accordance with provisions.

11.	129	To exempt class or classes of companies to furnish financial statement as per the accounting standards.
12.	148	To direct class of companies engaged in production of goods or providing services to include in the books of accounts particulars relating to utilisation of material or labour or to other item of cost and direct the audit of cost record of the company by cost accountant in practice
13.	proviso to 197(1)	To approve payment of remuneration to Directors including MD or WTD or manager when basic limit exceeds.
14.	200	To fix the limit with regard to remuneration
15.	206(4)	To direct the Registrar or an Inspector to carry out the inquiry.
16.	206(5) and (6)	To direct an Inspector to inspect books and papers of a company; To authorize any statutory authority to carry out inspection of books of accounts of a company or class of companies.
17.	210	To appoint Investigators where it is necessary to investigate into affairs of the company.
18.	213	To appoint one or more competent person as inspectors to investigate into the affairs of the company.
19.	214	To order to submit Security for payment of costs and expenses of investigation
20.	216	To Investigate into the ownership of the company.
21.	217(9)	To provide assistance to the Inspector.
22.	224	To prosecute persons for the offence and caste duty on officers, employees or the company or body corporate to provide necessary assistance in connection with the prosecution.

23.	237	To provide for amalgamation of two or more companies in public interest by passing an order to be notified in the official gazette.
24.	259	To maintain databank consisting of the names of professionals consisting company secretaries, chartered accountants, cost accountants and other professional as specified.
25.	332	To prescribe by rules regarding the rate of floating charge.
26.	347(3)	To prescribe rules, the period, form and manner of retention of books and papers of company which has been wound up.
27.	396(2)	To appoint Registrar, Additional, Joint, Deputy and Assistant Registrar for the registration of companies.
28.	396(4)	To direct the preparation of seal or seals for authentication of documents required in connection with the registration of companies.
29.	400	To provide in the rules that the electronic form shall be exclusive, or in the alternative or in addition to the physical form.
30.	405	To direct companies to furnish information or statistics.
31.	406	To modify act with regard to <i>nidhis</i>
32.	435 (1)	To Establish or designate Special Courts
33.	435(2)	To appoint the judge for special court with the concurrence of the Chief Justice of the High Court.
34.	441	To Appoint Regional Director
35.	442	To Constitute And maintain a panel of experts i.e. "Mediation Panel" for mediation between parties during the pendency of any proceedings

36.	443	To appoint company prosecutors.
37.	454	To appoint Adjudicating Officers
38.	458	To delegate its powers and functions.
39.	459	To accord approval, sanction, consent , confirmation or recognition in relation to any matter subject to conditions and to prescribe fees on applications To give directions and to grant exemption
40.	462	To exempt class or classes of companies from provisions of this Act by way of notification in the Official Gazette.
41.	467	To amend Schedules.
42.	468	To make rules relating to winding up.
43.	469	To make rules.
44.	470	To Remove difficulties by publishing order in the Official Gazette in case of any difficulty arises in giving effect to the provision of the Act

PROVISIONS RELATING TO FRAUD

The Companies Bill, 2012, provides for specific provisions related to any act of fraud. Clause 447 deals with the punishment for fraud.

Explanation to clause 447 defines the term 'Fraud' as –

- (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.

The punishment for fraud as specified under clause 447 is –

Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 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 3 times the amount involved in fraud:

Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

The following table contains the acts for which the punishment for fraud under clause 447 is provided in the Bill:

S.No.	Clause No.	Item/Particulars
1.	7(5) & (6)	Incorporation of company (5) Furnishing any false or incorrect particulars of any information or suppression any material information, in any of the documents filed with the Registrar in relation to registration of a company by any person, of which he is aware, the person shall be liable under clause 447. (6) After the incorporation of a company, if 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, promoters, first directors of the company and the persons making declaration for incorporation shall be liable for action under clause 447.
2.	8(11)	Formation of companies with charitable objects, etc When it is proved that the affairs of the companies formed with charitable objects, were conducted fraudulently, every officer in default shall be liable.
3.	34	Criminal liability for mis-statements in prospectus Where a prospectus, issued, circulated or distributed 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 authorizes the issue of such prospectus shall be liable under clause 447. <i>Shall not apply 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.</i>

4.	36	Punishment for fraudulently inducing persons to invest money The person shall be liable, who 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 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; or (c) any agreement for, or with a view to obtaining credit facilities from bank or financial institution;
5.	38(1)	Punishment for personation for acquisition, etc., of securities The person shall be liable, if he (a) makes or abets the making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; (b) makes <i>or</i> abets the 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; (c) 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.
6.	46 (5)	Certificate of shares (5) If a company with intent to defraud issues a duplicate certificate of shares, every officer of the company who is in default shall be liable under clause 447.
7.	56 (7)	Transfer and transmission of securities (7) Where any depositor y or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under clause 447.

8.	66 (10)	Reduction of share capital (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.
9.	75 (1)	Damages for fraud Where company fails to repay deposit or any interest thereon within the time specified & it is proved that the deposits had been accepted with intent to defraud 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 liability under clause 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.
10.	140 (5)	Removal, resignation of auditor and giving of Special notice (5) Tribunal either <i>suo motu</i> or on an application made by 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. If application is made by Central Government & Tribunal is satisfied that any change of auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor & Central Government may appoint another auditor in his place. Auditor against whom final order has been passed by Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of the order and auditor shall also be liable under clause 447.

11.	206 (4)	Power to call for information, inspect books and conduct inquiries (4) If ROC is satisfied on the basis of information available or furnished or on a representation made by any person that business of company is carried on for a fraudulent/unlawful purpose/not in compliance with the provisions of this Act/if grievances of investors are not being addressed, he may, call on the company to furnish in writing any information or explanation on matters specified within such time as he may specify & carry out such inquiry as he deems fit after providing a reasonable opportunity of being heard: 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 as per clause 447.
12.	213 (proviso)	Investigation into company's affairs in other cases 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 in default of company and persons concerned in the formation of company or the management of its affairs shall be punishable for fraud.
13.	229	Penalty for furnishing False statement, mutilation, destruction of documents Where a person who is required to provide an explanation or make a statement during 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/body corporate; (b) makes, or is a party to the making of, a false entry in any document concerning the company/body corporate; or (c) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud.
14.	251 (1)	Fraudulent application for removal of name Where it is found that an application by a company under sub-clause (2) of clause 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 — (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 clause 447.
15.	266 (1)(proviso)	Power of Tribunal to Assess damages Against delinquent directors, etc 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 clause 447.
16.	339 (3)	Liability for fraudulent conduct of business (3) Where any business of a company is carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under clause 447.
17.	448	Punishment for false statement If in any return, report, certificate, financial statement, prospectus, statement or other document

		required by, or for, the purposes of this Act or rules 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 clause 447.

MATTERS ON WHICH EXIT OPPORTUNITY IS GIVEN TO SHAREHOLDERS

Clause 13 of the Companies Bill, 2012 deals with providing exit opportunity in case of alteration of provisions of memorandum.

Sub- clause (8) provides that a company, which has raised money from public through prospectus and still has any unutilized 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.

The procedure, amongst other things, provides that 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.

Clause 27 of the Companies Bill, 2012 deals with providing the exit opportunity in case of variation in terms of contract or objects in prospectus.

The provision provides that a company cannot vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval by way of special resolution.

Amongst other things, the dissenting shareholders shall be given an exit offer by promoters or controlling shareholders at such exit price, manner and conditions as may be specified by the Securities and Exchange Board in its regulations.

Dissenting shareholders are those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus.

Clause 230 of the Companies Bill, 2012 deals with Compromise and Arrangement

An order made by the Tribunal for sanctioning the compromise or arrangement, may include exit offer to dissenting shareholders, if any, which in the opinion of the Tribunal, is necessary to effectively implement the terms of the compromise or arrangement.

OFFENCES – Compoundable / Non-compoundable

The offences which are punishable with fines are compoundable under the Bill.

Any offence punishable (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, may, be compounded by the Regional Director;

Any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence exceeds five lakh rupees, may, be compounded by the Tribunal;

The offences which are punishable with Fine or Imprisonment; fine or Imprisonment or with both may be compoundable with the permission of Special Court.

Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

List of offences Compoundable in nature (powers vested with Regional Director)

Section	Nature of offence	Fine
11(2)	Committing default in complying with the requirements relating to commencement of business.	Fine upto Rs. 5,000 on company. Fine upto Rs. 1,000 for each day of default (for officer in default)
16(3)	Committing default in complying with the directions issued under sub-section (1) relating to rectification of name of company	Fine upto Rs. 1,000 for each day of default on company. Fine not less than Rs. 5,000 but may be extended to Rs. 1 lakh (for officer in default).
26(9)	Contravention of provisions relating to issue of a prospectus	Fine from Rs. 50,000 to 3 lakh on company.

53(3)	Violation of provisions relating to issue of shares at discount	Fine not less than Rs. 1 Lakh but may be extended to Rs. 5 lakh on company
56(6)	Failure to comply with the provision relating transfer and transmission of securities under sub-section (1) to (5)	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company. Fine not less than Rs. 10,000 but may be extended to Rs. 1 lakh (for officer in default).
59(5)	Committing default in complying with the order of Tribunal relating to rectification of register of members	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company.
64(2)	Failure to file a notice related to alteration, increase or redemption of share capital along with the altered memorandum with the Registrar	Fine upto Rs. 1,000 for each day of default continues, or five lakh rupees, whichever is less.
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company. [If more than 5 lakh then compoundable by the Tribunal]
68(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 relating to buy back of securities	Fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh on company.
86	Contravention of any provision of Chapter VI relating to Registration of Charges	Fine not less than Rs. 1 lakh but may be extended to Rs. 10 lakh on company.
88(5)	Failure to maintain register of	Fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh and

	members or debenture-holders or other security holders as prescribed	further fine up to Rs. 1,000/- for each day of default in case failure continues.
89(5)	Failure to file declaration not holding beneficial interest in any share	Fine upto Rs. 50,000 and further fine up to Rs. 1,000/- for each day of default in case failure continues.
89(7)	Failure to file return relating to beneficial interest in any share before the expiry of the time specified under the first proviso to sub-section (1) of section 403	Fine not less than Rs. 500 but may be extended to Rs. 1,000 on company & every officer who is in default and further fine up to Rs. 1,000/- for each day of default in case failure continues.
92(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	Fine which shall not be less than Rs. 50,000 but may be extended to Rs. 5 lakh.
99	Default 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	Fine upto Rs. 1 lakh on company & every officer who is in default and further fine up to Rs. 5,000/- for each day of default in case failure continues.
102(5)	Default in complying with the provisions of this section relating to statement to be annexed to notice	Fine upto Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.
105(3)	If default is made in complying with sub-section (2) relating to proxies	Fine upto Rs. 5,000 on every officer who is in default.
105(5)	If invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued	Every officer of the company who knowingly issue or willfully authorizes or permits their issue shall be punishable with Fine upto Rs. 1 lakh

121(3)	Failure to file Report on annual General meeting.	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company. Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh (for officer in default)
124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	Fine not be less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for every officer in default)
137(3)	Failure to file financial statements with the Registrar	Fine up to Rs. 1,000/- for each day of default, but maximum up to Rs. 10 lakh.
140(3)	Non-compliance by auditor of sub-section (2) relating to filing of resignation information	Fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh on auditor/audit firm.
147(1)	Failure of company to comply with the provisions of sections 139 to 146 with regard to auditors	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company
157(2)	Failure to furnish DIN to Registrar	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh on company and every officer in default.
165(6)	Acting as a director of more than 20 companies	Fine not less than Rs. 5,000 but may be extended to Rs. 25,000 for each day of default
166(7)	Default in complying with the provisions of this section relating to directors duties	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on directors
172	Contravention of the provisions of Chapter XI relating to appointment and qualifications of directors	Fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh

178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship Committee	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company
188(5)(ii)	Related party transaction in case of other company	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh
186(13)	Contravention of the provisions of this section relating to loans and investment	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company
187(4)	Contravention of the provisions of this section relating to investment of company held in its name	Fine not less than Rs. 25,000 but may be extended to Rs. 25 lakh on company.
191(5)	Contravention of the provisions of this section relating to payment to director for loss of office in connection with transfer of property	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh on such director
197(15)	Contravention of the provisions of this section relating to managerial remuneration in case of absence or inadequacy of profits.	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
203(5)	Contravention of the provisions of this section relating to appointment of Key Managerial personnel	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company Fine up to Rs. 50,000 on Director or key managerial person who is in default and further fine up to Rs. 1000 for each day of default in case the contravention continues.

204(4)	Contravention of the provisions of this section relating to Secretarial Audit for bigger companies.	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on the company, every officer of the company and company secretary in practice.
206(7)	Failure to furnish any information during inspection or inquiry	Fine up to Rs. 1 lakh and further fine up to Rs. 500 for each day of default on the company and every officer of the company.
221(2)	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)	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
222(2)	securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1)	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
232(8)	Contravention of the provisions by the transfer and transferee company in case of merger or amalgamation	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
238(3)	Failure to register the offer of Schemes involving transfer of shares.	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on director who issue such circular
242(8)	Contravention of the order of Tribunal relating to alterations in memorandum or articles	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
247(3) <i>Proviso</i>	Contravention of the provisions of this section by the valuer	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh

249(2)	Filing of application in restricted cases for removal of name	Fine upto Rs. 1 lakh
302(4)	Committing default by official liquidator in forwarding a copy of the order of dissolution of company by tribunal within the period specified in sub-section (3)	Fine upto Rs. 5,000 for each day of default (on company liquidator)
306(5)	Default in calling the meeting of the creditors; to prepare a statement of the position of the company's affairs alongwith a list of creditors, estimated amount of claim and filing the resolution with Registrar	Fine not less than Rs. 50,000 but may be extended to Rs. 2 lakh
307(2)	Default in publication of resolution to wind up voluntarily	Fine upto Rs. 5,000 for each day of default on company and every officer of the company
312(2)	Failure to give notice of appointment of Company Liquidator to Registrar	Fine upto Rs. 500 for each day of default on company and every officer who is in default
314(5)	Failure to prepare quarterly statement of accounts by company liquidator in voluntary winding up and file with Registrar under sub-section (5)	Fine upto Rs. 5,000 for each day of default (on Company liquidator)
318(8)	Failure to complying with the provisions of this section relating to final meeting and dissolution of company	Fine upto Rs. 1 lakh (on Company liquidator)
342(6)	Failure or neglect to give assistance required under sub-section (5)	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh

344(2)	Failure to give statement that the company is in liquidation	Fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh
348(6)	Contravention of the provisions of information as to pending liquidation	Fine upto Rs. 5,000 for each day of default (for Company liquidator)
356(2)	Failure to file certified copy of the order of Tribunal relating to dissolution of company void with the Registrar	Fine upto Rs. 10,000 for each day of default (for Company liquidator or the person on whose application the order was passed)
392	Contravention of the provisions of Chapter XXII by a foreign company	Fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh and further fine up to Rs. 50,000 for each day of default
405(4)	Failure to furnish information or statistics etc. by the companies required by the Central Government	Fine upto Rs. 25,000 on company
450	No specific penalty or punishment is provided in the Act	Fine up to Rs. 10,000 and further fine up to Rs. 1,000 for each day of default in case of contravention continues
451	Repeated default within 3 years	Twice the amount of fine for such offence in addition to any imprisonment provided for that offence
452(1)	Punishment for wrongful withholding of property	Fine not less than Rs. 1 lakh but may be extend to Rs. 5 Lakh on officer or employee of the company
453	Improper use of the words "limited" and "private limited"	Fine not less than Rs. 500 but may be extended to Rs. 2,000 for each day of default
454(8)	Failure to pay the penalty imposed by the adjudicating officer or Regional Director	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company
464(3)	Being a member of a company formed exceeding certain numbers	Fine upto Rs. 1 lakh and liabilities incurred in such business
469(3)	Contravention of the Rules framed by Central Government	Fine upto Rs. 5,000 and further fine up to Rs. 500 for each day of default in case of contravention continues

List of offences compoundable in nature (powers vested with the Tribunal)

Section	Nature of offence	Fine
8(11)	Committing default in complying with the requirements relating to formation of companies with charitable objects etc.	Fine not less than Rs. 10 lakh but may be extended to Rs. 1 crore on company.
40(5)	Committing default in complying with the provisions of this section relation to securities to be dealt with in stock exchanges	Fine not less than Rs. 5 lakh but may be extended to Rs. 50 lakh on company.
46(5)	Fraudulently issuing of duplicate share certificates by a company	Fine not less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extended to 10 times or Rs. 10 crores whichever is higher on company.
66(11)	Failure to publish the order of confirmation of the reduction of share capital by the Tribunal	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company.
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company. [If less than 5 lakh then compoundable by the RD]
74(3)	If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal	Fine not less than Rs. 1 crore but may be extended to Rs. 10 crore on company.

117(2)	Failure to file with the Registrar the copy of notice or agreement within stipulated time	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company. Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh (for officer in default including liquidator).
124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company.
143(15)	Failure of auditor to intimate to Central Government regarding fraud against the company by officers or employees	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh.
185(2)	Contravention of the provisions of sub-section 1 relating to loans, guarantee or security	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company
245(7)	Committing default in complying with the order of Tribunal under this section	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company
314(8)	Default in complying with the provisions of this section except sub-section (5)	Fine upto Rs. 10 lakh on company liquidator
316(2)	Failure to send quarterly report on winding up and call meeting by company liquidator	Fine upto Rs. 10 lakh on company liquidator

List of offences compoundable in nature (powers vested with Special Court)

Section	Nature of offence	Fine / Imprisonment
8(11)	Committing default in complying with the requirements relating to formation of companies with charitable objects etc.	Imprisonment upto three years or fine not less than Rs. 25,000 but may be extended to Rs. 25 lakh, or with both (for officer in default)
26(9)	Contravention of provisions relating to issue of a prospectus	Imprisonment upto three years or fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh or with both (every person who is knowingly a party to the issue of such prospectus)
40(5)	Committing default in complying with the provisions of this section relation to securities to be dealt with in stock exchanges	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh or with both (for officer in default).
48(5)	Committing default in complying with the provisions regarding to variation of shareholders' rights	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company. Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both (for officer in default).
53(3)	Violation of provisions relating to issue of shares at discount	Imprisonment upto six months or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for officer in default).
59(5)	Committing default in complying with the order of Tribunal relating to rectification of register of members	Imprisonment upto one year or fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh or with both (for officer in default).
68(11)	If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange	Imprisonment upto three years or fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh or with both (for officer in default).

	Board relating to buy back of securities	
71(11)	Committing default in complying with the order of Tribunal relating to redemption of debentures	Imprisonment upto three years or fine not less than Rs. 2 lakh but may be extended to Rs. 5 lakh or with both (for officer in default).
74(3)	If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal	Imprisonment upto seven years or fine not less than Rs. 25 lakh but may be extended to Rs. 2 crore or with both (for officer in default).
86	Contravention of any provision of Chapter VI relating to Registration of Charges	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default).
92(5)	Failure to file annual return before the expiry of the period specified under section 403 with additional fee	Fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh on company. Imprisonment upto six months or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for officer in default).
128(6)	Failure to keep proper books of account	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for MD, WTD, CFO etc.)
129(7)	Failure to keep proper financial statement	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for every director)
134(8)	Default in complying with the provisions regarding financial statement and Board's report	Imprisonment upto three years or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for every director)
137(3)	Failure to file financial statements with the Registrar	Fine up to Rs. 1,000/- for each day of default, but maximum up to Rs. 10 lakh. Imprisonment upto six months or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for every director)

147(1)	Failure of company to comply with the provisions of sections 139 to 146 with regard to auditors	Imprisonment upto one year or fine not be less than Rs. 10,000 but may be extended to Rs. 1 lakh or with both (for officer in default)
159	Contravention of the provisions of section 152, 155 and 156	Imprisonment upto six months or fine up to Rs. 50,000 and further fine up to Rs. 500/- for each day of default in case of contravention continues
167(2)	Functioning as a director after vacation of office	Imprisonment upto one year or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both
178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship Committee	Imprisonment upto one year or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default)
184(4)	Failure to disclose of director's interest and Participation in Board meeting by interested director	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 1 lakh or with both
185(2)	Contravention of the provisions of sub-section 1 relating to loans, guarantee or security	Imprisonment upto six months or fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh or with both
187(4)	Contravention of the provisions of this section relating to investment of company held in its name	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both
188(5)(i)	Contravention of this section relating to Related party transaction in case of listed company	Imprisonment upto one year or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both

194(2)	Forward dealing in securities of the company by Key Managerial personnel or director	Imprisonment upto two years or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for every director or Key Managerial Personnel)
195(2)	Contravention of this section (195) relating to Insider trading of securities by Key Managerial personnel or director	Imprisonment upto five years or fine not less than Rs. 5 lakh but may be extended to Rs. 25 crore or three times the profit made on insider trading whichever is higher or with both
221(2)	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)	Imprisonment upto three years or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for officer in default)
222(2)	securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1)	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both (for officer in default)
232(8)	Contravention of the provisions by the transfer and transferee company in case of merger or amalgamation	Imprisonment upto one year or fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh or with both (for officer in default)
242(8)	Contravention of the order of Tribunal relating to alterations in memorandum or articles	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default)
243(2)	Acting as managing or other director or manager, whose agreement has been terminated or set aside	Imprisonment upto six months or fine up to Rs. 5 lakh or with both
274(4)	Failure to file statement of affairs	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both

284(2)	Failure to extend full cooperation to the company liquidator	Imprisonment upto six months or fine up to Rs. 50,000 or with both
305(4)	Without reasonable grounds giving declaration of solvency in case of proposal to wind up voluntarily	Imprisonment not less than three years but may be extended to five years or fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh or with both
306(5)	Default in calling the meeting of the creditors; to prepare a statement of the position of the company's affairs alongwith a list of creditors, estimated amount of claim and filing the resolution with Registrar	Imprisonment upto six months or fine not less than Rs. 50,000 but may be extended to Rs. 2 lakh or with both (for directors)
347(4)	contravention of any rule framed or an order made under sub-section (3)	Imprisonment upto six months or fine upto Rs. 50,000 or with both
348(7)	Wilful default by company liquidator	Imprisonment upto six months or fine upto Rs. 1 lakh or with both
392	Contravention of the provisions of Chapter XXII by a foreign company	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both (for officer in default)
405(4)	Failure to furnish information or statistics etc. by the companies required by the Central Government	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 3 lakh or with both (for officer in default)
441(5)	Failure to comply with the order made by Tribunal or Regional Director in relation to Compounding of offences	Imprisonment upto six months or fine upto Rs. 1 lakh or with both
454(8)	Failure to pay the penalty imposed by the adjudicating officer or Regional Director	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default)

List of offences non-compoundable in nature

Section	Nature of offence	Imprisonment and Fine
46(5)	Fraudulently issuing of duplicate share certificates by a company	Fine not less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extended to 10 times or Rs. 10 crores whichever is higher on company. Imprisonment not less than six months but may be extended to 10 years and 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 (for officer in default).
56(7)	If the depository or depository participant with an intention to defraud a person, has transferred the shares.	Imprisonment not less than six months but may extended to 10 years and 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 (for officer in default).
57	Deceitfully personating as an owner of any shares or interest in a company	Imprisonment minimum of one year but may be extended to three years and with fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
58(6)	Contravention of an order of the Tribunal regarding the refusal of registration and appeal against refusal.	Imprisonment not less than one year but may be extended to three years and with fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	Imprisonment upto three years and fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh (for officer in default).
118(12)	Tampering with the minutes of the proceedings of meeting	Imprisonment upto two years and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh.

127 Proviso	Failure to distribute dividend within thirty days	Imprisonment upto two years and fine not less than Rs. 1,000 for each day of failure (for every director) and 18% interest liability on company
140(5)	Final order of Tribunal in relation to fraudulent behavior of auditor	Barred to be appointed as auditor for 5 years and Imprisonment not less than six months but may extended to 10 years and fine not less than the amount involved in fraud but may be extended to 3 times the amount involved in fraud
147(2) <i>Proviso</i>	Failure of auditor to comply with the provisions of sections 139, 143, 144 and 145 If knowingly contravenes	Imprisonment upto 1 year and fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh
182(4)	Political contribution made in contravention of this section	. Imprisonment upto six months and fine upto five times of the amount contributed (for officer in default)
186(13)	Contravention of the provisions of this section relating to loans and investment	Imprisonment upto two years and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh
207(4)	Disobeys the direction issued by the Registrar or inspector under this section	Imprisonment upto one year and fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh and deemed to have vacate office and shall disqualified from holding any office in any company
217(6)	Disobeys the direction issued by the Registrar or inspector under this section in relation to investigation	Imprisonment upto one year and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh and deemed to have vacate office and shall disqualified from holding any office in any company
217(8)	Failure to provide information, books or papers etc. to inspector during investigation	Imprisonment upto six months and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh and further fine up to Rs. 2,000 for each day of default

245(7)	Committing default in complying with the order of Tribunal under this section	Imprisonment upto three years and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh (for officer in default)
247(3) <i>Proviso</i>	Contravention of the provisions of this section by the valuer If the contravention is with the intentions to fraud	Imprisonment upto one year and fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
267	Contravention of the provisions of this chapter, Tribunal, Appellate Tribunal or temper the records	Imprisonment up to seven years and fine upto Rs. 10 lakh
336(1)	Offences by officers of companies in liquidation	Imprisonment not less than three years but may be extended to five years and fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh
336(2)	Offences by officers of companies in liquidation covered under sub-clause (viii) of clause (d) of sub-section (1)	Imprisonment not less than three years but may be extended to five years and fine not less than Rs. 3 lakh but may be extended to Rs. 5 lakh
337	Frauds by officers	Imprisonment not less than one year but may be extended to three years and fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh
338(1)	Failure to keep proper books of account before winding up	Imprisonment not less than one year but may be extended to three years and fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh
447 <i>Proviso</i>	Punishment for fraud	Imprisonment not less than six months but may be extended to 10 years and fine not less than the amount involved in fraud but may be extended to 3 times the amount involved in fraud

	If the fraud involves public interest	Imprisonment not less than 3 years
449	Intentionally gives false evidence	Imprisonment not less than three years but may be extended to seven years and fine upto Rs. 10 lakh
452 (2)	Wrongful withholding of property	To deliver up or refund any such property or cash wrongfully obtained; the benefits that have been derived, imprisonment for a term which may extend to two years.

A BRIEF NOTE ON CLASS ACTION

A class action, a class suit, or a representative action is a form of lawsuit in which a large group of people collectively bring a claim to court and/or in which a group of defendants is being sued.

This is the new provision inserted under the Companies Bill. The Companies Bill, 2012 provides for class-action lawsuits, which can allow a large number of people with common interest in a matter to sue or be sued as a group. Sections 245 and 246 of the Bill contain these provisions. Under these, class-action suits may be filed by investors if they are of the opinion that the affairs of the company are being conducted in a manner prejudicial to the interest of the company, its shareholders or depositors.

Class suits have several advantages, essentially the economics of aggregation. Presumably, class suits minimize litigation by avoiding multiple suits. The amount of compensation being claimed by each claimant may be too small to warrant individual pursuit. Obvious enough, class action is not limited to shareholder action. Shareholder activism is only a facet of class action – it ranges widely including consumer litigation, public interest matters, and so on.

Class action in other jurisdictions

Class action aimed at monetary settlements originated in the USA and is still predominantly a US phenomenon, though several European jurisdictions have, of late, enacted some provisions permitting class action.

Outside of USA, Australia is a country where securities class litigation is widely prevalent, as courts have held litigation funding by lawyers as permissible.

European jurisdictions allow class action to be pursued by consumer associations only and not by individuals. This has been considered reasonable as the objective is to restrict entrepreneurial pursuit by firms.

Class action in India

In India, the members or depositors can claim the damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm and also each partner of the audit firm shall be held liable who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. If these members 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 then

these members can 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.

Relevant provisions relating to Class Action under Bill, 2012

Clause 245 has been put in the Chapter dealing with oppression and mismanagement which provide for class action. As per the said clause, the following shall be treated as requisite number of members or depositors for filing a suit under this clause:

Class of companies	Requisite number of members	Requisite number of Depositors
In case of companies limited by shares	At least 100 members or specified percentage of number of members whichever is lower or any member or members holding specified percentage of the issued share capital of the company	At least 100 depositors or specified percentage of number of depositors whichever is lower or any depositor or depositors to whom the company owes such percentage of total deposits
In case of company not having share capital	one-fifth of the total number of its members	Same as above

Application to Tribunal

The number of members who are eligible for the application to Tribunal in case of company having share capital shall be not less than 100 members of the company or shall not be 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 but subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

The number of members eligible to file the application to the Tribunal in case of company not having share capital shall not be less than one-fifth of the total number of the members.

The number of depositors eligible to file an application to the Tribunal shall not be less than 100 depositors or shall not be less than such percentage of the total number of depositors as may be prescribed, the lesser of the two, or any depositor or depositors to whom the company has to pay such percentage of total deposits of the company as may be prescribed.

Functions of Tribunal

The Tribunal while considering an application should take into consideration the following things:

- 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 the matters that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.
- 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.

Procedure

If the Tribunal admits an application, then the Tribunal shall also have regard to the following things:

- 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.

Order to be binding

The order passed by the Tribunal shall be binding on the company, binding on all of its members, binding on depositors, binding on auditors and audit firm, it shall be binding on expert or consultant or advisor or any other person associated with company.

Punishment

The company which fails to comply with an order passed by the Tribunal 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.

Frivolous Applications

If the application filed before Tribunal is found to be frivolous or vexatious, it shall for reasons to be recorded in writing, reject the application and make the order that the applicant shall pay to the opposite party such cost, not exceeding Rs 1 lakh, as may be specified in the order.

Non-applicability to Banking Company

The provisions of class action are not applicable to Banking Company.

A BRIEF NOTE ON MEDIATION AND CONCILIATION PANEL

Clause 442 of the Companies Bill, 2012 provides for maintenance of Mediation and Conciliation Panel.

It states that the Central government shall maintain a panel of experts for mediation between the parties. Such panel may be called Mediation and Conciliation Panel.

The parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act may resort to mediation under these provisions. The form and the fee for applying shall be prescribed in the Rules.

After receiving application for referring the matter to Mediation and Conciliation Panel, the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from such Panel.

The matter is required to be disposed off within a period of three months from the date of such reference. The Panel is required to forward its recommendations to the Central Government or Tribunal or the Appellate Tribunal, as the case may be, within that period.

The aggrieved party may file its objections to the Central Government or Tribunal or the Appellate Tribunal, as the case may be.

The Central Government or Tribunal or the Appellate Tribunal, may, *suo motu*, refer any matter pertaining to such proceedings to experts from the Panel.

The fees, terms and conditions of experts and the procedure to be followed by the Panel shall be given in the Rules.

**COMPARATIVE TABLE SHOWING THE CLAUSES OF THE COMPANIES BILL, 2012 AND
THE CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956**

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
CHAPTER I - PRELIMINARY		
1. Short title, extent, commencement and application. - (1) This Act may be called the Companies Act, 2013. (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.	1. Short title, commencement and extent. —(1) This Act may be called the Companies Act, 1956. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (3) It extends to the whole of India: [Provided that it shall apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification in the Official Gazette, specify.	The Bill empowers the Central Government to implement provisions of the Bill on different dates. The Bill once enacted shall replace the Companies Act, 1956.
2. Definitions. - In this Act, unless the context otherwise requires,—	2. Definitions. —In this Act, unless the context otherwise requires,—	No Change
(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;	(1) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;	For harmonization, the Bill empowers SEBI to specify salient features of abridged prospectus.
(3)“alter” or “alteration” includes the making of additions, omissions and substitutions;	(1A) "alter" and "alteration" shall include the making of additions and omissions;	‘Substitution’ is also included in the definition of ‘alteration’ under the Companies Bill.
(10)“Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company;	(6) "Board of directors" or "Board", in relation to a company, means the Board of directors of the company;	The Board has been defined as collective body of directors

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
(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;	(7) "body corporate" or "corporation" includes a company incorporated outside India but does not include— (a) a corporation sole; (b) a co-operative society registered under any law relating to co-operative societies; and (c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;]	Since one person company forms part of the Bill, hence corporation sole is no more excluded from the definition of body corporate.
(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;	(8) "book and paper" and "book or paper" include accounts, deeds, vouchers, writings, and documents;	The new definition also covers Minutes and registers. Companies Bill has kept pace with the growth in information technology. It enables maintaining of books, deeds, documents, registers, minutes etc. in electronic form. These documents can be maintained either in physical or in electronic form. Section 135 of UK Companies Act, 2006, also permits companies to maintain documents electronically. In fact, the concept is recognized worldwide.
(14) "branch office", in relation to a company, means any establishment described as such by the company;	(9) "branch office" in relation to a company means— (a) any establishment described as a branch by the company; or (b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or (a) any establishment engaged in any	The definition has been simplified. It is left to the discretion of the Company as to which is its branch office. The role of Central Government to specify the establishments not to be treated as Branch office, has also been done away with.

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
No provision	production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under section 8;]	
(20) "company" means a company incorporated under this Act or under any previous company law;	(10) "company" means a company as defined in section 3;	Clause (20) defines the term "Company" and clause (67) defines the term "previous company law". On reading both the clauses together, it is similar to section 3 of the Companies Act, 1956.
(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) "limited company" means a company limited by shares or by guarantee;	Since terms 'company limited by guarantee' and 'company limited by shares' have been defined independently, the definition of term 'limited company' is omitted.
(29) "Court" means— (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);	(11) "the Court" means,— (a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10; (b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may	Since the term 'Court' has been used in the Bill in wide sense, it includes reference to High Court, District Court, Court of session, the Special Court, Metropolitan Magistrate.

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(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district; (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law; (iv) the Special Court established under section 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;	be, a Presidency Magistrate, having jurisdiction to try such offence; (14) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction;	The term 'District Court' is not separately defined. It is covered under the definition of 'Court' itself.
(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;	(12) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not	The words 'any other securities of a company' are substituted by 'any other instrument of a company evidencing a debt' to broaden the area of debentures and to avoid any dispute.
(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;	(15) "document" includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act or otherwise;	The definition is widened to include papers maintained in electronic form.
(37) "employees' stock option" means the	(15A) "employees stock option" means	Under new definition employees stock

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option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or subscribe for, the shares of the company at a future date at a pre-determined price;	the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price;	option may be given to the directors, officers or employees of the subsidiary company also. Aligning with SEBI (Employee Stock Option Scheme) Guidelines the definition mentions 'directors instead of 'whole-time directors' (WTD).
(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;	(17) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not: Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938);	With the intention to have a uniformity in financial year, the term 'financial year' is redefined. Financial year for all the companies now will begin on 1st April and end on 31st March. In cases where 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 approval of the tribunal is required. Tribunal may allow any period as its financial year.
(52) "listed company" means a company which has any of its securities listed on any	(23A) "listed public companies" means a public company which has any of its	The definition has been modified so as to remove the word "public", since

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recognised stock exchange;	securities listed in any recognized stock exchange;	only a public company can be a listed company.
(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;	(27) "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114; 41. Definition of "member".—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members. (2) Every other person who agrees in writing] to become a member of a company and whose name is entered in its register of members, shall be a member of the company. (3) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.	The term member has been defined and placed in definition clause. There is no change in definition.
(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;	(30) "officer" includes any director, manager or secretary 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;	Now the definition is modified to include Key Managerial Personnel in the term ‘officer’.
(60) “officer who is in default”, for the	(31) "officer who is in default", in relation	The definition has been modified to

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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	to any provision referred to in section 5, has the meaning specified in that section; 5. Meaning of "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 punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:— (a) the managing director or managing directors; (b) the whole-time director or whole-time directors; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: Provided that where the Board exercises	include Key Managerial Personnel as officer in default; Knowledge attributability/ consent would also be determining factor while determining whether a person is officer in default or not.

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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;	any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.	The share transfer agents, bankers, registrars and merchant bankers to the issue or transfer have also been made liable as officer in default, in respect of the issue or transfer of any shares of a company.
(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;	(32) "paid-up capital" or "capital paid-up" includes capital credited as paid-up;	Since, the term paid up share capital does not include any other amount received in respect of such shares, it has been specifically provided for in the definition. The term paid-up share capital also includes specifically any amount of money credited as paid-up in respect of shares of the company.
(66)“prescribed” means prescribed by rules made under this Act;	(33) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies except sub-section (5) of section 503, [sub-section (3) of section 550, section 552 and sub-section (3) of section 555], prescribed by rules made by the Supreme Court in consultation with [<i>the Tribunal</i>], and as respects the other provisions of this Act including sub-section (5) of section 503, [sub-section (3) of section 550, section 552 and sub-section (3) of	The scheme of whole Bill is that the substantive law is proposed to be covered under the Bill and procedures to be prescribed through rules Hence wherever word “prescribed” is used, it refers to general power to make rules.

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	section 555], prescribed by rules made by the Central Government;	
(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;	(35) "private company" means a private company as defined in section 3; 3. Definitions of "company", "existing company", "private company" and "public company" 1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below:— (iii) "private company" means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles,— (a) restricts the right to transfer its shares, if any; (b) limits the number of its members to fifty not including— (i) persons who are in the employment of the company; and (ii) 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	The requirement of a private company having minimum paid-up capital of one lakh rupees has been retained in the Companies Bill, 2012. Number of members have been increased from 50 to 200 and restriction to invite public to subscribe shares or debentures has been extended to include all type of securities.

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	after the employment ceased; and (c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; (d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;	
(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;	(36) "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or] inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;	The definition of ‘prospectus’ now also includes red herring prospectus and shelf prospectus.
(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	(37) "public company" means a public company as defined in section 3; 3 Definitions of "company", "existing company", "private company" and "public company".—(1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below:—	In the Companies Bill, 2012, the requirement of public company having minimum paid-up capital of five lakh rupees has been retained. It has been clearly provided that subsidiary of public company shall be deemed to be public company even if it continue to be private company in its Articles.

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company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;	(iv) "public company" means a company which— (a) is not a private company; (b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed; (c) is a private company which is a subsidiary of a company which is not a private company.	
(73) "recognised stock exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;	(39) "recognised stock exchange" means, in relation to any provision of this Act in which it occurs, a stock exchange, whether in or outside India, which is notified by the Central Government in the Official Gazette as a recognised stock exchange for the purposes of that provision;	The definition has been linked to Securities Contracts (Regulation) Act, 1956 which is the appropriate and relevant legislation for definition of this term.
72) "public financial institution" means— (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 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; (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (i) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act,	4A. Public financial institutions. —(1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely:— (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913); (ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948); (iii) the Industrial Development Bank of	The criteria for notification for public financial institutions has been widened. It now includes institutions established or constituted under State Act also along with Central Act. Another criteria is minimum of 51% of the paid-up share capital held by one or more State Governments as well besides Central Government. Existing public financial institutions would be continuing in view of transitional provisions provided in the Bill.

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1956 so repealed under section 465 of this Act; (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;	India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964); (iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956); (v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963); (vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act; (vii) <i>the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.</i> (2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution: Provided that no institution shall be so specified unless— (i) it has been established or constituted by or under any Central Act; or (ii) not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government.	

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(77)“relative”, with reference to any person, means any one who is a 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;	(41) "relative" means, with reference to any person, any one who is related to such person in any of the ways specified in section 6, and no others; 6. Meaning of "relative". A person shall be deemed to be a relative of another, if, and only if, — (a) they are members of a Hindu undivided family; or (b) they are husband and wife; or (c) the one is related to the other in the manner indicated in Schedule IA.	The clause provides for prescription power, this list of relatives may be expanded under the Rules. The detailed list of relatives as provided in schedule 1A of the Act would be provided in Rules under the Bill
(79) “Schedule” means a Schedule annexed to this Act;	(42) "Schedule" means a Schedule annexed to this Act;	No change. There are seven schedules to the Companies Bill, 2012.
(81)“securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;	(45AA) "securities" means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and includes hybrids;]	Reference to ‘hybrids’ omitted in the Companies Bill, 2012.
(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	(47) "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of section 4; 4. Meaning of "holding company" and "subsidiary".—(1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to	

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(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. <i>Explanation.</i>—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;	be a subsidiary of another if, but only if, — (a) that other controls the composition of its Board of directors; or (b) that other— (i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company; (ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary. <i>Illustration</i> Company B is a subsidiary of company A, and company C is a subsidiary of company B. Company C is a subsidiary of company A, by virtue of clause (c) above. If company D is a subsidiary of company C, company D will be a subsidiary of company B and consequently also of company A, by virtue of clause (c) above, and so on. (2) For the purposes of sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the	The Companies Bill, 2012 restricts end number of subsidiaries which a holding company can have. It provides that such class or classes of the holding companies as may be prescribed shall not have the layers of subsidiaries beyond the prescribed numbers. The term layer has also been defined.

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	consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say— (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; (b) that a person's appointment thereto follows necessarily from his appointment as director, [* * *] or manager of, or to any other office or employment in, that other company; or (c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof. (3) In determining whether one company is a subsidiary of another— (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it; (b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable— (i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or (ii) by, or by a nominee for, a subsidiary of that other company,	

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	not being a subsidiary which is concerned only in a fiduciary capacity; shall be treated as held or exercisable by that other company; (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business. (4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary. (5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 85. (6) In the case of a body corporate which	

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	is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not. (7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.	
(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.	2A Interpretation of certain words and expressions.—Words and expressions used and not defined in this Act but defined in the Depositories Act, 1996 (22 of 1996) shall have the same meanings respectively assigned to them in that Act.	Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 have been added along with Depositories Act, 1996 for words and expressions not included in this Bill.
New Definitions under the Companies Bill: “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not		These are the new definitions provided under the new Bill, 2012.

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a subsidiary company of the company having such influence and includes a joint venture company. <i>Explanation.</i>—For the purposes of this clause, “significant influence” means control of at the least twenty per cent. of total share capital, or of business decisions under an agreement; • “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; • “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; • “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		

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prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section; • “called-up capital” means such part of the capital, which has been called for payment; • “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; • “Chief Executive Officer” means an officer of a company, who has been designated as such by it; • “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a company; • “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		

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(iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) or 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; • “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; • “independent director” means an independent director referred to in sub-section (5) of section 149; • “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; • “issued capital” means such capital as		as financial statement. One Person company, Small company and dormant company are exempted to prepare cash flow statement. For removing any ambiguity, the term Independent Director has been defined under the Bill.

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the company issues from time to time for subscription; “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; (iia) the whole-time director (iii) the Chief Financial Officer ; and (iv) such other officer as may be prescribed; “One Person Company” means a company which has only one person as a member;		This is a new term. In the entire Bill, Key Managerial Personnel (KMP) have been made responsible for major decisions enlisted below: - He is prohibited from insider trading/forward dealing in securities. - He has been included in officer/officer in default/related party alongwith relatives. - He has been authorised to sign document/proceedings/contract company’s behalf. - He has also been held responsible for disclosure in annual return. - Under the Bill he is required to disclose interest/concern & changes to company within 30 days of appointment/ relinquishment. - In case KMP gains undue benefit from disgorgement of company assets, he shall be held personally liable if the same is proved in inspection of company. The Bill permits registration of One Person Company. The proposed introduction of One Person Company into the legal system is a move that

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• “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-clause (b) and (c) shall apply to a person who is acting merely in a professional capacity; • “register of companies” means the register of companies maintained by the Registrar on paper or in any electronic		would encourage entrepreneurship and corporatisation of business. At present, an entrepreneur in India has to find another person to implement his skills through incorporation of a company while in the UK, Australia, Singapore, Pakistan etc. a single person can form a company. Now, the person in accordance to whose advice, directions or instructions the Board of Directors of the company is accustomed to act are also covered under sub clause (c) of clause 69 as promoters. Not only company’s but the Registrar of companies too can make use of information technology and maintain

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mode under this Act; • “related party”, with reference to a company, means— (i) a director or his relative; (ii) 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		their register of Companies electronically.

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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; • “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; • “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:		The definition of remuneration is aligned with definition under Income Tax 1961. A public company cannot be considered as Small Company. Small companies are exempted from complying with the requirements of some of the provisions under the Bill.

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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; • “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; • “whole-time director” includes a director in the whole-time employment of the company.		
CHAPTER II: INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO		
3. Formation of company. 3. (1) A company may be formed for any lawful purpose by— (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	12 Mode of forming incorporated company.—(1) Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.	The concept of One person Company has been introduced. Under the Bill the memorandum of such company shall state the name of the company with the last words ‘OPC Limited’. One Person Companies are a class of companies distinct from public and private companies. The one person company may not find it difficult to comply with the

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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 or his incapacity to contract 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		provisions of law as such a company can appoint more than one director to carry on the business of the company. It may also employ as many officers and employees as required to ensure various compliances including Company Secretaries, Chartered Accountants, Cost and Works Accountants etc. It is 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 or his incapacity to contract 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. It further provides that any change in nomination shall also be intimated to the Registrar There are similar provisions in Pakistan. Simpler Regime for One Person Company Under the Bill OPC's are required to comply with a simpler legal regime through exemptions so that the single entrepreneur is not compelled to fritter

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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.	(2) Such a company may be either— (a) 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 (in this Act termed "a company limited by shares"); (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or (c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").	away his time, energy and resources on procedural matters. For example under these clauses OPC's have been provided with simpler regimes/ exemptions: Clause 92 relating to Annual Return, Clause 2(40) defining the term Financial statement, Clause 96 relating to Annual General Meetings, Clause 193 relating to contracts by OPC's, Clause 122 relating to applicability of chapter VII (Management and Administration). The filing requirements for a one person company may be very simple and the OPCs may be required to file only minimum documents. OPCs are imperative because they would give entrepreneurial capabilities of people an outlet for participation in economic activity and such economic activity may take place through the creation of an economic person in the form of a company. There has been criticism in certain quarters against the formation of such a company as it may give room for evasion of public funds and tax liability by an individual. The fears may be addressed through adequate precautions. Similar provisions pertaining to "One Person Company" exist in the UK Companies Act, 2006.

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4. Memorandum. (1) The memorandum of a company shall state— (a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company: 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,	13 Requirements with respect to memorandum.—(1) The memorandum of every company shall state — (a) the name of the company with "Limited" as the last word of the name in the case of a public limited company, and with "Private Limited" as the last words of the name in the case of a private limited company; (b) the State in which the registered office of the company is to be situate; (c) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, (31 of 1965) the objects of the company; (d) in the case of a company formed after such commencement,— (i) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects; (ii) other objects of the company not included in sub-clause (i); and (e) in the case of companies (other than trading corporations), with objects not confined to one State, the States to whose territories the objects extend. (2) The memorandum of a company	The earlier provision in the Act provided for division of object clause into main object and other objects, however, the Bill has dropped such provision. Rest the language has been simplified.

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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	limited by shares or by guarantee shall also state that the liability of its members is limited. (3) The memorandum of a company limited by guarantee shall also state 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 of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount. (4) In the case of a company having a share capital— (a) unless the company is an unlimited company, the memorandum shall also state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount; (b) no subscriber of the memorandum	

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(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	shall take less than one share; and (c) each subscriber of the memorandum shall write opposite to his name the number of shares he takes. 20. Companies not to be registered with undesirable names—(1) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable. (2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,— (i) the name by which a company in existence has been previously registered, or (ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1). (3) The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks.	

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(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—		

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(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.	14 Form of memorandum.— The memorandum of association of a company shall be in such one of the Forms in Tables B, C, D and E in Schedule I as may be applicable to the case of the company, or in a Form as near thereto as circumstances admit.	Model forms are provided under schedule I.
8. Formation of companies with charitable objects, etc. 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— (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	25. Power to dispense with "Limited" in name of charitable or other company.— (1) Where it is proved to the satisfaction of the Central Government¹ that an association:— (a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and (b) intends to apply its profits, if any, or	The objects have been reviewed and more relevant objects have been included. Points of difference between Clause 8 of the Bill and section 25 of Companies Act 1956 are as under: Firstly, the objects with which a

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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.	other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited". (2) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies.	company with charitable objects etc. can be formed, also include the objects like, sports, education, research and social welfare. Secondly, such company can be an OPC also.

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(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.	(3) Where it is proved to the satisfaction of the Central Government— (a) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (a) of sub-section (1), and (b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited"; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21. (4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease. (5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations¹ shall be binding on the body to which the licence is granted, and where the grant is under sub-section	

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(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	(1), shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other. (6) It shall not be necessary for a body to which a licence is so granted to use the word "Limited" or the words "Private Limited" as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the directions, be exempt from such of the provisions of this Act as may be specified therein. (7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption granted by this section: Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation. (8)(a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.	

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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	(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a). (c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject. (d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section. (9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a	Thirdly, if the Central Govt. while revoking the licence, is satisfied that it is essential in the public interest to do so, it may order the company to be wound up or amalgamated with another company having similar objects.

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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	period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and— (a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and (b) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21. (10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five thousand rupees for every day	Fourthly, in case of winding up or dissolution of such company, the proceeds on realization of the assets of such company after satisfying all debts and liabilities, shall be transferred to another company registered under this section and having similar objects or credited to the Rehabilitation and Insolvency Fund proposed to be formed under clause 269. This is a welcome provision as a non profit company enjoys several exemptions and privileges under the Companies Act as well as several other laws. This provision has been inserted to prohibit the misuse of funds of charitable companies thereby preventing any financial advantage.

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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.	during which the default continues.	
11. Commencement of Business (1) A company having a share capital shall not commence any business or exercise any borrowing powers unless— (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	149. Restrictions on commencement of business. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; (c) no money is, or may become, liable to be repaid to applicants for any shares or	Under the Companies Act of 1956, it is required that the Certificate of commencement be obtained only by public companies, while in the Bill it is required that all the companies obtain the commencement Certificate from the Registrar. In tune with the recommendations of Irani Committee, the clause has been made simple. Any company after its incorporation can commence any business or exercise any borrowing powers only after filing two documents with the concerned ROC i.e., (i) a declaration by a director of the

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(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 subsection (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.	debentures which have been offered for public subscription by reason of any failure to apply for, or to obtain, permission for the shares or debentures to be dealt in on any recognized stock exchange; and (d) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole- time practice] in the prescribed form, that clauses (a), (b) and (c) of this sub- section, have been complied with. (2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless- (a) there has been filed with the Registrar a statement in lieu of prospectus; (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and (c) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole- time practice in the prescribed form, that clause (b) of this sub-section has been complied with. (2A) Without prejudice to the provisions of sub- section (1) and sub- section (2) a company having a share capital, whether or	company to the effect that every subscriber to the memorandum has paid the value for the shares agreed to be taken by him and paid-up share capital is not less than Rupees 5 lacs and Rupees 1 lakh in case of public and private company respectively. (ii) a verification of its registered office Verification of Registered office is a welcome provision to combat the menace of vanishing companies. The language has been simplified.

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	not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business- (a) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects stated in its memorandum in pursuance of clause (c) of sub- section (1) of section 13; (b) if such company is a company formed after such commencement, in relation to any of the objects stated in its memorandum in pursuance of sub- clause (ii) of clause (d) of sub- section (1) of the said section, unless- (i) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and (ii) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole- time practice, in the prescribed form, that clause (i) or as the case may be, sub- section (2B) has been complied with; and if the company commences any such business in contravention of this sub- section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues. Explanation.- A company shall be deemed to commence any business within the meaning	

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	of clause (a) if and only if it commences any new business which is not germane to the business which it is carrying on at the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects referred to in the said clause. (2B) Notwithstanding anything contained in sub- section (2A) where no such special resolution as is referred to in that sub- section is passed but the votes cast (whether on a show of hands or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (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, exceed the votes, if any, cast against the proposal by members so entitled and voting, the Central Government may on an application made to it by the Board of directors in this behalf allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting. (3) The Registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub- section (1) or sub- section (2), as the case may be, and, in the case of a company which is required by sub- section (2) to file a statement in lieu of prospectus, also of' such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive	

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	evidence that the company is so entitled. (4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding. (5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on applications for debentures. (6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues. (7) Nothing in this section shall apply to- (a) a private company; or (b) a company registered before the first day of April, 1914 , which has not issued a prospectus inviting the public to subscribe for its shares. Registers of members and debenture holders	The section is applicable to private companies as well.
12. 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.		Under the new law, the company must have a registered office on and from the fifteenth day of its incorporation.

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(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	147. Publication of name by company.—(1) Every company— (a) shall paint or affix its name and the address of its registered office], and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages; (b) shall have its name engraven in legible characters on its seal; and (c) shall have its name and the address of its registered office] mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices and other official publications; and also have its name so mentioned in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit	

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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	of the company. 17A. Change of registered office within a State.—(1) No company shall change the place of its registered office from one place to another within a State unless such change is confirmed by the Regional Director. (1) The company shall make an application in the prescribed form to the Regional Director for confirmation under sub-section (1).	The requirement of getting confirmation by the Regional Director has been retained. Change in registered office outside the local limits of any city, town or village may be made with the authority of special resolution by the company.

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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 subsection (5) have been complied with and the change shall take effect from the date of the certificate.	(3) The confirmation referred to in sub-section (1), shall be communicated to the company within four weeks from the date of receipt of application for such change. Explanation.—For the purposes of this section, it is hereby declared that the provisions of this section shall apply only to the companies which change the registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State. (4) The company shall file, with the Registrar a certified copy of the confirmation by the Regional Director for change of its registered office under this section, within two months from the date of confirmation, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such document. (5) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and confirmation have been complied with and henceforth the memorandum as altered shall be the memorandum of the company.	The company shall file the confirmation with the Registrar within sixty days from the date of confirmation as against two months provided under the existing Act. That means there is no change in the period. The Companies Bill has made the process simpler, faster and easier, without reference to any Tribunal/Court, ensuring that the new registered office is accessible to stakeholders for legal recourse, where necessary.
13. Alteration of memorandum.	16. Alteration of memorandum.—	

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(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 subsections (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.	(1) A company shall not alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent, for which express provision is made in this Act. (2) Only those provisions which are required by section 13 or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum. (3) Other provisions contained in the memorandum, including those relating to the appointment of a managing director, or manager, may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting of the alteration of such provisions in any other manner, they may also be altered in such other manner. (4) All references to the articles of a company in this Act shall be construed as including references to the other provisions aforesaid contained in its memorandum. 17. Special resolution and confirmation by Central Government required for alteration of memorandum.— <i>(1) A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it-</i> <i>(a) to carry on its business more</i>	The provisions for alteration of memorandum have been simplified. The approval of the Central Government is necessary for shifting the registered office from one State to another.

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(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	<i>economically or more efficiently; or</i> <i>(b) to attain its main purpose by new or improved means; or</i> <i>(c) to enlarge or change the local area of its operations; or</i> <i>(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or</i> <i>(e) to restrict or abandon any of the objects specified in the memorandum; or</i> <i>(f) to sell or dispose of the whole or any part of the undertaking or of any of the undertakings, of the company; or</i> <i>(g) to amalgamate with any other company or body of persons.</i> <i>(2) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on petition.</i> <i>(3) Before confirming the alteration, the Central Government must be satisfied—</i> <i>(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Central Government, be affected by the alteration; and</i>	Under sub-section (5) of the Bill, the time period of sixty days is fixed for the Central Government to dispose of the application for shifting the registered office from one State to another. The specific provision for giving notice of the petition for confirmation of the alteration to Registrar to appear and state his objections and suggestions, if any, with respect to the confirmation of the alteration is dropped in the bill. This aspect may be covered by sub clause (5) which provides that the Central Government shall satisfy itself that consent of all concerned with the company is available. The Registrar of the State where the registered office is being shifted to shall issue a fresh Certificate of Incorporation indicating the alteration.

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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.	(b) <i>that, with respect to every creditor who, in the opinion of the Central Government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central Government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured:</i> <i>Provided that the Central Government may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a).</i> (4) <i>The Central Government shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity of appearing before the Central Government and state his objections and suggestions, if any, with respect to the confirmation of the alteration.</i> (5) <i>The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and make such order as to costs as it thinks proper.</i> (6) <i>The Central Government shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.</i>	

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(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.	<i>(7) The Central Government may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Central Government for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect, any such arrangement:</i> Provided that no part of the capital of the company may be expended for any such purchase. 18 Alteration to be registered within three months.- 19 Effect of failure to register 21 Change of name by company — 23. Registration of change of name and effect thereof.— 37. Provision as to companies limited by guarantee.—	
14. Alteration of articles. (1) Subject to the provisions of this Act and	31. Alteration of articles by special resolution.—	

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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 a period of fifteen days in	(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may, by special resolution, alter its articles: Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government. (2) Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution. (2A) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval. (3) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them, extend to altering any provisions in Table B annexed to Act 19 of	Conversion of a public company into private company, as per provision of the Bill, requires approval of Tribunal. (The Act requires the approval of Central Government). The bill requires to file with the registrar every alteration of articles within a period of fifteen days instead of one month as per the existing law.

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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.	1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.	
20. Service of documents (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: 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 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:	51. Service of documents on company.—A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at its registered office: Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs. 52. Service of documents on Registrar.— A document may be served on a Registrar by sending it to him at his office by post under a certificate of posting or by registered post, or by delivering it to, or leaving it for, him at his office.	To enhance the speed of communication and to reduce the cost, the Bill recognizes that a document can be served electronically. A document can be served electronically, both on the company and its officers or by the company on the Registrar or its own members. This is also the internationally accepted mode of service of documents. Section 291 of UK Companies Act, 2006 permits a company to circulate written resolutions proposed by director to eligible members of the company in electronic form. Under Section 292 and 298, written resolutions of members may also be circulated in electronic form. Further a member may signify his agreement to written resolution in electronic form. Section 333 of the UK Act deals specifically with Electronic Communication. Section 333 Sending documents

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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.	53. Service of documents on members by company.—	relating to meetings etc in electronic form (1) Where a company has given an electronic address in a notice calling a meeting, it is deemed to have agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice). (2) Where a company has given an electronic address— (a) in an instrument of proxy sent out by the company in relation to the meeting, or (b) in an invitation to appoint a proxy issued by the company in relation to the meeting, it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice). (3) In subsection (2), documents relating to proxies include— (a) the appointment of a proxy in relation to a meeting, (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and (c) notice of the termination of the authority of a proxy. (4) In this section “electronic address” means any address or

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		number used for the purposes of sending or receiving documents or information by electronic means. Further, the provision has been made for serving any document through a particular mode, if requested by any member on payment of certain fees.
21. Authentication of documents, proceedings and contracts. Save as otherwise provided in this Act,— (a) a document or proceeding requiring authentication by a company; or (b) contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.	54. Authentication of documents and proceedings.—Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, the manager, the secretary or other authorised officer of the company, and need not be under its common seal.	Provisions have been simplified. Authority for authentication of documents/contracts is proposed to be given to Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf.

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CHAPTER III - PROSPECTUS AND ALLOTMENT OF SECURITIES		
23. Public offer and private placements (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. (2) A private company may issue securities— (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or (b) through private placement by complying with the provisions of Part II of this Chapter. <i>Explanation.</i>—For the purposes of this Chapter, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.	No provision	New clause introduced in the Bill. For clarity, the entire chapter relating to issue of securities has been divided into two parts. Part I relates to issue of public offer Part II relates to issue of securities through private placement.
26. Matters to be stated in prospectus	PROSPECTUS AND ALLOTMENT, AND OTHER MATTERS RELATING TO ISSUE	Reference to Schedule II has been

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(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— (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	OF SHARES OR DEBENTURES <i>Prospectus</i> 55. Dating of prospectus.—A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus. 56. Matters to be stated and reports to be set out in prospectus.— (1) Every prospectus issued— (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule. (2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void. (3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient	omitted. Important contents of the prospectus have been provided in the clause itself. Procedural aspects would be prescribed through rules. The provisions have been simplified to make the prospectus more understandable. The new clause provides that the prospectus shall also include details of CFO. Among others the Bill provides for following new particulars to be included in the prospectus: ▪ 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; ▪ 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 ▪ disclosures in such manner as may be prescribed about sources of promoter's contribution;

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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	features of a prospectus as may be prescribed which complies with the requirements of this section: Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him: Provided further that this sub-section shall not apply if it is shown that the form of application was issued either— (a) in connection with a <i>bona fide</i> invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees. (4) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if— (a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or (c) the non-compliance or contravention was in respect of matters which, in	Rest of the provisions have been simplified.

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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	the opinion of the Court dealing with the case, were immaterial], or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused: Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.	

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(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 another 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. <i>Explanation.</i>—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	(5) This section shall not apply— (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; 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; but subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently. (6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section. 60. Registration of prospectus.—	2(1) (38) “expert” includes an engineer, a valuer, a chartered accountant, a

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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	59. Penalty and interpretation	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; Penalty provisions have been enhanced and minimum and maximum amount of fine has been provided in the Bill.

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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.		
27. Variation in terms of contract or objects in prospectus. (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	61. Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied.—A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of, or except an authority given by, the company in general meeting.	The provisions with respect to variation in terms of contracts or objects in prospectus have been made stringent under the Bill. Such variation can be done by passing a special resolution and by publishing the details thereof in newspapers where the registered office of the company is situated. Further, any company who makes such variation shall not use the amount raised by it through prospectus for buying/trading shares of other listed companies. The provision provides that the dissenting shareholders 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.

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the Securities and Exchange Board by making regulations in this behalf.		
28. Offer of sale of shares by certain members of company. (1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed. (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.	No provision	This is a new provision under the Bill. The clause provides that members whose shares are proposed to be offered to the public, shall collectively authorise the company, to take all actions in respect of offer of sale for and on their behalf
29. Public offer of securities to be in dematerialised form.	68B. Initial offer of securities to be in dematerialised form in certain cases.— Notwithstanding anything contained in any	Under the Bill every company making public offer and other prescribed class of public companies will have to issue

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(1) Notwithstanding anything contained in any other provisions of this Act,— (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. (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.	other provisions of this Act, every listed public company, making initial public offer of any security for a sum of rupees ten crores or more, shall issue the same only in dematerialised form by complying with the requisite provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.	securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. Other companies may convert their securities in dematerialised form or issue its securities in physical form.
34. Criminal liability for misstatements in prospectus. 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	63. Criminal liability for mis-statements in prospectus.— (1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.	Penalty provisions have been enhanced. In the event of mis-statement, term of imprisonment has been linked with punishment for fraud as stipulated under clause 447 reproduced herein below. 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 which shall not be less than six

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was necessary.	(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given— (a) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or (b) the consent required by sub-section (3) of section 60. 65. Interpretation of provisions relating to prospectuses.—(1) For the purposes of the foregoing provisions of this part— (a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and (b) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included. (2) For the purposes of sections 61, 62 and 63 and clause (a) of sub-section (1) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.	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. <i>Explanation.</i>—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.

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36. Punishment for fraudulently inducing persons to invest money. 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; or (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution; shall be liable for action under section 447.	68. Penalty for fraudulently inducing persons to invest money.— Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts 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 shares or debentures; or (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures; shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to one lakh rupees, or with both.	Punishment for fraudulently misleading or inducing persons to invest in the company is similar to as stipulated under clause 447.
37. Action by affected persons. 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.	No provision	This is a new provision in the Bill. This clause in the bill contains provision for class action suits affected by misleading statements

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41. Global depository receipt 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.	No provision	This is a new provision in the Bill. This clause in the Bill provides for the issuance of GDR.
42. Offer or invitation for subscription of securities on private placement. (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issued of a private placement offer letter. (2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed. <i>Explanation 1.</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, 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	67. Construction of references to offering shares or debentures to the public, etc.—(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner. (2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner. (3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances—	This new clause in the bill provides for a company to make private placement through issue of a private placement offer letter. ► Such offer to be made to maximum 50 persons [excluding QIBs and employees of the company being offered securities under a scheme of employees stock option], in a financial year and on the prescribed conditions. Higher Number may be prescribed through rules.

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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 Part I of this Chapter. <i>Explanation II.</i>— For the purposes of this section, the expression— (i) "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. (ii) "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section. (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 or that offer or invitation has been withdrawn or abandoned by the company. (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. (5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other	(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation: [Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more: Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).	► The terms "private placement and "qualified institutional buyer" has been defined in the clause itself. ► All monies payable towards subscription of these securities

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banking channels but not by 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.		shall be paid through cheque or demand draft or other banking channels but not by cash ► All such offers 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;

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(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) 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:— (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	2(46A) "share with differential rights" means a share that is issued with differential rights in accordance with the provisions of section 86;	Inserted in the Companies Act vide the Companies (Amendment) Act, 2000. Companies Bill, 2012 gives rule making power with respect to differential voting power.
53. Prohibition on issue of shares at discount. ((1) Except as provided in section 54, a	79. Power to issue shares at a discount.—	The clause provides that a company cannot issue shares at discount other than as Sweat equity shares. Issuance

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(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.	a discount, it may apply to the <i>Central Government</i> for an order sanctioning the issue; and on any such application, the <i>Central Government</i>, if having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit: <i>Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.</i> (4) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this sub-section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.	
55. Issue and redemption of preference shares. (1) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.	80. Power to issue redeemable preference shares.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:	Under the Bill a company may issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue as per prescribed conditions for infrastructure projects,

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(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	Provided that— (a) no such shares shall be redeemed except out of 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 the redemption; (b) no such shares shall be redeemed unless they are fully paid; (c) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's [security] premium account, before the shares are redeemed; (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve	subject to the redemption of certain percentage on a annual basis at the option of such preferential shareholders.

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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 (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-	fund, to be called the capital redemption reserve account], a sum equal to the nominal amount of the shares redeemed; and the provisions of this Act relating to the reduction of the 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. (2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.	

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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. <i>Explanation.</i>—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.	(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital. (4) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 611, be deemed to be increased by the issue of shares in pursuance of this sub-	

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(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.	section: Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares. (5) 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. (5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1996, issue any preference share which is irredeemable or is redeemable after the expiry of a period of twenty years from the date of its issue. (6) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten thousand rupees.	
61. Power of limited company to alter its share capital. (1) A limited company having a share capital may, if so authorised by its articles, alter its	94. Power of limited company to alter its share capital. (1) A limited company having a share capital, may, if so authorised by its articles,	Prior permission of the Tribunal is required under the Bill, in case consolidation or division of the share capital results in changes in the voting

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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: Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner; (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.	alter the conditions of is memorandum as follows, that is to say, it may— (a) increase its share capital by such amount as it thinks expedient by issuing new shares; (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; (c) convert all or any of its fully paid up shares into stock, and reconvert that stock into fully paid up shares of any denomination; (d) subdivide 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 powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.	percentage of shareholders

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(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital	(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.	
62. Further issue of share capital. (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered — (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the share capital paid up on those shares by circulating an offer for sale subject to such terms and conditions relating to the time within which the offer has to be accepted, the renunciation of such offer and such other matters as may be prescribed; (b) to employees under a scheme of employees' stock option, subject to such conditions as may be prescribed; or (c) if it is authorised by a special resolution, to persons other than those mentioned in clause (a) or clause (b), either for cash or for a consideration, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.	81. Further issue of capital.— (1) Where at any time after the expiry of two years the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,— (a) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date; (b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined; (c) 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	Applicability : all companies Under the Bill apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the issued further shares, such sharers may also be offered to employees by way of ESOP. Under the existing section a company may issue further capital any time after the expiry of two years. Under the Bill period of two years has been dispensed with.

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	to in clause (b) shall contain a statement of this right; (d) 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 as they think most beneficial to the company. <i>Explanation.</i>—In this sub-section, "equity share capital" and "equity shares" have the same meaning as in section 85. (1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons whether or not those persons include the persons referred to in clause (a) of sub-section (1) in any manner whatsoever— (a) if a special resolution to that effect is passed by the company in general meeting, or (b) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (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, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central Government is satisfied,	

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(2) Nothing in this section shall apply to the increase of the subscribed capital of a public company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company: Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.	on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company. (2) Nothing in clause (c) of sub-section (1) shall be deemed— (a) to extend the time within which the offer should be accepted, or (b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation. (3) Nothing in this section shall apply— (a) to a private company; or (b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company— (i) to convert such debentures or loans into shares in the company, or (ii) to subscribe for shares in the company: Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term— (a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and	

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(3) Notwithstanding anything contained in sub-section (2), where any debentures have been issued, or loan has been obtained from any Government, by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion: Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit. (4) In determining the terms and conditions of conversion under sub-section (3), the Government shall have due regard to the	(b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans. (4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963 (53 of 1963), the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares^[123] in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion. (2) In determining the terms and conditions of such conversion, the Central Government shall have due	

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financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary. (5) Where the Government has, by an order made under sub-section (3), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (3) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted in to.	regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company. (6) A copy of every order proposed to be issued by the Central Government under sub-section (4) 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. (7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.	
63. Issue of bonus shares. (1) A company may issue fully paid-up bonus shares to its members, in any manner	No provision	New provision incorporated under the Bill.

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whatsoever, out of— <i>(i)</i> its free reserves; <i>(ii)</i> the securities premium account; or <i>(iii)</i> 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— <i>(a)</i> it is authorised by its articles; <i>(b)</i> it has, on the recommendation of the Board, been authorised in the general meeting of the company; <i>(c)</i> it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; <i>(d)</i> it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus; <i>(e)</i> the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up; <i>(f)</i> it complies with such conditions as may be prescribed. (3) The bonus shares shall not be issued in lieu of dividend.		
CHAPTER V - ACCEPTANCE OF DEPOSITS BY COMPANIES		
73. Prohibition on acceptance of deposits from public.	58A. Deposits not to be invited without issuing an advertisement.—	

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(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: Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, 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	(1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members. (2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless— (a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), (b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed, and (c) the company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit. (3)(a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974 (14 of 1974) in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), shall, unless renewed in accordance with clause (b), be repaid in accordance with the terms and conditions of such deposit. (b) No deposit referred to in clause (a) shall be renewed by the company after the	The depositors being in the nature of unsecured creditors, had been subjected to a lot of hardship and in many cases lost their hard earned money, the Bill proposes to prohibit companies from accepting deposits except from members. Further even for accepting deposits from the members, stringent conditions have been stipulated which include : • Passing resolution in general meeting, • Compliance with rules to be made in consultation with the Reserve Bank of India • providing security for the repayment of deposits • issuance of circular to members including therein a statement showing - • the financial position of the company; • credit rating obtained; • total number of depositors and the amount due to these depositors in respect of previous deposits accepted by the company • other particulars in such form and in such manner as may be prescribed. • Filing copy of the circular along with the statement with the Registrar 30 days before the date of the issue of the circular.

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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	expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company. (c) Where, before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), repayment of such deposit shall be made in full on or before the 1st day of April, 1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction. (3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1988, shall,	• Depositing a sum which shall not be less than 15% of the amount of its deposits maturing during the financial year and the financial year next following in a Deposit Repayment Reserve Account. • providing deposit insurance in such manner and to such extent as may be prescribed. • certifying that the company has not defaulted in the repayment of deposit, accepted either before or after the commencement of the Act or in the payment of interest on such deposits. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor 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. Some Observations : 1. While provision of security for the payment of sum and interest has been made, the manner in which the security would be created has not been specified and totally left to be decided as between the company and the

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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.	unless renewed in accordance with the rules made under sub-section (1), be repaid in accordance with the terms and conditions of such deposit. (4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow. (5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section, - (a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged;	members. 2. No specific penal provision has been made where the company makes a default in complying with the order of the Tribunal. A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to a stricter regime. Such company will have to comply with Chapter V of Companies Bill, 2012 and rules made by Central Government after consulting Reserve Bank of India. Further such company will also have to obtain credit rating from recognised agency and will also have to create a charge on its assets in case of secured deposits.

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Corresponds to proviso to clause 73 (1) of the clause discussed earlier.	(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of the manner of condition prescribed under that sub-section or in contravention of the provisions of sub-section (2), as the case may be,— (a) the company shall be punishable,— (i) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted; (ii) where such contravention relates to the invitation of any deposit, with fine which may extend to ten lakh rupees but shall not be less than fifty thousand rupees; (c) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (7)(a) Nothing contained in this section shall apply to,— (i) a banking company, or	

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	(ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (b) Except the provisions relating to advertisement contained in clause (b) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (8) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order: Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India. (9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the <i>Tribunal</i> may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest,	

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76. Acceptance of deposits from public by certain companies (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: 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, <i>mutatis mutandis</i>, apply to the acceptance of deposits from public under this section.	direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order: Provided that the <i>Tribunal</i> may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter. (10) Whoever fails to comply with any order made by the <i>Tribunal</i> under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees five hundred for every day during which such non-compliance continues. (11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section. <i>Explanation.</i>—For the purposes of this section, "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.	A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to the prescribed compliance requirements and legal framework provided in the clause. Such company will also have to obtain credit rating from recognised agency and will also have to create a charge on its assets.

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CHAPTER VI - REGISTRATION OF CHARGES		
77. Duty to register Charges etc. (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 charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation: Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional 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.	125. Certain charges to be void against liquidator or creditors unless registered. (1) Subject to the provisions of this part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within thirty days after the date of its creation: Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period. (2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge. (3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.	The Bill lays the duty of creating charge on the company. The manner and forms etc for creation of charge (including for charges in respect of properties/ assets existing outside India) are proposed to be prescribed in the rules. The Bill specifically provides that any subsequent registration of a charge shall not prejudice any rights acquired in respect of any property before the charge is actually registered. The additional period for registration of charge has been increased from 30 to 300 days. Wherein the charge is not registered within extended days, then application will be required to be made to the Central Government for extension. The specific classification of charges specified in sub-

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(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.	(4) This section applies to the following charges:— (a) a charge for the purpose of securing any issue of debentures; (b) a charge on uncalled share capital of the company; (c) a charge on any immovable property, wherever situate, or any interest therein; (d) a charge on any book debts of the company; (e) a charge, not being a pledge, on any movable property of the company; (f) a floating charge on the undertaking or any property of the company including stock-in-trade; (g) a charge on calls made but not paid; (h) a charge on a ship or any share in a ship; (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright. (5) In the case of a charge created out of India and comprising solely property situate outside India, thirty days after the date on which the instrument creating or evidencing the charge or a copy thereof could, in due course of post and if despatched with due diligence, have been received in India, shall be substituted for thirty days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be filed with the Registrar.	section 4 has been omitted. In case the charge is created outside India and comprise solely of property outside India, then it shall be registered within 30 days of its creation and not from the date on which instrument creating charge is received in India, as earlier provided.

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	(6) Where a charge is created in India but comprises property outside India, the instrument creating or purporting to create the charge under this section or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate. (7) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts. (8) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property. 129. Particulars in case of commission, etc., on debentures.— 132. Certificate of registration	Under the Bill there is no separate provision for the registration of charges in respect of the issue of debentures. Reference to issue of certificate 'under his hand' have been omitted to allow issue of certificate electronically. Form and manner of issuing certificate of registration is proposed to be prescribed through Rules. Further reference to such certificate of registration being conclusive evidence has been omitted.

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78. Application for registration of charge. 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, within such time and 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.	133. Endorsement of certificate of registration on debenture or certificate of debenture stock. 134. Duty of company as regards registration and right of interested party. 136. Copy of instrument creating charge to be kept by company at registered office.—	The detailed requirements in respect of manner in which endorsement of Registrar's certificate would be made on debenture certificate would be prescribed through rules. The requirement under section 136 of existing Act may be prescribed through rules to be prescribed under clause 77(1) of the Bill. The provisions have been made clearer to indicate that registration of charge would also be allowed if filed by charge holder, in case debtor company fails to get the same registered.

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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	141. Rectification by Central Government of register of charges.—(1) The Central Government, on being satisfied— (a) that the omission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or section 139, was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or (b) that on the grounds, it is just and equitable to grant relief, 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	

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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.	<i>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.</i> <i>(2) The Central Government may make such order as to the costs of an application under sub-section (1) as it thinks fit.</i> <i>(3) 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.</i>	

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CHAPTER VII - MANAGEMENT AND ADMINISTRATION		
89. Declaration in respect of beneficial interest in any share. (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. (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.	187C. Declaration by persons not holding beneficial interest in any share. (1) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share. (2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), or within thirty days after his becoming such beneficial owner, whichever is later, 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) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.	Under this clause, the Central Government may make rules to provide for the manner of holding and disclosing the beneficial interest and beneficial ownership. Penal provisions under the clause have been made stringent. No change

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(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	(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration. 5 (a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues. (b) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.	This is a new provision wherein the Central Government is empowered to make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership. Penalty is enhanced. Penalty is enhanced

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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.	(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him. (7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged. (8) The provisions of this section shall not apply to the trustee referred to in section 187B on and after the commencement of the Companies (Amendment) Act, 2000.	Companies (Amendment) Act, 2000 being redundant, hence no reference is there in the Bill.
92. Annual return. (1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding— (a) its registered office, principal business activities, particulars of its holding, subsidiary	159. Annual return to be made by company having a share capital.— (1) Every company having a share capital shall, within sixty]days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding— (a) its registered office, (b) the register of its members,	Reference to Schedule V provided in the existing Act has been omitted since the form of annual return will be prescribed in the rules. All types of companies, whether having share capital or not have to

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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	(c) the register of its debenture holders, (d) its shares and debentures, (e) its indebtedness, (f) its members and debenture holders, past and present, and (g) its directors, managing directors, managers and secretaries, past and present: Provided that if any of the five immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number or shares held by a member. <i>Explanation.</i>—Any reference in this section or in section 160 or 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.	comply with the requirement of filing of the Annual Return. Contents of Annual Return have been revamped in the Bill keeping in view the need of relevant disclosures required in present context. Some of the important additions include particulars about Promoters, directors, key managerial personnel; Remuneration of directors & KMP; Penalty or punishment imposed on company; details in respect of shares held by foreign Institutional Investors.

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(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 sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty 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	company whose shares are listed on a recognised stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice. (2) There shall also be filed with the Registrar along with the return a certificate signed by [the signatories] of the return, stating— (a) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely; (aa) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and] (b) in the case of a private company also, (i) that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and (ii) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (b) of clause (iii) of sub-section (1) of section 3 are not to be included in reckoning the number of fifty.	The extracts of the Annual Return is intended to form a part of the Board's report for shareholders information. Penal provisions have been made stringent. This penal provision

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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.		imposes challenge to the professionals wherein they would be punished if they don't certify in conformity with requirements of the clause.
93. Return to be filed with Registrar in case promoters' Stake changes. 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.	No Provision	New Clause introduced in the Bill. Under the clause, every listed company is required to file with the registrar any change with respect to change in number of shares held by the promoters and top ten shareholders of such company within fifteen days of such change.
94. Place of keeping and inspection of registers, returns, etc. (1) The registers required to be kept and maintained by a company under section 88	163. Place of keeping, and inspection of registers and returns.— (1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders, and copies of all annual returns prepared under	Under the Bill, a company is required to keep Register of members at the registered office of the company. Other than this a company may also keep

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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	sections 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company: Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if— (i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, and (iii) the Registrar has been given in advance a copy of the proposed special resolution. (1A) Notwithstanding anything contained in sub-section (1) the Central Government may make rules for the preservation and for the disposal whether by destruction or otherwise, of the registers, indexes, returns and copies of certificates and other documents referred to in sub-section (1). (2) The registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company may impose, so that not less than two hours in each day are allowed for inspection) to the inspection— (a) of any member or debenture holder, without fee; and (b) of any other person, on payment of such sum as may be prescribed for each inspection. (3) Any such member, debenture holder or other person may—	and maintain its register of members at a place in which more than one-tenth of the total number of members entered in the register of members reside after approval in a general meeting by special resolution.

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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.	(a) make extracts from any register, index, or copy referred to in sub-section (1) without fee or additional fee, as the case may be, or (b) require a copy of any such register, index, or copy or of any part thereof, on payment of such sum as may be prescribed for every one hundred words or fractional part thereof required to be copied. (1) The company shall cause any copy required by any person under clause (b) of sub-section (3) to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company. (2) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five hundred rupees for every day during which the refusal or default continues. (6) The <i>Tribunal</i> may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.	Under the Bill in addition to member, debenture-holder, other security holders have also been empowered to inspect, take extract from the register of members. The new law empowers Central Government to direct inspection of the document. Penal provisions have been made stringent.
96. Annual general meeting.	166. Annual general meeting.—	

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(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year: Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation: 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:	(1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year: Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months. (2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public 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 :	One person company (OPC) is not required to hold AGM since it would have only one member. This proviso in the Bill provides that the first annual general meeting of a company shall be held within a period of nine months from the date of closing of the first financial year of the company. The Bill has clarified the time of business hours i.e. from 9. a.m. to 6 p.m. Also in place of the words “public holiday” the words national holiday have been substituted. This would allow companies to hold AGMs even on Sundays or

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Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose. <i>Explanation.</i>—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.	Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose: Provided further that— (a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and (b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meeting. 2(38) "public holiday" means a public holiday within the meaning of the Negotiable Instruments Act, 1881 (26 of 1881): Provided that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting;	other Public Holidays. Concept of National Holiday is introduced under Clause 96 of the Bill, this would enable companies to hold Annual General Meeting even on Sunday.
101. Notice of Meeting (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	171. Length of notice for calling meeting.— (1) A general meeting of a company may be called by giving not less than twenty-one days' notice in writing. (2) A general meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto—	Notice of the meeting under the Bill may also be sent through the electronic mode. Now notice of a meeting can also be served on the members and others electronically. Under the existing Act, Notice can be

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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	(i) in the case of an annual general meeting, by all the members entitled to vote thereat; and (ii) in the case of any other meeting, by members of the company (a) holding, if the company has a share capital, not less than 95 per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting, or (b) having, if the company has no share capital, not less than 95 per cent of the total voting power exercisable at that meeting: Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter. 172. Contents and manner of service of notice and persons on whom it is to be served.— (1) Every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat. (2) Notice of every meeting of the company shall be given— (i) to every member of the company, in any manner authorised by sub-sections (1) to (4) of section 53; (ii) to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased,	served only in writing. Serving of the Notice electronically would certainly save a lot of cost of companies, which in turn would be of benefit to shareholders themselves. However, the manner of service of notice shall be prescribed through the Rules. Sections 308 and 309 of the UK Companies Act, 2006 enable a company to send notice of a general meeting in electronic form. In fact the aforesaid legal provisions go a step further as they provide that notice can even be given by means of publishing it on the web-site of the company provided the notice is available on the web-site throughout the period beginning the date of the Notification and ending with the conclusion of the meeting. The bill now requires that the notice must be sent 21 clear days before the meeting instead of just 21 days. Electronic Mode has also

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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	(2) Unless the articles of the company otherwise provide, the provisions of sub-sections (3), (4) and (5) shall apply with respect to the meetings of a public or private company. (3) If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting, if called upon the requisition of members, shall stand dissolved. (4) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine. (5) If at the adjourned meeting also, a quorum is	(ii) 15 members personally present if such number is more than 1000 but up to 5000; (iii) 30 members personally present if such number as on the date of the meeting exceeds 5000; This proviso requires that in case of an adjournment or of a change of day, time or place of an adjourned meeting, the company shall give not less than three days' notice to the members either individually or by press announcement.

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is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.	not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.	
105. Proxies (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: 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 subsection 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.	176. Proxies.— (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the meeting: Provided that, unless the articles otherwise provide— (a) this sub-section shall not apply in the case of a company not having a share capital; (b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and (c) a proxy shall not be entitled to vote except on a poll.	Under the Bill, the Central Government is vested with powers to prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy. Maximum number is fixed as fifty for a person to be appointed as proxy holder.

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(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	(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. If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees. (3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public 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. (4) 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	Penal provisions have been made stringent.

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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'	punishable with fine which may extend to ten thousand 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. (5) 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. (6) An instrument appointing a proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles. (7) 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	

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notice in writing of the intention so to inspect is given to the company.	company.	
108. Voting through electronic means. 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.	No Provision	New clause introduced. Under the clause 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. This is a major step towards shareholder democracy. It is proposed to empower members of a company, spread across the length and breadth of the country, to exercise their vote on resolutions from any place they are. Under the proposed clause, shareholders would be able to vote using any electronic means like internet, electronic voting machines or SMS. The move would ensure greater participation of shareholders. For example at present in the AGM of a Listed Company having more than 1,00,000 shareholders, not even 1% of members attend. Even

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		in the case of postal ballot not more than 5% of members send their response. Permitting voting by electronic means, it is expected, would enhance the participation level manifold.
110. Postal ballot (1) Notwithstanding anything contained in this Act, a company— (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.	192A. Passing of resolutions by postal ballot.— (1) Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company. (2) Where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor, and requesting them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of posting of the letter. (3) The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf, and shall include with the notice, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period.	Under the Bill the provisions of the postal ballot have been extended to be applicable to all companies whether listed or unlisted. The Central Government may, by notification, declare transactions to be transacted only by means of postal ballot A company may pass any resolution by way of postal ballot, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting

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(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.	(4) If a resolution is assented to by a 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. (5) If a shareholder sends under sub-section (2) his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defaces or destroys the ballot paper or declaration of identity of the shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or with both. (6) If a default is made in complying with sub-sections (1) to (4), the company and every officer of the company, who is in default shall be punishable with fine which may extend to fifty thousand rupees in respect of each such default. <i>Explanation.</i>—For the purposes of this section, "postal ballot" includes voting by electronic mode.	The new law provides all the definitions in the definition clause i.e. clause 2 2(65) “postal ballot” means voting by post or through any electronic communication;
118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot. (1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every	193. Minutes of proceedings of general meetings and of Board and other meetings.— (1) Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every committee of the Board, to be kept by making within thirty days of the conclusion of every	The provisions of section 193, 194, 195 and 197 of the existing Act have been clubbed into clause 118 of the Companies Bill and the provisions have been

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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. (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	such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered. (1A) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed— (a) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting; (b) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose. (1B) In no case the minutes of proceedings of a meeting shall be attached to any such book as aforesaid by pasting or otherwise. (2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat. (3) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting. (4) In the case of a meeting of the Board of directors or of a committee of the Board, the minutes shall also contain— (a) the names of the directors present at the meeting; and	simplified. Every company shall maintain the minutes of every meeting whether the meeting is of shareholders or creditors resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board . The manner of preparing and signing the minutes would be governed by Rules. This is an important provision that the names of directors if any, dissenting from or not concurring with the resolution are required

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(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	(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring in, the resolution. (5) Nothing contained in sub-sections (1) to (4) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairman of the meeting— (a) is, or could reasonably be regarded as, defamatory of any person; (a) is irrelevant or immaterial to the proceedings; or (c) is detrimental to the interests of the company. <i>Explanation.</i>—The chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section. [194. Minutes to be evidence.— Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein. 195. Presumptions to be drawn where minutes duly drawn and signed.— Where minutes of the proceedings of any general meeting of the company or of any meeting of its Board	to be recorded in the minutes of relevant meeting. The provision was there in Companies Act, 1956 also. Corresponds to section 194 of Companies Act 1956 The provisions have been retained in the Bill in a similar manner. The reference to “voting by postal ballot” and

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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, 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	of directors or of a committee of the Board have been kept in accordance with the provisions of section 193, 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 in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.] 197. Publication of reports of proceedings of general meetings. (6) If default is made in complying with the foregoing provisions of this section in respect of any meeting, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.	“appointment of KMP, auditors and company secretary in practice have been introduced in the provisions. No change This is a new provision inserted in the Bill for better corporate compliance. Secretarial Standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India have been duly recognized. Penal provisions have been made stringent. .

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which may extend to one lakh rupees.		
120. Maintenance and inspection of documents in electronic form. 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.	No provision	New Clause Introduced Electronic format of maintenance and inspection of documents have been recognised under the Bill. Any documents, records, register or minutes etc., required to be kept by the company, may be kept in electronic form.
121. Report on annual general meeting. (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 subsection (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	No Provision	New Clause Introduced Every listed company is required under the Bill to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened in accordance with the law. Such report is required to be filed within 30 days of the conclusion of Annual General Meeting.

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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. Applicability of this Chapter to One Person Company. (1) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a 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	No Provision	New Clause Introduced This clause specifies applicable clauses to One Person Company under chapter VII of the Bill. Meaning thereby One Person Company is not required to comply with all the provisions of the chapter VII or certain provisions are applicable with modification as specified

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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

123. Declaration of dividend.

(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:

205. Dividend to be paid only out of profits.—

(1) No dividend shall be declared or paid by a company for any financial year except 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 those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Provided that —

(a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years;

(b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be

Electronic Clearing Service (ECS) mode of payment of Dividend has already become quite popular. In fact SEBI has advised companies to mandatorily use ECS facility for Dividend payments wherever available. In the event of non-availability of ECS facility, companies may use warrants for distributing dividend. The provision in the Bill permitting payment of dividend in **electronic** mode is an acknowledgement of this widely prevalent practice at making the dividend payment secure.

Under the Bill no dividend shall be declared or paid by a company from its reserves other than free reserves.

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	declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of sub-section (2) or against both; (c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation: Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960). (1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend. (1B) The amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend. (1C) The provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend. (2) For the purpose of sub-section (1), depreciation shall be provided either— (a) to the extent specified in section 350; or (b) in respect of each item of depreciable asset, for such an amount as is arrived at by dividing ninety-five per cent of the original cost thereof to the company by the specified period in	

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 capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company: 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.	respect of such asset; or (c) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent of the original cost to the company of each such depreciable asset on the expiry of the specified period; or (d) as regards any other depreciable asset for which no rate of depreciation has been laid down by this Act or any rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case: Provided that where depreciation is provided for in the manner laid down in clause (b) or clause (c), then, in the event of the depreciable asset being sold, discarded, demolished or destroyed the written down value thereof at the end of the financial year in which the asset is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso to section 350. (2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no dividend shall be declared or paid by a company for any financial year 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), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent, as may be prescribed: Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be	Clause 73 relates to Prohibition on acceptance of deposits from public. Clause 74 relates to Repayment of deposits, etc, accepted before commencement of this Act.

(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. Corresponds to sub clause (5) above.	made by the Central Government in this behalf. (2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares. (3) No dividend shall be payable except in cash: Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount, for the time being unpaid, on any shares held by the members of the company. (4) Nothing in this section shall be deemed to affect in any manner the operation of section 208. (5) For the purposes of this section— (a) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350; (b) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend, or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct.	Under the Bill Dividend may be paid by the company to registered shareholders or to his order or to his banker and shall not be payable except in cash.
124. Unpaid Dividend Account. (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	205A. Unpaid dividend to be transferred to special dividend account.— (1) Where, after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), a	

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 website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.	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 within the said period of thirty days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of Company Limited/ Company (Private) Limited". <i>Explanation.</i>—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed. (2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), remains unpaid at such commencement, the company shall within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1). (3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.	Under the Bill it is required that the company within a period of 90 days of making any transfer of an amount 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 website of the company, if any, and also on any other website approved by the Central Government. This provision is for the benefit of the shareholders. The shareholders would be able to know their claims and may apply for their dividend. It is specifically clarified that any person claiming to be entitled to any money transferred to the Unpaid dividend account may now apply to company for

(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 ensure 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.	(4) If the 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 concerned company, the company 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 ensure to the benefit of the members of the company, in proportion to the amount remaining unpaid to them. (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 to the Fund established under sub-section (1) of section 205C.	payment of money claimed. This is a new provision. It requires that all shares in respect of which unpaid or unclaimed dividend has been transferred to IEPF shall be transferred by company in name of IEPF along with statement. Format of statement would be provided through Rules. The procedure for claiming

(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.	(6) The company shall, when making any transfer under sub-section (5) to the Fund established under section 205C any unpaid or unclaimed dividend, furnish to such authority or committee as the Central Government may appoint] in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the persons entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto, and such other particulars as may be prescribed¹ (7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof. (8) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.	shares transferred to IEPF would be provided through Rules. Penal provisions have been made stringent.
125. Investor Education and Protection Fund. (1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund). (2) There shall be credited to the Fund—	205C. Establishment of Investor Education and Protection Fund.— The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the “Fund”). (2) There shall be credited to the Fund the	Under the Bill, additional categories of amounts to be credited are given. In addition to this, additional purposes are also given for which IEPF may be utilized.

(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; (e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956; (f) the interest or other income received out of investments made from the Fund; (g) the amount received under sub-section (4) of section 38; (h) the application money received by companies for allotment of any securities and due for refund;	following amounts, namely:— (a) amounts in the unpaid dividend accounts of companies; (b) the application moneys received by companies for allotment of any securities and due for refund; (a) matured deposits with companies; (b) matured debentures with companies; (c) the interest accrued on the amounts referred to in clauses (a) to (d); (d) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and (e) the interest or other income received out of the investments made from the Fund: Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment. <i>Explanation.</i>—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.	

(j) 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	(3) The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed .	

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 person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C 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. <i>Explanation.</i>—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 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	(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.	Now any person claiming to be entitled to amount which has been transferred in IEPF can apply to authority for refund even after seven years. The Central Government is empowered to constitute an authority to administer the IEPF. It shall consist of maximum seven members and a chief executive officer.

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.	(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.	The constitution of the said authority is provided under the clause itself. Further, the manner of administration of the fund, appointment of chairperson, members and chief executive officer, holding of meetings etc., shall be governed by the Rules. The authority is required to maintain separate accounts and other relevant records of the fund in the prescribed manner. Accounts of the Fund shall be audited by Comptroller and Auditor- General of India.

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128. Books of account, etc., to be kept by company. (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: [The term 'Books of account' is defined under clause 2(13) reproduced at the end of the column] 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:	<i>Accounts</i> 209. Books of account to be kept by company.— (1) Every company shall keep at its registered office proper books of account with respect to— (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place; (b) all sales and purchases of goods by the company; (c) the assets and liabilities of the company; and (d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account: Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.	Every company shall now be required to prepare and keep at its registered office, financial statements along with books of account and other relevant books and papers for every financial year including its branch offices if any and explain the transactions effected both at the registered office and its branches. The option has been given to the companies to maintain books of accounts in the electronic mode. The summarised returns shall now be made periodically

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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 summarized returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1). . (3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of	(2) Where a company has a branch office, whether in or outside India, the company 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, made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1). (3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein,— (a) if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and (b) If such books are not kept on accrual basis and according to the double entry system of accounting. (4) The books of account and other books and papers shall be open to inspection by any director during business hours.	instead of at intervals of not more than three months. This would give flexibility to corporates in managing their branch offices. Financial information maintained outside India may be allowed for inspection to any director subject to the conditions as may be prescribed in the rules. <i>Corresponds to Clause 128 (1) of the Bill.</i>

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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	(4A) The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account] shall be preserved in good order: Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account shall be so preserved.	The inspection of the books of account of a subsidiary company shall be done only by a person authorised by Board resolution. These are new provisions in the Bill which empower the Central Government to direct keeping of books of accounts for a period longer than 8 years if the company is under investigation under Chapter XIV. The penalty provisions have been enhanced. The term of imprisonment has been enhanced. Minimum and maximum amount of fine has also been prescribed.

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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, 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.	(5) If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence, unless it was committed wilfully. (6) The persons referred to in sub-section (5) are the following namely:— (a) where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company; and (d) where the company has neither a managing director nor manager, every director of the	As per clause 2(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 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;

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	company. (7) If any person, not being a person referred to in sub-section (6), having been charged by the managing director, manager or Board of directors, as the case may be, with the duty of seeing that the requirements of this section are complied with, makes a default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.	
129. Financial statement. (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	211. Form and contents of balance sheet and profit and loss account.— 211(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of that Part: Provided 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 balance sheet has been specified in or under the Act governing such class of company. 211(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of	The balance sheet and Profit & Loss Account, has been defined collectively as financial statement. Further, cash flow statement and statement showing changes in equity if any of the company also forms part of the same. While the essential principles and broad parameters for financial statements have been provided in the Bill, the format of financial statement is provided in Schedule III. Cash Flow statement shall also be made part of mandatory financial statements. The wording of the section/clause has been simplified.

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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— (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; (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949; (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	Schedule VI, so far as they are applicable thereto: Provided 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 profit and loss account has been specified in or under the Act governing such class of company. 210. Annual accounts and balance sheet.— 210(1) At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company— (a) a balance sheet as at the end of the period specified in sub-section (3); and (b) a profit and loss account for that period. 210(4) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but it shall not exceed fifteen months: Provided that it may extend to eighteen months where special permission has been granted in that	

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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.	behalf by the Registrar. 212. Balance sheet of holding company to include certain particulars as to its subsidiaries.— 212(1) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:— (a) a copy of the balance sheet of the subsidiary; (b) a copy of its profit and loss account; (c) a copy of the report of its Board of directors; (d) a copy of the report of its auditors; (e) a statement of the holding company's interest in the subsidiary as specified in sub-section (3); (f) the statement referred to in sub-section (5), if any; and (g) the report referred to in sub-section (6), if any. 211(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards. 211(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:— (a) the deviation from the accounting standards; (b) the reasons for such deviation; and	Along with financial statements, consolidated financial statements of all subsidiaries and the company shall be prepared and laid before the Annual General Meeting. The consolidation of financial statements has been made mandatory. The requirement of attaching financial statements of subsidiary company with the holding company has been done away with. Instead a company shall attach with its financial statements a separate statement containing salient features of its subsidiary. The term ‘subsidiary’ includes associate company and joint venture.

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(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, <i>mutatis mutandis</i>, 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	(c) the financial effect, if any, arising due to such deviation. 211(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949) as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A: Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section. 211(3) The Central Government may, by	Provisions of the Bill applicable to the preparation, adoption and audit of the financial statements of a holding company shall, <i>mutatis mutandis</i>, apply to the consolidated financial statements also. Now the Central Government may, on its own or on an application by a class of companies exempt them from complying with any of the requirements of this clause 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.

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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. <i>Explanation.</i>—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.	notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the public interest. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification. 210(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully. 210(6) If any person, not being a director of the company, having been charged by the Board of directors with the duty of seeing that the provisions of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both: Provided that no person shall be sentenced to	The penalty provisions have been enhanced. The term of imprisonment has been enhanced. Minimum and maximum amount of fine has also been prescribed.

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	imprisonment for any such offence unless it was committed wilfully.	
130. Re-opening of accounts on court's or Tribunal's orders. (1) A company shall not re-open its books of account and shall not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— (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, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order	No Provision	New Provision The Bill provides for provisions relating to re-opening of books of account or re-casting of financial statements of the company.

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under his 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. Voluntary revision of financial statements or Board's report. (1) If it appears to the directors of a company that— (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	No Provision	New Provision The Bill provides for provisions relating to financial statement by the Directors of the company. The directors of a company may prepare revised financial statements or a revised report in respect of any of the 3 preceding financial years after obtaining approval of the Tribunal on an application made by the company, if it appears to them that (a) financial statements of the company; or (b) the report of the Board, do not comply with the provisions of clause 129 related to financial statements or clause 134 related to financial statements / Boards Report.

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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. Constitution of National Financial Reporting Authority.	210A. Constitution of National Advisory Committee on Accounting Standards.—	

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(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. (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall— (a) 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; (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed; (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed. (3) The National Financial Reporting	(1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards (hereafter in this section referred to as the "Advisory Committee") to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act. (2) The Advisory Committee shall consist of the following members, namely:— (a) a Chairperson who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline; (b) one member each nominated by the Institute of	The name of National Advisory Committee on Accounting Standards has been changed to National Financial Reporting Authority. The role of National Financial Reporting Authority has been prescribed. The role of the authority has been extended to advise on matters related to Auditing Standards in addition to Accounting Standards. The constitution of the National Financial Reporting Authority has also been changed. Now it will be headed by the Chairman, who shall be a person of eminence and having expertise in accountancy, auditing, finance

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Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:	Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959) and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980); (c) one representative of the Central Government to be nominated by it; (d) one representative of the Reserve Bank of India to be nominated by it; (e) one representative of the Comptroller and Auditor-General of India to be nominated by him; (f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university; (g) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) or his nominee; (h) two members to represent the chambers of commerce and industry to be nominated by the Central Government; and (i) one representative of the Securities and Exchange Board of India to be nominated by it. (3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.	or law to be appointed by the Central Government and such other members not exceeding 15 as may be prescribed.

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Provided that the terms and conditions and the manner 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: Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment. (4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall— (a) have the power to investigate, either <i>suo motu</i> 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, registered under the Chartered Accountants Act,	(4) The members of the Advisory Committee shall hold office for such term as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled. (5) The non-official member of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank.	Chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firm) during the course of their appointment and two years after ceasing to hold such appointment. The National Financial Reporting Authority will have the power to investigate, either <i>suo motu</i> 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.

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1949: 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; (b) have 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:— (i) 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; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place; (iv) issuing commissions for examination of witnesses or documents; (c) where professional or other misconduct is proved, have the power to make order for—		In the event of professional or other misconduct, the National

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(A) imposing penalty of— (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms; (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India refund to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 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. <i>Explanation.</i>—For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949. (5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority constituted under sub-section (6)		Financial Reporting Authority has the power to impose penalty of not less than one lakh rupees in case of an Individual and ten lakh rupees in case of a firm and to debar the member/firm from professional practice for a minimum period of 6 months or such higher period not exceeding 10 years as it may decide.

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in such manner as may be prescribed. (6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority. (7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed. (8) The fee for filing the appeal shall be such as may be prescribed. (9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament. (10) The National Financial Reporting Authority shall meet at such times and		The Central Government, by notification, may constitute, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority

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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. (11) 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. (12) 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. (13) 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. (14) 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		

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Financial Reporting Authority. (15) 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.		
134. Financial Statement, Board's report, etc. (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 chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.	215. Authentication of balance sheet and profit and loss account.— (1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors— (i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of sub-section (2) of section 29 of the Banking Companies Act, 1949 (10 of 1949). (ii) in the case of any other company, by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one. (2) In the case of a company not being a banking company, when only one of its directors is for the time	The provisions of Section 215, 216 and 217 of the existing Act have been clubbed under clause 134 of the Bill. It is intended that financial statements shall be approved by the Board of directors before they are signed by the Chairperson (authorised by the Board) or by two directors one of whom shall be MD and the CEO, if he is director, the CFO and the company secretary. In case of one person company the financial statement shall be signed by one director.

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(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;	being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of sub-section (1). (3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon. 216. Profit and loss account to be annexed and auditors' report to be attached to balance sheet.— The profit and loss account shall be annexed to the balance sheet and the auditors' report (including the auditors' separate, special or supplementary report, if any) shall be attached thereto. 217. BOARD'S REPORT (1) There shall be attached to every balance sheet laid before a company in general meeting, a report by its Board of directors, with respect to - (a) the state of the company's affairs ; (b) the amounts, if any, which it proposes to carry to any reserves in such balance sheet ; (c) the amount, if any, which it recommends should be paid by way of dividend ; (d) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report ;	No distinction has been made between a company and banking company for purpose of signing of balance sheet in the Bill. In the Bill, the term "financial statement includes balance sheet, profit and loss account and cash flow statement. The Bill requires the Board's Report to be attached to financial statement (in the Act, it was required to be attached with balance sheet). The directors are required to include certain additional information in the Board Report like extract of Annual Return, number of Board Meetings in a financial year, declaration of independence by an Independent Director

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(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 practice 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;	(e) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed. (2) The Board's report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year - (a) in the nature of the company's business ; (b) in the company's subsidiaries or in the nature of the business carried on by them ; and (c) generally in the classes of business in which the company has an interest. (2A) (a) The Board's report shall also include a statement showing the name of every employee of the company who - (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than such sum as may be prescribed ; or (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than such sum per month as may be prescribed ; or (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent, of the equity shares of the	and company's policy on directors appointment and remuneration.

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(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	company. (b) The statement referred to in clause (a) shall also indicate, - (i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and (ii) such other particulars as may be prescribed. <i>Explanation.</i> - "Remuneration" has the meaning assigned to it in the <i>Explanation</i> to section 198.	The Board's report shall contain a statement indicating development and implementation of risk management policy and details about policy on CSR initiatives taken during the year. The Board's report of certain class of companies shall also contain a statement about

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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	(2AA) The Board's report shall also include a Directors' Responsibility Statement, indicating therein, - (i) that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures ; (ii) that 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 or loss of the company for that period ; (iii) that the directors had taken proper and sufficient care for the maintenance of adequate	formal annual evaluation made by Board of its own and Board committee's performance. In respect of one Person company, the Board of Director's Report shall contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his Report. The scope of Directors' Responsibility Statement has been widened to include the statement that in case of a listed company, the directors had laid down internal financial controls to be followed by the company and such internal financial controls have been complied with.

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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. <i>Explanation.</i>—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;	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 ; (iv) that the directors had prepared the annual accounts on a going concern basis." (2B) The Board's report shall also specify the reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A. (3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid, or, in cases falling under the proviso to section 222, in an addendum to that report, on every reservation, qualification or adverse remark contained in the auditors' report. (4) The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board ; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub-sections (1) and (2) of section 215.	The director's responsibility statement shall include a statement that directors had devised proper systems to ensure compliance with provisions of all applicable laws and such systems were adequate and operating effectively. The penalty provisions have been enhanced. The term of

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(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 chairperson of the company 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 annexed to or forming part of such financial statement; (b) the auditor's report; and (c) the Board's report referred to in sub-section (3).	(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to 7[twenty] thousand rupees, or with both : Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully : Provided further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty. (6) If any person, not being a director, having been charged by the Board of directors with the duty of seeing that the provisions of sub-sections (1) to (3) are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ²[twenty] thousand rupees, or with both : Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.	imprisonment has been enhanced. Minimum and maximum amount of fine has also been prescribed.

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(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. Corporate Social Responsibility (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. (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		New Provision The provisions relating to Corporate Social Responsibility have been introduced under the Bill. Now, 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. The Corporate Social Responsibility Committee shall, formulate and recommend to the Board, a Corporate Social Responsibility Policy and the amount of expenditure to be

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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 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	No Provision	incurred on the activities provided in the policy. The Board has to ensure that the company spends, in every financial year, at least 2% of average net profit of the company made during 3 immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy and in case of failure to do so, necessary reasons for not spending the amount, shall be disclosed in the Director's Report. The company shall while spending the amount earmarked for Corporate Social Responsibility activities give preference to the local area and areas around it where it operates.

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Responsibility Policy: Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities: Provided further 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. Explanation.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.		
138. Internal audit (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.	No provision	New provision Certain class or classes of companies, as may be prescribed, shall be required to appoint 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.

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CHAPTER X - AUDIT AND AUDITORS		
139. Appointment of auditors. (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 the company shall place the matter relating to such appointment for ratification by members at every annual general meeting: Provided further 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 also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141: Provided also that the company shall	<i>Audit</i> 224 Appointment and remuneration of auditors.— (1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed : Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B). (1A) Every auditor appointed under sub-section (1), shall within thirty days of the	Now every company shall, at its 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 6th Annual General Meeting and thereafter till the conclusion of every 6th meeting. However the company shall place the matter relating to such appointment for ratification by members at every annual general meeting. In the Bill, the written consent of auditor to such appointment is to be obtained before his appointment is made. The duty to inform the auditor of such appointment and to file a notice with

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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 reappointment. (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	receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.	the Registrar within fifteen days of the meeting in which the auditor is appointed will be that of company. The provisions for rotation of auditors in the listed company & certain other class of companies, as may be prescribed, have been provided. An individual auditor having completed his more than one term of five consecutive years shall not be eligible for re-appointment. Likewise an audit firm having completed its term as auditor for more than two terms of five consecutive years shall not be eligible for re-appointment as auditor in same company for next 5 years. Now, no audit firm having a common partner or partners to the other audit

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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 at such intervals as may be resolved by members; 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	(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or re-appoint any person [who is in full-time employment elsewhere] or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies: Provided that in the case of a firm of auditors, “specified number of companies” shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere: Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number, in the aggregate: Provided also that where any partner of a firm of auditors is also holding office, in his	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 5 years. A transition period of three years from the commencement of this Act has been provided for the companies in existence to comply with the provision of rotation of auditor.

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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.	individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate: Provided also that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company. (1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein. <i>Explanation</i> 1.—For the purposes of sub-sections (1B) and (1C), “specified number”	The Bill also provides for rotation of auditing partner and his team within an audit firm.

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(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.	means,— (a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies; (b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more. <i>Explanation</i> II.—In computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.	Corresponds to section 619 of the Companies Act, 1956. In the case of Government companies, C&AG shall appoint an auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold office till the conclusion of the Annual General Meeting.

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(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 the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty		

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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	[(6)(a) The Board may fill any casual vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act: Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting. (b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.] (2) Subject to the provisions of sub-	Any casual vacancy is to be filled by the Board of Directors within 30 days. However, if such casual vacancy is as a result of resignation of an auditor, such appointment is to be approved at the general meeting within a period of 3 months of such approval.

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(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	section (1B) and section 224A, at any annual general meeting], a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless— (a) he is not qualified for re-appointment; (b) he has given the company notice in writing of his unwillingness to be re-appointed; (c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or (d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with. (3) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy. (4) The company shall, within seven days of the Central Government's power under subsection (3), becoming exercisable, give notice of that fact to that Government; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable, with fine which may extend to [five thousand rupees.	Where at any annual general meeting, no auditor is appointed or re-appointed, the present Act requires the vacancy to be filled by Central Government but the Bill proposes that the existing auditor shall continue to be the auditor of the company. The power of Central Government to appoint an auditor in such situation has been dispensed with.

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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.	(5) The first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting: Provided that— (a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and (b) if the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors. (7) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office	In case the company has an audit committee, then all appointments of auditors including filling of casual vacancy, shall be made after taking into account the recommendations of such committee. Now the first auditor of a company other than a Government company shall be appointed by the Board of Directors within 30 days of its incorporation and if the Board fails to do so, the members shall appoint the same within 90 days at an extra ordinary general meeting, who shall hold office till the conclusion of first Annual General Meeting. In case of Government companies, the First Auditor shall be appointed by the Comptroller and Auditor General (C&AG) within 60 days from the date of incorporation and if he fails to do so, the Board shall appoint auditor within next 30 days. In the case of Board's failure to do so, it has to inform the members of the company who will appoint the auditor within 60 days at an extra ordinary general meeting, who shall hold office till the conclusion of first Annual General Meeting.

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	before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.	
140. Removal, resignation of auditor and giving of Special notice. (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: 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	225. Provisions as to resolutions for appointing or removing auditors.— (1) 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. (2) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.	Now along with the approval of Central Government, the permission of shareholders by way of a special resolution of the company is also required for removal of an auditor. A reasonable opportunity of being heard is to be given to the auditor. As per the Bill, when an auditor of a company resigns, he is required to file a statement in prescribed form within 30 days with the company and the Registrar. In case of Government company, such statement shall also be submitted to the Comptroller and Auditor General of India, giving the reasons and other relevant facts with regard to his resignation.

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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	(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are 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 representations having been made; and (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company;	

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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 <i>suo motu</i> 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	and if a copy of the representations is not sent as aforesaid because they were 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 representations shall be read out at the meeting: Provided that copies of the representations need not be sent out and the representations 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 [Central Government] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the [Central Government] may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application. (4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (5) of section 224 or to the removal of any auditor or auditors under sub-section (7) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.	A new provisions has been introduced whereby the Tribunal <i>suo motu</i> or on an application from Central Government/ or by any person concerned, can direct the company to change the auditor if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers.

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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 I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers. Explanation II.—For the purposes of this Chapter the word “auditor” includes a firm of auditors.		Now no auditor shall be eligible for appointment as an auditor of any company for a period of 5 years against whom final order for removal has been made by Tribunal and he shall also be liable for action under clause 447. It has been clarified that in the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers. It is also clarified that for this Chapter (Chapter X) the auditor includes auditor firm.
141. Eligibility, qualifications and disqualifications of auditors. (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant: 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.	226. Qualifications and disqualifications of auditors.— 226(1) A person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949): Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed	

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(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.	by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm. 226(2)(a) Notwithstanding anything contained in sub-section (1), but subject to the provisions of any rules made under clause (b), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951) [or of the Jammu and Kashmir (Extension of Laws) Act, 1956, (62 of 1956), as the case may be,] entitling him to act as an auditor of companies [in the territories which, immediately before the 1st November, 1956, were comprised in that State] or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in [India]. (b) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States] for the purposes of clause (a), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation.	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. The power of Central Government prescribing conditions and restrictions for such grant, renewal, suspension or cancellation of auditors' certificates to persons in Part B states is omitted.

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(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; (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	226(3) None of the following persons shall be qualified for appointment as auditor of a company— (a) a body corporate; (b) an officer or employee of the company; (c) a person who is a partner, or who is in the employment, of an officer or employee of the company; (d) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;	Other categories of persons have been inserted in the Bill who are not eligible to be appointed as an auditor of the company. The scope of disqualifications for their eligibility is widened to ensure independence of auditor. If a person or his relative or partner is indebted to the company or its subsidiary or holding/ associate company or is holding any security or interest in the company or its subsidiary or associate company or has given any 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 a sum which may be prescribed in the rules, then such persons are also disqualified. Further, a person or a firm who has business relationship of such nature as may be prescribed with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company; a person whose relative is in the employment of the company as a director or key

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(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 full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;	(e) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000. <i>Explanation.</i>—For the purposes of this section, "security" means an instrument which carries voting rights:] <i>Explanation.</i>—References in this sub-section to an officer or employee shall be construed as not including references to an auditor. 224(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or re-appoint any person [who is in full-time employment elsewhere] or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies:	managerial personnel are also disqualified. As per the Bill, a person who is in full employment elsewhere or a person or a partner of a firm holding appointment as its auditor, shall be disqualified for appointment if at that date of appointment or reappointment he is holding appointment as auditor of more than twenty companies.

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(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	Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere: Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number, in the aggregate: Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate: Provided also that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company.	

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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.	226(4) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company. 226(5) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) and (4), he shall be deemed to have vacated his office as such.	
142. Remuneration of auditors. (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: Provided that the Board may fix remuneration of the first auditor appointed by it.	224(8) The remuneration of the auditors of a company— (a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be; and- (aa) in the case of an auditor appointed under section 619 by the Comptroller and Auditor-General of India, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine; (b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.	The provisions of the Bill provide that authority for fixation of remuneration for auditors will be with shareholders to be decided in a general meeting.

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(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.	For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".	The term 'remuneration' is elaborately redefined.
143. Powers and duties of auditors and Auditing Standards. (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	227. Powers and duties of auditors.— 227(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor. 227(1A) Without prejudice to the provisions of sub-section (1), the auditor shall inquire— (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 not prejudicial to the interests of the company or its members; (b) where transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company; (c) where the company is not an	

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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.	investment company within the meaning of section 372 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 papers 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.	In the Bill, the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries. Now the auditor shall also comply

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(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 (11) 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	227(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view— (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and (ii) in the case of the profit and loss account, of the profit or loss for its financial year. 227(3) The auditor's report shall also state— (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit; (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as	with Auditing Standards. Auditor in his Report shall also report on the cash flow for the year and such other matters as may be prescribed.

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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	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; (bb) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause (c) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report; (c) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns; (d) whether, in his opinion, the profit and loss account and balance sheet complied with the accounting standards referred to in sub-section (3C) of section 211; (e) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company; (f) whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274;] (g) <i>whether the cess payable under</i>	

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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 Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact	<i>section 441A has been paid and if not, the details of amount of cess not so paid.</i> 227(4) Where any of the matters referred to in clauses (i) and (ii) of sub-section (2) or in clauses (a), (b), (bb), (c) and (d) of sub-section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer. 619. Application of Sections 224 To 233 to Government Companies 619(1) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections 224 to 233. 619(2) The auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor-General of India : Provided that the limits specified in sub-sections (1B) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub-	The auditor's report shall also state whether the company has adequate internal financial controls in place and its operating effectiveness. The other matters that may be included in the auditor report may be prescribed by rules. The auditor is required to provide reasons, where any of the matters required to be included in the Audit Report under this clause is answered in negative or with a qualification. In the case of Government company, the Audit Report among other things, shall include directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereof and the impact on the Company's accounts and financial statement.

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on the accounts and financial statement of the company. (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 a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; 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 shall be sent by the company to every person entitled to copies of audited	section. 619(3) The Comptroller and Auditor-General of India shall have power – (a) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such; (b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise 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 authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct. 619(4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit. 619(5) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the	

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financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report. (7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor General of 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	same manner as the audit report. 228. Audit of accounts of branch office of company.— 228(1) Where a company has a branch office, the accounts of that office shall, [be audited by the company's auditor appointed under section 224 or] by a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, either [by the company's auditor or a person qualified as aforesaid] or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.	The duties and powers of the company's auditor with reference to the audit of the branch and of the branch auditor, if any, shall be prescribed by rules.

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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.	228(2) Where the accounts of any branch office are [audited by a person other than the company's auditor] the company's auditor— (a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor, and (b) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office: Provided that in the case of a banking company having a branch office outside India, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principle office of the company in India. 228(3) (a) Where a company in general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in	

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	consultation with the company's auditor; (b) the person so appointed (hereafter in this section referred to as the branch auditor) shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same; (c) the branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary; (d) the branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors if so authorised by the company in general meeting. 228(4) Notwithstanding anything contained in the foregoing provisions of this section, the Central Government [may make rules providing for the exemption of] any branch office from the provisions of this section to the extent specified in the rules and in making such rules the Central Government shall have regard to all or any of the following matters, namely:— (a) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as	The power of Central Government under this clause to issue Rules for providing exemption related to provisions of the branch audit, has been dispensed with.

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(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: 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	branch auditor even though such person may be an officer or employee of the company; (b) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of this section; (c) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office; (d) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of this section.	This is a new provision in the Bill to ensure compliance of auditing standards by every auditor. The Central Government has been given option to prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. Further, where no 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. The Central Government may

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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	227(4A) The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein: Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case. 227(5) The accounts of a company shall not be deemed as not having been, and the auditor's report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if— (a) Those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and (b) Those provisions are specified in the balance sheet and profit and loss account of the company.	consult the National Financial Reporting Authority before it makes an order directing that the auditor's report shall also include a statement on such matters as may be specified therein. In the existing Act, such statement can be prescribed after consultation with ICAI. Now a duty has been cast on auditor, to immediately report to the Central Government, any offence involving fraud, which during the performance of his duties he believes is being or has been committed against the company by officers or employees of the company.

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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 <i>mutatis mutandis</i> 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.		The duties and powers of an auditor under clause 143, shall apply <i>mutatis mutandis</i> to both Cost Accountants for Cost Audit and Company Secretary in practice for Secretarial Audit.
144. Auditor not to render certain services. 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, namely:— (a) accounting and book keeping services; (b) internal audit;	No Provision	New Provision As per the Bill, an auditor may provide the company with such other services as are approved by the Board of Directors or the audit committee, but shall not provide the services mentioned here in below whether directly or indirectly to the company, its holding company and subsidiary company: (a) accounting and book keeping services; (b) internal audit;

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(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: Provided that an auditor or audit firm who or which has been performing any non audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement. Explanation.—For the purposes of this subsection, 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,		(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; A transition period has been provided to auditors to comply with the provisions of this clause before the closure of the first financial year after the date of commencement of the new law.

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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.		
148. Central Government to specify audit of items of cost in respect of certain companies. (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.	233B. Audit of cost accounts in certain cases.— (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor [who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959)]: Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the	The Central Government may by order direct maintenance of cost records for certain class of companies engaged in production of prescribed goods and providing prescribed services and may also specify audit of items of cost in respect of certain class of companies engaged in the production of such goods or providing such services as may be prescribed. Consultation with regulatory bodies has been made necessary before Central Government issues such order in case of any class of companies regulated under a special Act.

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(3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed: Provided that no person appointed under section 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. (4) An audit conducted under this section shall be in addition to the audit conducted	said notification, such Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a Chartered Accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company. (2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government: Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224. (3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed	The power of Central Government to provide that the audit under this clause may be conducted by Chartered Accountants in case sufficient numbers of Cost Accountants are not available has been dispensed with. Under the Bill, no approval of Central Government is required for the appointment of Cost Auditor to conduct the Cost Audit. The cost audit shall be conducted in accordance with cost accounting standards, which are issued by the Institute of Cost Accountants of India, with the approval of Central Government.

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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	under section 224. (4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the [Central Government] in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.] (5)(a) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company. (b) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company. (c) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (a) or clause (b) of this sub-section, he shall on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company. (6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company. (7) The company shall, within thirty days from the date of receipt of a copy of the report	Now the Cost Accountant in practice shall submit the copy of his audit

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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	referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report. (8) If, after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government. (9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary. (10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf. (11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to [fifty thousand rupees] and	report to the Board of Directors who shall forward the same to Central Government, instead of directly forwarding the Report by Auditor to the Central Government, as is provided under the Companies Act, 1956. There has been increase in the punishment in the Bill, if the company or its officer or cost auditor contravenes the provisions related to

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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.	every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to [fifty thousand rupees], or with both.]	Cost Audit.

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CHAPTER XI - APPOINTMENT AND QUALIFICATIONS OF DIRECTORS		
149. Company to have Board of Directors. (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.	252. Minimum number of directors.— (1) Every public company (other than a public company which has become such by virtue of section 43A) shall have at least three directors: Provided that a public company having,— (a) a paid-up capital of five crore rupees or more; (b) one thousand or more small shareholders, may have a director elected by such small shareholders in the manner as may be	In case of one person company, a company is required to have minimum one director. Minimum number of directors in case of private and public companies is same as in 1956 Act i.e. two and three respectively. Maximum number of directors is increased from twelve to fifteen. For appointing more than fifteen directors, passing of special resolution is required. Under the 1956 Act, approval from Central Government was required for appointing beyond twelve. Under the Bill, the prescribed class of companies are required to have atleast one woman director. Corresponds to Clause 151 - Appointment of director elected by small shareholders In the Bill, every listed company has the option of appointing one small shareholder director.

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	prescribed. <i>Explanation.</i>—For the purposes of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.	
(2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1). (3) 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. (4) 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.	(2) Every other company shall have at least two directors. (3) The directors of a company collectively are referred to in this Act as the "Board of directors" or "Board".	Corresponds to clause 2(10): (10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company; There is no change in the definition of Board. The new law requires appointment of atleast one resident director in every company. The new law requires appointment of atleast one-third of total directors as independent directors in every listed company. Board independence is being accepted the world over as a vital norm for effective functioning of the company and to the benefit of shareholders in the long run. It is widely accepted today that independent directors bring an element of objectivity to Board

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	permissible maximum under its articles as first registered, shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as, it is disapproved by that Government: Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.	
Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one. (5) 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). (6) 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;		A transition period of one year is provided for compliance of this provision. ‘Independent Director’ is defined in the Bill clearly.

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(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		It is well established that existence of any significant pecuniary relationship between the company and an individual acts against the person's capacity to act independently of promoter's/management is interests. This aspect has been well taken care of in defining independent director.

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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 nonprofit 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. (7) 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 (6). 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.		A declaration as to meeting the criteria of independence by independent director is required at the first meeting in which he participates and at first meeting in every financial year.
(8) The company and independent directors shall abide by the provisions specified in Schedule IV. (9) Notwithstanding anything contained in		Schedule IV to the Bill is code of conduct for Independent directors. It provides for Role and functions, duties, manner of appointment, resignation and evaluation etc.

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any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of 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. (10) 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 reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. (11) Notwithstanding anything contained in sub-section (10), 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.		IDs are not entitled to stock option. They are entitled for profit related commission and sitting fees for attending the meetings. It is important to note that remuneration of independent directors is also linked to profit related commissions. There has to be a clear relationship between responsibility and performance vis-à-vis remuneration. An independent director shall hold office for a term upto 5 years. Maximum two consecutive terms are permissible. After cooling period of three years, independent director shall again be eligible for appointment in that company as Independent director.

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Explanation.—For the purposes of sub-sections (10) and (11), 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. (12) 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. (13) 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.		Independent Director and Non-executive Director (not being Promoter or KMP) 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
Manner of selection of independent directors and maintenance of databank 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	No Provision	New provision. Selection of Independent Director may be made out of data bank (containing the names, addresses and qualifications of persons who are eligible and, willing to act as independent directors) maintained by a body, association, Institute as may be notified by the Central

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creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such 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.		Government.
Clause 151 - Appointment of director elected by small shareholders 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	252. Minimum number of directors.— (1) Every public company (other than a public company which has become such by virtue of section 43A) shall have at least three directors: Provided that a public company having,— (a) a paid-up capital of five crore rupees or more;	The Bill requires every listed company to have one small shareholders director.

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of not more than twenty thousand rupees or such other sum as may be prescribed.	(b) one thousand or more small shareholders, may have a director elected by such small shareholders in the manner as may be prescribed. <i>Explanation.</i>—For the purposes of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.	
164. Disqualifications for appointment of director. (1) A person shall not be eligible for appointment as a director of a company, if— (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;	274. Disqualifications of directors.— (1) A person shall not be capable of being appointed director of a company, if— (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; (b) he is an undischarged insolvent; (c) he has applied to be adjudicated as an insolvent and his application is pending; (d) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;	The following new disqualifications are added: (g) he has been convicted of an offence dealing with related party transactions at any time during the last preceding five years; or (h) he has not obtained Director Identification Number;

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(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.	(e) he has not paid any call in respect of 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; or (f) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section; (g) such person is already a director of a public company which,— (A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or (B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:	Director of a company which has not filed financial statements or annual return for any continuous period of three years or has failed to repay the deposits accepted, shall not 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.

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(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,	Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company in which he is a director failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B). (2) The Central Government may, by notification in the Official Gazette, remove— (a) the disqualification incurred by any person in virtue of clause (d) of sub-section (1), either generally or in relation to any company or companies specified in the notification; or (b) the disqualification incurred by any person in virtue of clause (e) of sub-section (1). (3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).	A private company may provide for additional disqualifications.

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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.		
165. 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. <i>Explanation.—</i> 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.	275. No person to be a director of more than fifteen companies.— After the commencement of this Act, no person shall, save as otherwise provided in section 276, hold office at the same time as director in more than fifteen companies.	Number of directorships is increased from fifteen to twenty companies. Members may reduce the limit of twenty companies by passing special resolution.

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(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.	276. Choice to be made by director of more than [fifteen] companies at commencement of Act.— (1) Any person holding office as director in more than [fifteen] companies immediately before the commencement of [the Companies (Amendment) Act, 2000] shall, within two months from such commencement,— (a) choose not more than [fifteen] 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 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, to the Registrar having jurisdiction in respect of each such company, and also to the Central Government. (2) Any resignation made in pursuance of clause (b) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.	

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(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.	(3) No such person shall act as director— (a) in more than fifteen companies, after the expiry of two months from the commencement of [the Companies (Amendment) Act, 2000]; or (b) of any company after despatching the resignation of his office as director thereof, in pursuance of clause (b) of sub-section (1). 278. Exclusion of certain directorships for the purposes of sections 275, 276 and 277.—(1) In calculating, for the purposes of sections 275, 276 and 277, the number of companies of which a person may be a director, the following companies shall be excluded, namely:— (a) a private company which is neither a subsidiary nor a holding company of a public company; (b) an unlimited company; (c) an association not carrying on business for profit or which prohibits the payment of a dividend; (d) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director. (2) In making the calculation aforesaid, any company referred to in clauses (a), (b) and	Exclusion of certain companies is not provided under new law.

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(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.	(c) of sub-section (1) shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses. 279. Penalty.— Any person who holds office, or acts, as a director of more than fifteen companies in contravention of the foregoing provisions shall be punishable with fine which may extend to fifty thousand rupees] in respect of each of those companies after the first twenty.	Punishment has been increased.
166. Duties of directors. (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		New provision. Duties of directors are specifically provided under the Bill. They have been made responsible to work in the best interests of company, its employees, shareholders, the community and for the protection of environment.

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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, 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.	312. Prohibition of assignment of office by director.—Any assignment of his office made after the commencement of this Act by any director of a company shall be void.	
168. Resignation of director. (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:	No provision	New Provision. In case of resignation, the Board is duty bound to take note of it and shall place the fact of such resignation in the report of directors to be laid down before the next general meeting.

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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.		Director himself shall also forward his resignation to Registrar within thirty days of resignation. The resignation shall be effective from the date on which notice is received by the company or the date specified in the notice by the director whichever is later. Director is liable for the offences that occurred during his tenure.
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.	303. Register of directors etc.— (1) Every company shall keep at its registered office a register of its directors, managing director, manager and secretary, containing with respect to each of them the following particulars, that is to say:— (a) in the case of an individual, his present name, and surname in full; any former name or surname in full;	Register of Directors, KMP and register of their shareholding have been merged into one register.

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(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.	[his father's name and surname in full; or where the individual is a married woman, the husband's name and surname in full]; his usual residential address; his nationality and, if that nationality is not the nationality of origin, his nationality of origin, his business occupation, if any, if he holds the office of director, managing director, manager or secretary in any other body corporate, the particulars of each such office held by him; and except in the case of a private company which is not a subsidiary of a public company, the date of his birth; (b) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality [the father's name or where a director is a married woman, the husband's name] of each of its directors; and if it holds the office of manager or secretary in any other body corporate, the particulars of each such office; (c) in the case of a firm, the name of the firm, the full name, address, nationality, and nationality of origin, if different from that nationality [the father's name or where a partner is a married woman, the husband's name] of each partner; and the date on which each became a partner; and if the firm holds the office of	Now return for appointment or changes therein shall also be filed for appointment of Key managerial personnel along with directors. The particulars of directors and key managerial personnel to be entered in the register shall be in the format as given in the rules. The particulars shall include the details of securities held by each of them in the company or its holding, subsidiary or associate companies. Section 303, 307 and 308 are combined in one section under the Companies Bill, 2012.

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	manager or secretary in any other body corporate, the particulars of each such office; (d) if any director or directors have been nominated by a body corporate, its corporate name; all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (b) in respect of the body corporate; (e) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (c) in respect of the firm. <i>Explanation.</i>—For the purposes of this sub-section— (1) any person in accordance with [whose directions or instructions], the Board of directors of a company is accustomed to act shall be deemed to be a director of the company; (2) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and (3) reference to a former name or surname do not include— (i) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the	

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	title; (ii) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; and (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage. (2) The company shall, within the periods respectively mentioned in this sub-section, send to the Registrar [a return in duplicate in the prescribed form] containing the particulars specified in the said register and [a notification in duplicate in the prescribed form] of any change among its directors, managing directors, managers or secretaries specifying the date of the change. The period within which the said return is to be sent shall be a period of [thirty] days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be [thirty] days from the happening thereof. (3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees] for every day during which the default	

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	continues. 307. Register of directors' shareholdings, etc.— 308. Duty of directors and persons deemed to be directors to make disclosure of shareholdings.	
CHAPTER XII - MEETINGS OF BOARD AND ITS POWERS		
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: 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	285. Board to meet at least once in every three calendar months.— In the case of every company, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year: Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.	Now every company is required to hold the first meeting of the Board of Directors within thirty days of the date of incorporation. The gap between any two Board meetings shall not be more than one hundred and twenty days The new law recognizes participation of directors in Board Meetings through video conferencing or other audio visual means.

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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	286. Notice of meetings.— (1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.	It is subject to restriction that Central Government may, by notification, specify the matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. Internationally, countries such as USA, Canada, Australia, Mauritius through their respective Business Corporations Acts, permit participation of members at meetings of Board of Directors, through electronic means i.e., tele or video conferencing, provided certain safeguards are taken. Electronic means of sending the notice has also been recognised. Sections 308 and 309 of the UK Companies Act, 2006 enable a company to send notice of a general meeting in electronic form. It fact aforesaid provisions go a step further as they provide that notice can even be given by means of publishing it on the web-site of the company provided the notice is available on the web-site throughout the period beginning the date of the Notification and ending with the conclusion of the meeting. To ensure that views of independent

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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 sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.	(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.	directors are duly considered at meetings of the Board the clause provides that in case of emergency meetings where shorter notice is to be given, the presence of one independent director is a must. However, if such presence is not possible, the decisions taken at the meeting should be ratified by atleast one independent director. Penalty has been considerably increased. In case of a One Person Company, small company and dormant company, one meeting in each half calendar year is sufficient and the gap between the two meetings should not be less than ninety days.
174. Quorum for meetings of Board	287. Quorum for meetings.— (1) In this section— (a) "total strength" means the total strength of the Board of directors of a company as determined in pursuance of this Act, after deducting	

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Explanation to sub-section (3) hereunder. (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 sub-section, “interested director” means a	therefrom the number of the directors, if any, whose places may be vacant at the time; and (b) "interested director" means any director whose presence cannot, by reason of section 300, count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter. (2) The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher: Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested [present at the meeting being not less than two], shall be the quorum during such time. 288. Procedure where meeting adjourned for want of quorum.—(1) If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the	Participation of directors through video conferencing or by other audio visual means is recognized for the purpose of quorum. The continuing directors may act notwithstanding any vacancy in the Board. In case the number of directors reduces below the quorum, the continuing directors or director may act only 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

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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.	next succeeding day which is not a public holiday, at the same time and place. (2) The provisions of section 285 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.	An explanation has been added to interpret the terms ‘fraction of a number ‘ and ‘total strength’.
177. Audit Committee. (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,	292A. Audit Committee.— (1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as "Audit Committee" which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors. (2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board.	As per new law, every listed company (as per Act only public company having paid up capital of not less than five crore rupees) and such other class of prescribed companies are required to constitute an Audit Committee. The audit committee shall consist of minimum 3 directors with Independent directors forming a majority. The majority shall be persons with ability to read and understand, the financial statement.

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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 <i>inter alia</i>, 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	(3) The members of the Audit Committee shall elect a chairman from amongst themselves. (4) The annual report of the company shall disclose the composition of the Audit Committee. (5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote. (6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and	Terms of reference of the Committee have been specifically provided in the clause itself.

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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.	annual financial statements before submission to the Board and also ensure compliance of internal control systems. (7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary. (8) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board. (9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders. (10) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit. (11) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.]	The auditors and Key Managerial personnel shall have a right to attend meeting of Audit Committee but have no right to vote.

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(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.		This is new provision under the Bill. Establishment of vigil mechanism by listed and prescribed class of companies has been made mandatory.
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: Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member	No Provision	New Provision. Every listed company and prescribed class of companies are required to constitute Nomination and Remuneration Committee. Minimum three non-executive directors are required out of which one half shall be independent directors..

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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 177 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		Constitution of Stakeholders Relationship Committee is also mandatory in the company which has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year. The Committee shall consider and resolve the grievances of security holders.

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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. <i>Explanation.</i>—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.		
188. Related party transactions. (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	297. Board's sanction to be required for certain contracts in which particular directors are interested.— (1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company— (a) for the sale, purchase or supply of any goods, materials or services; or (b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:	The following transactions also require the approval of Board : - selling or otherwise disposing of, or buying, property of any kind; - leasing of property of any kind; - availing or rendering of any services; - appointment of any agent for purchase or sale of goods, materials, services or property; - such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and - underwriting the subscription of any securities or derivatives thereof, of the company:

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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. <i>Explanation.</i>— 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;	Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.	Further, in the case of a company having prescribed amount of paid up share capital and for the transactions exceeding the prescribed amount, the prior approval of company by way of special resolution is required under the new law instead of Central Government approval which is required under 1956 Act. Furthermore, the member shall not vote at any such resolution for approving any contract, if he is a related party. The transactions entered into in ordinary course of business are exempted from taking Board's approval except the transactions which are not on arm's length basis.

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(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.	(2) Nothing contained in clause (a) of sub-section (1) shall affect— (a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or (b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business: Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the	The term, ‘Arm’s length transaction’ has been defined in the explanation appended to the clause. Disclosure of all such contracts alongwith the justification for entering into such contracts needs to be given under Board’s report.

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(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 authorized 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.	aggregate in any year comprised in the period of the contract or contracts; or (c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid. (3) Notwithstanding anything contained in sub-sections (1) and (2) a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into. (4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.	Companies can proceed against a director/employees who had authorized such contract in violation of provision of this section for recovery of any loss sustained by it. The penalty structure has been changed. The amount of penalty is different for public company whose shares are not listed in any stock exchange and listed public company.

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	(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board. (6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960). 314. Director, etc., not to hold office or place of profit.— [(1) Except with the consent of the company accorded by a special resolution,— (a) no director of a company shall hold any office or place of profit, and (b) [no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of [such sum as may be prescribed], except that of managing director or manager,] banker or trustee for the holders of debentures of the company,— (i) under the company; or (ii) under any subsidiary of the company, unless the remuneration received from such	The provisions for prior approval of Board for appointment to any office or place of profit in the company or its subsidiary company are clubbed. Approval of Central Government is not required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary. These sections are clubbed in one clause 188 of the Bill. Language is simplified. Redundant provisions deleted.

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	subsidiary in respect of such office or place of profit is paid over to the company or its holding company: Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit: Provided further that where a relative of a director or a firm in which such relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later. <i>Explanation.</i>—For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution. (1A) Nothing in sub-section (1) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director	

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	becomes a director of the company. (1B) Notwithstanding anything contained in sub-section (1),— (a) no partner or relative of a director or manager, (b) no firm in which such director or manager, or relative of either, is a partner, (c) no private company of which such a director or manager, or relative of either, is a director or member, shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than [such sum as may be prescribed], except with the prior consent of the company by a special resolution and the approval of the Central Government: (2) [(a)] If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, or the manager concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or	

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	place of profit. (b) The company shall not waive the recovery of any sum refundable to it under clause (a) unless permitted to do so by the Central Government. (2A) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to which this section applies shall, before or at the time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in sub-section (1). (2B) If, after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974) any office or place of profit is held, without the prior consent of the company by a special resolution and the approval of the Central Government, the partner, relative, firm or private company appointed to such office or place of profit shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him on and from the date on which the office was so held by him. (2C) If any office or place of profit is held in contravention of the provisions of the proviso to sub-section (1B), the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the expiry of six months from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974) or the date next following the date of the general	

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	meeting of the company referred to in the said proviso, whichever is earlier, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit. (2D) The Company shall not waive the recovery of any sum refundable to it under sub-section (2B) unless permitted to do so by the Central Government. (3) Any office or place shall be deemed to be an office or place of profit under the company [within the meaning of this section],— (a) in case the office or place is held by a director, if the director holding it [obtains from the company anything] by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise; (b) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it obtains from the company anything] by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of	

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	residence, or otherwise. (4) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.	
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	No Provision	A company is prohibited from entering into any arrangement which allows its director/director of holding, subsidiary or associate company or any person connected with him, to acquire any assets from the company for consideration other than cash. For such type of arrangements, prior approval of members through special resolution in a general meeting is necessary. The particulars of such arrangement are required to be given in the notice for approval in general meeting.

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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.		
Contracts by One Person Companies. 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: Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.	New provision.	If one person company enters into any contract with the sole member who is also the Director of the company, except, when, the contract in ordinary course of business shall ensure that the terms of contract shall be either contained in a Memorandum or are recorded in the Minutes of the first Board Meeting held next after entering into contract.

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(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 a 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	No Provision	Directors and Key Managerial Personnel are prohibited from forward dealings in securities of company.

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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. <i>Explanation.</i>—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.		
Prohibition on insider trading of securities. 195. (1) No person including any director or key managerial personnel of a company shall enter into insider trading: Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law. <i>Explanation.</i>—For the purposes of this section,— (a) “insider trading” means— (i) an act of subscribing, buying, selling,	No provision	No person including any director or key managerial personnel of a company shall enter into insider trading. The term ‘insider trading’ and ‘price sensitive information’ is defined in the section itself. Provisions of the insider trading shall not be applicable to any communication in the ordinary course of business.

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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		
196. Appointment of managing director, whole-time director or manager. (2) No company shall appoint or re-appoint any person as its managing director, whole-	317. Managing director not to be appointed for more than five years at a time.— (1) No company shall, after the commencement of this Act, appoint or	The provision requires a company not to appoint or re-appoint any person as

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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 six months.	insolvent; (b) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or (c) is, or has at any time been, convicted by a Court of an offence involving moral turpitude. 384. Firm or body corporate not to be appointed manager.— No company shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any firm, body corporate or association as its manager. 385. Certain persons not to be appointed managers.— (1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who— (a) is an undischarged insolvent, or has at any time within the preceding five years been adjudged an insolvent; or (b) suspends, or has at any time within the preceding five years suspended, payment to his creditors; or makes, or has at any time within the preceding five years made, a composition with them; or (c) is, or has at any time within the	

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	preceding five years been, convicted by a Court in India of an offence involving moral turpitude. (2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (a), (b) or (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.	
197. Remuneration of managerial personnel. (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	198. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.—(1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in sections 349 [59][and 350], except that the remuneration of the directors shall not be deducted from the gross profits. (2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309. (3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387. (4) Notwithstanding anything contained in sub-sections (1) to (3), but subject to the	The scattered provisions relating to remuneration are provided at one place. The provisions are simplified. Provisions on Remuneration to managerial personnel and to non-executive directors are provided in separate clauses leaving no scope for confusion. Limit of eleven percent is retained. Provisions of Schedule V are

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meeting may, with the approval of the Central Government, authorize 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).	provisions of section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government ***** 309. Remuneration of directors.— (1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and 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 any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity: Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if— (a) the services rendered are of a professional nature, and (b) in the opinion of the Central	applicable under new law which was schedule XIII under the Companies Act, 1956.

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(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:	Government, the director possesses the requisite qualifications for the practice of the profession].	In the event of nil or inadequate profit, the conditions under which the company can pay remuneration have been changed. Remuneration payable to any such director in other capacity is not included in the upper limits, if such services are of professional nature and Nomination and Remuneration Committee or the Board opines that the director possesses the requisite qualification for the practice of the profession.

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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	(2) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him: Provided that where immediately before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) fees for meetings of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer. (3) A director who is either in the whole-time employment of the company or a managing director 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: Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net	Different sitting fees may be prescribed for Independent directors. Independent directors are not entitled receive stock options. They are entitled to sitting fees and

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independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. (8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.	profits for one such director, and if there is more than one such director, ten per cent for all of them together. [(4) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration either— (a) by way of a monthly, quarterly or annual payment with the approval of the Central Government; or (b) by way of commission if the company by special resolution authorises such payment: Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed— (i) one per cent of the net profits of the company, if the company has a managing or whole-time director, or a manager; (ii) three per cent of the net profits of the company, in any other case: Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent or, as the case may be, three per cent of its net profits.] (5) The net profits referred to in sub-sections (3) and (4) shall be computed in the	reimbursement of expenses for participation in the Board and other meetings. They are also allowed for profit related commission as may be approved by the members.

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(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	manner referred to in section 198, sub-section (1). (5A) 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. (5B) The company shall not waive the recovery of any sum refundable to it under sub-section (5A) unless permitted by the Central Government.] (6) No director of a company who is in receipt of any commission from the company and who is either in the whole-time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company. (7) The special resolution referred to in sub-section (4) shall not remain in force for a period of more than five years; but may be renewed, from time to time, by special resolution for further periods of not more than five years at a time: Provided that no renewal shall be effected earlier than one year from the date on which it is to come into force.	Every listed company shall disclose in the Board's report the ratio of the

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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) 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.	(8) The provisions of this section shall come into force immediately on the commencement of this Act or, where such commencement does not coincide with the end of a financial year of the company, with effect from the expiry of the financial year immediately succeeding such commencement. (9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company. 387. Remuneration of manager.—The manager of a company may, subject to the provisions of section 198, receive remuneration either by way of a monthly payment, or by way of a specified percentage of the "net profits" of the company calculated in the manner laid down in sections 349 and 350, or partly by the one way and partly by the other:	remuneration of each director to the median employee's remuneration. Premium paid on any insurance policy taken by a company on behalf of managerial personnel for indemnifying them against any liability in respect of negligence, shall not be treated as part of the remuneration unless such personnel is proved to be guilty. Internationally the laws of various countries including U.K., Australia, Canada and Singapore do not provide for any upper ceiling or minimum level of directors' remuneration. Global practice in relation to managerial remuneration is that companies should be provided full freedom to remunerate their directors but a proper disclosure should be made by the company. In U.K., the Directors' Remuneration Report is required to be audited and laid before the company in general meeting.

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	Provided that except with the approval of the Central Government such remuneration shall not exceed in the aggregate five per cent of the net profits. 388. Application of sections 269, 310], 311, 312 and 317 to manager.—The provisions of sections 269, 310, 311 and 317 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 312 shall apply in relation to the manager of a company, as they apply to a director thereof.	
Recovery of remuneration in certain cases. 199. 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 statements 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 or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.	No provision	Now in case a company is required to re-state its financial statements due to fraud or non-compliance with any requirements under this law, the company can recover from any past or present Managing Director or WTD or Manager who, during the period for which the financial statements are to be re-stated.
Central Government or company to fix limit with regard to remuneration.	310. Provision for increase in remuneration to require Government	

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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.	sanction.—[In the case of a public company or a private company which is a subsidiary of a public company, any provision relating to the remuneration of any director including a managing or whole-time director, or any amendment thereof, which purports to increase] or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that 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 by its Board of directors, [shall not have any effect— (a) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule; and (b) in any other case, unless it is approved by the Central Government], and the amendment shall become void if, and in so far as, it is disapproved by that Government: [Provided that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or a committee thereof attended by any such director and the amount of such fee after such increase does not exceed [such sum as may be prescribed]: [Provided further that where in the case of any private company which converts itself	The factors which the Central Government will consider while approving the applications with regard to appointment or remuneration of managerial personnel in excess of the limits are provided under the Bill itself.. Under the 1956 Act, there were no such factors which would be considered by the Central Government.

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	into a public company or becomes a public company under the provisions of section 43A, any provision relating to the remuneration of any director including a managing or whole-time director as contained in its memorandum or articles or in any agreement entered into by it or in any resolution passed by it in general meeting or by its Board of directors includes a provision for the payment of fee for each meeting of the Board or a Committee thereof attended by any such director which is in excess of the sum specified under the first proviso, such provision shall be deemed to be an increase in the remuneration of such director and shall not, after it ceases to be a private company, or, as the case may be, becomes a public company, have any effect unless approved by the Central Government]. 311. Increase in remuneration of managing director on re-appointment or appointment after Act to require Government sanction.	
Appointment of key managerial personnel. 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,— (i) managing director, or Chief Executive	383A. Certain companies to have secretaries.—(1) Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company:	Concept of KMP introduced Every prescribed class of companies shall have a whole-time key managerial personnel. Every company belonging to prescribed class or classes of

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Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer : Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,— (a) the articles of such a company provide otherwise; or (b) the company does not carry multiple businesses: Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government. (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.	Provided that every company not required to employ a whole-time secretary under sub-section (1) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.] (1A) If a company fails to comply with 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 the default continues: Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company	companies is compulsorily required to appoint MD or CEO or manager and CS and CFO. An individual shall not be appointed or reappointed as the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act. Subject to the provisions provided in this clause. However, if a class of companies is engaged in multiple business and which has appointed one or more CEOs for each such business; these provisions are not applicable to them. Under the new law, in case some companies are engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business, they may have chairperson of the company as well as the managing director or CEO at the same time. This is subject to notification of such class of companies by the Central Government. KMP to be appointed by way of Board resolution specifying the terms and conditions including remuneration.

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	was such that it was beyond its capacity to engage a whole-time secretary.] 316. Number of companies of which one person may be appointed managing director.— (1) [No public company and no private company which is a subsidiary of a public company] shall, after the commencement of this Act, appoint or employ any person as managing director, if he is either the managing director or the manager of [any other company (including a private company which is not a subsidiary of a public company)], except as provided in sub-section (2). (2) A public company or a private company which is a subsidiary of a public 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 (including a private company which is not a subsidiary of a public company): Provided that 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. (3) Where, at the commencement of this	In case the appointment of MD, WTD or manager is at variance with schedule V, the approval of Central Government is required.

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(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 sub-section 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.	Act, any person is holding the office either of managing director or of manager in more than two companies of which each one or at least one is a public company or a private company which is a subsidiary of a public company], he shall, within one year from the commencement of [the Companies (Amendment) Act, 1960 (65 of 1960)], choose not more than two of those companies as companies in which he wishes to continue to hold the office of managing director or manager, as the case may be; and the provisions of clauses (b) and (c) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply <i>mutatis mutandis</i> in relation to this case, as those provisions apply in relation to the case of a director. (4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a managing director of more than two companies if the Central Government is satisfied that it is necessary that the companies should, for their proper working function as a single unit and have a common managing director. 317. Managing director not to be appointed for more than five years at a time.— (1) No company shall, after the commencement of this Act, appoint or employ any individual as its managing director for a term exceeding five years at a	Whole time KMP shall not hold office in more than one company at the same time. He may do so with the permission of Board. An obligation to fill the vacancy has been made time bound under the Bill. Within six months of his vacancy, the resulting vacancy is required to be filled.

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(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.	time. (2) Any individual holding at the commencement of this Act the office of managing director in a company shall unless his term expires earlier, be deemed to have vacated his office immediately on the expiry of five years from the commencement of this Act. (3) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion: Provided that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force. [(4) This section shall not apply to a private company unless it is a subsidiary of a public company.] 386. Number of companies of which a person may be appointed manager.—(1) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director of any other company, except as provided in sub-section (2). (2) A company may appoint or employ a person as its manager, if he is the manager or managing director of one, and not more than one, other company: Provided that such appointment or employment is made or approved by a	

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	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. (3) Where, at the commencement of this Act, any person is holding the office either of manager or of managing director in more than two companies, he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he wishes to continue to hold the office of manager or managing director, as the case may be; and the provisions of clauses (b) and (c) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply <i>mutatis mutandis</i> in relation to this case, as those provisions apply in relation to the case of a director. (4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager. 269. Appointment of managing or whole-time director or manager to require Government approval only in certain cases.— 268. Amendment of provision relating to managing, whole-time or non-rotational	

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	directors to require Government approval.—	
Secretarial audit for bigger companies. 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. (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.	No provision	This is a new provision. All listed and other prescribed companies are required to annex with its Board's report, a Secretarial audit report given by a company secretary in practice. Company is under duty to give all assistance to the company secretary for conducting the secretarial audit. The Board is required to give explanation on any qualifications/ the remarks made by company secretary in practice his report. In the event of contraventions of the provisions, the company, every officer or the company secretary in his default shall be punished by imposing a penalty of one lakh rupees which may extend to five lakh rupees.
Functions of company secretary.		

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205. (1) The functions of the company secretary shall include,— (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. <i>Explanation.</i>—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. (2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.	No Provision	New provision. Functions of Company Secretary are now provided under the law. They are required to report to the Board about the compliances with provisions of this Act and other laws applicable to the company including applicable secretarial standards.. Other duties shall be prescribed through rules.

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186. Loan and investment by company. (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: 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	372A. Inter-corporate loans and investments.— (1) No company shall, directly or indirectly,— (a) make any loan to any other body corporate; (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person, by any body corporate; and (c) acquire, by way of subscription, purchase	A company cannot make investment through more than two layers of investment companies. The provision would help the Government to have track on the complex web of subsidiary firms. Exceptions to the clause are also provided. Investment company is defined under the clause as explanation. No company can give any loan, guarantee or acquire the securities exceeding sixty

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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.	or otherwise the securities of any other body corporate, exceeding sixty per cent of its paid-up share capital and free reserves, or hundred per cent of its free reserves, whichever is more: Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided further that the Board may give guarantee, without being previously authorised by a special resolution, if,— (a) a resolution is passed in the meeting of the Board authorising to give guarantee in accordance with the provisions of this section; (b) there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee; and (c) the resolution of the Board under clause (a) is confirmed within twelve months, in a	percent of paid up share capital, free reserves and securities premium account or hundred percent of its free reserves and securities premium account, whichever is more. Securities premium account is addition in calculating the limits. For giving loans / guarantee / providing security exceeding these limits prior approval at general meeting by means of special resolution is necessary. The law now requires the company to disclose the full particulars of loans / guarantee / security provided along with the purpose for which these are proposed to be utilized.

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(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	general meeting of the company or the annual general meeting held immediately after passing of the Board's resolution, whichever is earlier: Provided also that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details. (2) No loan or investment shall be made 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 referred to in section 4A, 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 amounts for which guarantee or security so far provided to or in all other bodies corporate, alongwith the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of sixty per cent specified in sub-section (1), if 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.	The provisions requiring consent of all the directors is retained. The companies which are registered under section 12 of the SEBI Act, 1992 and are covered under prescribed

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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. (7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan. (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	(3) No loan to any body corporate shall be made 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). (4) No company, which has defaulted in complying with the provision of section 58A, shall, directly or indirectly,— (a) make any loan to any body corporate; (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate, till such default is subsisting. (5) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body	class of companies, for them there is a prescribed limit and also those companies shall furnish in its financial statement the details of loan or deposits. Instead of prevailing Bank rate, the New Law provides for prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan. The particulars and manner of keeping the register shall be provided through rules.

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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. [corresponds to sub-clause (12) below].	corporate under sub-section (1), namely:— (i) the name of the body corporate; (ii) the amount, terms and purpose of the investment or loan or security or guarantee; (iii) the date on which the investment or loan has been made; and (iv) the date on which the guarantee has been given or security has been provided in connection with a loan. (b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security. (6) The register referred to in sub-section (5) shall be kept at the registered office of the company concerned and— (a) shall be open to inspection at such office; and (b) extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly. (7) The Central Government may, prescribe	

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(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.	guidelines for the purposes of this section. (8) Nothing contained in this section shall apply,— (a) to any loan made, any guarantee given or any security provided or any investment made by— (i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities; (ii) a company whose principal business is the acquisition of shares, stock, debentures or other securities; (iii) a private company, unless it is a subsidiary of a public company; (b) to investment made in shares allotted in pursuance of clause (a) of sub-section (1) of section 81; (c) to any loan made by a holding company to its wholly owned subsidiary; (d) to any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary; or (e) to acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly	Exemption to private companies, companies whose principle business is acquisition of securities, loan by a holding company to its wholly owned subsidiary has been done away with.

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(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. <i>Explanation.</i>—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.	owned subsidiary. (9) If default is made in complying with the provisions of this section, other than sub-section (5), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees: Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced: Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company. (10) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for	Penalty provisions revised.

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	every day after the first during which the default continues. Explanation.—For the purposes of this section,— (a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company; (b) "free reserves" means those reserves which, as per the latest audited balance sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.] 373. Investments made before commencement of Act.— 374. Penalty for contravention of section 372 or 373.	Clause 2 defines the terms as under: 2(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 unrealized 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 recognized 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.
CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION		
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	209A. Inspection of books of account, etc., of companies.— (1) The books of account and other books and papers of every company shall be open to inspection during business hours— (i) by the Registrar, or (ii) by such officer of the Government as may	Every director, officer or other employee of the company is under duty to produce all the required documents to the Registrar or inspector and render every assistance in connection with inspection.

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(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:— (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.	books of account and other books and papers, or (ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made. (5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:— (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) inspection of any books, registers and other documents of the company at any place. (6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government or the Securities and Exchange Board of India in respect of inspection made by its officers. (7) Any officer authorised to make an	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 with respect to the specified matters.

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(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.	inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries. (8) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees], and also with imprisonment for a term not exceeding one year. (9) Where a director or any other officer of a company has been convicted of an offence under this section he 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 for holding such office in any company, for a period of five years from such date.	The Registrar may recommend in the report for further investigation into the affairs of the company along with the necessary reasons thereof.

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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:	234A. Seizure of documents by Registrar.—(1) Where, upon information in his possession or otherwise, the Registrar has reasonable ground to believe that books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of the First Class or as the case may be, the Presidency Magistrate having jurisdiction for an order for the seizure of such books and papers. (2) After considering the application and hearing the Registrar, if necessary, the Magistrate may, by order, authorise the Registrar— (a) to enter, with such assistance as may be required the place or places where such books and papers are kept; (b) to search that place or those places in the manner specified in the order; and (c) to seize such books and papers as he considers necessary. (3) The Registrar shall return the books and papers seized under this section as soon as may be, and in any case not later than the thirtieth day, after such seizure, to the company or the other body corporate or, as the case may be, to the	If the Registrar or Inspector has any ground to believe that the books and papers of Company, or books relating to key managerial personnel or any director or auditor or company secretary in practice are likely to be mutilated, destroyed or altered, they with the approval of Special Court, have the power to seize such books and papers. Seizure of books relating to KMP/director/auditor/CS is addition under the new law. Permission of special court is required by the Registrar or inspector instead of Magistrate of the First Class or as the case may be, the Presidency Magistrate having jurisdiction as provided under the 1956 Act. The period of returning the books/ papers seized to the company is increased from 30 days to 180 days.

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Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again: Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary. (3) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, <i>mutatis mutandis</i>, to every search and seizure made under this section.	managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return: Provided that the Registrar 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. (4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 relating to searches or seizures made under that Code.	
Establishment of Serious Fraud Investigation Office 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: 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	No Provision	New Provision. Under the new law, the establishment of SFIO has been provided for investigation of frauds related to the Companies. It is further provided that till the time SFIO is established under this clause, the existing SFIO set up by Central Government, shall be deemed to be SFIO for the purpose of this clause.

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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.		The composition of SFIO is provided under the clause.
Investigation into affairs of Company by Serious Fraud Investigation Office		

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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— (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.	No Provision	New Provision. The Central Government may refer the matter for investigation to SFIO either on receipt of report of Registrar under section 208 or on receipt of special resolution from company or in public interest or on request from any Department of the Central Government or a State Government. Once the case is assigned to SFIO by Central Government, 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.

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(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, subsection (1) of section 38, sub-sections (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, 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		SFIO will submit its investigation report to Central Government within the period as specified in the order. The company and its officers and employees are responsible to provide every information and assistance to the investigating officer.

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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. (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		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 be recorded in writing) to believe that any

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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		person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person. He is under duty to inform him of the grounds for such arrest. A copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

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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. (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.		Transitional provisions.

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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.	240. Production of documents and evidence. (1) It shall be the duty of all officers and other employees and agents of the company and where the affairs of any other body corporate are investigated by virtue of section 239, of all officers and other employees and agents of such body corporate— (a) to preserve and to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the company or, as the case may be, or of relating to the other body corporate, 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. (1A) The inspector may, with the previous approval of the Central Government, 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 with the previous approval of that Government as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary	Duty has been imposed on all officers and other employees including former officers and employees of a company which is under investigation, to preserve and to produce the books and papers and give all assistance to the inspector. Previous approval of Central Govt. is not required for requiring other body corporate to furnish the required information.

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(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).	for the purposes of his investigation. (1B) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (1A) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books, and papers are produced: Provided that the inspector may call for the books and papers if they are needed again: Provided further that if certified copies of the books and papers produced under sub-section (1A) are furnished to the inspector, he shall return those books and papers to the body corporate concerned. (2) An inspector may examine on oath— (a) any of the persons referred to in sub-section (1); and (b) with the previous approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate, as the case may be; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.	The period of keeping the books in custody is same as is in the 1956 Act. If needed again, such books and papers may be called by the inspector for a further period of 180 days. In the 1956 Act, no period was provided for further requiring the documents. The inspector has all the powers as vested in a civil court under the Code of Civil

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(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:— (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	(3) If any person fails without reasonable cause or refuses— (a) to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (1) or sub-section (1A) to produce; or (b) to furnish any information which it is his duty under sub-section (1A) to furnish; or (c) to appear before the inspector personally when required to do so under sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or (d) to sign the notes of any examination referred to in sub-section (5), he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to twenty thousand rupees, or with both, 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. (5) Notes of any examination under sub-section (2) shall be taken down in writing and shall be read over to or by, and signed by, the person	Procedure 1908 regarding discovery and production of books of account, summoning and enforcing the attendance of persons and examining them on oath and inspection of any books of the company at any place. Punishment is enhanced.

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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 subsection (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.	examined, and may thereafter be used in evidence against him. (6) In this section— (a) the expression "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate; (b) the expression "agent", in relation to any company, body corporate or person, means any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers and legal advisers of, and persons employed as auditors by, such company, body corporate or person; and (c) any reference to officers and other employees, agents or partners shall be construed as a reference to past as well as present officers and other employees, agents or partners, as the case may be.	The definitions of 'officers', 'agent' and reference to officers and other employees, agents or partners is not provided in this clause under the Bill. With the prior approval of the Central Government, the officers of the Central Government, State Government, police or statutory authority are under duty to provide assistance to the inspector for the purpose of inspection, inquiry or investigation as may be required by him.

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(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: Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf:		Central Government may enter into any agreement with the government of foreign state for reciprocal arrangements to assist in any inspection and investigation under this Act or under any corresponding law in force in that state. Central Government is authorized to forward letter of request to court or competent authority outside India which shall thereupon to 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.

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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.		
Freezing of assets of company on inquiry and investigation.	No Provision	New provision.

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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.		Where the Tribunal has reason 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 direct that the transfer, removal or disposal shall not take place during such period not exceeding three years or as given in the order.
Penalty for furnishing false statement, mutilation, destruction of documents.		

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
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.	No Provision	Penalty for furnishing false statement, mutilation, destruction of documents is linked to the fraud provisions. The person who destroys, mutilates or falsifies the documents relating to the property, assets or affairs of the company or the body corporate or makes a false entry in any document concerning the company or body corporate; or provides an explanation which is false, he shall be punishable as per the provisions provided under section 447.
CHAPTER XV - COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS		
232. Merger and amalgamation of companies. (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	394. Provisions for facilitating reconstruction and amalgamation of companies.— (1) Where an application is made to the Tribunal under section 391 for the sanctioning of a compromise or 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	

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
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 <i>mutatis mutandis</i>. (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	been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, 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 concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as the "transferee company"); the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:— (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company; (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person; (iii) the continuation by or against the	Under the Companies Bill, 2012 now merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting of the members or creditors the following- (a) the draft of the proposed terms of the scheme drawn up and adopted by the

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
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:	transferee company of any legal proceedings pending by or against any transferor company; (iv) the dissolution, without winding up, of any transferor company; (v) the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:	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

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
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;		company summoned for the purposes of approving the scheme. Division of undertaking has also been recognized in the Act. The Tribunal on receipt of application may order a meeting of the creditors or the members. Where such an order (as above) is passed, merging companies or companies in respect of which division is proposed shall circulate certain information/ documents for the purpose of meeting. After the satisfaction of the Tribunal about the completion of proper procedure by companies, the Tribunal shall order for sanction/ compromise or arrangements.

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(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	Provided that no compromise or arrangement proposed for the purposes of, or in connection	Further the Bill provides that in case of the merger of a listed company and an unlisted company, the Tribunal can order that unlisted company i.e. transferor company shall continue to be listed. In case of dissolution of transferor company, the fee already paid on authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation. A certificate by the Company's auditor is required to be filed with the Tribunal to the effect

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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.	with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest: Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. (2) 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 and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect. (3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar	that accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards. Under the Bill, a certified copy of order is required to be filed with the Registrar of Companies for registration

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(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. <i>Explanation.</i>—For the purposes of this section,—	for registration. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees. (4) In this section— (a) "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description; and (b) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.	within thirty days of its receipt.. The clause provides that the scheme 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. The clause also provides that every company in relation to which the order is made shall, until the completion of the scheme, file a statement in prescribed form and time with the Registrar every year duly certified by professionals indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not. Penal provisions have been made stringent.

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(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.		
233. Merger or amalgamation of certain companies (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two	No Provision	This is a new provision in the Bill.

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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		Separate and simpler provisions have been provided for the merger or amalgamation between two 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. In case of merger or amalgamation under this clause, certain additional conditions also need to be satisfied.

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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		In case Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall approve the scheme. The proposal is to be approved by the members of the respective companies. A short form and time bound procedure has been provided for this kind of merger. In case 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 objections and requesting that the Tribunal may consider the scheme under section 232.

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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;		

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(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 <i>mutatis mutandis</i> apply to a company or companies specified in sub-section (1) in respect of a		

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scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of subsection (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.		The Central Government may provide through rules for the manner in which such companies may merge or amalgamate.
234. Merger or amalgamation of company with foreign company. (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply <i>mutatis mutandis</i> 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.	No provision	The Companies Act, 1956 provides for merger of Foreign Company with an Indian Company. It does not allow Indian company to merge with foreign company. The Bill has liberalized the provisions and makes provision for cross border mergers and amalgamations between Indian companies and companies incorporated in the jurisdictions of such countries. The manner in which such cross border merger will take place would be given under rules which would be prepared

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(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 <i>vice versa</i> 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. <i>Explanation.</i>—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.		in consultation with Reserve Bank of India. The term ‘foreign company’ is explained for this section.
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	CHAPTER VI PREVENTION OF OPPRESSION AND MISMANAGEMENT A. Powers of Tribunal 397. Application to [Tribunal] for relief in cases of oppression.— (1) Any member of a company who complain that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [Tribunal] for an order under this	Provisions for relief in cases of oppression and for relief in cases of mismanagement are combined under one clause. Central Government may also file application to the Tribunal,

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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	section, provided such members have a right so to apply in virtue of section 399. (2) If, on any application under sub-section (1) the [Tribunal] is of opinion— (a) that the company's affairs [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; 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. 398. Application to [Tribunal] for relief in cases of mismanagement.— (1) Any members of a company who complain: (a) that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company; or (b) that a 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	if it is satisfied that the affairs of the company are being conducted in a manner prejudicial to the public interest. The Central Government may also apply to the Tribunal for an order under these provisions.

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	company, whether by an alteration in its 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 public interest or] in a manner prejudicial to the interests of the company; may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399. (2) If, on any application under sub-section (1), the [Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.	
242. Powers of Tribunal. (1) If, on any application made under section 241, the Tribunal is of the opinion— (a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner	402. Powers of Tribunal on application under section 397 or 398.— Without prejudice to the generality of the powers of the Tribunal under section 397 or 398, any order under either section may provide for— [Corresponds to section 408 below]	Provisions under section 402, 403 and 404 of the Act have been combined under the new law as a single clause.

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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;	(a) the regulation of the conduct of the company's affairs in future; (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company; (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital. (d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:— (i) the managing director, (ii) any other director, (iii) [* * *], (iv) and	It is proposed to provide for more powers to the Tribunal for the purpose of bringing to an end the oppression or mis-management in a company. Restriction on the transfer or allotment of the shares of the company is a new power given to the Tribunal.

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(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	(v) the manager, upon such terms and conditions as may, in the opinion of the [Tribunal] be just and equitable in all the circumstances of the case; (e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned; (f) 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 section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; [Corresponds to section 408, 409 given below] [Corresponds to section 408, 409 given below]	

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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	(g) any other matter for which in the opinion of the Tribunal, it is just and equitable that provision should be made. 403. Interim order by Tribunal.— Pending the making by it of a final order under section 397 or 398, as the case may be, 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. 404. Effect of alteration of memorandum or articles of company by order under section 397 or 398.— (1) Where an order under section 397 or 398	Manner of appointing the managing director or manager would be provided under the rules as against the 1956 Act in which the procedure and manner of appointment as well as removal of the directors is provided under the Act.

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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. [corresponds to 242 (2)(j) and (k) stated above]	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. (2) Subject to the provisions of sub-section (1), the alterations made by the order 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 as so altered. (3) 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. (4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees. B. Powers of Central Government 408. Powers of Government to prevent oppression or mismanagement—	Punishment is enhanced.

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	409. Power of Tribunal to prevent change in Board of directors likely to affect company prejudicially.	The manner of appointing director, managing director is provided under the rules to the Companies Bill. Duplicity is avoided under the Bill. Common provision find place under one clause.
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 <i>ultra vires</i> 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;	No provision	New provision Specified number of members or depositors may file class action suit in the Tribunal against the company 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. The ambit of order which a Tribunal may pass is specified in the clause.

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(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) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. (3) (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		The shareholders and depositors can claim damages from: - Company; - Auditors - Expert - Advisor - 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.

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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. (4) 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 subsection (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		The requisite number of members and depositors who may apply for class action suit is provided under the clause.

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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. (5) 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. (6) Any order passed by the Tribunal shall be		The factors which may be considered by the Tribunal for admitting the application are specified under the clause.

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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. (7) 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. (8) 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. (9) Nothing contained in this section shall apply to a banking company. (10) 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).		The order passed by the Tribunal is binding on company, members, depositors, auditors and any other person associated with the company. The Tribunal may reject the application if it finds the same to be frivolous or vexations. It has also the power to penalise the frivolous applicants. A Banking company is exempted under this clause
CHAPTER XVII - REGISTERED VALUERS		
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	No provision	It is a new provision under the Bill. Where under the provision of

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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		this new law, a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, these should be valued by the registered valuer. A registered valuer is required to be appointed by the audit committee or in its absence by the Board of Directors of the company. The qualifications and experience for becoming a registered valuer are proposed to be provided under the rules. The valuer while doing valuation is required to follow the good practices specified under the clause. Penalty provisions are provided under the clause.

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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 XIX - REVIVAL AND REHABILITATION OF SICK COMPANIES		
Determination of sickness. 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	PART VIA REVIVAL AND REHABILITATION OF SICK INDUSTRIAL COMPANIES 424A. Reference to Tribunal.— (1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed for determination of the measures which may be adopted with respect to such company:	The concept of Industrial company/undertaking and criterion of Net Worth (as was there in SICA) has been dropped under this Companies Bill. More realistic definition viewing the practical aspects and past experience, has been

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company be declared as a sick company. (2) The applicant under sub-section (1) may, along with an application under that subsection 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.	Section 2 (46AA) "sick industrial company" means an industrial company which has - (i) the accumulated losses in any financial year equal to fifty per cent or more of its average net worth during four years immediately preceding such financial year ; or (ii) failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company Provided that nothing contained in this sub-section shall apply to a Government company: Provided further that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company. (2) The application under sub-section (1) shall be accompanied by a certificate from an auditor from a panel of auditors prepared by the Tribunal indicating— (a) the reasons of the net worth of such	given for considering as sick company. Sickness has now been linked with cash flows and the rights of majority Secured Creditors are being protected under these provisions. If any Company has failed to pay/secure/compound their debt within 30 days of notice to company, they may file an application to Tribunal for determination of company as sick company. Further, Section 253 (4) authorizes company to file an application on ground mentioned. Reference to Tribunal can be either made by Secured creditor or Company. Jurisdiction and power lies with Tribunal.

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(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	company being fifty per cent or less than fifty per cent; or (b) the default in repayment of its debt making such company a sick industrial company, as the case may be. (3) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank 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 industrial company has become, for the purposes of this Act, a sick industrial 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 industrial company by— (a) the Government of any State unless all or any of the industrial 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. (4) A reference under sub-section (1) or sub-	

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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	section (3) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or 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, as the case may be, come to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier. (5) The Tribunal may, on receipt of a reference under sub-section (1), pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.	Where the Tribunal is satisfied that a company has become sick company, it 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 within a reasonable time. If the Tribunal deems fit that it is practicable for a sick company to pay its debts within a reasonable time, the Tribunal shall, by order in

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such time to the company as it may deem fit to make repayment of the debt.		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. Application for revival and rehabilitation. (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: 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: 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		On the determination of sickness by the tribunal, the applicant shall make an application within 60 days of determination, for measures to be adopted for revival or rehabilitation. Application shall be accompanied by audited financial statement, scheme for revival or rehabilitation and other documents as may be prescribed.

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Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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 securitization company or reconstruction company which has acquired such assets. (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.		If the financial assets have been acquired by securitization or reconstruction company, then application for revival and rehabilitation can be made with the consent of securitization company or reconstruction company which has acquired such assets. Under SICA, absolute prohibition for reference being made to BIFR, if financial assets have been acquired by any securitization or reconstruction company u/s 5(1) of that Act.

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(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.		
256. Appointment of interim administrator. (1) On the receipt of an application under section 254, the Tribunal shall, not later than seven days from such receipt,— (a) fix a date for hearing not later than ninety days from date of 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		Under the Bill, the Tribunal shall not later than seven days from receipt of application for revival and rehabilitation under clause 254 fix the date of hearing and appoint an interim administrator to convene a meeting of creditors of the company. The Tribunal may issue such directions as it may consider necessary. Where the Tribunal determines the Company as Sick and where the company has no draft scheme for its revival and rehabilitation, the Tribunal may direct the Interim administrator to take over the management of the Company. Interim

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(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.		Administrator is also appointed to convene meeting of creditors. Interim Administrator shall be appointed by Tribunal from a panel maintained by the Central Govt. Under SICA, there was no provision for Interim administrator. BIFR appoints operating agency for conducting inquiry into working of sick industrial companies
259. Appointment of administrator. (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. (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	No Provision	Under SICA, operating agency is appointed by BIFR for preparation of scheme of revival and its implementation. Under the Bill, in case the Tribunal is satisfied that the sick company may be revived, it may appoint a Company Administrator to prepare a scheme of revival and rehabilitation/take over the management of the Company. Company Administrator shall be appointed by Tribunal from a panel maintained by Central Govt. Under the clause a databank maintained by the Central

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company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.		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, it is from this databank that the tribunal shall appoint interim administrator. The company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts for the purpose of assisting him in the management of the company. Expert has been defined under the definitions clause.
269. Rehabilitation and Insolvency Fund. 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. (2) There shall be credited to the Fund—	441C. Rehabilitation Fund.—(1) There shall be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund. (2) There shall be credited to the Fund—	A Rehabilitation and Insolvency fund is to be set up for the purpose of Rehabilitation, Revival and Liquidation of Sick Company. However as per the existing provisions, it is not mandatory

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(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.	(a) all amounts paid under section 441B; (b) any amount given as grants by the Central Government for the purposes of this Fund; (c) any amount given to the Fund from any other source; (d) any income from investment of the amount in the Fund; (e) amount refunded by the company under section 441G.	for any Company to transfer any such amount. More or less the provisions of the clause remain the same as in the existing Act.

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CHAPTER XX - WINDING UP		
270. Modes of winding up. (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).	425. Modes of winding up.— (1) The winding up of a company may be either— (a) by the Tribunal; or (b) voluntary (2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.	No change.
271. Circumstances in which company may be wound up by Tribunal. (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;	WINDING UP BY THE TRIBUNAL 433. Circumstances in which company may be wound up by Tribunal.— A company may be wound up by the Tribunal,— (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting; (c) if the company does not commence	Grounds in respect of “reduction in number of members”, “default in filing statutory report to the Registrar” and “non-commencement of business” have been omitted in the Bill.

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(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.	its business within a year from its incorporation, or suspends its business for a whole year; (d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two; (e) if the company is unable to pay its debts; (f) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up; (g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years; (h) 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	One more ground that has been added to order winding up of the company is if on an application made by the Registrar or any other person authorized 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. The words 'any five consecutive financial years' existing under the Companies Act are replaced with 'immediately preceding five consecutive financial years' in the Bill.

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(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	morality; (i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G: Provided that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government. 434. Company when deemed unable to pay its debts.— (1) 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 in a sum 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 under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; (b) if 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	“Re-structure” is also added as one of the tool which company can do on receipt of demand to repay the debt.

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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.	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. (2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.	The manner of giving authorization for raising the demand by a creditor has not been provided in the Bill as it is a matter of procedure.
275. Company Liquidators and their appointments. (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	449. Official Liquidator to be liquidator.— On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company. 448. Appointment of Official Liquidator.— (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who— (a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and	For the first time, the term ‘company liquidator’ is coined in the Bill. The requirement of appointment from the panel maintained by the Central Government is same both under the Companies Act and the Bill. However under the Bill, the panel may consist of body corporate also.

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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.	works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or (b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or (c) may be a whole-time or a part-time officer appointed by the Central Government: Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen. (2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be— (a) approved by the Tribunal for those appointed under clauses (a) and (b) of sub-section (1), subject to a maximum remuneration of five per cent of the	The Bill provides that such professionals on the panel must be having at least ten years' experience in company matters and such other qualifications as may be prescribed. The provision for taking views from the secured creditors and workmen has been omitted in view of Clause 275(3) and (4) to make the winding up process time bound and faster. The clause also empowers the Central Government to remove the name of a person from the panel on the grounds of misconduct, fraud, etc., after giving him an opportunity of being heard. Under the Bill, the terms and conditions of appointment of a liquidator/ company liquidator and the fee payable to him is required to be specified by the Tribunal on the basis of task required to be performed, experience, qualification of liquidator and size of the company.

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(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.	value of debt recovered and realisation of sale of assets; (b) approved by the Central Government for those appointed under clause (c) of sub-section (1) in accordance with the rules made by it in this behalf. (3) (4) (5) (6) 450. Appointment and Powers of Provisional Liquidator (1) At any time after the presentation of a winding up petition and before the making of a winding up order, the Tribunal may appoint the Official Liquidator to be liquidator provisionally. (2) Before appointing a provisional liquidator, the Tribunal shall give notice to the company and give 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.	A declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment is required to be filed by the company liquidator or provisional liquidator within seven days of appointment. This is considered necessary to avoid any conflict of interest.

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	(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or by a subsequent order ; but otherwise he shall have the same powers as a liquidator. (4) The Official Liquidator shall cease to hold office as provisional liquidator and shall become the liquidator, of the company, on a winding up order being made.	
284. Promoters, directors, etc., to cooperate with Company Liquidator. (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. (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.	No Provision	New Provision The clause casts an obligation upon the promoters, directors and officers of the company to cooperate with the company liquidator during winding up process. The contravention of sub clause (1) invites punishment.
291. Provision for professional assistance to Company Liquidator. (1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company	459. Provision for legal assistance to liquidator.— The liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost	In addition to professionals mentioned in the existing Act, the Bill refers to 'other professionals' as may be necessary to assist Company Liquidator.

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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.	accountants or legal practitioners entitled to appear before the Tribunal under section 10GD to assist him in the performance of his duties.	The professionals appointed under this clause to assist the company liquidator are required to disclose the conflict of interest or lack of independence in respect of his appointment.
301. Arrest of person trying to leave India or abscond. 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 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.	479. Power to arrest absconding contributory.— At any time either before or after making a winding up order, the Tribunal may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause— (a) the contributory to be arrested and safely kept 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.	The Bill provides for the detention of a person having property, accounts or papers of the company in his possession, if he is trying to leave India or abscond in addition to the contributory.

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302. Dissolution of company by Tribunal. (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.	481. Dissolution of Company (1) When the affairs of a company have been completely wound up or when the Tribunal is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. (2) A copy of the order shall, within thirty days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company. (3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.	Now, the Company Liquidator has to file the application before the Tribunal for dissolution when the affairs of a company have been completely wound up. The language has been simplified. The penalty has been enhanced in the Bill.
304. Circumstances in which company may be wound up voluntarily. A company may be wound up	484. Circumstances in which company may be wound-up voluntarily.— (1) A company may be wound-up	

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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.	voluntarily— (a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound-up voluntarily; (b) if the company passes a special resolution that the company be wound-up voluntarily. (2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or (b) of sub-section (1).	The language is simplified in the Bill. Sub-section (2) has been omitted in the Bill.
310. Appointment of Company Liquidator. (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.	490. Power of company to appoint and fix remuneration of liquidators.— (1) The company in general meeting shall— (a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and (b) fix the remuneration, if any, to be paid to the liquidator or liquidators. 490(2) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the Tribunal. 490(3) Before the remuneration of the liquidator or liquidators is fixed as aforesaid,	The Bill provides that for voluntary winding up, the Company Liquidator shall be appointed by the Company in general meeting from the panel prepared by the Central Government.

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(2) Where the creditors have passed a resolution for winding up the company under sub-section (3) of section 306, the appointment of the 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.	the liquidator, or any of the liquidators, as the case may be, shall not take charge of his office. 502. Appointment of liquidator.— 502(1) The creditors and the company at their respective meetings mentioned in section 500 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. 504. Fixing of liquidators' remuneration.— (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators. (2) Where the remuneration is not so fixed, it shall be determined by the Tribunal. (3) Any remuneration fixed under sub-section (1) or (2) shall not be increased in any circumstances whatever, whether with or without the sanction of the Tribunal. 502(2) If the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator:	Now majority approval from creditors is required for the appointment of Company Liquidator to be effective. In case creditors do not approve appointment of company liquidator, they shall appoint another company liquidator. Under the Companies Act, remuneration is to be fixed by the committee of inspection and if there is no such committee, then by the creditors. The Tribunal shall determine remuneration, if it is not so determined by creditors or committee. However, under the Bill, the creditors while approving the appointment of company liquidator or appointing the company liquidator of their own choice pass suitable resolution with regard to the fee of the company liquidator.

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(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.	Provided that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Tribunal for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors. 502(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator. 502(4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.	Under the Bill, a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment is required to be filed by the liquidator within 7 days of such appointment. This is considered necessary to avoid conflict of interest.
314. Powers and duties of Company Liquidator in voluntary winding up. (1) The Company Liquidator shall perform such functions and discharge such duties as may be determined from time to time by	512. Powers and duties of liquidator in voluntary winding up.—(1) The liquidator may,— (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company,	In the Act, company in general meeting or liquidator may give powers to Board of directors to continue even after

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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.	and in the case of a creditor's voluntary winding up, with the sanction of the Tribunal or, the committee of inspection or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by clauses (a) to (d) of sub-section (1) of section 457 to a liquidator in a winding up by the Tribunal; (b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the liquidator in a winding up by the Tribunal; (c) exercise the power of the Tribunal under this Act of settling a list of contributories (which shall be prima facie evidence of the liability of the persons named therein to be contributories); (d) exercise the power of the Tribunal of making calls; (e) 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 think fit. (2) The exercise by the liquidator of the powers given by clause (a) of sub-section (1) shall be subject to the control of the Tribunal; and any creditor or contributory may apply to the Tribunal with respect to any exercise or	appointment of Liquidator, the Bill does not provide for such power.

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(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	proposed exercise of any of the powers conferred by this section. (3) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves. (4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number of them not being less than two.	Now the company liquidator is required to maintain the proper books of account. The members, creditors and any officer authorised can inspect such books of account. In addition, quarterly statement of accounts shall be prepared and filed within 30 days from the date of closure of quarter with the Registrar. Any failure may invite penalty upon company liquidator. Observance of due care and diligence is provided for under the Bill. Sub-clause (7) and (8) are new provisions to ensure accountability by the Company

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except sub-section (5) he shall be punishable with fine which may extend to ten lakh rupees.		Liquidator.
315. Appointment of committees. 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.	503. Appointment of committee of inspection.— (1) The creditors at the meeting to be held in pursuance of section 500 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons. (2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number of persons (not exceeding five) as they think fit to act as members of the committee: Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection. (3) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the Tribunal otherwise directs, be qualified to act as members of the committee. (4) On any application to the Tribunal for a direction under sub-section (3), the Tribunal may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution. (5) Subject to the provisions of sub-sections (1) to (4) and to such rules as may be made by the Central Government, the provisions of section 465 except sub-section (1) thereof	The Companies Act provides for Appointment of committee of inspection. The Bill provides for appointment of appropriate committee(s) to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions. Under Companies Act 1956, the Inspection committee is appointed by the creditors only. Whereas the committees under the Bill may be appointed by the members also, if no creditors are there.

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	shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Tribunal.	
359. Appointment of Official Liquidator. (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. (2) The liquidators appointed under sub-section (1) shall be whole-time officers of the Central Government.	448. Appointment of Official Liquidator.— (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who— (a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or (b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or (c) may be a whole-time or a part-time officer appointed by the Central Government: Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen. (2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be— (a) approved by the Tribunal for those	Under the Companies Act, the Official Liquidator is appointed from the Panel of professional firms, body corporate or whole-time or part-time officer appointed by the Central Government. Whereas in the Bill only whole-time officers of the Central Government shall be appointed as official liquidators. Further under the Bill the Official Liquidators shall be appointed only for small companies i.e. companies having assets of book value not exceeding one crore and for prescribed class of companies as per clause 361 as stated below.

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	realisation of the assets and be paid to the Official Liquidator or to the Central Government, as the case may be. (6) The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf: Provided that the Tribunal may— (a) transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing; (b) remove the Official Liquidator on sufficient cause being shown; (c) proceed against the Official Liquidator for professional misconduct.	
361. Summary procedure for liquidation. (1) Where the company to be wound up under this Chapter, — (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	No Provision	New Provision The summary procedure for liquidation is introduced in the Bill. The Central Government may order the company to be wound up by summary procedure, if the company has assets of less than one crore rupees or belongs to prescribed class of companies. The Central Government has to appoint the official liquidator for said purpose. The official liquidator shall take into his custody all the assets and actionable

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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.		claims. A report is required to be submitted by the official liquidator within 30 days of his appointment to the Central Government specifically stating that whether the affairs of the company are conducted in fraudulent manner or not. On receiving the report of the official liquidator, the Central Government may direct further investigation into the affairs of the company. After considering the investigation report, the Central Government may order for winding up of the company.
365. Order of dissolution of company. (1) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—	No Provision	New Provision The official liquidator is required to submit a final report to the Central Government and the Tribunal that company is finally

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(i) the Central Government, in case no reference was made to the Tribunal under sub-section (4) of section 364; and (ii) in any other case, the Central Government and the 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.		wound up. On the basis of final report, the Central Government/ Tribunal has to issue the order that the company be dissolved. After making such order, the Registrar is required to strike off the name of the company from the register of companies.

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CHAPTER XXII - COMPANIES INCORPORATED OUTSIDE INDIA		
379. Application of Act to foreign companies. 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.	591. Application of sections 592 to 602 to foreign companies.— (1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:— (a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and (b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act. (2) Notwithstanding anything contained in sub-section (1), 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 company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.	The language is simplified in the Bill. The term 'foreign company' is used in the Bill, instead of 'a company incorporated outside India and having an established place of business in India' as used in the Companies Act 1956.

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CHAPTER XXIV - REGISTRATION OFFICES AND FEES		
400. Electronic form to be exclusive, alternative or in addition to physical form. 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.	No Provision	New Provision The power to specify whether the electronic form is exclusive, or in the alternative or in addition to the physical form, lies with the Central Government.

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CHAPTER XXVI - NIDHIS		
406. Power to modify Act in its application to Nidhis. (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. (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.	620A. Power to modify Act in its application to Nidhis, etc.— (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be. (2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the Notification— (a) shall not apply to any Nidhi or Mutual Benefit Society, or (b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification. (3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.	The Nidhi company is defined in the Bill. Provisions have been made slightly simpler but the effect is same. The Companies Act 1956 provides that every notification under this section shall be laid as soon as may be after it is issued, before each House of parliament. While the Bill provides that the notification to be issued by the Central Government with respect to the application of the provisions to the Nidhi Companies shall be laid in draft before each House of the Parliament before it is issued.

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CHAPTER XXVII - NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL		
408. Constitution of National Company Law Tribunal. 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.	<i>PART IB</i> NATIONAL COMPANY LAW TRIBUNAL 10FB. Constitution of National Company Law Tribunal.—The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal 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. 10FC. Composition of Tribunal.—<i>The Tribunal shall consist of a President and such number of judicial and Technical Members not exceeding sixty-two, as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.</i>	Under the Bill, the number of Judicial and Technical members shall be prescribed by notification by the Central Government.
409. Qualification of President and Members of Tribunal. (1) The President shall be a person who is or has been a Judge of a High Court for five years. (2) A person shall not be qualified for appointment as a Judicial Member unless he— (a) is, or has been, a judge of a High Court; or (b) is, or has been, a District Judge for at	10FD. Qualifications for appointment of President and Members.— (1) <i>The Central Government shall appoint a person who has been, or is qualified to be, a Judge of a High Court as the President of the Tribunal.</i> (2) <i>A person shall not be qualified for appointment as Judicial Member unless he—</i> (a) <i>has, for at least fifteen years, held a judicial office in the territory of India; or</i>	The criteria for appointment of Members to the Tribunal has been provided under the Bill. Language is simplified. Explanation to clause (c) of sub-section is newly inserted.

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least five years; or (c) has, for at least ten years been an advocate of a court. <i>Explanation.</i>— For the purposes of clause (c), in computing the period during which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate. (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) <i>has, for at least ten years been an advocate of a High Court, or has partly held judicial office and has been partly in practice as an advocate for a total period of fifteen years; or</i> (c) <i>has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government including at least three years of service as a Member of the Indian Company Law Service (Legal Branch) in Senior Administrative Grade in that service; or</i> (d) <i>has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government (including at least three years of service as a Member of the Indian Legal Service in Grade I of that service).</i> (3) <i>A person shall not be qualified for appointment as Technical Member unless he—</i> (a) <i>has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Accounts Branch) in Senior Administrative Grade in that Service]; or</i>	

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(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. 407. National Company Law Tribunal And	(b) <i>is, or has been, a Joint Secretary to the Government of India under the Central Staffing Scheme, or any other post under the Central Government or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India for at least five years and has adequate knowledge of, and experience in, dealing with problems relating to company law; or</i> (c) <i>is, or has been, for at least fifteen years in practice as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or</i> (d) <i>is, or has been, for at least fifteen years in practice as a cost accountant under the Costs and Works Accountants Act, 1959 (23 of 1959); or</i> (e) <i>is, or has been, for at least fifteen years working experience as a Secretary in whole-time practice as defined in clause (45A) of section 2 of this Act and is a member of the Institute of the Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980); or</i> (f) <i>is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, science, technology, economics,</i>	

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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.	<i>banking, industry, law, matters relating to industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would be in the opinion of the Central Government useful to the Tribunal; or</i> (g) <i>is, or has been, a Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947); or</i> (h) <i>is a person having special knowledge of, and experience of not less than fifteen years in, the matters relating to labour.</i> Explanation.—<i>For the purposes of this Part,—</i> (i) <i>"Judicial Member" means a Member of the Tribunal appointed as such under sub-section (2) of section 10FD and includes the President of the Tribunal;</i> (ii) <i>"Technical Member" means a Member of the Tribunal appointed as such under sub-section (3) of section 10FD.</i>	
410. Constitution of Appellate Tribunal.	10FR. Constitution of Appellate Tribunal.—	

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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. 411. Qualifications of Chairperson and Members of Appellate Tribunal. (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.	<i>(1) The Central Government shall, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, an Appellate Tribunal to be called the "National Company Law Appellate Tribunal" consisting of a Chairperson and not more than two Members, to be appointed by that Government, for hearing appeals against the orders of the Tribunal under this Act.</i> <i>(2) The Chairperson of the Appellate Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.</i> <i>(3) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would be in the opinion of the Central Government useful to the Appellate Tribunal.</i>	The Tribunal requires specialized expertise to address the issues referred to it. Concept of Judicial member and Technical Member introduced for Appellate Tribunal. Under the Bill the maximum number of Judicial and Technical Members provided are eleven. The reference to getting opinion from Central Government on qualification of members of the Appellate Tribunal does not find place in the Bill.

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412. Selection of Members of Tribunal and Appellate Tribunal. (1) The President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India. (2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of – (a) Chief Justice of India or his nominee—Chairperson; (b) 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.	10FX. Selection Committee.— (1) <i>The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—</i> (a) <i>Chief Justice of India or his nominee</i> <i>Chairperson;</i> (b) <i>Secretary in the Ministry of Finance and Company Affairs</i> <i>Member;</i> (c) <i>Secretary in the Ministry of Labour</i> <i>Member;</i> (d) <i>Secretary in the Ministry of Law and Justice (Department of Legal Affairs or Legislative Department)</i> <i>Member;</i> (d) <i>Secretary in the Ministry of Finance and Company Affairs (Department of Company Affairs)</i> <i>Member.</i> (2) <i>The Joint Secretary in the Ministry or Department of the Central Government</i>	The President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India. The members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on recommendation of a Selection committee. The constitution of the selection committee has been provided in the bill. Convener to Selection Committee shall be the Secretary, Ministry of Corporate Affairs in place of Joint Secretary provided in the existing Act.

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(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	<i>dealing with this Act shall be the Convenor of the Selection Committee.</i> <i>(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy.</i> <i>(4) The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.</i> <i>(5) Before recommending any person for appointment as the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal or President or Member of the Tribunal, as the case may be.</i> <i>(6) No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any</i>	Selection Committee has been allowed to determine its procedure for recommending persons.

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Committee.	<i>vacancy or any defect in the constitution of the Selection Committee</i>	
Appeal from orders of Tribunal. 421. (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal. (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties. (3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such 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	<i>PART IC</i> APPELLATE TRIBUNAL 10FQ. Appeal from order of Tribunal.— (1) <i>Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal.</i> (2) <i>No appeal shall lie to the Appellate Tribunal from an order or decision made by the Tribunal with the consent of parties.</i> (3) <i>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 or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:</i> <i>Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from not filing the appeal in time.</i> (4) <i>On receipt of an appeal preferred under sub-section (1), the Appellate Tribunal shall, after giving parties to the appeal, an</i>	An appeal is to be filed within a period of 45 days. The further extension of time period of forty five days has been fixed for entertaining appeal by the Appellate Tribunal.

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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	<i>opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.</i> <i>(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.</i> <i>(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal.</i>	The period of six months from the date of the receipt of the appeal, is reduced to three months from the date of commencement of the proceeding before the Tribunal or the filing of the appeal before the Appellate Tribunal, for the disposal of the proceeding or appeal

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(1) by such period not exceeding ninety days as he may consider necessary.		
423. Appeal to Supreme Court 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.	10GF. Appeal to Supreme Court.— <i>Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order:</i> 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.]	The language has been slightly changed to bring clarity. In place of the words “from the date of communication of the decision or order”, the words, “from the date of receipt of the order” have been substituted.
432. Right to legal representation. 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. 2(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	10GD. Right to legal representation.— <i>The applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.</i> Explanation.—<i>For the purposes of this section,—</i> (a) <i>“chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered</i>	Any party to the proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize any professional or legal practitioners or any other person (as against any other officer) to present his case.

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a valid certificate of practice under sub-section (1) of section 6 of that Act; 2(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; (28) “cost accountant” means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;	<i>Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;</i> (b) <i>"company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;</i> (c) <i>"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) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;</i> (d) <i>"legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.</i>	
Transfer of certain pending proceedings. 434 (1) On such date as may be notified by the Central Government in this behalf,— (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	10F. Appeals against the orders of the Company Law Board.—Any person aggrieved by any decision or order of the Company Law Board <i>made before the commencement of the Companies (Second Amendment) Act, 2002</i> 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	Section 434 of the new Act provides for the transfer of the pending proceedings to the tribunal constituted under the bill. Power has been given to the Central Government to make rules to ensure timely transfer of all matters, proceedings

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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; (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 from the stage before their transfer: (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	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 the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.	or cases pending before the CLB or other courts.

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for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated: 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. (2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section		

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CHAPTER XXVIII - SPECIAL COURTS		
435. Establishment of Special Courts. (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. (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.	622. Jurisdiction to try offences.— No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.	The provisions relating to offences have been revised in the Bill. The Bill states that Special Courts may be set up by the Central Government to ensure speedy trial of offences punishable under the new law. Special Court shall consist of a single judge. The judge shall be appointed by the Central Government with the concurrence of the Chief Justice of High Court within whose jurisdiction the judge to be appointed is working. However, such person should not be a Sessions Judge or an additional Sessions Judge immediately before such appointment.
436. Offences triable by Special Courts. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— (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;	No Provision	New provision Under the Bill, notwithstanding anything contained in the Code of Criminal procedure, 1973: a. all offences under this Bill 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,

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(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 (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		by such one of them as may be specified in this behalf by the High Court concerned.; b. where a person accused of, or suspected of the commission of, an offence under this Bill 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. When trying an offence under this Bill, a Special Court may also try an offence other than an offence under this Bill with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

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under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years: Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed: Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.		The Special Court may try in a summary way any offence if it is punishable with imprisonment upto 3 years.
437. Appeal and revision. 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.	No Provision	New provision All appeals from Special Court shall lie to the High Court.

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442. Mediation and Conciliation Panel. (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 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	No Provision	New provision The Bill provides provisions for Mediation and Conciliation. For the purpose of mediation and conciliation, 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 the Tribunal or the Appellate Tribunal under this Bill. The powers are vested with the Central Government, the Tribunal and the Appellate Tribunal to refer any matter to the panel of experts. The Panel has to follow the prescribed

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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 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.		procedure for disposal of matters. The party aggrieved by the recommendations of the Panel may file objections with the Central Government or the Tribunal or the Appellate Tribunal.

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CHAPTER XXIX - MISCELLANEOUS		
447. Punishment for fraud. 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 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;	No Provision	New Provision Now, the Bill provides for specific provisions relating to any act of fraud. This clause provides penalty for the person who is found to be guilty of fraud. The word ‘fraud’ has been explained in the clause. Further, the terms ‘wrongful gain’ and ‘wrongful loss’ also defined in the clause.

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(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.		
454. Adjudication of penalties. (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 (3) 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	No Provision	New Provision The Central Government may appoint adjudicating officers for adjudging penalty under the provisions of this Bill. The adjudicating officer may impose penalty on the company and the officer in default for any non-compliance or default. Before imposing penalty the company or the officer shall be given an opportunity of being heard. Aggrieved person may appeal to the Regional Director against the order of the adjudicating officer.

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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.		In the event of not paying the penalty within the stipulated time, the officer in default shall be punishable with imprisonment which may extend to six months or with fine or with both.
455. Dormant company. (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	No Provision	New Provision If a company has been formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such an inactive company may make an

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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 shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.		application to the Registrar in the prescribed manner for obtaining the status of a dormant company. The terms ‘inactive company’ and ‘significant accounting transaction’ have been defined in this clause. The Registrar shall maintain a register of dormant companies.

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(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.		The clause further provides that 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. The company is required to pay the annual fee as may be prescribed to the Registrar to retain its dormant status. 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.
462. Power to exempt class or classes of companies from provisions of this Act. (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	620. Power to Modify Act in Relation to Government Companies (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than sections 618, 619 and 619A) specified in the notification : -	Instead of specific exemptions in the Bill itself, the Central Government may in the public interest, by notification direct that any of the provisions of this Act, shall not apply to such class or classes of companies; or shall apply to the class

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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.	(a) shall not apply to any Government company ; or (b) shall apply to any Government company, only 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.	or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification. Under the Companies Act 1956 such power can only be exercised in relation to Government Company.
464. Prohibition of association or partnership of persons exceeding certain number. (1) No association or partnership consisting of more than such number of persons as may	PART II INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO <i>Certain companies, associations and partnerships to be registered as companies under Act</i> 11 Prohibition of associations and partnerships exceeding certain number.— (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as	Maximum number of persons who can carry on any business, that has for its object the acquisition of gain, without

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be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force: Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred. (2) Nothing in sub-section (1) shall apply to— (a) a Hindu undivided family carrying on any business; or (b) an association or partnership, if it is formed by professionals who are governed by special Acts. (3) Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.	a company under this Act, or is formed in pursuance of some other Indian Law. (2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law. (3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded. (4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business. (5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to ten thousand rupees.	registering it as a company under the new Act has been prescribed as one hundred. Professionals governed by Special Acts may form association or partnership without any restriction on maximum numbers. Amount of fine has been raised from ten thousand rupees to one lakh rupees.

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465. Repeal of certain enactments and savings. (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed: Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable <i>mutatis mutandis</i> 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: Provided further that until a date of notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the 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: 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 corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.	PRODUCER COMPANIES SECTIONS 581A TO 581 ZT [TEXT OF THESE SECTIONS NOT RE- PRODUCED FOR BREVITY OF THE STATEMENT]	The clause is framed by clubbing different sections of the Companies Act 1956. The Companies Act 1956 and the Registration of Companies (Sikkim) Act 1961 shall stand repealed. The provisions of Part IX A of the Companies Act, 1956 shall be applicable <i>mutatis mutandis</i> as if Companies Act, 1956 has not been repealed The Bill further provides that till the formation of Tribunal and Appellate Tribunal, the provisions of Companies Act 1956 with regard to Company Law Board and Court shall continue to apply. It has also been provided 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 corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

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(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 operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture 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;	645. Saving of orders, rules, etc., in force at commencement of Act.— Nothing in this Act shall affect any order, rule, 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 previous companies law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act. 652. Appointment under previous companies laws to have effect as if made under Act.— Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act.	

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(c) any principal or rule of law or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments; (d) 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; (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored. (f) 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; (g) 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;	653. Former registration offices continued.— The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act. 656. Saving of incorporation under repealed Acts.— Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed. 654. Registers under previous companies laws to be deemed to be part of registers under Act.— Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act. 655. Funds and accounts under Act to be in continuation of funds and accounts under previous companies laws.—All funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under previous companies laws.	

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(h) 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; (i) 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; (j) 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 (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act,	646. Saving of operation of section 138 of Act 7 of 1913.— Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (7 of 1913), as respects inspectors, or as respects the continuation of an inspection begun by inspectors, appointed before the commencement of this Act, and the provisions of this Act shall apply to or in relation to a report of inspectors appointed under the said section 138 as they apply to or in relation to a report of inspectors appointed under section 235 or 237 of this Act. 658. Section 6 of the General Clauses Act, 1897 (10 of 1897) to apply in addition to sections 645 to 657 of Act.—The mention of particular matters in sections 645 to 657 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of	The prosecution proceedings pending before any Court shall continue to be heard and disposed of by the said Court. It has been provided in the Bill that any matter filed with the Registrar, Regional Director or the Central Government

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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. (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.	repeals.	under the Companies Act 1956 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.
466. Dissolution of Company Law Board and consequential provisions. (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	10A "Company Law Board" means the Board of Company Law Administration constituted under section 10E;	Dissolution of Company Law Board has been provided for in Clause 466 of the Bill.
469. Power of Central Government to make rules. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of	642. Power of Central Government to make rules. (1) In addition to the powers conferred by section 641, the Central Government may, by notification in the Official Gazette, make rules— (a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Central	The provisions have been simplified.

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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.	Government; and (b) generally to carry out the purposes of this Act. (2) 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. (3) Every rule made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. (4) Every regulation made by the Securities and Exchange Board of India under this Act shall be laid, as soon as may be after it is made, before each House of	The penalty under this clause has been increased. Clause 24(1)(a) of the Companies Bill, 2012 provides that the provisions of Chapter III, Chapter IV and clause 127 of the Bill shall in so far as they relate to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed on any stock exchange in India, shall, except as provided under this Bill, be administered by the SEBI by making regulations and to be laid before each House of Parliament for any modification and annulment. The clause does not provide the manner in which Rules made by the Central Government under this Bill are to be laid before the each House of Parliament.

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	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 regulation or both Houses agree that the regulation should not be made, the 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 regulation.	
470. Power to Remove difficulties. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of five 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.	No Provision	New Provision The clause 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 Bill before the expiry of 5 years from the date of commencement of clause 1. The clause further provides that every order made to be laid before each House of Parliament as soon as possible.