Report of

The Companies Law Committee

February 2016

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Ministry of Corporate Affairs
Government of India

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REPORT OF THE COMPANIES LAW COMMITTEE

New Delhi, the 1st February, 2016

To

Honourable Union Minister of Finance, Corporate Affairs and I&B

Sir,

We have the privilege and honour to present the report of the Companies Law Committee, set up on 4th June, 2015, to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 as well as on the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies.

2. The Committee had the benefit of participation by various institutes, industry chambers and experts in various disciplines. It has tried to take a holistic and comprehensive view while suggesting changes in the Act/Rules keeping in mind the difficulties and challenges expressed by various stakeholders. It has endeavoured to reconcile their competing interests, being mindful of the need for facilitating "ease of doing business" in India, and incentivising start-up companies.

3. We thank you for providing us an opportunity to present our views on the issues arising from implementation of the Companies Act, 2013 and related matters.

Yours sincerely,

(Shri Tapan Ray)
Chairman

(Ms. Reva Khetrapal)
Member

(Shri Y.M. Deosthalee)
Member

(Shri N. S. Vishwanathan)
Member

(Shri Manoj Fadnis)
Member

(Dr. A.S. Durga Prasad)
Member

(Shri Atul H Mehta)
Member

(Shri Bharat Vasani)
Member

(Shri P. K. Nagpal)
Member

01/02/2016

(Shri Amardeep S Bhatia)
Member Convener

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ACKNOWLEDGEMENTS

The Committee takes this opportunity to thank all the stakeholders who have contributed by way of responses/suggestions on the dedicated facility set up on the MCA21 portal for inviting comments for assisting the Committee. The Committee also acknowledges and places on record the valuable comments/suggestions made by Industry Chambers, Professional Institutes, law firms, academicians and other experts.

The Committee expresses gratitude to the members of the six Groups set up by the Committee who contributed immensely by participating in various meetings of the Group and expressed insights on complex company law issues.

Vidhi Centre for Legal Policy (Vidhi) provided support through analysis of various issues in the light of international best practices on the matter which proved to be very useful to the Committee. The Committee appreciates the support provided by Vidhi.

The Committee is grateful to MCA, ICAI and ICSI for providing logistic support and space for the meetings of the Committee. The Committee would like to make a special mention of the dedicated efforts put in by the team of officers of the Policy Division of Ministry of Corporate Affairs for collating the suggestions received, facilitating discussions in the meeting and providing administrative & technical support.

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BACKGROUND

1. INTRODUCTION

1.1 The enactment of the Companies Act, 2013 (the "**Companies Act, 2013**" or the "**Act**") was one of the most significant legal reforms in India in the recent past, aimed at bringing Indian company law in tune with global standards. The Act incorporated recommendations made by various committees, such as the Naresh Chandra Committee, Dr. J J Irani Committee, Vepa Kamesan Committee, etc. It also went through a rigorous review process in the Parliament after being first tabled as a Bill in 2009. The Parliamentary Standing Committee on Finance examined the Bill twice, during which extensive public consultations were also held.

1.2 The notification of the provisions of the Companies Act, 2013 has been done in a phased manner, with 283 of the 470 provisions enforced by 1st April, 2014. Most of the remaining provisions are dependent on the establishment of the National Company Law Tribunal (Tribunal), which is likely in the next few months.

1.3 The Act introduced significant changes in the company law in India, especially in relation to accountability, disclosures, investor protection and corporate governance. In view of the extent and scope of changes, the stakeholders took some time to come to terms with the new regime with the new provisions, and encountered some difficulties in the process. Several representations were made to the Government on the practical difficulties faced during implementation.

1.4 Though a few immediate amendments were made in May, 2015, the Government continued to receive representations that the Act needed further review. The Hon'ble Minister of Corporate Affairs, at the time of consideration of the amendments in the Rajya Sabha in May 2015, also underscored some of these concerns and committed to constitute a '*Committee in which we have the representatives of the Company Secretary institute, the CA institute or some Chambers, plus somebody from the Department, a broad-based Committee, will be constituted to go into this whole question for the next few months as to where the shoe pinches*'. In view thereof, the Ministry of Corporate Affairs (the "**MCA**") constituted the Companies Law Committee (the "**CLC**" or the "**Committee**") under the chairmanship of the Secretary, Ministry of Corporate Affairs vide an office order dated 4th June, 2015.

1.5 The CLC was constituted with the mandate of (a) making recommendations on issues arising from the implementation of the Companies Act, 2013, and (b) examining the recommendations received from the Bankruptcy Law Reforms Committee, the High

Level Committee on Corporate Social Responsibility, the Law Commission of India and other agencies.

1.6 The CLC consisted of a former judge of the Delhi High Court, representatives of the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India, the Institute of Company Secretaries of India and the industry. The CLC co-opted representatives from RBI and SEBI as members. Copy of the constitution order of CLC is at **Annexure I**.

1.7 During the course of its deliberations, the CLC studied recommendations and suggestions received from various stakeholders as well as international best practices. The Report prepared by the CLC recommends several changes to the Companies Act, 2013 which the CLC believes to be necessary for its proper and effective implementation. While some of the changes suggested herein are for the purpose of removing ambiguities in the provisions, other recommendations are more substantial in nature.

2. WORKING PROCESS OF THE COMMITTEE

2.1 The CLC had its first meeting on 13th June, 2015. It had eight more meetings between July, 2015 and January, 2016. The CLC invited suggestions from the public on an online e-platform specifically created for this purpose, during the period 18th June, 2015 to 31st July, 2015. The Industry Chambers and Professional Institutes were requested to collate suggestions from their constituents, and submit these on the online platform after necessary vetting. The Secretary General of Supreme Court of India and the Registrar Generals of all High Courts were also requested to bring it to the notice of the Judges as well as the Bar Association to submit their suggestions on the e-platform. Comptroller & Auditor General (C&AG) and various regulators, viz. Competition Commission of India (CCI), Reserve Bank of India (RBI), Securities & Exchange Board of India (SEBI), National Housing Bank (NHB), Telecom Regulatory Authority of India (TRAI), Central Electricity Regulatory Commission (CERC), and Insurance Regulatory Development Authority (IRDA) were also approached to give their suggestions to the Committee.

2.2 As part of this consultation process, over two thousand comments were received from industry chambers, professional bodies, companies and individuals. Of these 289, 196, 132, 113, 48 suggestions were received from Institute of Company Secretaries of India (ICSI), Confederation of Indian Industry (CII), Institute of Cost Accountants of India (ICoAI), Institute of Chartered Accountants of India (ICAI), Federation of Indian Chambers of Commerce & Industry (FICCI) or persons affiliated with theses bodies respectively. It is learnt that the various industry chambers and professional institutes had detailed consultations with their constituents before submitting their

suggestions. A chapter wise break up on the suggestions received is placed at **Annexure II**.

2.3 Six groups were set up to review the suggestions received during the public consultation. Each group was convened by a member of the CLC, and consisted of subject-matter experts, industry representatives, lawyers, company secretaries, cost accountants, chartered accountants and investors' representatives. The name of members were drawn up in consultation with industry chambers and based on inputs from professionals, etc. The groups were also given the option to co-opt additional members. Almost all groups co-opted members, and had several meetings to discuss the issues assigned to them.

2.4 The **first group** convened by Dr. A.S. Durga Prasad, a member of the CLC and President of the Institute of Cost Accountants of India, studied the registry-related issues, which included the provisions on the incorporation of companies, registration of charges, registration offices and fees payable to the MCA/RoC. The members of the group were (1) Mr. Harinderjit Singh, Partner, Pricewaterhouse Coopers, (2) Mr. V. Sreedharan, Practising Company Secretary (3) Mr. Nishith Desai, of M/s Nisith Desai & Associates, (4) Mr. B. Renganathan, Executive Vice-President - IB Compliance, Edelweiss Financial Services Ltd. and (5) Mr. D. Bandyopadhyay, Registrar of Companies, Delhi & Haryana.

2.5 The **second group** convened by Mr. Manoj Fadnis, a member of the CLC and President of the Institute of Chartered Accountants of India, examined the issues relating to the raising of funds, such as prospectus and allotment of securities, acceptance of deposits by companies, share capital and debentures, declaration and payment of dividend, and registered valuers. The group was composed of (1) Mr. Cyril S. Shroff, Managing Partner, M/s. Cyril Amarchand Mangaldas, (2) Mr. Ashok Gupta, Legal Counsel, Kumar Mangalam Birla Group, (3) Mr. Harish Vaid, Senior President, J.P. Group, (4) Mr. Amit Tandon, Institutional Investor Advisory Services India Limited, (5) Mr. N.S. Kannan, Executive Director, ICICI Bank, (6) Mr. N. Sivaraman, L&T Finance Holdings, (7) Mr. K. Narasimha Murthy and (8) Dr. T. Pandian, Registrar of Companies, Mumbai.

2.6 The **third group** considered issues relating to accounts, audit and enforcement, including inspection, inquiry and investigation and NIDHIs. This group was convened by Mr. Y.M. Deosthalee, a member of the CLC and nominee of the Federation of Indian Chambers of Commerce and Industry (FICCI) in the Committee. The members of the group were (1) Mr. Jaimin Bhatt, President & CFO, Kotak Mahindra Bank Ltd., (2) Mr. P.R. Ramesh, Chairman, Deloitte, (3) Mr. S. Santhanakrishnan, Central Council Member, ICAI, (4) Dr. Prithvi Haldea, Prime Database, (5) Mr. J.K. Jolly, Joint Director, Ministry of Corporate Affairs, and (6) Mr. Kamlesh Vikamsey, Central Council Member and former President, ICAI.

2.7 The **fourth group** studied issues relating to corporate governance, which included including management and administration of companies, meetings of board and its powers, appointment and qualifications of directors, and appointment and remuneration of managerial personnel. The group was convened by Mr. Bharat Vasani, a member of the CLC and nominee of the Confederation of Indian Industries in the Committee. The members of the group consisted of (1) Ms. Vijaya Sampath, (2) Mr. Amarjeet Chopra, Chairman, NACAS and former President, ICAI, (3) Dr. K. S. Ravichandran, Company Secretary, KSR & Co., (4) Mr. J.N. Gupta, Stakeholders Empowerment Services, (5) Ms. Zia Mody, AZB & Partners, (6) Mr. Benudhar Mishra, Joint Director, O/o, RD (NR), (7) Ms. Bina Chandarana , Kotak Mahindra Bank Limited, and (8) Mr Narayan Shankar, Mahindra & Mahindra Limited.

2.8 The **fifth group** convened by Mr. Atul H Mehta, President of the Institute of Company Secretaries of India examined issues relating to the sections yet to be notified owing to litigation on National Company Law Tribunal. They considered, among others, issues related to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, revival and rehabilitation of sick companies, winding up companies, and winding up of unregistered companies. The members of the group were (1) Mr. Bahram Vakil, AZB & Partners, (2) Mr. Gyanendra Kumar / Mr. Cyril Shroff, Cyril Amarchand Mangaldas and (3) Mr. P.K. Malhotra, Secretary, Company Law Board.

2.9 The **sixth group** convened by Mrs. Reva Khetrapal, Judge (retd.), Delhi High Court studied the penalty provisions in the Companies Act, 2013. The members of the group were (1) Mr. Shardul Shroff, Managing Partner, M/s. Shardul Amarchand Mangaldas, (2) Ms. Sandhya Kudtarkar, Vice President, Group Legal Services, Tata Services Ltd., (3) Mr. B.N. Harish, RD SER, (4) Mr. Pradip Kapadia, M/s. Vigil Juris, (5) M/s Vidhi Centre for Legal Policy, New Delhi, (6) Ms Preeti Malhotra, former ICSI President, (7) Mr Vijay Sanduja, (8) Mr. S. Santhanakrishnan, Central Council Member, ICAI and (9) Mr. Sunil H Talati, past President ICAI.

2.10 During the course of their working, the groups examined the recommendations received by the CLC through the public consultation process. The groups were requested to keep in mind the following Guiding Principles/ Guidelines while examining the suggestions received from stakeholders:-

a) Need to balance the interest of various stakeholders like companies, professionals, investors, regulators, etc.
b) Need to simplify processes or doing away with unnecessary procedures.
c) Need for greater transparency and disclosures in view of lesser regulatory interference and greater self-regulation.
d) Bringing greater clarity in language of the provisions of the Act, wherever required.

e) Pros and cons of addressing issues through subordinate legislation i.e. Rules versus amendment in the Act.
f) Compliance requirements for various class of companies versus public interest.
g) Levels of punishment for non-compliance and the necessity to improve compliance.

2.11 MCA engaged Vidhi Centre for Legal Policy for assisting the Committee in reaching informed decisions by carrying out research, consulting businesses, practitioners and corporate law academics, on the principles involved as well as international practices in the areas of insolvency, raising of capital, penalties, related party transactions and other areas.

2.12 The CLC, based on the inputs made available by the groups, Vidhi and in-house inputs available with MCA and the professional institutions examined and analysed every relevant issue. The CLC also received representations from regulators and authorities, including the Securities and Exchange Board of India, and the Reserve Bank of India. The CLC, while examining the inputs, recognised that many of these relate to the new principles introduced in the Act. Many of the suggestions received during the public consultation arise from the adjustments required due to change of balance attained under the Companies Act, 1956 framework and the new principles, and reflect views of the affected stakeholders. Some of the suggestions relate to transitional problems due to adjustments required while the remaining are those that need to be addressed due to inconsistencies or genuine difficulties that businesses are facing. The Committee, while making the recommendations, kept in view the need to maintain balance between accepted good practices, regulatory concerns and mitigation of genuine difficulties being faced by stakeholders.

3. STRUCTURE AND OVERVIEW OF THE REPORT

3.1 The report is divided into two parts, namely Part I, dealing with the suggested amendments in the Companies Act, 2013, and Part II, proposing changes to Rules issued under the Act. The recommendations in Part I of the report have been divided into sections, broadly sequenced as per the scheme of the Chapters in the Companies Act, 2013. Summary of the changes proposed in the Act and the Rules as contained in the report have been tabulated at **Annexure III**.

3.2 The Committee's recommendations would result in changes in 78 sections, and more than one hundred changes in the Act. While the report proposes specific amendments that need to be carried out, it may be noted that some amendments may also require consequential changes to the Act, which may be addressed at the stage of legislative drafting for ensuring consistency.

3.3 In relation to definitions of certain terms used in the Act, the Committee recommends changes/improvements to the following definitions among others: *Associate Company, Debentures, Financial Year, Holding Company, Interested Director, Key managerial personnel, Net worth, Related Party, Small Company, Subsidiary Company and Turnover.* These modifications have been proposed to remove ambiguities and make the definitions more objective. The amendments proposed to the provisions relating to incorporation of companies relate to allowing unrestricted object clause in the memorandum of association, and certain filing and registration related requirements. These amendments have been proposed to make the process of incorporation simpler and provide greater flexibility for carrying out business.

3.4 In so far as the chapters relating to raising of capital are concerned, the recommendations of the Committee are aimed at simplifying the disclosure regime, streamlining the private placement mechanism and synchronising the provisions of the Act with the regulations issued by other sectoral regulators. While the changes proposed in relation to these provisions are expected to help businesses in raising capital, they also take into account the interests of all stakeholders by ensuring that adequate disclosures and appropriate safeguards against misuse are retained. The amendments relating to provisions dealing with registration of charges are aimed at providing some relaxations so as to facilitate the ease of doing business.

3.5 The recommendations of the Committee relating to declaration and payment of dividend are aimed at harmonising the provisions in the Act and Rules to provide correct interpretation and for addressing some loopholes to ensure that businesses do not misuse the provisions to pay out dividend out of the company's capital. The Committee has also suggested changes to the provisions relating to accounts and audit to improve transparency and the quality of information in relation to the financial position of the company. These recommendations also address ambiguities in relation to calculation of profits for determination of a company's 'corporate social responsibility' obligations.

3.6 The Committee's recommendations on corporate governance (Chapter VII- 'Management and Administration', Chapter XI- 'Appointment and Qualifications of Directors', Chapter XII- 'Meetings of Board and Its Powers' and Chapter XIII- 'Appointment and Remuneration of Managerial Personnel') are aimed at striking the right balance among objectives such as improving corporate governance, incentivising individuals to take up positions of responsibility, and reducing the cost of compliance. These recommendations touch upon a wide range of issues and concepts including independent directors, nomination and remuneration committee, audit committee, disclosure of interests, loans and investments, managerial remuneration, and insider trading.

3.7 The remaining recommendations proposing amendments to the Act deal with issues relating to compromises and arrangements, registered valuers, companies incorporated outside India, registration offices and fees, Nidhis, National Company Law Tribunal, Special Courts and Penalties.

3.8 The Committee has also, as part of its deliberations recommended certain changes specifically for encouraging start-ups. In addition, there are certain recommendations which, though being changed/modified for other classes of companies, would create a positive environment for start-ups. These recommendations relate to incorporation, raising of capital, and certain compliances. Specifically, the recommendations have been made for reducing compliance burden on account of the private placement procedure (paragraph 3.3 to 3.12 of Part I of the report), excluding convertible notes raised by start-ups from the definition of deposits (paragraph 5.5 of Part II of the report), simplifying the procedure to convert an LLP into a company (paragraph 14.2 of Part II of the report), addressing concerns with regard to insider trading provisions (paragraph 12.23 of Part I of the report), allowing start-ups to raise deposits for its initial five years without any upper limits (paragraph 5.5 of Part I of the report), allowing start-ups to issue ESOPs to promoters working as employees (paragraph 4.11 of Part I of the report), rules regarding availability of names are being made liberal to allow for more innovative names (paragraph 2.13 to 2.15 of Part II of the report), relaxing the requirement for foreign nationals to be managing directors/whole time directors (paragraph 13.14 of Part I of the report), increasing the thresholds for private companies to comply with having an Independent Director, Audit Committee, Nomination & Remuneration Committee (paragraph 12.9 of Part I and 12.3 of Part II of the report), doing away with the requirement for Government approval for managerial remuneration (paragraph 13.5 of Part I of the report), and increasing the limits with regard to sweat equity that can be issued by a company from 25% of paid up capital to 50% (paragraph 4.10 of Part II of the report).

PART – I

RECOMMENDATIONS PROPOSING AMENDMENTS TO THE ACT

1. DEFINITIONS

Associate Company

1.1 Section 2 (6) of the Companies Act, 2013 defines the term "*associate company*", in relation to another company, to mean a company in which the other company has a significant influence, but is not a subsidiary company of the company having such influence, and also includes a *joint venture company*. The Explanation to Section 2(6) defines the phrase "*significant influence*" to mean control of at least twenty per cent of the total share capital, or of business decisions under an agreement. The term "*total share capital*" has been defined in Rule 2(1) (r) of the Companies (Specification of Definitions Details) Rules, 2014, to mean the aggregate of (a) paid-up equity share capital; and (b) convertible preference share capital.

1.2 It was stated to the Committee that this definition and the definition in the Accounting Standards (and the Listing Regulations, which also refers to the Accounting Standards definition), which excludes joint ventures, etc. were not consistent. It was also noted that the Accounting Standards defined joint ventures separately, and that the treatment for consolidation, related party disclosures, etc. for associates and joint ventures made the usage of the term in the Act at odds with the usage in the Accounting Standards. The Committee felt that to the extent that the term 'associate company' has been linked to corporate governance requirements prescribed in the Act, such as for determining interests in transactions, for ensuring independence in the appointments of independent directors, auditors, etc., it may not require any change other than those recommended in the following two paragraphs. Clarity would also be required in its usage for the purpose of consolidation of accounts, which has been addressed in paragraph 9.5 of Part I of this report.

1.3 The Committee further noted that the term *"significant influence"*, in the Explanation to Section 2(6), refers to 'total share capital' which includes preference share capital. Replacing 'total share capital' with 'total voting power' would be consistent with accepted principles. **The Committee, therefore, further recommended that the Explanation to Section 2(6) should read as "For the purposes of this clause, 'significant influence' means control of at least twenty per cent of the total voting**

power, or control of or participation in taking business decisions under an agreement."

1.4 Further, even though the Act makes references to the term *"joint venture"* as an inclusive part in the definition of the term *"associate company",* it would be appropriate to define the term. Definition of 'joint venture' as contained in the Indian Accounting Standard (IndAS) 28 was considered as a comprehensive definition for the purpose. **The Committee, therefore, recommended that the term "*joint venture*" may be assigned the same meaning as under Indian Accounting Standard (IndAS) 28 as part of the Explanation to Section 2(6) itself.**

Charge

1.5 Section 2(16) defines "charge" to mean 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. Chapter VI of the Companies Act, 2013 (Sections 77 to 87) contains provisions dealing with registration of charges with Registrar, registration of satisfaction of charges, intimation of appointment of receiver of property subject to a charge, punishment for contraventions etc. It was suggested that in view of the inclusive definition, difficulties are faced in complying with the requirement of registration of pledges, etc. It was noted that the expression "charge" is used in various provisions of Companies Act, 2013. Judicial precedents have also specified a more inclusive definition of charge. **The Committee, therefore, felt that amending the definition of "charge" would not be desirable. Instead, an amendment to exclude the registration/filing requirement for banker's lien, etc. under Chapter VI is suggested (paragraph 6.2 of the Part I of the report).**

Control

1.6 Section 2(27) of the Act defines the term *"control"* in inclusive terms and provides for it to include "*the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.*" During the process of public consultation it was pointed out that the phrase *"in any other manner"* appearing in the definition is ambiguous, and open to more than one interpretation, and thus, an exception ought to be made for customary minority rights. It was suggested that this phrase, could by implication include veto rights given to any financial investors and therefore, a recommendation for creating an exception for customary minority rights was put forward. A demand was also made to bring the definition in consonance with the definition of control as per Accounting Standard 110. The Committee noted that a similar definition of control had been included by SEBI in its Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Committee

also took note of the case of Subhkam Ventures Private Limited v. SEBI. **The Committee felt that such an inclusive definition of 'control' would be required in view of the myriad of instruments and corporate structuring that are constantly evolving and, therefore, the Committee by a majority view, did not recommend any change in the definition of control.**

Debenture

1.7 Section 2(30) defines the term *"debenture"* to include 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. It had been pointed out that the phrase *"any other instrument of a company evidencing a debt"* appearing in the definition made it very broad and included, by implication, instruments like commercial papers and other money market instruments, which were often used as an important short-term fund raising source by eligible companies; and were well regulated under RBI regulations. It was put to the Committee, that treatment of money market instruments and such other instruments as debentures would give rise to difficulties. In this regard, it was also noted that through an amendment to Rule 18 of the Companies (Share Capital and Debenture) Rules, 2014 in March 2015, it was clarified that the raising of monies through commercial papers would not be governed by the Rules pertaining to the issue of debentures. **The Committee, however, felt that an exception be made for instruments covered under Chapter III D of the RBI Act, 1934 in the term 'debenture' as defined in Section 2 (30) of the Companies Act, 2013. In addition, an exception may also be made for deposits accepted by banking companies, and flexibility be given to the Central Government, in consultation with RBI and SEBI, as applicable, to carve out other instruments from the definition, as may be required.**

Deposit

1.8 **The Committee considered the suggestion for making the definition of deposit less restrictive, but felt that adequate prescriptive powers for excluding amounts received by a company from the term 'deposit' have been provided in the definition and no change is, therefore, required.**

Financial Year

1.9 Section 2 (41) of the Act provides that the financial year in relation to a company or a body corporate shall mean the period ending on the 31st of March every year. It gives the 'National Company Law Tribunal' (***NCLT***) the authority to allow a company or a body corporate, which is a *subsidiary* or a holding company of a company incorporated outside India, to follow a different financial year, if it is required to do so, for the consolidation of its accounts outside India. One of the suggestions received during the public consultation process was that the NCLT should have similar powers

(to allow a different financial year) for associates and joint ventures of a company incorporated outside India, since the financial statements of associates and joint ventures were also taken into consideration in the preparation of 'consolidated financial statements' (*CFS*), if required. **The Committee, therefore, recommended that the first proviso to Section 2(41) be expanded to also allow associates and joint ventures of a company incorporated outside India to apply for a different financial year to the NCLT.**

Foreign Company

1.10 Section 2(42) of the Act defines the term "foreign company". This is wider than the definition provided in the Companies Act, 1956, and includes companies conducting business in India through electronic and other manner, and through an agent. Rule 2(1) (c) of the Companies (Registration of Foreign Companies) Rules, 2014, further expands on the term "electronic mode". The Committee noted that in view of the expansion in the scope of coverage of a foreign company and the location of the server being immaterial, even insignificant web/internet-based electronic transactions of a company incorporated outside India, with no establishment in India, with Indian customers could result in such a company falling within the ambit of Section 2(42). The Committee observed that it would be impractical to cover companies incorporated outside India that had a mere incidental presence through an electronic mode, and had never intended to setup a place of business in India. **The Committee felt that even though no amendment needs to be carried out in the definition of 'foreign company', those foreign companies with incidental, insignificant transactions may be exempted from the requirement for registration and other requirements under Chapter XXII by providing for prescriptive powers under section 379 (Paragraph 20.2 of the report may be referred to).**

Holding company

1.11 Section 2 (46) of the Act defines a *"holding company"* in relation to other companies, as a company of which such other companies are subsidiary companies. Section 2 (87) of the Act defines a *"subsidiary company",* and Explanation (c) to Section 2(87) clarifies that the expression *"company"* includes a 'body corporate'. It was suggested that an Explanation similar to Explanation (c) to Section 2(87) be included in Section 2(46), so that a company incorporated outside India could be considered to be the holding company of another company, for the purposes of the Act. The Committee felt that this was a minor anomaly, but which could lead to uncertainties in ascertaining the status of a company, in case of a foreign holding company; and also in determining the applicability of the Act to such a company. **The Committee, therefore, recommended that an Explanation (on the lines of Explanation (c) to Section 2(87)) be included in Section 2 (46).**

Interested Director

1.12 Section 2 (49) of the Act defines an *"interested director"*. Section 184 (2) provides nature of interests to be disclosed by directors, but does not use the phrase 'interested director'. The provision in essence, defined an interested director. Further, the only reference to the term 'interested director' in the Act was in Section 174 (3), and an Explanation to that provision clarified that the meaning of the term 'interested director' would be the same as for the purposes of Section 184 (2). The definition provided in Section 2(49), though much wider, has not been used in the Act and is redundant. **The Committee felt that in view of the redundancy, the definition of 'interested director' may be omitted.**

Listed Company

1.13 Section 2(52) of the Act defines a *"listed company"* as "*a company which has any of its securities listed on any recognised stock exchange*". It was suggested by the stakeholders that this definition be amended to exclude companies which were private/closely held, but had listed their privately placed non-convertible debentures/ preference shares in accordance with the SEBI Regulations. It was noted by the Committee that the Companies Act, 1956 had defined a *"listed public company",* as opposed to the Companies Act, 2013, which defines a *"listed company"*. In view of this definition, private companies, which listed their privately placed debentures/preference shares, had to comply with some of the corporate governance requirements made applicable to listed companies under the new Act. In other cases, these requirements are applicable to private companies owing to the thresholds prescribed in the Rules under Companies Act, 2013. The Committee also noted that the SEBI Regulations while having a similar definition, addressed the issue of applicability of corporate governance requirements through differential treatments to the companies which only had their debt instruments listed. **The Committee felt that while the definition of the term 'listed company' need not be modified, the thresholds prescribed for private companies for corporate governance requirements may be reviewed. In addition, specific exemptions under section 462 of the Act could also be given to listed companies, other than the equity listed companies, from certain corporate governance requirements prescribed in the Act (paragraph 12.9 of Part I and 12.3 of Part II of the report may also be referred to).**

Managing Director

1.14 Section 2(54) of the Act defines the term *"managing director"* to mean a director who, by virtue of the 'Articles of Association' (***AOA***) of a company, or an agreement with the company, or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called. In this regard, **a suggestion was made to insert a proviso,**

clarifying that the managing director should be allowed to exercise his powers, subject to the superintendence, control and direction of the Board of Directors, as was provided in the second proviso to Section 2(26) of the Companies Act, 1956. The Committee was of the opinion that it was implicit in the provision itself and therefore, an amendment was not required in the Act.

Net worth

1.15 Section 2(57) of the Act defines the term *"net worth"*, and specifies various amounts that are to be taken into consideration while calculating it. The net worth of a company reflects its intrinsic value. The definition does not include the phrase 'debit or credit balance of the profit and loss account'. **In this regard, the Committee recommended for the phrase 'debit or credit balance of the profit and loss account' to be included in the definition.**

Officer who is in default

1.16 Section 2(60) of the Act defines the term *"officer who is in default".* This definition is relevant for ascertaining the liability of the officers of the company, in relation to several offences described in the Act. Sub-clause (vi) of the definition covers a director who is aware of a 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. The Committee deliberated on the concern raised that the mere receipt of the proceedings of a Board, unless he had also attended the Board meeting, ought not to make a Director liable for any contravention, and that imposing such responsibility would deter individuals from taking up positions of directorships. However, it was felt that diluting the requirement would not be appropriate, as a Director should raise an issue of concern based on the agenda or proceedings received by him, irrespective of whether he attends the meeting; and that it might make it convenient for directors to skip inconvenient meetings and raise the defence of not having attended the meeting to escape liability. **The Committee felt that sufficient defences were already provided for Independent and Non-Executive Directors under Section 149(12) of the Act and as such no amendment was required in Section 2(60).**

1.17 A reference was also made to some of the suggestions received in response to the MCA circular dated 29th July, 2011, issued under the Companies Act, 1956. It was clarified therein that the prosecutions against 'officers in default' had to be initiated primarily against the managing directors, whole time directors and the company secretary, if any; and arraying of all the directors, regardless of their personal involvement was discouraged. **The Committee recommended that the circular dated 29th July, 2011, issued under the Companies Act, 1956, conveyed important guidelines to field offices and may be reissued, taking into account the changes in Companies Act, 2013.**

Public Company

1.18 Section 2(71) of the Act defines a *"public company"*. The proviso to this definition states that "*a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its Articles."* During the process of public consultations, it was suggested that the said proviso may be deleted to enable public companies to incorporate subsidiaries as private limited companies, to take advantage of the benefits available to a private company. **The Committee noted that despite the restrictions on the number of members and transferability of shares (which are the inherent features of a private company) in a private company, the legislative intent was clear that such private companies should also be subject to the additional obligations and restrictions which apply to public companies under the Act**. **The Committee, therefore, felt that a subsidiary of a public company needed to be regulated in the same manner as a public company.**

Public Financial Institution

1.19 Section 2(72) of the Act defines a *"public financial institution"*, and covers institutions like LIC, IDFC, SUUTI etc. It was suggested to the Committee that this definition be amended to include the State Bank of India, its subsidiary banks, as well as other nationalized banks, in order to extend the protection and facility available under other provisions like Section 186(5) of the Act, to them. **The Committee noted that banks were not covered under the corresponding Section 4A of the Companies Act, 1956, and felt that there is inadequate justification to classify banks as PFIs. The Committee, therefore, recommended that there was no need for an amendment.**

Related Party

1.20 Suggestions were received by the Committee, pointing out that the term *"related party",* as currently defined, used the word 'company' in Section 2(76)(viii), meaning thereby that those entities that were incorporated in India would come in the purview of the definition. This resulted in the impression that companies incorporated outside India (such as holding/ subsidiary/ associate / fellow subsidiary of an Indian company) were excluded from the purview of related party of an Indian company. It noted that this would be unintentional and would seriously affect the compliance requirements of related parties under the Act. **The Committee, therefore, recommended that Section 2 (76) (viii) be amended to substitute 'company' with 'body corporate' and should also include investing company or the venturer of a company in sub-clause (viii)(A) thereof. In addition, the Committee also felt that the fifth and sixth Removal of Difficulty Orders of 2014, issued to plug unintentional loopholes be brought into the Act through an amendment.**

Small Company

1.21 In Section 2(85) of the Act, the **Committee recommended the replacement of the words "last profit and loss account" with the words "last audited profit and loss account", to take care of what seemed to be an inadvertent drafting error. It also recommended the Removal of Difficulty Order to be given effect to through an amendment to the Act itself. Further, it was noted that a review of the thresholds for small companies would be done by MCA, at an appropriate time.**

Subsidiary Company

1.22 Section 2(87) of the Act defines a *"subsidiary company"*, in relation to another company (that is to say a holding company), as 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. Further, Rule 2(1) (r) of the Companies (Specification of Definitions Details) Rules, 2014, specifies that the 'total share capital' shall be the aggregate of the paid up equity share capital and the convertible preference share capital.

1.23 During the deliberations, it was noted that by virtue of the present definition, a company in which the preference share capital was greater than its equity share capital, could become a subsidiary of an entity that holds the preference shares, even though it might not have control, or any voting rights in such a company. Further, inclusion of the preference share capital in the total share capital could create confusion about ownership of the company. Further, such companies could be shown as subsidiaries, but would not be considered for consolidation purposes, as per the applicable Accounting Standards. It was pointed out that it was problematic to treat preference shares on par with equity shares, and this could also affect raising of funds for several industries, especially infrastructure and allied sectors. The Committee also felt that there were sufficient checks in the Act to address matters relating to control over a company. **In order to address the practical problems, the Committee recommended that the term "total share capital" be replaced with the term 'total voting power', as equity share capital should be the basis for determining holding/subsidiary status. Consequential changes in the Rules may also be required.**

Layers of subsidiaries other than investment subsidiaries

1.24 Section 2 (87) of the Act also contains a proviso that prescribes the class/classes of subsidiary companies that shall not have layers of subsidiaries beyond a prescribed number. This provision has not been notified so far. Further, Section 186 (1) lays down that a company, unless otherwise prescribed, shall not make any investment through more than two layers of investment companies. The Committee noted that this provision was included to address practices of creating subsidiaries aimed at making it difficult to trace the source of funds and their ultimate use, and reduce the

usage of multiple layers of structuring for siphoning off of funds, and that the same was incorporated in the Act in the wake of various scams in the country. However, this could hit legitimate business structuring. In this regard, the Committee also noted that the J. J. Irani Committee Report on Company Law recommended that the new Companies Act should not impose severe restrictions on corporate structuring, as these prescriptions would put Indian companies at a disadvantage vis-à-vis their international counterparts. The report stated, "*therefore, we are of the view that there may not be any restriction to a company having any number of subsidiaries, or to such subsidiaries having further subsidiaries*." The J. J. Irani Report also noted that *proper disclosures accompanied by mandatory consolidation of financial statements should address the concern attendant to the lack of transparency in holding-subsidiary structure.* The report had also recognized that siphoning off of funds could take place through other routes, and therefore, imposing a blanket restriction on the number of layers of subsidiaries may not be the best way to deal with the concern. A perusal of the Parliamentary Standing Committee Report on the Companies Bill 2012 **(*Standing Committee Report*)** also reveals that stakeholders had represented before the Committee that imposing restrictions on layers could be construed as restrictive for conduct of businesses. In addition, at another place in the report, it is proposed to introduce a register of beneficial owners of a company, which would address the need to know the ultimate beneficial owners in complex corporate structures. **The Committee, therefore, felt that while the proviso to Section 2(87) has not yet been notified, it was likely to have a substantial bearing on the functioning, structuring and the ability of companies to raise funds when so notified and hence recommended that the proviso be omitted.**

Turnover

1.25 Section 2(91) of the Act defines the term *"turnover"* to mean the aggregate value of the realisation from the sale, supply or distribution of goods, or on account of services rendered, or both, by the company, during a financial year. It was suggested that excise duty and other taxes might be specifically excluded from the purview of this term. The Committee noted that the term has been used in the Act, mainly in the provisions giving prescriptive power on the basis of the criteria of a company's turnover. Accounting Standard 9 specifies gross turnover to be the amount of revenue from sales transactions. It was suggested by the Institute of Chartered Accountants of India (***ICAI***) that the definition of turnover should mean the amount of revenue recognised as per the applicable Accounting Standards followed by the company. **The Committee, therefore, recommended that the definition of the term 'turnover' be revised to read '"turnover" means the gross amount of revenue recognized in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year'**.

2. INCORPORATION OF COMPANIES

Memorandum

2.1 Section 4 of the Act requires a company to have a 'Memorandum of Association' (***MOA***), which has to be subscribed to by the persons incorporating a company. The Companies Act, 2013 has done away with the bifurcation of objects into 'main' and 'other' objects. Instead, Section 4(1)(c) and Schedule I require the MOA of every company to state *"the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof."* While the new Act has liberalised the manner of specifying the objects in the MoA, certain problems in implementation were reported, such as, for the approval of name of a company, and the allotment of Corporate Identity Number for a company with multiple objects. The English Companies Act, 2006 provides that a company's objects will be unrestricted, unless the articles specifically restrict them. With annual reporting on the major activities undertaken by a company, there are adequate provisions for disclosures on the current objects of a company. Sectoral regulators can always prescribe restrictive criteria to suit their requirements. **The Committee, therefore, recommended for a more liberal operational regime for companies. To provide for this, the Committee recommended that Section 4(1)(c) should be amended appropriately, to allow companies the additional option to have a generic object clause, i.e., *"to engage in any lawful act or activity or business as per the law for the time being in force"* in the MOA.**

2.2 Suggestions were received from the stakeholders that the period of currency of name approved be sixty days from the date of approval and not from the date of application. However, considering the ground realities, the fact that a changed process for centralised processing of name reservation/approval has already been implemented, as well as the fact that only one re-submission is allowed, the Committee felt that there is a case for building in efficiency in the system and reduce misuse by reducing the period of reservation to 20 days by amending Section 4(5)(i). **The Committee, therefore, recommended that the period of name reservation should be reduced from 60 days to 20 days from the date of approval, and simultaneously, the fees for such reservation be reduced to Rupees Five Hundred.**

Incorporation of companies

2.3 Section 7 of the Act provides for requirements in relation to the incorporation of companies. Section 7(1)(c) requires affidavits to be given by directors and the first subscribers regarding their not being convicted of offences indicated therein. Section 7(1)(b) also requires a declaration to be given by a professional, and by the proposed director, or manager, or secretary of the company, with respect to compliance with the applicable provisions of the Act, regarding the incorporation of a company. Suggestions received by the Committee had indicated that both of these requirements caused additional documentary burden, and could, at times, lead to a delay in the

incorporation of companies. It was also suggested that certification under Section 7(1)(b) could be either from directors/managers/secretaries or from professionals, and not from both. **The Committee felt that the requirements with respect to affidavits under Section 7(1)(c) could be replaced with self-declarations, as a wrong declaration carries a stiff punishment under the Act. Regarding certification under Section 7(1)(b), the Committee felt that a certificate by both the parties stated therein ought to be retained as an additional check at the stage of incorporation of the company.**

Registered Office of Company

2.4 Section 12 of the Act governs the provisions relating to the registered office of a company. Section 12(1) seems to require that a company shall, on and from the fifteenth day of its incorporation, and at all times thereafter, have a registered office. Technically, this interpretation would not allow a company to have its registered office immediately on incorporation, or earlier than the fifteenth day of its incorporation, whereas a company could have its office from the day of its incorporation. **The Committee felt that this sub-section may be amended to provide for a company to have its registered office within thirty days of its incorporation.**

2.5 Section 12(4) provides for the recording of the change of the registered office of a company by the Registrar, after being given notice of the same by the company within fifteen days of such change. The Committee noted the concern expressed by stakeholders that in respect of certain documents like lease deeds, rent agreements and other related documents that are required to be submitted, the prescribed time period of fifteen days is insufficient, especially where various approvals may have to be obtained. **The Committee recommended that the time limit for registering change in registered office be increased to thirty days.**

Authentication of documents, proceedings and contracts

2.6 Section 21 of the Act provides that a document requiring authentication by a company, or contracts made by, or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf. It was stated before the Committee that since the definition of *"officer"* under Section 2(59) included top level management persons in a company, it would be practically very difficult for only such top level persons to sign the documents, without providing for any other employee to sign, even with a board resolution. Suggestions were made for such authentication to be allowed under the signature of 'any employee of the company duly authorised by the Board'. The Committee noted that since any authorization for employees would be backed by a board resolution, it would be expected of the Board to exercise due care while authorizing any such employee. **Accordingly, the Committee recommended an amendment to Section**

21, to allow authorizations, on the signature of 'any employee of the company duly authorised by the Board'.

Effect of number of members falling below the minimum requirement

2.7 Section 3(1) of the Act provides for the minimum number of persons required for formation of a company. However, the minimum number of persons required for continuation of a company after it is formed and legal consequences of number of members falling below the minimum number is not provided in section 3 of the Act. **The Committee felt that suitable provisions should be made in the Act/rules to provide for consequences of number of members falling below the prescribed minimum i.e. fastening the continuing members with the liability for all the debts incurred by the company till the prescribed minimum is restored. Further, provision may also be made for the maximum period of 6 months within which the default shall be made good failing which the violation of the law is triggered.** Similar provision was there in Section 45 of the 1956 Act.

3. PROSPECTUS AND ALLOTMENT OF SECURITIES

Matters to be stated in the Prospectus

3.1 The Committee noted that SEBI is in the process of simplifying the contents of the prospectus/offer document by amending the provisions of SEBI (ICDR) Regulations, 2009 so as to reduce the volume of disclosures following suggestions from the stakeholders that those offer documents are becoming too long, too detailed, and repetitive as also too difficult to understand. **The Committee felt, however, that this objective could be achieved only if Section 26(1) of the Companies Act, 2013 is modified to empower SEBI to prescribe the contents in consultation with MCA. Further, MCA and SEBI may workout the minimum disclosures to be included in the prospectus so that the regulatory objectives of both the regulators are achieved while achieving the end purpose of reduction in the size of the prospectus.**

Civil Liability for Mis-statements in Prospectus

3.2 Section 35 of the Act prescribes civil liability for directors, promoters and experts for issuing misleading statements in a prospectus; and the defences available to them. During the process of public consultation, the stakeholders suggested that directors could not rely on the statements made by experts in a prospectus, as a defence for civil liability, although such defence was available to them under Section 62(2)(d)(ii) of the Companies Act, 1956. In the United States, under the Securities Exchange Act, 1934, named experts (including accountants, engineers and appraisers) who prepare or certify a portion of the registration statement, or any report supporting the registration statement, are subject to liability for the portions they prepare. The English

Companies Act, 2006 provides for director's liability in case of untrue or misleading statements, but also provides for a safe harbour provision, such that the director is only liable to compensate the company for the loss suffered by the company in reimbursing an investor if the director knew, or was reckless in not checking whether the statement was untrue or misleading or knew the omission to be dishonest concealment of a material fact. **The Committee acknowledged that it would be appropriate to hold experts liable for statements prepared by them, and which the directors relied upon (as long as such experts were identified in the prospectus). Accordingly, an amendment in the provision was recommended.**

Private Placement

3.3 Section 42 of the Act, in conjunction with Section 62, lays down the framework for private placement of securities. Further, while Section 62 governs preferential allotment; Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014, cross-refers to the procedure under Section 42. A few of the issues raised were with regard to the compliance with some of the requirements provided under Section 42 of the Act, and Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014. These requirements, it was suggested, were cumbersome, time consuming; requiring elaborate, sensitive and significant public disclosures. Difficulties had been expressed with regard to the offer letter, opening of a separate account, time period for allotment of shares, size of minimum investment, making of a fresh offer etc. The Committee noted that changes had been made in the current provisions to check the gross misuse of earlier provisions relating to private placement under the Companies Act, 1956, and felt that such requirements, which were procedural in nature and did not cause great difficulty, ought to be retained.

3.4 The Committee also deliberated on the contents of the 'Private Placement Offer Letter' **('*PPOL*')** (PAS-4 form), which were required to be circulated, to identified investors/persons, and filed with the Registrar. The Committee noted that the form mandated disclosures of extensive information relating to the company, particulars of the offer, details about directors, financial position of the company, declarations by directors with respect to compliances under the Act, etc. **The Committee felt that the requirement under Section 42 and Rule 14 with regard to preparation and filing of Private Placement Offer Letter (PPOL) should be done away with and Form PAS-4 should be discontinued. In order to ensure that investor gets adequate information about the company which is making private placement, the disclosures made under Explanatory Statement referred to in Rule 13(2)(d) of Companies (Share Capital and Debenture) Rules, 2014, should be embodied in the Private Placement Application Form.**

3.5 **Important information presently provided in Form PAS-4 can be shifted as disclosure requirement under the said Rule 13(2)(d). In case of private placement of non-convertible debentures within the ceiling specified under Section**

180(1)(c), the Board resolution under Section 179(3)(c) should provide for reasonable details about the proposed offer which should be specified in the application form in such cases.

3.6 The Committee also deliberated on Section 42(3), which prohibits the making of any fresh offer or invitation, when there are allotments pending for an earlier offer or invitation. It was pointed out that companies might be required to simultaneously issue, different forms of instruments, such as preference shares or non-convertible debentures, for meeting their financial requirements that had been clarified to an extent under Explanation (ii) below sub-rule 14(2)(b). **The Committee recommended that, subject to the limit on the number of persons who could be made the offer of securities as prescribed under Section 42(2), a company could, at the same time keep open more than one issue of securities (that is, of equity share or preference share or debenture) in a year to such classes of investors as may be prescribed by Rules in order to provide greater flexibility in raising capital/loans while not compromising on regulatory concerns. Section 42(3) would also need to be made explicit about the simultaneous offering of securities of different kinds, as currently prescribed in the Rules.**

3.7 **The Committee felt that Section 42(7) could be modified to require that all offers covered under Section 42 shall be made only to such persons whose names, father's names, addresses, phone numbers and email IDs, if any, or any other information as may be prescribed by rules are duly recorded by the company prior to the invitation to subscribe. These details need not, however, be filed with the Registry. The said information, however, could be asked by ROC/Inspector during any of the proceedings under Chapter XIV of the Act. However, in order to ensure that companies are accountable and transparent during private placement process, a new rule may be inserted in Chapter 3 Rules to the effect that companies would initiate circulation of application form and collect monies only after the relevant resolution (i.e. Special resolution or the Board resolution) is filed with the Registry. Consequential change in Rule 14(3) could also be made. Once the basic details like names, father's names, addresses, phone numbers and email IDs, if any, are kept by the company, the requirement for PAS-5 can also be omitted.**

3.8 At the moment, in case of non-convertible debentures a prior special resolution only once in a year has been prescribed. **The Committee recommends that since Non-Convertible Debentures are pure borrowings and do not form part of equity capital, the proviso to Rule 14(2)(a) may be amended to prescribe that the relevant board resolution under Section 179(3)(c) would be adequate in case the offer under Section 42 is for debentures up to the borrowing limits permissible for Board under section 180(1)(c) of the Act. This would also align the requirements with that of section 180(1)(c). It was, however, felt that the said Board resolution should clearly mention (in the body of the resolution) that the**

offer of debentures being approved by Board is through private placement under Section 42 and certain other minimum details as may be prescribed in the rules be provided in the Board resolution. Private companies (who have been given exemption from Section 117(3)(g) through section 462 notification) should either be required to file board resolutions under Section 179(3)(c) or pass a special resolution.

3.9 **The Committee also felt that since the requirement for filing of PPOL and list/details of proposed offerees (i.e. PAS-5) with Registry within 30 days of circulation of PPOL is being dispensed with, companies should be required to file return of allotment (PAS-3) within the prescribed timeline, and should be liable for penalties under Section 42 in case of non-compliance. Further, it could be provided in the Act/Rules that companies would not be allowed to utilise the monies raised through private placement unless such return of allotment is filed. The underlying objective is to ensure that private placement process is completed within a finite period of 90 days.**

3.10 **The Committee further recommended that Section 42(1) may clearly provide that provisions of Section 42 and rules made thereunder shall also apply to offer of convertible securities referred to in Section 62(1)(c) read with Rule 13 of the Companies (Share Capital and Debenture) Rules, 2014.**

3.11 **Regarding valuation of convertible securities, the Committee felt that while the company should be mandated to get valuation done (in respect of equity and convertible securities), the report of the valuer should be made available to investors, and may not be filed/circulated. The company should retain the report with itself for making it available for regulatory purposes, as and when required. Further, Section 62(1)(c) and Rule 13(3) requiring price of securities to be decided in advance should be modified and provisions allowing pricing as per a formula (on the lines of RBI Regulation/FDI Policy) may be considered.**

3.12 **The Committee also felt that in case of equity or mandatorily convertible securities the minimum investment size can be twenty thousand rupees with no linkage to face value so that it can include premium amount as well. However, for private placement of non-convertible preference shares or non-convertible debentures the minimum investment size could be one lakh rupees with no linkage to face value.**

3.13 It has been brought to notice that renunciation of rights is being used as a way to bypass the provisions of preferential allotment/private placement. **The Committee, therefore, recommended that an accountable way of use of renunciation rights by shareholders needs to be prescribed. Reference was made to the principles contained in sections 755-756 of the English Companies Act, 2006, which could be used for regulation of private placement and preferential allotment under**

Companies Act, 2013 while making changes in Section 42/62 and rules made thereunder.

3.14 The suggestions to limit the scope of Section 23 to shares instead of securities, limiting the exit option under Section 27(2) to dissenting shareholders, who had expressed specific dissent; linking the requirement of obtaining minimum subscription in a public issue to the date on which the issue opened, increasing the time limit to forty-five days under Section 39(3), and increasing the time limit of sixty days for the allotment of securities to one hundred and eighty days under Section 42 were also considered by the Committee. However, **as the suggestions made were not in tune with the underlying principles and/or out-of-sync with the greater efficiencies or speed of businesses on date, the Committee did not recommend for any change to these sections.**

4. SHARE CAPITAL AND DEBENTURES

Prohibition on Issue of Shares at Discount

4.1 Sub-section (1) of Section 53 of the Act prohibits issue of shares at a discount. Sub-section (2) makes the issue of shares at a discounted price void. The Committee noted that the use of the words "discounted price" could be interpreted to mean a price lower than the market value of shares, and not lower than its nominal value, as intended in sub-section (1). **To remove the ambiguity, it recommended that the word 'discount', may replace the words "discounted price" in the provision**.

4.2 It was noted that Companies Act 1956 allowed companies to issue shares at a discount with the prior approval of the Company Law Board (CLB) though this facility was hardly used. **The Committee felt that to enable restructuring of a distressed company, when the debt of such a company is converted into shares in accordance with any debt restructuring guidelines specified by Reserve Bank of India (Strategic Debt Restructuring Scheme issued by RBI vide Circular dated 8.06.2015), a company may issue shares at a discount to a creditor referred to in, and as per the guidelines.**

Further Issue of Share Capital

4.3 Section 62 of the Act deals with the further issue of share capital. Sub-section (2) requires the notice with regard to offers on rights basis to be despatched through registered post, or speed post, or an electronic mode. The stakeholders had suggested additionally allowing courier and hand delivery as a mode. The Committee felt that with multiple modes of delivery being allowed, companies would be able to leverage these, without undermining the requirement of ensuring delivery. **Thus, it was recommended that any mode of delivery that would provide irrefutable/certain proof of delivery, be allowed.**

5. ACCEPTANCE OF DEPOSITS BY COMPANIES

Prohibition on Acceptance of Deposits by Companies

5.1 Companies accepting deposits from their members or the public, are required to comply with the requirements of Section 73(2)(c) and 73(5), that is, of keeping an amount not less than fifteen percent of the amount of its deposits maturing during a financial year and the next financial year, deposited and kept in a scheduled bank in a separate bank account to be called as the deposit repayment reserve account. This account is not to be used by the company for any purpose other than the repayment of deposits. Private companies accepting deposits from their members are already exempted from this requirement. **The Committee felt that though the provision was a safeguard for depositors, it would increase the cost of borrowing for the company as well as lock-up a high percentage of the borrowed sums. Accordingly, the requirement for the amount to be deposited and kept in a scheduled bank in a financial year should be changed to not less than twenty percent of the amount of deposits maturing during that financial year, which would mitigate the difficulties of companies, while continuing with reasonable safeguards for the depositors who have to receive money on maturity of their deposits.**

5.2 The Committee has also noted that Section 73(2)(d) mandates a company accepting deposits to provide for deposit insurance in the manner and extent as is prescribed in Part 5 of the Companies (Acceptance of Deposits) Rules,2014. However, as insurance companies are not offering any products for covering company deposit default risks, this requirement was relaxed till 31/03/2016. MCA had also taken up this issue with Department of Financial Services (DFS) which stated that though an insurance company is not prevented by IRDA from devising an insurance policy to cover default risks, it is difficult to assess the risk and its likely exposure to liability as companies are not as tightly regulated as banks with particular reference to their financial efficiency and delivery of commitments. **It was also noted by the Committee that as on date none of the insurance companies is offering such insurance products. Considering the above situation, the Committee felt that the provisions of Section 73(2)(d) along with relevant Rules be omitted.**

5.3 On a related note, Section 73(2)(e) requires a certification from the company that no default has been committed in the repayment of deposits, accepted either before or after the commencement of the Act, or the payment of interest on such deposits. It was stated that this requirement was harsh on companies which might have defaulted due to reasons beyond their control, such as industry conditions at some point of time in the past, but repaid such deposits with earnest efforts thereafter. The Committee noted that imposing a lifelong ban for a default anytime in the past would be harsh. **Therefore, it was recommended that the prohibition on accepting further deposits should apply indefinitely only to a company that had not rectified/made**

good earlier defaults. However, in case a company had made good an earlier default in the repayment of deposits and the payment of interest due thereon, then it should be allowed to accept further deposits after a period of five years from the date it repaid the earlier defaulting amounts with full disclosures.

5.4 The suggestion to allow private companies engaged in the infrastructure sector to take deposits from their individual members without any upper limit was considered. **In this regard, the Committee agreed to recommend for allowing exemptions to such private companies from the upper limit, as promoters or their relatives or 'Qualified Institutional Buyers' (QIB), who had invested in the risk capital would already be aware of the business prospects of the company.**

5.5 At present, private companies are permitted to accept deposits from their members' deposits which amount shall not exceed 100% of their paid up capital and free reserves with relaxed compliance requirements. **With a view to ease raising of funds for start-ups without additional compliance costs, the Committee recommended that limits with regard to raising of deposits from members for 'Start-ups' which are private companies may be removed for the first five years from their incorporation by using section 462 of the Act.**

Repayment of deposits accepted before commencement of this Act

5.6 The Committee also deliberated upon the suggestion to incorporate, in the Act itself, provisions of Rule 19 of the Companies (Acceptance of Deposit) Rules, 2014, which allowed for deposits accepted under the Companies Act, 1956 to be repaid as per the original terms and conditions. **The Committee recommended that the provisions of Rule 19 be provided in the Act**.

Punishment for Contravention of Section 73 or Section 76

5.7 The Committee also deliberated on the suggestion for revisiting the provisions of Section 76A which provided that the defaulting company should, in addition to the repayment of the amount of deposit and the interest due, be punishable with fine which should not be less than Rupees One Crore, but which could extend to Rupees Ten Crore. **The Committee recommended that the minimum fine be modified to Rupees One Crore, or twice the deposit accepted, whichever is lower, and the maximum amount be as already prescribed.**

6. REGISTRATION OF CHARGES

Duty to Register Charges, etc.

6.1 Section 77 of the Act mandates registration of charges with the Registrar. During the process of public consultation, it was pointed out that unlike the Companies Act,

1956, a specific list of charges to be so registered had not been included in the new Act or the Rules. Thus, in the absence of a specific list of charges to be registered, and the wide definition of the word *"charge",* 'pledges' and 'liens' were also required to be registered. These were earlier exempted from registration requirements under the previous Act. It was stated before the Committee that registration of pledges and liens created various practical difficulties, relating to the quantum and frequency of registrations required, etc. for example members of the 'Clearing Corporation' (***CC***) deposited cash, bank guarantees, FDRs, approved securities etc. with the Corporation towards meeting the margin and security deposit requirements would require registration of charges, creating operational difficulties.

6.2 **In this regard, the Committee felt that there was no need for the definition of the term 'charge' to be changed, since relevant judicial precedents specified that charges included pledges. However, Section 77(3) may provide for prescriptive powers to allow certain liens or securities or pledges to be exempted from filing.** This would address the practical problems in case of transactions by NBFCs engaged in financing of assets, and for members/agents of the Clearing Corporation, etc.

Company to report satisfaction of charge

6.3 Section 82 of the Act provides that a company shall give intimation to the Registrar of the payment or satisfaction in full, of any registered charge so registered within thirty days from the date of such payment or satisfaction. Further, sub-section (1) of Section 77 shall, as far as may be, apply to an intimation given under this Section. It has been suggested to the Committee that similar time limits, as provided for under Section 77 for registration of charge, ought to be allowed for reporting satisfaction of charges under Section 82 too. **The Committee felt that, as it would generally be in a company's interest to report satisfaction of charges, there should not be any regulatory concern in allowing similar timelines as allowed for registering a charge and, therefore, recommended for the same.**

7. MANAGEMENT AND ADMINISTRATION

Beneficial Interest in Shares, Register of Beneficial Owners of a Company

7.1 Misuse of corporate vehicles for the purpose of evading tax or laundering money for corrupt or illegal purposes, including for terrorist activities has been a concern worldwide. Complex structures and chains of corporate vehicles are used to hide the real owner behind the transactions made using these structures. Realizing this, jurisdictions world over have been putting in place mechanisms to identify the natural person controlling a corporate entity. Following recommendations of Financial Action Task Force (FATF), India has also tightened the concepts of beneficial interest and beneficial owner as contained in the Prevention of Money Laundering Act as well as

introduced a comprehensive definition through SEBI guidelines. The SEBI guidelines issued in 2010 are aimed at identifying beneficial owners of security accounts held by various intermediaries. However, since then, jurisdictions world over have taken significant steps on beneficial ownership provisions. Changes have been made by many jurisdictions, for example Russian Union and UK in their laws to bring in transparency in company ownership and control. The English Companies Act, 2006 was amended in 2015 to require certain companies and LLPs to create and maintain a 'Persons with Significant Control' Register and make it available to public, as well as file the information with the UK Companies House. A publicly accessible central registry of UK company beneficial ownership information has also been established. Regulatory concerns have been raised in India also, drawing on examples set by these jurisdictions. The Ministry of Finance has suggested to introduce a Register of Beneficial Owners by mandating it in the Companies Act.

7.2 Section 89 of the Companies Act, 2013 deals with the concept of beneficial interest in a share which obligates every person acquiring/holding beneficial interest in a share as well as the legal owner to make a declaration to the company in respect of such beneficial interest. In view of the absence of a definition of beneficial interest in a share in a company, absence of any obligation on a company to collect information on beneficial ownership, the absence of the concept of beneficial ownership in a company, no enabling provisions to maintain a separate register on beneficial ownership, in the Act, the existing provisions are considered inadequate for the purpose of mandating a register of beneficial owners of the company. **The Committee, therefore, recommended to amend the Act to mandate the following:**

a) **Provide a definition of beneficial interest in a share, and beneficial ownership in a company. The existing definition under SEBI Circular/Guidelines and the Prevention of Money Laundering Act may be used as a basis for the definition in the Companies Act, 2013. The rules issued under the United States Securities Exchange Act of 1934 define beneficial ownership in a security, which can be used as a basis for the definition of beneficial interest in a share.**
b) **Companies and individuals may be obligated to obtain information on beneficial ownership. In this regard, companies may be empowered to seek information from members and in case of failure to supply the required information, apply sanctions in the form of suspension of rights against the beneficial interests subject to adequate safeguards.**
c) **Companies would also be mandated to maintain registers of beneficial owners and provide the information to the registry (MCA21). Periodic updating may also be mandated. Data privacy concerns may be addressed by making only part of the filed information available to the public.**
d) **Companies not complying with the requirements may be liable to fine and criminal prosecution.**

Annual Return

7.3 Section 92 of the Act, read with Rule 11 of the Companies (Management and Administration) Rules, 2014, provides for the filing of annual return of a company in the prescribed form.

7.4 The Ministry of Corporate Affairs, through the Companies (Second) (Removal of Difficulties) Order, 2014, replaced the words *"paid up capital and turnover"* with the words *"paid up capital or turnover"* for the purposes of prescribing thresholds for companies other than listed ones that were required to get their annual return certified by a practising company secretary. **The Committee took the view that such a change brought about by way of a Removal of Difficulties Order may be included in the Act by way of an amendment. The Committee further recommended that prescriptive powers for separate Annual Return format for small companies and one person companies, with lesser details be included in the Section.**

7.5 Section 92(3) mandates the filing of an extract of the annual return as a part of the Board's report. This requirement is leading to duplication of information being reported to the shareholders under other provisions of the Act or mandated to be made available on the website of the companies. **The Committee recommended that this requirement may be omitted, and instead the web address/link of the Annual Return filed by the company and hosted on its website, if any, should be provided in the Board's Report and information with regard to shareholding pattern be provided as part of section 134 requirements.** The matter has been further dealt with in paragraph 9.11 of Part I of this report.

Filings in case promoters' stake changes

7.6 Section 93 of the Act, as worded presently, requires filing of a return by a listed company with the Registrar, in a prescribed form with respect to changes in the number of shares held by promoters, and top ten shareholders. The Committee noted that as the information was also required to be filed with Stock Exchanges/SEBI, it would lead to duplication of reporting. Moreover, the present prescription required filings on changes in individual holding, and not the changes that are linked to the paid up share capital. This has led to an increase in the amount of filings being made under the Act. **The Committee recommended that the requirement be omitted altogether.**

Place of keeping and inspection of registers, returns etc.

7.7 Section 94 of the Act pertains to the place of keeping of registers, required to be maintained by a company under Section 88. The register of members contained various personal details of shareholders, like their PAN card details, E-Mail ID,

address of members, which ought not to be used for commercial purposes. **Accordingly, the Committee suggested that such personal information, as may be prescribed in the Rules, may not be made available publicly.**

7.8 The proviso to Section 94(1) deals with the place of keeping and inspection of registers, returns, etc. at any place in India other than the registered office of a company. The Committee noted that greater flexibility had been provided to companies in the Companies Act, 2013, vis-à-vis the Companies Act, 1956, with respect to the changing of the place for keeping the registers. **In this regard, the Committee recommended that the requirement of providing the Registrar with an advance copy of a proposed special resolution as required under Section 94(1) be done away with, since it did not serve any purpose, particularly because the special resolution was in any case to be filed as per the requirements of Section 117(3)(a).**

Holding of Annual General Meeting

7.9 Section 96(2) requires holding of Annual General Meeting 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. **The Committee did not agree with the suggestions to allow AGMs to be convened abroad if 75% or more of members of the company reside abroad on the ground that the companies incorporated in India hold at least the annual general meeting in India to establish territorial nexus.** Further, the suggestion to dispense with AGMs of wholly owned subsidiary companies was not agreed to as both i.e. WOS and holding company were separate legal entities. **However, the suggestions to allow private limited companies and wholly owned subsidiaries of unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance, is recommended by the Committee with a view to ease doing business. This would require amendment to Section 96(2) so that exemption can be provided to such class of companies.**

Notice of meeting

7.10 The proviso to Section 101 (1) of the Act allows for the convening of a general meeting of a company by giving a shorter notice than the required twenty-one days, provided that consent is given by not less than ninety-five percent of the members entitled to vote at such a meeting. Private companies have been given flexibility to make suitable provisions through their AOA. The Committee was of the opinion that obtaining the approval of ninety-five percent members entitled to vote at a meeting, especially at a short notice, could be difficult. **The Committee also referred to a similar provision under the Companies Act, 1956 and recommended for the requirement of ninety-five percent of the votes exercisable at such a meeting to be applicable in the case of extraordinary general meetings only**. **The Committee while considering the suggestion to allow acceptance of proxy till the beginning**

of the general meeting referred to the Standing Committee's recommendations (2009) on proxies, and did not agree to the suggestions because of apprehensions about their possible misuse.

Calling of extraordinary general meeting

7.11 Section 100 read with Explanation to Rule 18 deals with the provisions relating to calling of extraordinary general meeting within India. The Committee noted that the explanation to Rule 18(3) requires that an EGM shall be held only in India. This is an appropriate prescription. Relaxation can be provided for wholly owned subsidiaries of companies incorporated outside India and certain other cases. For these cases, authority may be given to prescribe exemptions through Rules. Such a mandatory provision may be preferably prescribed in the substantive section (section 100) and not in the Rule. **Hence, the Committee recommended that the explanation to Rule 18(3) be deleted and an explanation be incorporated at the end of Section 100 mandating that EGM shall be held only in India, as well as provide for exemptions to wholly owned subsidiaries of companies incorporated outside India.**

Postal Ballot

7.12 Section 110(1)(a) prescribes for mandatorily transacting certain items through postal ballot. The mandatory requirement of a postal ballot was no longer relevant for companies which are required to conduct voting using electronic means, as this mode equally provides for that no shareholder is deprived of his right to vote on resolutions in case he cannot attend the AGM/general meeting. **The Committee, therefore, decided to amend Section 110 of the Act, such that Rule 22(16) of the Companies (Management and Administration) Rules, 2014 would provide that if a company is required to provide for electronic voting, then the same items could be covered in its General Meetings too.**

Filing of resolutions and agreements

7.13 Section 117 of the Act makes it mandatory for companies to file resolutions with the Registrar in respect of several matters. A concern was raised that the filing of Board resolutions as required under Section 117(3)(g), often involved disclosing confidential and commercially sensitive information such as business strategies, financing plans, investments, amalgamation, reconstruction exercises etc. Therefore, this requirement ought to be done away with. However, the Committee was of the opinion that such filings ensured that sensitive documents were not tampered with, and the original version of the documents filed with the Registrar could be used to ensure correctness of the documents. While acknowledging that sensitive information like business strategies, budgets, financing plans etc. if available publicly could hamper the business interest and that an amendment had already been made to ensure that these filings were not available for public inspection, **the Committee recommended that while the filing requirement ought to continue, MCA may address the concerns**

of companies by adequately publicising the provisions in the MCA21 system to ensure confidentiality of such filed information.

7.14 Sub-section (3) of Section 117 lays down the matters in respect of which such filings need to be made. Section 117(3)(a) provides that special resolutions need to be filed by the company, and Section 117 (3)(e) imposes such filing obligations, where resolutions are passed under Section 180 (1) (a) and Section 180 (1) (c). **The Committee, during deliberations, held that Section 180 (1) required the passing of a special resolution, and that the filing requirements were triggered under Section 117(3)(a) itself. Since clause (e) of Section 117(3) appeared to be repetitive, it was recommended for deletion.**

7.15 The proviso to Section 117(1) requires that every resolution that has an effect of altering the Articles of Association of a company be embodied or annexed to the AOA of a company. The Committee, while holding the view that the manner of inclusion of the amendment of the Articles of Association be left to the discretion of each company, **recommended that the resolution altering the Articles need not be embodied in, or annexed to the Articles of Association in cases where the amendment, with references, in the form of a footnote, to the resolutions made, is incorporated in the Articles of Association itself. The Committee recommended that a clarification to this effect be issued.**

7.16 In terms of Section 117 (3) (g) read with Section 179 (3)(f), companies are required to file copies of resolutions passed to grant loans or give guarantees or provide security in respect of loans. In this regard, **the Committee considered the suggestion that providing such information by banks may violate their confidentiality obligations towards their customers, and recommended that an exemption be considered for banks.**

Secretarial Standards

7.17 The Committee had received a number of representations querying the requirement, scope and content of the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) in accordance with the requirements laid down in Section 118 (10) of the Act. **The Committee recommended that ICSI should re-examine and revise the Secretarial Standards in consultation with all the stakeholders. The issues received from stakeholders by the Committee should also be taken into account during the re-examination. Further, the Committee felt that as it is a new concept, this requirement may be reviewed after 1-2 years.**

8. DECLARATION AND PAYMENT OF DIVIDEND

Declaration of Dividend

8.1 Sub-section (3) of Section 123 of the Act, allows the Board of Directors to declare interim dividend during any financial year out of the surplus in the profit and loss account, and out of the profits of the financial year in which such dividend is sought to be declared. The sub-section could be interpreted to mean that the interim dividend for a particular financial year could only be declared during that particular financial year period; restricting the ability of companies to declare interim dividend after the close of the financial year but before the Annual General Meeting (AGM). Such an interpretation could not have been the intent of the Act and would cause difficulties for companies, as declaration of interim dividend after the close of financial year is an accepted practice.

8.2 Further, the use of the word *"and"* after the words *"surplus in the profit and loss account"*, and before the words *"out of the profits of the financial year"* in sub-section (3) of Section 123 appears at disharmony with the provisions of sub-section (1)(a), which provides for the declaration of dividend out of the profits of the company for that financial year, or the profits of the company from any previous financial year(s) (subject to deduction of depreciation and other conditions), or both the amounts. The Committee also felt that, as a measure of good corporate governance, a company should not declare interim dividend out of the projected profits for the full year.

8.3 **The Committee, after examining the above issues, recommended that the provisions of section 123(3) be amended in such a way as to allow declaration of interim dividend from out of the profits of the current financial year, generated till the date of declaration, including brought forward surplus in the Profit & Loss Account, and the same could be declared anytime up to convening of AGM for the said financial year.**

Unpaid Dividend Account – transfer of securities to IEPF in certain cases

8.4 The suggestion made by stakeholders to omit those provisions of Section 124(6), that required a transfer of all shares in respect of which dividend is not claimed or paid for seven consecutive years to IEPF, was rejected by the Committee. **The Committee felt that since the provisions allowed the return of securities to the claimants after these were transferred to IEPF; the provisions could be retained as provided.**

9. ACCOUNTS OF COMPANIES

Consolidated Financial Statements

9.1 Section 129(3) of the Act requires a company having a subsidiary, a joint venture, or an associate company, to prepare a 'Consolidated Financial Statement' (***CFS***), in addition to its stand-alone financial statements. The requirement for a CFS under the Act had been introduced for the first time in the Companies Act, 2013. Before 1st April 2014, such a requirement existed only for listed companies, which were required to prepare consolidated financial statements in terms of the listing agreements with stock exchanges. A number of comments received by the Committee during the consultation process related to the preparation of a CFS and associated matters, and were accordingly dealt with. The proposed changes have been noted in the following paragraphs.

9.2 General Instruction Number 4 for the preparation of a CFS, as prescribed in Schedule III of the Act, requires that the entity shall disclose a list of subsidiaries, associates or joint ventures which have not been consolidated in the CFS, along with the reasons for not consolidating. Comments received by the Committee suggested that the Instruction indicated a lack of clarity on the kind of entities to be so disclosed. **The Committee noted that the Accounting Standard indicated instances where accounts of subsidiaries, associates or joint ventures was not required to be consolidated; and the recommendations in Paragraph 9.5 would resolve the issue/bring clarity.**

9.3 The first proviso to Section 129 (3) of the Act requires that a statement showing salient features of the financial statements of subsidiaries are to be attached with the financial statement of a holding company. It was suggested to the Committee that in case of companies having overseas subsidiaries, the underlying subsidiaries of such subsidiaries not be statutorily required to prepare separate financials and also be exempted from having audited financial statements. **The Committee recommended that in such cases, where a CFS was statutorily required to be prepared as per the law of the jurisdiction in which the overseas subsidiary is established and is placed on the website in the statutory format, there should be no requirement for standalone financial statements of the step down subsidiaries to be placed on the website as per 4th proviso to Section 136(1) and included in the salient features that are required to be attached. There should be no exemption in other cases.**

9.4 A clarification was also sought during the consultation process, as to whether the financial statements of such overseas subsidiaries, which may have been prepared in accordance with the local GAAP, needed to be prepared as per the Indian GAAP, for the purpose of placing on the website /attachment to the Indian holding company's financial statement to be filed with the Registrar. **The Committee felt that such subsidiaries submit/attach the financial statements as per the statutory/GAAP**

requirements of the local jurisdiction. No change in the provision is required on this account.

9.5 The Explanation to Section 129(3) provides that *"for the purposes of this sub-section, the word "subsidiary" shall include associate company, and joint venture."* The suggestions received stated that some difficulties arose on account of the differences in the definition of a subsidiary under Section 2(87) of the Companies Act, 2013, and the Accounting Standards. In this regard, the Committee noted that revisions in Accounting Standards, to bring them in alignment with the Companies Act, 2013, were already under consideration. It was noted that the treatment in the IndAS would also differ. **The Committee, however, felt, that to ensure the same treatment for the consolidation of accounts under the Accounting Standards and the Act, the reference to 'associates' and 'joint ventures' under Section 129 ought to be amplified/clarified, to be in accordance with the applicable Accounting Standards.**

9.6 Suggestions received by the Committee had referred to the provisions of Section 129(4), which provides that the provisions of the Act, applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis,* apply to the consolidated financial statements. It had been stated that a combined reading of Sections 129(3), 129(4), and Sections 143(2) and 143(3) of the Act prescribe the same reporting requirements for the auditors of both the standalone and consolidated financial statements, and that the application of such provisions with respect to the auditor's reporting requirements under Section 143(3) might not be practical. **The Committee felt that the use of phrase *"mutatis mutandis"* provided sufficient flexibility, and that only applicable reporting for the CFS needs to be done by the auditor. As such, no change was required in Section 129(4). The Committee, however, felt that providing some clarity on the auditors' reporting requirement (with respect to reporting on the Internal Financial Controls and CARO, and for overseas subsidiaries), for the convenience of stakeholders, in the form of guidance from ICAI to its members should be helpful. This matter has also been dealt with in Paragraph 10.12 of Part I of this report.**

Re-opening of accounts

9.7 Section 130 of the Act provides for the re-opening of accounts, after due approval from a court or a Tribunal. The Proviso to Section 130(1) provides that the court or the Tribunal shall give notice to the Central Government, the Income-tax authorities, SEBI or any other statutory regulatory body or authority concerned and shall take into consideration any representations made by them before passing any order under this Section. A suggestion was made during the consultation process that in the interest of the principle of natural justice, other concerned parties, like a company or the Auditor/Chartered Accountant of the company should also be given an opportunity to present their point of view. **The Committee deliberated and felt that while a**

court/Tribunal always had the inherent power to call/give notice to any concerned party in the process, it would be appropriate if a provision was specifically made in the Section enabling the Court/Tribunal to give notice to any other party/person concerned, in addition to those specifically referred to in the provisions.

9.8 A concern was also raised on the absence of any mention about the period up to which the accounts could be re-opened under Section 130. It would be a heavy burden on companies if they have to maintain their accounts forever, or beyond a reasonable time limit because of this provision of re-opening of accounts. The Committee noted that Section 128 of the Act required a company to keep its accounts for a minimum period of eight years, unless a direction was issued under a proviso to Section 128(5) by the Central Government. **Thus, it was decided that the applicability of provisions of Section 130 for the re-opening of accounts could be restricted to eight years, unless a longer period is required through a specific direction issued by Central Government, under Section 128(5).**

National Financial Reporting Authority

9.9 The Committee noted that ICAI has submitted a letter dated 18th August 2015, wherein ICAI had raised concerns with respect to constitution of National Financial Reporting Authority (NFRA). It was stated that the ICAI is already discharging its regulatory functions with regard to discipline through a robust mechanism wherein a Board of Discipline and Disciplinary Committee with Government nominees has been entrusted with the responsibility, the Chartered Accountants profession sees constitution of NFRA as an interference in the functioning of the profession, multiple layers of regulation would lead to delay/duplication of work and therefore suggested for omission of Section 132. **The Committee deliberated in detail on the matter and felt that in view of the critical nature of responsibilities wherein lapses have been seen to cause serious repercussions, the need for an independent body to oversee the profession is a requirement of the day. Major economies of the world have already established such regulatory bodies. The Committee by a majority view recommended that NFRA should be established early. Consultation may, however, be carried out with ICAI with regard to the jurisdiction of NFRA and the ICAI representation on NFRA.**

Board's Reports, etc.

9.10 Section 134(1) of the Act states that the financial statement, including the CFS, is to be signed by the chairperson of the company, where he is so authorised by the Board, or by two directors, out of which one has to be the 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. **It was noted by the Committee that in case a company did not have a managing director, the**

Chief Executive Officer, irrespective of whether he was a director or not, being a KMP, and responsible for the overall management of the company; should be mandated to sign the financial statements. The Committee also noted that since the appointment of a managing director was not mandatory for all companies, the words "if any", may be inserted after the words "managing director".

9.11 Several suggestions pointed out that due to the numerous disclosures in the Board's Report, the Report had become lengthier, and more expensive to produce. **The Committee felt that while some of the disclosures in the Board's Report under the Companies Act, 1956 was insufficient and had become redundant, there was a need to fine-tune the current requirements, without reducing the information content of the Report. Form MGT-9 be omitted with details regarding shareholding, etc. to be specifically prescribed under section 134(3). Salient points of the CSR Policy, Remuneration Policy may be included in the Report and the detailed documents/policies provided on the website of the company, if any, and web address or link of these documents/policies provided. Changes in the policies should be specifically highlighted in the salient points. Disclosures with regard to loans or investments under section 186 and particulars of contracts with related parties under section 188, if provided in the financial statements, may be only referred, and salient points discussed, in the Board's Report. Disclosure requirements under Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 may be pruned (refer para 13.2 of Part II the report). For small companies, separate format for the Board's Report may be prescribed.**

9.12 **The Committee also noted that the Board's Report and the Financial Statements and the Corporate Governance reporting requirements of SEBI, which together are also called the Annual Report of the company, have duplication in disclosures. It recommended that these need to be harmonized so that the Report is structured, repetition is avoided and made more readable.**

9.13 The Committee deliberated on the suggestion of replacing the specific requirement for disclosure, pursuant to the provisions of Section 197(12), of the ratio of the remuneration of each director to the median employee's remuneration, with a comparison of the director's remuneration with the weighted average of all the employees, since big companies had a large numbers of workers. **The Committee decided to retain this requirement, and not affect any changes. The matter has been also dealt with in Paragraph 13.2 of Part I of this report.**

Reporting on Internal Financial Controls

9.14 Section 134(5)(e) of the Act provides that the Board's Responsibility Statement shall state that the directors of the company, in the case of a listed company, had laid down the internal financial controls to be followed by the company, and that such controls were adequate, and operating effectively. Suggestions received by the Committee

stated that directors were facing difficulties in certifying that the directors had laid down the internal financial controls to be followed by the company, and that it should be sufficient for the managing/executive directors to confirm that the company had a mechanism in place for internal financial controls. **However, the Committee observed that it was essential to cast this responsibility on the Board in consonance with the fiduciary responsibilities bestowed on the Directors under the Act, and hence, these provisions needed to be retained.**

Corporate Social Responsibility

9.15 The Committee, during discussions on the suggestions made with respect to Section 135 of the Act, also considered the recommendations relating to changes in the Act/Corporate Social Responsibility Policy Rules (CSRP Rules) made by the High Level Committee, to suggest measures for improved monitoring of the implementation of the 'Corporate Social Responsibility Policies' (***High Level CSR Committee***), constituted by the MCA.

9.16 Section 135 (1) requires every company having a net worth of Rupees Five Hundred Crore or more; or a turnover of Rupees One Thousand Crore or more; or a net profit of Rupees Five Crore or more, during ***any financial year***, to constitute a 'Corporate Social Responsibility Committee' of the Board, consisting of three or more directors, out of which at least one director has to be an independent director. Rule 5(1) of CSR Policy Rules, 2014, allows unlisted companies, private companies, and foreign companies, to have the Committee with less than three directors, and without Independent Directors, where they were not required to be appointed. **In this regard, the Committee recommended that, the composition of CSR Committee for companies not required to appoint Independent Directors be prescribed as 'having two or more Directors'.**

9.17 The High Level CSR Committee, in its recommendation at para number 4.17 of the report have suggested clarity to be brought in with regard to 'any financial year' as used in Section 135(1) for determining whether the threshold of specified net worth or turnover or net profit is met to constitute the CSR Committee. **The Committee recommended that the words "any financial year" be replaced by the words 'preceding financial year'.**

9.18 Rule 2(1)(f) of CSRP Rules, 2014, requires dividend income, etc. to be excluded while calculating the net profit for the purposes of CSR spending. This would lead to an incongruous situation, wherein companies which were not required to spend on CSR, would nevertheless, be required to constitute CSR Committees. **Thus, the Committee recommended for this inconsistency to be removed by providing prescriptive powers to exclude certain sums from net profit in Section 135(1) itself.**

9.19 Rule 3 of the CSR Policy Rules, 2014 clarifies that foreign companies are also required to comply with the provisions of CSR. The Committee agreed with the principle that the CSR provisions should be applicable to foreign companies, as provided in the Rules. The High Level CSR Committee had also recommended vide its recommendation at para number 4.15 of its Report that clarity be provided on the applicability of the section to foreign companies. **The Committee, therefore, recommended that Section 384 of the Act may specifically include this requirement.**

9.20 Section 135(3)(a) requires that the CSR Policy shall indicate 'the ***activities*** to be undertaken by the company as specified in Schedule VII'. Schedule VII indicates broad areas, which have been further explained to be interpreted liberally in circular no. 21/2014 issued by MCA. **The Committee felt that it would be appropriate for the said clause to be modified to refer to subjects in Schedule VII within which CSR activities could be taken up by an eligible company.**

9.21 The Explanation below Section 135(5) provides that for the purpose of this provision, the 'average net profit' shall be calculated in accordance with Section 198. **The High Level CSR Committee has recommended in para 4.16 of the report for the term *"average net profit"* to be replaced with the words *"net profit"*, to remove any ambiguity. The Committee also agreed with the recommendation. Further, prescriptive powers were also recommended to be introduced for specifying the manner of calculation of 'net profits' of a foreign company, through Rules, while referring to Section 381.**

9.22 The High Level CSR Committee, in paragraph 4.10 of its report, had recommended for allowing a carry forward of unspent amounts, from a particular year; and for transfer of any unspent balance, after a period of five-years, to one of the funds listed in Schedule VII of the Act. **The Committee felt that while a carry forward might be desirable, the requirement of mandatorily transferring the unspent amount at the end of five-years would go against the principle of 'comply or explain' and would not be appropriate. In view of this, the Committee recommended the continuance of the current provisions, where the actual expenditure was reported with no obligation to carry over.**

9.23 The suggestion to allow CSR spends in kind was not agreed to by the High Level Committee on CSR (as specified in para 3.13.2 of its report), in view of various issues (including the valuation issue) involved. **The Committee concurred with the aforementioned observation and did not recommend any amendment.**

9.24 Section 135 (5) provides that a company has to give preference to the local area, and areas around its areas of operations, for spending the amount earmarked for CSR activities. It had been suggested that government companies be allowed to deposit

CSR funds into state coffers/ any CSR Authority established by the State Government, so that it could channelize these according to its priorities. **The Committee felt that this would defeat the intent behind the provision and take away the flexibility available with the company. Further, the Committee felt that the requirement with respect to CSR are new provisions, and as such, all companies should be given the required flexibility for a reasonable period, say five-years, to experience the implementation of this provision. Accordingly, no amendment was recommended.**

9.25 The High level CSR Committee had recommended for Section 8 companies to be exempted from the provisions on CSR. It had been noted by the said Committee that "*Section 8 companies are 'not for profit' companies registered under Section 8 of the Companies Act, 2013 (Section 25 of Companies Act, 1956) with the basic object of working in social and developmental sector. Their involvement in charitable and philanthropic activities is already 100 percent. These companies prepare income and expenditure statements which reflect the surplus/deficit of an organization and not the profit of the company. The surplus accrued to such company is not distributed amongst members, but is ploughed back to the expenditure of the company, that in-turn is spent on social welfare activities already included in Schedule VII. Therefore, it may be not necessary for these companies to undertake CSR activities outside the ambit of their normal course of business.*" **The Committee, however, felt that it would not be appropriate to give differential treatment to section 8 companies in the matter of providing exemptions from compliance of CSR provisions, as there are certain areas where examples could be found of section 8 and other companies co-existing, for example, companies in microfinance business. Further, there should not be a difficulty in section 8 companies using the prescribed percentage of its surplus for CSR activities. Thus, it was decided not to recommend for exemption of Section 8 companies from the CSR provisions of the Act.**

Right of member to copies of audited financial statement

9.26 Section 101 of the Act provides for a twenty-one day notice period to call for a general meeting, and also provides for a meeting to be called for at a shorter notice, provided at least ninety-five percent of the voting power consented to such shorter notice. However, under Section 136, for the circulation of annual accounts to the members, the Section requires twenty-one days' notice, and does not provide for a shorter notice period to circulate the annual accounts. In this regard, the Ministry of Corporate Affairs had issued a circular dated 21st July 2015, in which it had clarified that the shorter notice period would also apply to the circulation of annual accounts. **The Committee felt that it would be appropriate that clarity allowing financial statements to be circulated at a shorter period in accordance with the provision for shorter notice meeting under Section 101 be provided in Section 136.**

9.27 Item (a) of the 4th proviso to Section 136 (1), provides that every company having a subsidiary or subsidiaries, shall place separate audited accounts in respect of each of its subsidiaries on its website, if any. The Committee considered the suggestion to exempt unlisted companies from the requirement of uploading financial statements of all subsidiaries on the website of the holding company. **In this regard, the Committee recommended that requirement should be limited to listed companies in view of their dispersed shareholding and the need for greater regulatory oversight as compared to unlisted companies. However, the Committee did not agree to the suggestion that for listed companies, item (a) would apply only in respect of its Indian subsidiaries. Further, the Committee felt that the requirements under item (b) of the 4th proviso to Section 136 ought to continue to be applicable to all companies, including unlisted companies.**

10. AUDIT AND AUDITORS

Appointment of Auditors

10.1 Section 139(1) provides that the shareholders at the 'Annual General Meeting' (AGM) shall appoint an auditor of a company, for a consecutive period of five years, and that his appointment shall be ratified every year at the AGM. The first proviso to the said sub-section requires the company to place the matter relating to such appointment, for ratification by the members in each AGM. During the consultation, clarity was sought for cases where the shareholders choose not to ratify the auditor's appointment as per Section 139 (1). A clarification was also sought for cases where the auditor was unwilling to continue at any stage before the completion of his five-year term; whether this would be treated as a casual vacancy.

10.2 The Committee felt that the objective of Section 139(1) is to ensure independence of auditors and any decision taken by the shareholders not to ratify any appointment during the period of five-years would be akin to removal of the auditor and provisions of Section 140(1) should come into play. Explanation to Rule 3 of Companies (Audit and Auditors) Rules, 2014, provides for such a situation and requires that the Board shall appoint another individual or firm as the auditor (s) after following the procedure laid down in this behalf under the Act. **There is an inconsistency due to the two provisions, wherein removal would require a special resolution and approval of the Central Government while removal through non-ratification would need a resolution. The Committee felt that it would be advisable to omit the provisions with respect to ratification, as it defeats the objective of giving five year term to the auditors. This would also remove the inconsistency in the Act.**

10.3 **The Committee felt that if the auditor was unwilling to continue at any stage before completion of his five-year term, it should be treated as a case of resignation, and the provisions of Section 139(8) for the filling up such casual**

vacancy arising due to resignation should apply. This may be made explicit in the section itself.

Rotation of auditors

10.4 Section 139 (2) provides for the rotation of auditors, and requires such rotation after five consecutive years, in case of individual, and ten consecutive years, in case of a firm. The third proviso to Section 139 (1) requires for the compliance of the provisions of rotation within three years from the commencement of the Act. Rule 6(2) of the Companies (Audit and Auditors) Rules, 2014, provides that the period for which the auditor has held office prior to the commencement of this Act shall be taken into account for the calculation of the period of five, or ten years, as the case may be. It was suggested to the Committee, that the earlier tenure held by the auditor should not be considered for the purposes of determining the cutoff point for rotation of auditors.

10.5 There was strong representation from some of the affected auditors to either omit the provisions or increase the transition period to five years in view of implementation of Indian Accounting Standards. It was pointed out that the new requirements have been largely accepted by the auditors. **The Committee noted that the three years' transitional period provided to companies was reasonable and required no modification. Further, the intention of the legislation had been accurately translated in the Rules, and for this purpose, a transitional time period of three years had already been given. Hence, the Committee felt that there was no need for any change. However, the Committee, felt that Rule 6 ought to provide clarity that the three years' transition period would be counted from AGM to AGM, and not from the commencement of the Act.**

10.6 It was also suggested to the Committee that private companies ought to be exempted from the provisions governing the rotation of auditors. The Committee noted that only large private companies with a paid up capital of Rupees Twenty Crore or more were required to follow this provision. The threshold has been prescribed keeping in view the importance of such a provision for the purposes of good corporate governance and larger public interest. **The Committee, therefore, decided against increasing this threshold to reduce the coverage of private companies.**

Disqualification of Auditors

10.7 Section 141 (3) (d) of the Act, *inter alia*, provides that a person shall not be eligible for appointment as an auditor of a company, if he, or his relative, or partner, holds any security, or gives a guarantee, or is indebted to the company for specified amounts, etc. Suggestions received by the Committee expressed difficulty in the application of these provisions, as an auditor did not have any control over the financial decisions of his relatives who were not financially dependent on the auditor, like brother, married

sister, or married daughter. It was suggested that, for the purposes of Section 141(3)(d), the term "relative" be restricted only to financially dependent relatives.

10.8 The Committee deliberated on the suggestion and noted that the definition of the term 'relative' had been significantly changed and the coverage reduced to only eight relatives. It was also noted that restricting the coverage to 'financially dependent relatives' in the Indian context would impair the principle of ensuring independence of the auditor. It was deliberated whether the difficulties expressed would be addressed if the thresholds with respect to holding securities, or giving loans etc. under Section 141(3)(d)(i) & (ii), read with Rule 10(2) & (3), are linked to a certain percentage (say two percent) of the total share capital of a company. **The Committee, however, felt that revision in the thresholds would not adequately address the difficulties and instead, for the purpose of section 141(3)(d), the term relative should be suitably modified.**

10.9 Section 141 (3) (i) provides that any person whose subsidiary, or associate company, or any other form of entity is engaged on the date of appointment, in the services prohibited under Section 144, shall be disqualified from being appointed as an auditor. It was suggested during the public consultation that the language of Section 141(3) (i) was such that a firm which was engaged in any of the activities mentioned in Section 144 anywhere in the world, and was rendering any such service to companies other than the auditee company, could not be appointed as an auditor of a company in India, even if such services were rendered to an entity which was totally unconnected with the auditee company. It was requested to provide clarification that the restriction under Section 141(3)(i) would apply, only if the services were rendered to the company that proposed to appoint the auditor. **The Committee noted that any relaxation to section 141(3)(i) read with Section 144 would compromise independence of auditors. However, clarity needs to be provided by suitably amending the clause.**

Powers and duties of auditors and auditing standards

10.10 The first proviso to Section 143 (1) of the Act provides that the auditor of a holding company shall also have the right to access the books of accounts of subsidiary companies, in connection to the consolidation of accounts. In view of this, it was suggested that the auditor of the holding company should also have the right of access to accounts and records of a joint venture/ associate company, also in connection with the consolidation of accounts of such entities with the holding company. **The Committee recommended a change in the first proviso to Section 143 (1) to provide that the auditor of a holding company to have a right of access to the accounts and records of the associate company and joint venture company, whose accounts are required to be consolidated.**

10.11 Section 143 (3) (i) requires the auditor to state in his report whether the company has adequate internal financial controls system in place and the operating effectiveness of

such controls. This has to be read with Section 134 (5) (e) on the Directors' Responsibility Statement which also defines internal financial controls, and Rule 8(5)(viii) of Companies (Accounts) Rules, 2014. Rule 10A of the Company (Audit and Auditors) Rules, 2014, makes the requirement under Section 143(3)(i) optional for FY 14-15 and is mandatory from FY 15-16 onwards. It has been expressed that auditing internal financial control systems by auditors would be an onerous responsibility. It was also expressed that their responsibility should be limited to the auditing of the systems with respect to financial statements only, and that this cannot be compared with responsibility of directors which is wider and can be discharged as they have other resources like internal auditors, etc. who can be used for this purpose. **In this regard, the Committee recommended that the reporting obligations of auditors should be with reference to the financial statements.**

10.12 It was brought before the Committee that a combined reading of the requirements of Section 129(3), 129(4) as well as Sections 143(2) and 143(3) of the Companies Act, 2013, suggests that the Act prescribes the same reporting requirements for the auditors for both the standalone and consolidated financial statements. The application of the auditor's specific reporting requirements under Section 143(3) of the Act for consolidated financial statements may result in practical issues around implementation, particularly in relation to foreign subsidiaries/JVs/associates of Indian Companies to which the Act would not apply and accordingly these provisions shall not be applicable to them. Specific reporting requirements under Section 143(3) of the Act such as "whether proper books of accounts as required by law are being kept"; "consideration of the report of branch auditors"; "disqualification of directors under Section 164(2)"; "any other matter that may be prescribed such as the current report on CARO" may not be practicable for the audit of the consolidated financial statements. In the case of Indian subsidiary, associate and joint venture companies, such reporting requirements would also be covered by the auditor's report on the financial statements of those Indian entities. Further, the requirement to report on internal financial controls is quite exhaustive and application of the same to the consolidated financial statements would significantly enlarge the scope of audit of consolidated financial statements. **In view of this, the Committee felt that it would be sufficient if the auditor expressed a true and fair opinion on the consolidated financial statements and reported on the relevant and significant matters concerning subsidiaries/associates requiring attention of shareholders rather than the entire reporting requirements of Section 143(3) of the Act. The Committee suggested that ICAI may issue a guidance note, consistent with international practices.**

10.13 Section 143(5) provides that in case of a Government company, the 'Comptroller and Auditor General' (***C&AG***) shall appoint the auditor and direct such auditor on the manner in which the accounts are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the C&AG which, among other things, include the directions, if any, issued by the C&AG, the action taken thereon and its impact on the accounts and financial statement of the company. It was suggested that since the directions issued by C&AG involved voluminous

data/information, this ought to be allowed to be filed separately as annexures with the C&AG and need not be made part of a public documents such as an auditor's report. **C&AG was consulted in this matter and it was noted that the directions issued does not entail voluminous information. The Committee, therefore, recommended that no change is required.**

Reporting of Fraud by auditor u/s 143(12)

10.14 Section 143 (12) provides that if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed. **After due consideration, the Committee concluded that the words "is being committed" appearing in the sub-section should be retained, as auditors were responsible for reporting not only frauds that had been committed and had been acted upon by the company, but also frauds that were continuing, but were either not known, or had not been acted upon. The Committee also noted that the Form ADT-4, which specified the manner of reporting fraud, should be modified to allow an auditor to explain his comments.**

Protection to the Auditor

10.15 **Suggestion was made during the consultative process that protection should be given to auditors for liabilities arising on account of reporting on fraud u/s 143 (12). The Committee noted that Section 143 (13) already provided for adequate protection.**

Auditor not to render certain services

10.16 Section 144 prohibits rendering of certain non-audit services directly or indirectly to the auditee company or its holding company or subsidiary company. Clarity was sought on the term 'management services' used in Section 144(h). It was also suggested that restrictions under Section 144(h) and (i) should apply to listed companies and public interest entities only. A view was also given that such services could be allowed subject to certain percentage of audit fees being received by the auditor. In this regard, ICAI had undertaken an exercise to list out such management services. **The Committee felt that the nature of the suggestions and issues being raised are broadly aimed at opening a window for the auditor to have a relationship other than that of an auditor and auditee, and thus may impinge on the independence of the auditor. It, therefore, recommended no change in the provision, or for providing any exemption to any class of companies. However, it was recommended that ICAI, after consulting the Ministry of Corporate Affairs, should come up with a guidance note for auditors.**

Punishment for contravention

10.17 Section 147(5) provides that where an audit is conducted by an audit firm, and it is proved that the partner or partners of the audit firm have acted in a fraudulent manner or abetted or colluded in any fraud, the liability, whether civil or criminal for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally. Rule 9 of the Companies (Audit and Auditors) Rules, 2014, provides that in case of criminal liability of any audit firm, the liability other than fine shall devolve only on the concerned partners, who acted in a fraudulent manner or abetted or colluded in any fraud. **The Committee recommended that the provisions of Rule 9 should be introduced in the Act.**

10.18 With regard to the liability of 'any other persons' in Section 147(3)(ii), the section on 'Penalties' in the report has dealt with this issue in detail (Paragraph 28.17 and 28.18 of Part I of the report).

Audit of items of cost in respect of certain companies

10.19 Attention of the Committee was drawn to the definition of the term 'cost accountant' appearing in Section 2(28) of the Act. It was suggested that this covered only a cost accountant in employment, and not a cost accountant in practice. It was pointed out that as the term cost accountant in practice has also been used, the same might also be defined. **The Committee recommended for change in the existing definition to allow for a cost accountant in practice too.**

10.20 It was pointed out that there is no provision under Section 148 to ensure/check whether a company required to maintain cost records is complying with relevant provisions or not. The disclosures under CARO 2015, it was pointed out, is from the auditor. It was suggested that a disclosure in this regard may be provided in the Board's report. **The Committee suggested that Section 134(3) may provide for such disclosure of compliance.**

10.21 A suggestion was also made to correct the name of the Institute of Cost Accountants of India, which was appearing as the 'Institute of Cost and Works Accountants of India' in Section 148. **The Committee recommended that the change in the name of ICAI in the Act may be made.**

11. APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Residence requirement for Directors

11.1 Section 149(3) requires a company to have at least one Director to have stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. **The Committee felt that it would be more appropriate that**

such a requirement is in relation to the director's stay in India during the financial year and not the calendar year, with the requirement effective after a period of six months from incorporation. It was also pointed out that the requirements for residency in the previous year forces a new subsidiary of a company incorporated outside India to appoint an individual/professional unconnected with the company as Director, which did not aid in any way in Board decision making and many a time leads to unnecessary disputes. **The Committee recommended that it would be more appropriate that the residence requirement is for the current financial year. On the suggestion to align the requirements of residency with that of the Income Tax Act, 1961, the Committee felt that it may not be appropriate as its requirements are more expansive rather than restrictive and would defeat the purpose of prescribing the residency criteria.**

Independent Directors

11.2 The Committee noted that the requirement for a company to have Independent Directors, as prescribed in Section 149, has been included in the Companies Act, 2013 for the first time, though listed companies were required to appoint Independent Directors in accordance with SEBI Regulations since 2000. Section 149(6) prescribed certain qualifications and criteria for the selection of an Independent Director with the sole purpose of securing his independence. Clause (c) of sub-section (6) prescribes that an independent director must not have or had any 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. The Committee observed that even minor pecuniary relationships are covered within this clause (c) even though such transactions may not compromise the independence of the directors, whereas, Regulation 16 of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 prohibits only 'material' pecuniary relationships for disqualifying appointment of persons as Independent Directors. In this regard, the Committee also noted that Dr. J.J. Irani Committee in its report, used the word 'material pecuniary relationships or transactions' and also explained what the term 'material transaction' should mean. International best practices also indicate adoption of such a test. The Committee also noted that the 2010 Standing Committee Report on the Companies Bill also recommended that *Independent Directors should not have any kind of pecuniary relationship at all with the company*. It was also noted that the Standing Committee Report, 2012 had, however, suggested regulatory harmonization between the Companies Act, 2013 and SEBI's listing agreement. **After deliberations, the Committee recommended that, in view of the difficulties being faced, the test of materiality for the purpose of determining whether pecuniary relationships could impact the independence of an individual to be an independent director may be introduced.**

11.3 Section 149(6)(d) further prescribes that a director can be appointed as an Independent Director only if none of his relatives has or had a pecuniary relationship

or transaction of a prescribed value 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. **In this regard, the Committee felt that the scope of the restriction on *"pecuniary relationship or transaction"* entered into by a relative be made more specific by clearly categorising the types of transactions as provided under Section 141(3)(d).**

11.4 While deliberating on the suggestion to allow professional fee not exceeding ten percent of the gross total income from a company in the case of a firm of auditors or company secretaries in practice or cost auditors, on the lines of the provisions in Section 149(6)(e)(ii)(B) for employees, proprietors or partners of legal or consulting firms, if appointed as an Independent Director, **the Committee did not agree to the suggestion since in the case of other professionals as specified in Section 149(6)(e)(ii)(A), it could impact the independence of the professionals.**

11.5 Clauses 149(6)(e) (i), *inter-alia*, restricts the appointment of an individual as an Independent Director in case his relative is or was a KMP or an employee in the company, its holding, subsidiary or associate company during any of the preceding three financial years. **In this regard, the Committee recommended that the scope of the restriction be modified. At the point of time when a director's independence is under consideration, it is likely to be impacted where his / her relative has held a significant position such as a director or key managerial personnel, and not at lower levels during the preceding years. For the preceding years, the restriction should, therefore, be for relatives holding Board or KMP/one level below Board position similar to that contained in Section 141(3)(f). However, it would be possible to influence an Independent Director in case his relative is also working in the situations referred to in the section irrespective of the position he holds. This scope of restriction after appointment should, therefore, be retained as prescribed.**

Nominee Directors

11.6 The Committee noted that whilst provisions relating to *"nominee director"* are provided under Sections 161(3) and 149(7), the term 'nominee director' has been defined only in the explanation to Section 149(7) with specific reference to Independent Directors. **The Committee felt that a definition of 'Nominee Director' should be specifically included as a definition clause.**

Rights of persons other than retiring directors to stand for directorships

11.7 Section 160 provides that an individual (who is not a retiring director under Section 152) shall be eligible to be appointed as a director, if he or some member proposing him as a director, leaves a written notice of candidature at the registered office of the company, at least fourteen days prior to the date of the general meeting along with a deposit of Rupees One Lakh, or such higher amount, as may be prescribed. In this

regard, the Committee noted that the exemptions/modifications have already been notified for wholly owned Government companies, Section 8 companies and Nidhis.

11.8 The Committee noted that, under Section 149(10), an independent director is eligible for appointment for a term of five consecutive years. As per the present provisions, on completion of the tenure, for his re-appointment also, the requirements under Section 160 will need to be complied with, which is unreasonable as such appointments will be recommended by the Board. Similar will be the case for other persons recommended by the Nomination and Remuneration Committee, as also by the Board, to be considered for appointment. **As there are considered recommendations of the Board, NRC, the requirement for a deposit etc. should not be applicable. The Committee, therefore, recommends that in case of appointment of Independent Directors and Directors recommended by the Nomination and Remuneration Committee, the requirements of Section 160 ought to be dispensed with.**

Appointment of additional, alternate and nominee directors

11.9 Section 161(2) deals with the appointment of a person as an alternate director by the Board. The Committee noted that this Section does not prohibit the appointment of an existing director as an alternate director and that same individual acting as a director and alternate director for some other director of the same company leads to conflict of interest and also ambiguity in the calculation of quorum. **The Committee recommended that there should be a prohibition in the Act for appointing a director of a company as an alternate director in the same company.**

11.10 Section 161(4) authorises the Board of a public company to fill a vacancy caused by vacation of the office of any director before the expiry of his term, however subject to the AOA of the company. **The Committee was of the view that this right should be available to the Boards of private companies as well.**

Number of directorships

11.11 Section 165 prescribes the maximum number of companies in which a person may hold office as a director, including any alternate directorship, that is, not more than 20 companies. While comments were received during the public consultation process that directorship in a subsidiary by a director of the holding company should not be counted while calculating the maximum number prescribed, the **Committee felt that the prescription of maximum number of directorships should not be diluted as the subsidiary would also be as important as the holding company for the time and attention of the Director.**

11.12 The Committee also deliberated on the suggestion for excluding directorship in a dormant company for the purposes of the limit under Section 165 and felt that dormant companies can be excluded from the ceiling. Such companies would be

inactive and having insignificant transactions and therefore not impacting on the temporal resources of the Director and that in case such an exemption is not given, persons would be dis-incentivised from accepting the position of a director in such companies. **The Committee, therefore, recommended for excluding the directorship in a dormant company for reckoning the limit.**

Disqualifications from appointment as, and vacation of office of director

11.13 Section 167(1)(a) dealing with vacation of office by a director triggers an automatic vacation of office of the director if he incurs any of the disqualifications stipulated under Section 164. Section 164(1) provides for disqualifications which are incurred by a director in his personal capacity such as being an undischarged bankrupt, of unsound mind, convicted of an offence etc., and Section 164(2) lists out disqualifications related to the company such as non-compliance of annual filing requirements, etc. The Committee acknowledged that this Section created a paradoxical situation, as the office of all the directors in a Board would become vacant where they are disqualified under Section 164(2), and a new person could not be appointed as a director as they would also attract such a disqualification. **In this regard, the Committee recommended that the vacancy of an office should be triggered only where a disqualification is incurred in a personal capacity and therefore, the scope of Section 167(1)(a) should be limited to only disqualifications under Section 164(1).**

11.14 **The Committee also recommended that a disqualification under Section 164(2) be only applicable to a person who was a director at the time of the non-compliance, and in case of a continuing non-compliance, there should be a period of six months' time allowed for a new Director to make the company compliant.**

11.15 The Committee felt that the proviso to Section 164 (appearing under sub-section (3) of the section) creates an inconsistent situation when read with the proviso to Section 167(1)(f), as these provide for a person to be appointed as a Director if he has been convicted/disqualified by a Court but has an appeal preferred in a Court whereas for a sitting Director, it does not allow such consideration and he has to vacate office on conviction, even if an appeal had been preferred against such conviction and sentence. **The Committee, therefore, recommended that such inconsistency be corrected and in case of requirement for vacation of office of a Director, it should not take effect until the appeals are disposed off, while in case of disqualification, it is not required to provide for period of pendency of appeal.**

11.16 **The Committee considered and did not agree to the suggestion to amend Section 167(1)(h)**, because in the Committee's opinion, the provision was clear, and referred to an automatic vacation of the office of a Director where a person was appointed as such a Director, by virtue of his holding any office, or other employment in the holding, subsidiary or associate company.

Resignation of Director

11.17 The proviso to Section 168(1) requires that a resigning Director should file a copy of his resignation along with the reasons for resignation with the Registrar, within thirty days. The intent is to address likely misuse by some companies of the Director's name after his resignation. **However, since majority of the companies will not fall in this category, the Committee felt that it would be appropriate if an option of intimating such resignation to the Registrar was given to the Director instead of making it mandatory. The requirement of mandatory filing by the company in the prescribed Form should continue. This would also facilitate foreign Directors**.

11.18 **The Committee considered and recommended that necessary flexibility may be provided in the Act to do away with the requirement of DIN or provide an option to shift to AADHAAR or any other universally accepted identification number at a future date.**

12. MEETINGS OF BOARD AND ITS POWERS

Participation through video-conferencing

12.1 The participation of directors, through video-conferencing, is governed by Section 173(2). The proviso to the sub-section also delegates the authority to prescribe matters that may not be dealt with through video conferencing to the Central Government. Accordingly, Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 specifies matters which shall not be dealt with in any meeting held through video conferencing or other audio-visual means. The Committee was of the view that the requirement completely bars participation in these specified matters of the Board meetings through video conferencing, which unnecessarily restricts wider participation even if the necessary quorum as specified in Section 174 is physically present. **The Committee, therefore, recommended that flexibility be provided to allow participation of Directors through video conferencing, subject to such participation not being counted for the purpose of quorum. However, such Directors, though not counted for the purposes of quorum, may be entitled to sitting fees.**

Interested directors: exemptions from section 174(3) to private companies

12.2 Private companies have been exempted from the prescription under Section 184(2) barring participation of interested directors in Board meetings. **The Committee recommended that since Section 184(2) and Section 174(3) are related sections with respect to interested directors, related exemption under Section 174(3) to enable such participating interested Directors for the purposes of quorum,**

should be given to private companies using the power to exempt under Section 462 of the Act.

Audit Committee

12.3 The audit committee under Section 177(4)(iv) is required to approve or modify transactions of the company with related parties. The suggestions received appear to imply a lack of clarity among stakeholders on the extent of responsibility entrusted to the Audit Committee including on whether it had independent approving powers or has to pre-approve and give its recommendations to the Board. The Committee observed that the Audit Committee has been specifically mandated to approve or modify all related party transactions. This has to be, however, read harmoniously with the provisions of Section 188, which entrust the Board and the shareholders with the responsibility of approving specified related party transactions. The Committee further observed that while some of these transactions, which are not related party transactions, they would be within the purview of the management/executive, and some would also fall within the responsibilities of Board. The Committee also referred to the recommendations of the J J Irani Committee that "*all matters relating to appointment of auditors, examination of the auditor's report along with financial statements prior to consideration and approval by the Board, related party transactions, valuations and other matters involving conflicts of interest should also be referred to the Board only through the audit committee*", and the provisions specifically requiring the prior approval of the Audit Committee under SEBI Regulations. Internationally also, the trend is to assign approval of such transactions to Committees consisting of disinterested members of the Board, etc. **The Committee recommended that the existing requirement for the Audit Committee to pre approve all related party transactions, subject to approval by Board or shareholders as required under Section 188 should continue. For transactions not covered under Section 188, the Audit Committee may give its recommendation to the Board in case it is not approving a particular transaction.**

12.4 The Committee received a suggestion to allow ratification by the Audit Committee within three months from the date on which such transaction was entered into, without obtaining the prior approval of the Audit Committee, inadvertently. **The Committee observed that subject to safeguards, it would be similar to the flexibility provided under Section 188 to the Board and the shareholders. However, concerns of possible misuse of this flexibility would need to be suitably addressed by prescribing an upper threshold of Rupees One Crore on such transactions**.

12.5 **In addition, the Committee recommended that, as provided in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 related party transactions between a holding company and its wholly owned subsidiaries need**

not require the approval of the Audit Committee for transactions not requiring Board approval under section 188, and Section 177 be amended accordingly.

12.6 The Committee also discussed the applicability of corporate governance requirements such as Section 177, 178, etc. to dormant companies having no business activities or employees. **In this regard, the Committee observed that whilst it is unlikely that these provisions are applicable to dormant companies, a clarification be issued stating that dormant companies are exempt from the requirement to constitute Audit Committee.**

Nomination and Remuneration Committee

12.7 As per the current provisions of Section 178(2), the Nomination & Remuneration Committee (NRC) is required to carry out evaluation of every director's performance. It is felt that, as Independent Directors are required to carry out review of performance of non-Independent Directors and the Board as a whole separately as per Schedule IV requirements, the Board is also required to carry out its evaluation (refer Section 134(3)(p)), carrying out another set of performance evaluations by the Nomination and Remuneration Committee is avoidable. **The Committee recommends that the NRC should instead 'prescribe a methodology to carry out evaluation of performance of individual Directors, Committee(s) of the Board and the Board as a whole', and the Board should carry out the performance evaluation as per the methodology either by itself, by the NRC or by an external party as laid down in the methodology. The performance review by the Independent Directors, as presently required in Schedule IV, may also form part of the methodology. Schedule IV may be amended accordingly. The provision may be reviewed after three years.**

12.8 The proviso to Section 178(4) prescribes that the remuneration policy should be disclosed in the report of the Board. **In this regard, the Committee felt that it would be sufficient for the company to place the remuneration policy on the website of the company, if any, and to disclose only the salient features of the policy in the Board's report along with the web link/address.**

12.9 The Committee also considered the suggestion to modify Section 177 and 178 to provide exemptions to private companies, which have listed their debt instruments as per SEBI Debt Listing Regulations. **The Committee recommended review of the existing thresholds, and thereafter consider granting exemptions under Section 462, if required.**

Filing of board resolutions

12.10 Section 179(3) read with Section 117 prescribe filing of board resolutions with the ROC in the prescribed form MGT 14. Section 117(3)(g) has already been amended to restrict availability of such documents for public inspection and provides that private

companies are exempted from this filing requirement. The comments received in the public consultation process suggest that the requirements of filing MGT-14 need to be relaxed on account of confidential Board resolutions becoming public which has already been addressed by the Amendment. **The Committee felt that adequate publicity of the steps taken within MCA21 to ensure that these documents are not freely accessible would allay the concerns of stakeholders.**

Restrictions on powers of Board

12.11 The Committee while dealing with the powers of the Board to borrow money under Section 180(1)(c) also referred to Section 293(1)(d) of the Companies Act, 1956. **After due deliberation, it recommended that 'securities premium' be also included for the purpose of recognising the borrowing limits, along with the company's paid-up share capital and free reserves, since it was a part of the capital of a company.**

Prohibitions and restrictions regarding political contributions

12.12 The Committee deliberated on the recommendations made by Law Commission of India in its 255th Report for amending section 182 of the Act (Prohibitions and restrictions regarding political Contributions) to empower a larger group of people, such as the company's shareholders, in deciding how to use the funds of a company for political purposes. **The Committee felt that a wider consultation with industry chambers, political parties and other stakeholders should be taken up by the Ministry before taking a final decision on changes recommended in the 255th Report.**

Disclosure of Interest by Director

12.13 **The Committee while deliberating on the suggestions to prescribe a limit of thirty days under Section 184(1) for a Director to disclose any change in his interest, instead of at the first Board meeting after such change, did not agree to the suggestion, as in its opinion it could lead to gaps and hence, might not be desirable.** It also observed that the requirement for disclosure in body corporates under Section 184(2) of holdings by one or more Directors, was the same as in the Companies Act, 1956; and that the suggestion to change this provision due to difficulties in implementation was not acceptable. **The Committee further recommended that 'body corporates' be included under the ambit of the provision of 184(5), to align it to Section 184(2), where the words 'body corporate' have been used to evaluate the interest of a Director.**

Loans to Directors, etc.

12.14 The Committee acknowledged that there are difficulties being faced in genuine transactions due to the complete embargo on providing loans to subsidiaries with common directors, but at the same time there is no doubt that the route has been misused in the past for siphoning of funds by controlling shareholders. **The Committee noted that limited relaxation has already been provided to private companies not having other body corporates invested in them and therefore any further relaxation should be subject to greater safeguards. The Committee, therefore, recommended, that it may be considered to allow companies to advance a loan to any other person in whom director is interested subject to prior approval of the company by a special resolution. Further, loans extended to persons, including subsidiaries, falling within the restrictive purview of Section 185 should be used by the subsidiary for its principal business activity only, and not for further investment or grant of loan.**

12.15 The Committee also felt that there was no rationale as to why the interest rate prescribed in the proviso (b) to Section 185(1) should not be aligned with the rate prescribed under Section 186(7). **Thus, it recommended that this be aligned, keeping in mind further changes suggested to the provision, in the succeeding paragraphs dealing with other issues in Section 186.**

Loan and Investment by Company

12.16 The Committee felt that the layering restrictions on investment companies under Section 186(1) may become too obtrusive and impractical in the modern business world. Regulatory concerns arising out of earlier scams were also noted. The Committee noted that while companies that became a subsidiary of another investment company due to any corporate action such as the non-subscription of a rights issue from the layering requirements, etc. could be exempted, it would not address the core issue that there may be several legitimate business justifications for use of a multi layered structure, and such restriction hampers the ability of a company to structure its business. **The Committee felt that sufficient safeguards have been built into the oversight mechanism of SEBI and Stock Exchanges, and the recommendations on Beneficial Ownership register requirements should dispel the regulatory concerns. Keeping this in mind, the Committee recommended that the restrictions on layering as contained in the section be omitted. Further, 'principal business' of an investment company may be clarified in the Explanation below sub-section (13) of Section 186 on the lines of RBI's stipulations.**

12.17 **The Committee further recommended that the provisions of Rule 13(1) of the Companies (Meetings of Board and its Powers) Rules, 2013 relating to aggregation of loans and investments for the purpose of calculating the limits**

under Section 186(2) might be provided in the Act itself and consequential changes in the Rules may also be made.

12.18 The Committee felt that the occurrence of the word 'person' in sub-section (2) of Section 186 unwittingly seems to cover employees, and suggests that it would be appropriate to clarify the usage of the word 'person' in that sub-section, and that the employees given loans as a part of conditions of service or pursuant to any approved scheme for all employees by the company, should not, unwittingly, be covered under this Section, as this Section was meant to cover inter-corporate loans. **The Committee, therefore, recommended for the insertion of an 'explanation' to clarify the exclusion of employees from the requirement of the sub-section/clause.**

12.19 The Committee also deliberated on the suggestion to exempt the application of Section 186, except sub-Section (1), to wholly owned subsidiaries and **suggests that the provisions of Rule 11 with regard to wholly owned subsidiaries may be brought into the Act**. **Further, consequential changes in the Rules may also be made in this regard. However, the Committee did not agree to the suggestions that interest free loans may be specifically allowed to wholly owned subsidiaries.**

12.20 The Committee considered the suggestion that it may not be appropriate to apply Indian interest rates bench marks prescribed under Section 186(7) to loans given by companies to foreign entities. **It felt that the company should be looking at the effective yield against the loan given by it and such yield, irrespective of whether a loan is given to a company incorporated outside India, should not be less than the prescribed rate under Section 186(7).**

12.21 The Committee noted that while Section 186(11)(b)(iii) provides exemption to investment in shares allotted in pursuance to rights issues by Indian companies under Section 62(1)(a) of the Act, **similar exemption be also extended to investments in rights issues made by body corporates (companies incorporated outside India). The exemption provision may be aligned with Section 372A(8) of the Companies Act, 1956 in this regard. Further, the Committee recommended that the Removal of Difficulty Order for Section 186(11) with regard to Insurance and Housing finance Companies, etc. issued in January 2015, subject to legal clarification, may be included in the sub-section itself through an amendment. Language of Section 372A(8) of the Companies Act, 1956 may be used.**

Related party transactions

12.22 **The Committee noted that the circular no. 30/2014 issued by the MCA, clarifying requirements of second proviso to Section 188(1) had been misinterpreted, and hence, should be withdrawn. Further, as all parties in case of joint ventures and closely held public companies may be related parties, not allowing them to vote**

may be impractical and such cases may be specifically excluded from the requirements of the second proviso.

Prohibition on forward dealing and Insider trading of securities

12.23 The Companies Act 2013 vide Sections 194 and 195 restrict forward dealing by directors and KMPs and insider trading by any person including directors and KMPs respectively. The aforesaid provisions are seemingly applicable in respect of both private and public companies. Prima facie, Section 195 seems to be applicable to private companies and restricts insider trading. However, it can be argued that since the securities in private companies would not be marketable, as a market in securities in the absence of an alternative market platform would mean a stock market on which securities of different companies are listed for the purpose of trade, they would not qualify as securities within the meaning of Section 195, and thus would exclude private companies from the ambit of the said provision. On the same basis, it would be unjustified to apply the insider trading regulations to private companies. It can also be argued, on the basis of legislation in some jurisdictions, that there are valid reasons for including the insider trading prohibitions in company law in addition to securities law, and these flow from the fiduciary responsibilities of the directors who may abuse their position and use confidential information, which have come to them through their position, for personal profit and not act in the best interests of the company. However, insider trading prohibitions can be problematic in the context of the rights of first refusal that are frequently contained in the shareholders' agreements of private companies. **The Committee deliberated on the issues involved and noted that SEBI regulations are comprehensive in the matter (and also apply to companies intending to get listed), and in view of the practical difficulties expressed by stakeholders, sections 194 and 195 may be omitted from the Act.**

13. APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

Disclosure of remuneration of directors

13.1 The J.J. Irani Committee had recommended comprehensive revision of the provisions of the Companies Act, 1956, relating to the payment of managerial remuneration, emphasising more on disclosures (both on quality and quantity), rather than providing limits or ceilings on managerial remuneration. SEBI, in its 'Consultative Paper on Corporate Governance Norms in India', noted that the remuneration paid to managerial personnel of companies in India, in certain cases, was much higher than the remuneration paid to their foreign counterparts. The paper also recommended the inclusion of disclosure requirements mandated under the Companies Act to be incorporated in the Listing Agreement.

13.2 The disclosure requirements under the Act include the obligation under Section 197(12), on a listed company, to disclose in the Board's report, the ratio of the

remuneration of each director to the median employee's remuneration. In the process of public consultation, stakeholders termed this requirement to be tedious, and an incorrect comparison, especially in companies having a large workforce. Accordingly, it was suggested that this requirement be changed to either one of weighted average, or a comparison limited to the top three layers of the employees. However, it was felt that any change to an alternative will go against the rationale behind the disclosure requirement. There was no difficulty in reporting the number by itself; and it being an effective tool of measuring the spread between the highest and the lowest paid employees, it would serve a purpose of ensuring some check on managerial remuneration through debate. **The Committee, therefore, recommended that the disclosure requirement may not be diluted.**

Limits on remuneration

13.3 Section 197 prescribes that the total managerial remuneration payable by a public company shall not exceed eleven per cent of the net profits of that company and such limits may be exceeded with the approval of the shareholders and the Central Government. Section 197(3) provides that if a company has no profit or inadequate profits, the company shall not pay remuneration (excluding any sitting fees or other fees decided by the Board, to a prescribed limit) to its directors except in accordance with Schedule V, and in case it is not able to comply with the requirements, prior approval of the Central Government is required.

13.4 The Committee noted that the limits on remuneration payable by companies having inadequate/no profits prescribed in Schedule V to the Act, though increased as compared to the Companies Act, 1956, were still very low and insufficient to attract good managerial talent for turning around of such companies. Further, a restrictive regime of seeking Central Government and shareholders' approval (by way of special resolution) for the payment of remuneration to Managerial Personnel by companies having inadequate/no profits would, apart from causing delays, also result in talented professionals moving away from such companies in search of higher assured compensation.

13.5 Currently, the law in countries like the US, the UK and Switzerland, does not require the company to approach government authorities for approving remuneration payable to their managerial personnel, even in a scenario where they have losses or inadequate profits and empowers the Board of the companies to decide the remuneration payable to Directors. **The Committee, therefore, recommended that the Schedule may be amended to substitute the requirement to pass a special resolution by shareholders with an ordinary resolution, in cases where the managerial person was not a promoter, and a professional with domain knowledge / relevant experience; and was not related to any director or promoter of the company and did not hold more than two per cent of the paid-up equity share capital of the company or its holding company. In other cases, however, the requirement for special resolution of the shareholders should be retained. The Committee further**

recommended that the limits of yearly remuneration prescribed in the Schedule be enhanced. Further, the Committee also recommended that the requirement for government approval may be omitted altogether, and necessary safeguards in the form of additional disclosures, audit, higher penalties, etc. may be prescribed instead.

13.6 **The Committee did not agree with the suggestion for changing the provision relating to deduction of remuneration of 'directors' to remuneration of 'managerial personnel' under Section 197(1) and Section 198(4)(b) of the Act.** The principle has not undergone any change from the Companies Act, 1956, and such change might not be desirable.

Calculation of profits

13.7 **The Committee examined Section 198 as to whether it has outlived its utility** in current times where the Accounting Standards prescribe a robust framework for the determination of yearly profit or loss for the company, and the possibility of using the net profit before tax as presented in the financial statements, for basing the determination of managerial remuneration. Alternative formulations were considered, but found to be more complex, and further the present formulation is well accepted. Therefore, **no change, other than on account of requirement of IndAS, was recommended.**

13.8 Section 198(4)(l) mandates the deduction of 'brought forward losses' of the company while calculating the net profit, for the purpose of computing managerial remuneration in the subsequent years. However, the clause did not provide for the deduction of brought forward losses of the years prior to the commencement of the Act, which may be an inadvertent omission. **The Committee agreed with the suggestion, and recommended the amendment of Section 198(4)(l), to include brought forward losses of the years subsequent to the enactment of the Companies (Amendment) Act, 1960.**

13.9 Section 198(4) requires that while calculating profits for managerial remuneration, the profits on sale of investments be deducted. The Committee agreed to the argument that Investment Companies, whose principal business was sale and purchase of investments, would not be using the correct profit figures, and may need to comply with the requirements of Schedule V to pay remuneration to its managerial personnel. **It was recommended, that specific provisions for such companies be incorporated in the Act.**

Key Managerial Personnel

13.10 The J.J. Irani Committee observed that "*stakeholders / Board look towards certain key managerial personnel for formulation and execution of policies.*" It felt that such key managerial personnel must be recognised by the law, along with their liability, in appropriate aspects of the legislation. Section 203, read with the corresponding Rule

requires every listed company, and every other public company having a share capital of Rupees Ten Crore or more, to have a whole time managing director or CEO or a manager, Chief Financial Officer and Company Secretary (companies having a share capital of Rupees Five Crore or more), who all have been named as 'key managerial personnel'. **The Committee opined that while the current provisions limit the officers who can be designated as key managerial personnel**, **flexibility would be desirable for companies to designate other whole time officers of the company as key managerial personnel. The Committee further recommended that the Board can be empowered to designate other whole time officers of the company as key managerial personnel and that the definition of key managerial personnel in Section 2(51) may also be accordingly modified.**

13.11 At the same time, **the Committee also recommended enabling a whole time key managerial personnel, holding necessary qualifications, to hold more than one position in the same company at the same time**, so as to reduce the cost of compliance for such companies, and also to utilise the capacities of these officers to the optimum level.

13.12 It was suggested during the public consultation process, that an enabling provision for a company secretary, Chief Financial Officer, Chief Executive Officer to file his resignation with the Registrar, on lines similar to that for a Director under Section 168, may be provided for. **As information about the appointment of these key managerial personnel is required to be filed with the Registrar, it may be argued that the registry and the public should be updated through filing of change due to resignation. The Committee, therefore, recommended that a company should also file information (similar to that for auditors) on the resignation of any of the KMPs in the Registry.**

13.13 Section 203(3) provides that whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. The Committee noted that Section 13 of the General Clauses Act, 1897 provides that 'singular' shall include the 'plural', unless there is anything repugnant in the subject or the context. Thus, whole-time key managerial personnel may hold office in more than one subsidiary company as per the present law. **Accordingly, the Committee recommended no change in this regard.**

13.14 Presently Schedule V requires that a Managing Director/Whole Time Director should have been resident in India for previous one year. The requirement prevents a foreign national to be a Managing Director/Whole Time Director unless he has stayed in the country for a year. **The Committee recommends that, in order to draw on the larger pool of resources and increasing mobility of professionals/talent worldwide, this requirement may be done away with subject to satisfaction of other applicable regulatory clearances.**

14. INSPECTION, INQUIRY AND INVESTIGATION

14.1 Chapter XIV of the Act provides for the requirements with respect to enquiry or inspection of books of accounts by the Registrar/Inspector and with respect to an investigation by the Inspector. The Committee examined the suggestion pertaining to Section 223, which provides for an Inspectors' report, and noted that the legislative intent under Section 223 is to cover reports with respect to an investigation of companies only and no other reports. Sub-Section (3) of this Section provides that a copy of the report made under sub-section (1) may be obtained by making an application in this regard to the Central Government. Therefore, as per these provisions, any person can obtain a copy of the report referred to in Section 223. The concern expressed in the suggestions that enquiry and inspection reports must not be made available on application; was also looked into by the Committee. **It was noted that the intention of the provision was to cover both the interim and final reports. The interim reports also contain conclusive findings. The reports are made available to the members of the company and other body corporate, and also to any other person, whose interests as a creditor of the company and other body corporate appear to the Central Government to be affected (in line with Section 241 of the Companies Act, 1956), and therefore, it would not be justifiable to deny them access to these reports.**

15. COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

Purchase of Minority Shareholding

15.1 Section 236 of the Act deals with the purchase of minority shareholding. This provision refers to the acquisition of shares of a company and contemplates a situation where an acquirer, or a person acting in concert with such an acquirer, becomes a registered holder of ninety percent or more of the issued equity share capital of a company. This provision prescribes that such an acquirer shall notify the company of his intention of buying the remaining equity shares. While Sections 236 (4), 236 (5) and 236 (6) make a reference to a "transferor company", the term 'transferor company' has not been defined in the section itself. The Committee felt that the use of the term 'transferor company' in the said Section 236 without providing for a context may ostensibly include even transfer of assets by a company, thereby including amalgamations and mergers within the ambit of this provision, which did not appear to be the intention. **Accordingly, the Committee recommended that the references to the phrase 'transferor company' in Section 236, may be modified to a 'company whose shares are being transferred' or alternatively, an explanation be provided in the provision clarifying that Section 236 only applies to the acquisition of shares.**

16. PREVENTION OF OPPRESSION AND MISMANAGEMENT

16.1 The Committee **did not recommend any changes to Chapter XVI of the Act**.

17. REGISTERED VALUERS

17.1 Many of the suggestions on Chapter XVII (which contains only 1 Section viz. Section 247) related to the commencement of the Chapter/Section along with the relevant Rules. **The Committee felt that the provisions have far reaching ramifications and the Government may decide on the framework after taking into account views of all stakeholders.**

17.2 Attention of the Committee was also drawn to Section 247 (2) (d) of the Act, which provides that the valuer shall 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. The Committee agreed that it was not fair to presume that the valuer would be interested for an indefinite period after the completion of the valuation of the assets. **The Committee deliberated on the matter and felt that a valuer ought to be disqualified for valuing any asset, if he had any interest in such an asset, at any time during three years prior to his appointment, and three years after his cessation as a valuer.**

18. REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

18.1 The Committee **did not recommend any changes to Chapter XVIII of the Act**.

19. COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

Companies Authorised to Register

19.1 Section 366 of the Act provides for entities such as partnership firms, limited liability partnerships, cooperative societies, or other business entities formed under any other law, to be registered as a company under the Act, provided, inter alia, that such an entity has seven or more members. It was suggested to the Committee that since various entities referred to in the Section (which can be registered under the Act) could be formed even with less than seven persons, the above referred restriction for the entities to consist of seven or more members would need to be reviewed to allow registration of such entities, consisting of two or more members. Comparable provisions were also found in the English Companies Act, 2006, allowing for the formation of companies with less than seven members. **The Committee**

recommended for amending Section 366(2) of the Act, to allow for such conversions to companies from partnership firms, etc. with 'two or more members', provided that in case of less than seven members, the conversion would be to a private company.

19.2 It was also pointed out that the existing Rules framed under Section 366 do not allow registration of partnership firms (registered under Partnership Act, 1932) as companies. It was pointed out that this was permitted under the earlier Act and should be allowed under new Act also. **The Committee recommended for changes to be made in the Rules to allow for registration of partnership firms (dealt with in Part II of this report), as no change in the Act was needed.**

20. COMPANIES INCORPORATED OUTSIDE INDIA

Application of Act to Foreign Companies

20.1 Section 379 of the Act provides that where not less than fifty percent of the paid-up share capital of a foreign company is held by one or more citizens of India, or companies/body corporates incorporated in India, such companies shall comply with the provisions of Chapter XII, and other provisions of the 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. It was put to the Committee to clarify the position on the applicability of the provisions of Chapter XXII, to those body corporates that were covered within the definition of Section 2(42), but did not fall within the category indicated in Section 379 of the Act.

20.2 **The Committee felt that as was clearly provided under Section 591(1) of the Companies Act, 1956, it may be specifically provided that the remaining body corporates as covered within the definition of foreign company, would need to comply with the provisions of Chapter XXII, as applicable. In this regard, necessary amendment in Section 379 was also recommended with respect to the threshold on transactions, etc. conducted by such companies, to be prescribed in the relevant Rules (refer paragraph 1.10 of Part I of the report also).**

21. GOVERNMENT COMPANIES

21.1 The Committee **did not recommend any changes to the provisions of Chapter XXIII.**

22. REGISTRATION OFFICES AND FEES

22.1 The Committee noted that most of the suggestions received under Chapter XXIV related to matters on the filing of various forms etc. in the Registry. These **were recommended to be addressed through modifications in the Rules/forms etc.**

Fee for filing etc.

22.2 Section 403(1) allows a company to file documents belatedly up to two hundred and seventy days from the date on which such document becomes overdue for filing (i.e. after providing for the prescribed period for filing as per the concerned provision) by paying additional fee and without attracting liability for prosecution/penal action. Delayed filings beyond two hundred and seventy days can still be done with the maximum additional fee but the company is also liable for prosecution/penal action. This framework has been specifically mentioned for filings under Section 89 (filing of declaration of beneficial interest), Section 92 (filing of Annual Return), Section 117 (filing of resolutions and agreements), Section 121 (AGM report for listed companies), Section 137 (filing of financial statements) and Section 157 (company to inform DIN of directors to ROC). It is, therefore, being viewed that in respect of delay in filings under any other section (other than the six mentioned above), the company will have to obtain condonation of delay under Section 460(b) and is not eligible for immunity from prosecution/penal action for any delay if condonation is not obtained. It is observed that the provision, coupled with low filing fees, has resulted in a low level of annual statutory filings as compared to previous years. **The Committee, therefore, recommended for necessary changes to be made in the Act to bring clarity that the requirement of filing with additional fee for 270 days under first proviso to section 403 is applicable only to the six sections. Further, additional fees should be enhanced substantially (by up to 10 times of current prescribed amount) to deter non-compliance, and if a company files a document within the original period, not including the period allowed with additional fees, should be reduced to zero. A separate requirement for additional fees for the sections other than six sections may also be prescribed (refer paragraph 28.10 of Part I of the report also).**

22.3 **The Committee also felt that it may be clarified (in the Rules) that, irrespective of the delay, obtaining condonation of delay is not a pre-requisite to filing a document. It is a separate process under section 460 in respect of all belated filings (refer paragraph 18.2 of Part II of the report also).**

23. COMPANIES TO FURNISH INFORMATION OR STATISTICS

Power of Central Government to direct Companies to Furnish Information or Statistics

23.1 The Committee noted that this chapter contained only one provision, viz., Section 405. The suggestions made under this Section/Chapter related to requiring companies to file returns in respect of credits taken by them from unsecured creditors, and salaries paid by companies to each of its employees. **The Committee felt that this issue had already been dealt with, and as such, no changes were warranted in the Act/Rules.**

24. NIDHIS

24.1 The Committee did not receive any suggestion for change in the provisions of Section 406 of the Act, under which Nidhis are regulated under the Act. However, the Committee felt that the earlier provisions under the Companies Act, 1956, which required the approval of the Central Government for declaration of a company as 'Nidhi', were more appropriate since they provided a centralized and more restrictive framework for regulation of such entities. **It was also noted that since the nature of business of Nidhis were similar to those of NBFCs, it was more appropriate to regulate them at a central level in the Ministry, or through one or more Regional Directors.**

25. NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL

25.1 The Committee noted that after the Honourable Supreme Court's Order of May, 2015, the Government had initiated the process of constituting the 'National Company Law Tribunal' and the 'National Company Law Appellate Tribunal'. **The Committee felt that changes in the Companies Act, 2013, in Sections 409(3)(a) & (e), 411(3) and 412(2), as directed by the Honourable Supreme Court, should be included in the Act.**

26. SPECIAL COURTS

26.1 The Committee noted that the establishment/designation of Special Courts under the Act would result in faster prosecution of defaulting companies. The changes made through the Companies (Amendment) Act, 2015 have also been noted by the Committee. **The Committee recommended the early establishment/designation of the Special Courts. It may also be considered whether Special Courts at the subordinate level may also be established, in addition to the Sessions Judge or Additional Sessions Judge.**

Offences to be non-cognizable (Section 439)

26.2 Section 439 (2) of the Act provides that "*No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.*" **The Committee observed that sub-section (2) does not have a provision for complaints to be filed by a person who is a member of a company without any share capital. Therefore, to include such persons within the ambit of Section 439, the words 'or member' should be inserted after the term 'shareholder' in sub-section 2.**

Special Courts

26.3 The amendment in Section 435, through the Companies (Amendment) Act, 2015, empowered the Special Courts to adjudicate offences punishable with imprisonment of two years or more only. **The Committee recommended, that a consequential change in Section 441(6) ought to be made to refer to Special Courts, as well as other courts with whose permission the compounding may be allowed.**

27. MISCELLANEOUS

Protection of Action taken in Good Faith

27.1 Suggestions were received for amending Section 456 of the Act, to allow for rectification of mistakes by companies, especially during the filing of various forms. **It was noted by the Committee that the provision is for protecting action taken by government servants in administration of the Act.**

28. PENALTIES

28.1 The Act aims to provide for a regime of offences and penalties which is commensurate to the gravity of the offence. During the public consultation, concerns were raised in respect of the punishments for certain sections under the Act being disproportionate, and thus, the Committee has attempted to resolve the anomalies by following principles of law, analysing international best practices and by also taking guidance from the previous committees on this aspect.

28.2 The Committee noted that J.J. Irani Committee Report had recommended that "*the Companies Act may lay down the maximum as well as minimum quantum of penalty for a particular offence, however the Act should also provide that while levying a particular quantum of penalty, the levying authority should also take into consideration the size of company, nature of business, injury to public interest, nature and gravity of default, repetition of default, etc*.". The Standing Committee on the

Companies Bill, 2009 in its twenty first report had also stated that "*transgressions, purely procedural or technical in nature, should be viewed in a broader perspective, while serious non-compliance or violations including fraudulent conduct should invite stringent /deterrent provisions like imprisonment*". There is a varied experience internationally, where a separate and a more liberal penalty and compliance regime has been laid down for companies which are small in size in terms of their business though a differentiated treatment with a higher liability for statutory annual filings is also seen in some jurisdictions, for example UK, presumably to ensure a high rate of compliance.

28.3 The Committee observed that small businesses need to be encouraged by laying down a more liberal regime and wherever disproportionate punishments are proposed these need to be reduced. Further, the Committee felt that the procedural and technical non-compliances should attract less stringent punishments as compared with violations for substantive requirements. The Committee noted that the Act provides a duration of up to 300 days for companies to comply without the fear of prosecution in as many as six major compliance requirements. The Committee has given its recommendations on the suggestions received keeping these principles in mind but also keeping in mind the requirement for improving the low compliance levels, especially amongst private companies.

28.4 **The Committee further observed that the extension of the liberal regime to private companies with no significant public interest would be ideal. However, it is difficult to define public interest for this purpose in a holistic manner and limiting it to private companies having debt above a threshold may leave out a large number of companies. Also the Act provides for various other requirements (like appointment of IDs, vigil mechanism, auditor rotation etc.) which are applicable to companies depending upon their paid-up capital, turnover, debts etc. Recognition of the concept of public interest entity may require review of such thresholds/requirements and it may, therefore not be appropriate to provide a specific definition for public interest entities. However, in case of penal provisions which provide discretion to courts on imposing fines/imprisonment (e.g. in cases where the penal provisions provide for fine or imprisonment up to certain amount/term) the Courts/Tribunal could be empowered to consider certain factors before determining the fine/imprisonment. These factors could be size of the company, nature of business, injury to public interest, nature/gravity of default and repetition of default. Such a general provision could be inserted in the Act in the Miscellaneous Chapter.**

Annual Returns (Section 92) and Financial Statements (Section 137)

28.5 Section 92 of the Act prescribes that a company is to file a copy of its annual return within sixty days from the date of the annual general meeting, with the Registrar. Sub-

section (5) prescribes the punishment for not filing the annual returns within the period prescribed under Section 403 (i.e. three hundred thirty days from the date of the annual general meeting). The punishment prescribed is fine of not less than Rupees Fifty Thousand but which may extend to Rupees Five Lakh for the company, and imprisonment for a term which may extend to six months or fine not less than Rupees Fifty Thousand and up to Rupees Five Lakh or both for the officer in default. Similarly, under Section 137 of the Act, for non-filing of financial statements, the punishment prescribed is fine of Rupees One Thousand per day for the period during which the failure continues, but which shall not exceed Rupees Ten Lakh for the company, and imprisonment for a term which may extend to six months or fine not less than Rupees One Lakh but which may extend to Rupees Five Lakh or both for the officer in default.

28.6 As the two statutory annual filings for a company are of critical importance to the Registry and all stakeholders, and as prosecution is possible only after a period of 330/300 days, the imprisonment or fine prescribed has to be seen in this context. Further, an upper limit on imprisonment term provides the required flexibility to a Court to weigh the punishment against the size of the company, etc. Hence no reduction in quantum of punishment is proposed. **However, the fines under sub-section (5) of Section 92 and sub-section (3) of Section 137 have been viewed as excessive for one person companies and small companies. The Committee recommends that such class of companies should be subject to a fine, which is half of what is applicable under the provisions of Section 92(5) and Section 137(3).**

Adjudication of penalties

28.7 Section 454 of the Act provides for an in-house framework for prompt administration of penalties on detection of an offence by Registrar of Companies. The Committee while examining suggestions to reduce penalties under the mechanism noted that there are twenty sections in the Act, which are subject to the adjudication mechanism prescribed under Section 454. The said sections have a maximum penalty of rupees one lakh, and in most cases, the penalty is a fixed amount linked to number of days of default (for example, rupees one thousand per day of non-compliance) etc., thus not providing much discretion to the adjudicating officers. In the case of section 42, the penalty provided is very high and it is being dealt with separately. Further, in most of the cases, the sections deal with rights of shareholders like maintenance of registered office, maintenance of register of members, etc. **In view of this, the Committee felt that it would not be prudent to reduce the prescribed penalties for the adjudicating authority, who is not given any discretion on the quantum of penalty to ROC. Further, the Committee also felt the role of appellate body under section 454 would need to be clearly brought out as the appellate body may not be able to levy a lesser penalty than that was levied by adjudicating authority (i.e. ROC).**

Fee for filing (Section 403)

28.8 Section 403 of the Act permits the submission, filing, registration or recording of any document required to be submitted, filed, registered or recorded under the Act within a period of two hundred and seventy days from the date on which it should have been submitted on payment of prescribed additional fees. After the expiry of the abovementioned period, the second proviso of sub-section (1) permits the filing of such documents on payment of further additional fees, which has been prescribed in the Table of Fees pursuant to Rule 12 of the Companies (Registration of Offices and Fees) Rules, 2014. **The Committee recommended that a clarification be issued under Note 3 of Table B, that on a combined reading of the second proviso of sub-section (1) of Section 403 along with Table B, documents are permitted to be submitted, filed, registered or recorded under the provisions of the Act even after a delay of two hundred and seventy days from the date on which it should have been filed, on a payment of additional fee as prescribed. Paragraph 22.2 of Part I of report may also be referred to.**

28.9 The Committee is of the view that a more liberal regime for fees/ additional fees be laid down for one person companies and small companies, it is recommended that **the fees prescribed in Table A pursuant to Rule 12 of the Companies (Registration of Offices and Fees) Rules, 2014 should be halved for such companies.**

28.10 **At the same time, the Committee noted with concern the dip in annual statutory filings as compared to last year, indicating laxity owing to the additional time and the low filing fees, which need to be addressed. As the hands of the Registrar are tied with regard to filing of prosecution before the prescribed 270 days during which filing can be done with additional fees in case of the six identified filings where section 403 is applicable, the Committee felt that fees for timely filing may be reduced to zero, additional fees may be increased to up to 10 times of the current additional fees with steep slabs after the first slab. Repeated non-compliance should result in deprival of the moratorium from prosecution as specified under Section 403 and attract higher level of additional fees.**

Audit Committee and Nomination & Remuneration Committee and Stakeholders Relationship Committee (Section 177 and 178)

28.11 Section 177 of the Act lays down the constitution and functions of the Audit Committee and Section 178 lays down the constitution and functions of the Nomination & Remuneration Committee and Stakeholders Relationship Committee. Sub-section (8) of Section 178 of the Act states that for any contravention of the provisions of Section 177 or 178, the company shall be punishable with fine not less than rupees one lakh but which may extend to Rupees Five Lakh, and every officer 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 rupees twenty five thousand but which

may extend to rupees one lakh, or with both. The Committee observed that provisions of section 177 and 178 are applicable to listed and bigger public companies and most of the requirements under these sections are of substantive nature. **Section 292A of the Companies Act, 1956 which provided for the requirements on Audit Committee provided that in case of contravention of such section the officer in default shall be punishable with imprisonment which could extend up to one year or with fine up to Rupees fifty thousand or both. The committee feels that punishment for officer in default under section 178(8) may be aligned with the punishment provided under section 292A (11) of the Companies Act, 1956.**

Disclosure of interest by director (Section 184)

28.12 Section 184 of the Act requires two kinds of disclosures from the director – (i) under sub-section (1), his concern or interest in any company or companies or bodies corporates or firms or other association of individuals which shall include the shareholding, at the first board meeting in which he participates as a director post his appointment and thereafter at the first meeting of the board in every financial year or whenever there is a change, in the first board meeting held after such change; and (ii) under sub-section (2), his concern or interest in a contract or arrangement or proposed contract or arrangement. Any contravention of either of the sub-sections results in the imposition of punishment under sub-section (4) i.e. imprisonment for a term which may extend to one year or with fine which shall not be less than Rupees Fifty thousand but which may extent to Rupees One Lakh or with both, on the director. The public comments suggested that the punishment for non-disclosure of every infraction of sub-section (1), even if insignificant, results in the imposition of a minimum fine of Rupees Fifty Thousand extendable to Rupees One Lakh or imprisonment up to a year or both, which is disproportionate and onerous. **The Committee observed that it is essential for a director to disclose every concern or interest as required under sub-section (1), or any change thereto, so that the company is aware of such concerns or interests of the director. However, the Committee felt that the minimum fine of Rupees Fifty Thousand was on the higher side, and thus recommended deletion of the provision for minimum fine.**

Conditions to be fulfilled for the appointment of certain directors (Schedule V)

28.13 Part I of Schedule V of the Act lays down the conditions to be fulfilled for the appointment of a managing or whole time director or a manager, one of them being that he should not have been sentenced to imprisonment for any period or to a fine exceeding rupees one thousand, for the conviction of an offence under sixteen acts, one of them being the Act. **The Committee observed that the threshold of the fine needs revision, as the penalties throughout the Act have undergone upward revision. It was decided to recommend for revision of the disqualifying fine in Part I of Schedule V to Rupees Fifty Thousand in respect of conviction of offences under the Act.**

Punishment for fraud (Section 447)

28.14 Section 447 of the Act lays down the punishment for any person found guilty of fraud to imprisonment not less than six months but which may extend to ten years and fine not less than the amount involved in fraud but which may extend to three time the amount involved. Further, in case the fraud involves public interest, the minimum imprisonment shall be not less than three years.

28.15 The Committee received suggestions that the ambit of Section 447 was too broad and would result in minor infractions being punished with severe penalties, which are non-compoundable. However, it was also suggested during the discussions that once the offence of fraud is established, it would not be tenable to provide for a threshold for it to be punishable under Section 447. **The Committee observed that the provision has a potential of being misused and may also have a negative impact on attracting professionals in the post of directors etc. and, therefore, recommends that only frauds, which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 (and non-compoundable). Frauds below the limits, which do not involve public interest, may be given a differential treatment and compoundable since the cost of prosecution may exceed the quantum involved.**

Compounding of certain offences (Section 441)

28.16 As per Section 441 of the Act, any offence punishable under the Act with fine only is compoundable by the Tribunal. Other offences punishable with imprisonment or fine or both are compoundable only by the special court. Previously, in the Companies Act, 1956, offences punishable with fine as well as offences punishable with imprisonment or fine or both were compoundable by the Tribunal. The compounding provision was inserted by the Companies Amendment Act, 1988 on the recommendation of the Sachar Committee, as it was felt that leniency is required in the administration of the provisions of the Act particularly penal provisions because a large number of defaults are of technical nature and arise out of ignorance on account of bewildering complexity of the provisions. **The Committee observed that as per the scheme of the Act, most of the offences which are punishable with fine or imprisonment or both are technical / procedural in nature, and thus, for the leniency and ease in administration of the Act, the old provisions relating to compounding may be re-instated. Therefore, under sub-section (1), the Tribunal should have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both.**

Punishment for contravention by auditors (Section 147)

28.17 Under sub-section (2) of Section 147 of the Act, if an auditor of a company contravenes any of the provisions of the specified sections therein, he shall be

punishable with fine not less than rupees twenty-five thousand but which may extend to rupees five lakh. However, as per the proviso, if the contravention by the auditor is done knowingly or wilfully with an intention to deceive the company or its shareholders or creditors or tax authorities, the penalty is significantly enhanced to imprisonment for a term which may extend to one year and with fine not less than rupees one lakh but which may extend to rupees twenty-five lakh. Additionally, under sub-section (3), where an auditor has been convicted under sub-section (2), the auditor shall be liable to refund the remuneration received by him and pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in the audit report.

28.18 **The Committee observed that the punishment under sub-section (3) is linked to conviction under sub-section (2). Therefore, to align the scope of both the sub-sections, the term 'any other persons' in sub-section (3) be replaced with the phrase 'shareholder or creditor'. Further, the minimum fine under sub-section (2) of Section 147 is harsh, and should be rationalised and the maximum fine should be a multiple of the audit fees. The Committee recommends that under sub-section (2), minimum fine as specified may be retained and maximum fine may extend to rupees five lakh or four times the audit fees, whichever is less, and under the proviso to sub-section (2), the minimum fine should be rupees fifty thousand and which may extend to rupees twenty-five lakh or eight times the audit fees, whichever is less.**

National Financial Reporting Authority (Section 132)

28.19 Section 132 of the Act provides for the setting up of a National Financial Reporting Authority for matters relating to accounting and auditing standards. As per sub-section 4(c)(A), where professional or other misconduct is proved on the part of the auditor, the NFRA shall have the power to make an order for imposing penalty, in case of individuals, not less than rupees one lakh but which may extend to five times of the fees received; and in case of firms, not less than rupees ten lakh but which may extend to ten times of the fees received. **The Committee is of the view that the minimum fine on the firm may be rationalised to rupees five lakh.**

Removal, Resignation of Auditor

28.20 Section 140(3) prescribes a minimum fine of Rupees fifty thousand in case the auditor does not file the statement with regard to his resignation. This fine was considered as onerous for auditors of small companies**. The Committee recommended that the minimum fine may be reduced to Rupees fifty thousand or the audit fees, whichever is lesser.**

Punishment under Section 172

28.21 Section 172 of the Act is a residuary penalty section where under if a company contravenes any of the provisions of Chapter II (relating to appointment and qualification of directors), the company and every officer of the company who is in default shall be punishable with fine not less than rupees fifty thousand but which may extend to rupees five lakh. It was suggested during the public consultation, that since the appointment of directors in government companies is made by the relevant ministry, such companies should be subject to lesser penalty. **The Committee did not agree with the suggestion, and observed that adequate internal procedures exist within the Government for addressing the concerns raised and for prosecution of government companies in such cases.**

Offer or invitation for subscription of securities on private placement (Section 42)

28.22 As per sub-section (10) of Section 42 of the Act, if a company makes an offer or accepts monies in contravention of this section, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or rupees two crore, whichever is higher. Additionally, the company is required to refund all monies to subscribers within a period of thirty days of the order imposing the penalty. The Committee deliberated that in situations where the offer size is lesser than Rupees Two Crore, the minimum penalty of Rupees Two Crore may be unreasonable. Further, the Committee noted that the contraventions under Section 42 could either be procedural or substantive, and the punishments for the two need to be differentiated. **The Committee remarked that a comprehensive relook of Section 42 has been undertaken, and subject to changes recommended therein, the following recommendations are made –**

- **Contravention of sub-section (7) and (9) of Section 42 is a procedural violation, hence it shall be subject to a penalty (adjudicated under Section 454) of rupees one thousand per day of default, not exceeding rupees twenty lakh, commencing from the expiry of the time period within which the filings have to be made under the said sub-sections. It was felt that Section 403 should not be applicable to such contraventions;**
- **Other contraventions under Section 42 shall result in the company, its promoters and directors being punishable with penalty which may extend to the amount involved in the offer or invitation, or Rupees Two Crore, whichever is *lower.* Refund of all monies, as prescribed, may continue in both the sub-sections.**

Resolutions and agreements to be filed (Section 117)

28.23 As per sub-section (2) of Section 117 of the Act, if a company fails to file any resolution which is required to be filed as per the said section before the expiry of the period specified under section 403 i.e. within two hundred and seventy days from the date by which it should have been submitted, the company shall be punishable with a

fine not less than rupees five lakh but which may extend to rupees twenty five lakh; and every officer in default shall be punishable with fine not less than rupees one lakh but which may extend to rupees five lakh. **The Committee viewed the non-filing of resolutions as a procedural default and the current penalty being on the higher side. Thus, the Committee recommends that the minimum fine for both company and officer in default be reduced to rupees one Lakh and rupees fifty thousand respectively, and a proviso be inserted in sub-section (2) of Section 117, wherein the punishment prescribed for one person companies and small companies may be halved to that under sub-section (2).**

Condonation of delay (Section 460)

28.24 Section 460 of the Act provides for condonation of delay by the central government, however the circumstances in which delay may be condoned has not been spelled out clearly in the Act or the rules. The public comments suggested that the MCA should lay down clear guidelines enumerating the circumstances in which delay may be condoned under Section 460 of the Act. **The Committee noted that appropriate guidelines may be put in place.**

Loan to Directors (Section 185) and Loan and investment by company (Section 186)

28.25 As per Section 185 of the Act, no company shall advance any loan to any of its directors etc., except in a few cases as provided therein. Sub-section (2) provides that any loan advanced in contravention of Section 185 shall result in the company being punishable with fine which shall not be less than rupees five lakh but which may extend to rupees twenty-five lakh, and the director etc. shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than rupees five lakh but which may extend to rupees twenty-five lakh or both. As per Section 186 lays down the manner and conditions in respect of loans and investments by a company. Sub-section (13) states that a contravention of Section 186 shall result in the company being punishable with fine which shall not be less than rupees twenty-five thousand but which may extend to rupees five lakh, and the officer in default shall be punishable with imprisonment which may extend to two years or with fine which shall not be less than rupees twenty-five thousand but which may extend to rupees one lakh or both.

28.26 **The public comments suggested that the punishment under Section 185 and 186 was very high as compared to Companies Act, 1956 and should be reduced. The Committee did not accept the recommendation as the enhancement of punishment was undertaken to address the large number of violations of the said section as well as the need to deter diversion of funds by companies.**

29. REVIVAL & REHABILITATION, AND WINDING UP

29.1 As part of its mandate, the CLC also considered the recommendations made in the Interim Report of the Bankruptcy Law Reforms Committee (BLRC) that had suggested amendments to Chapters XIX (Revival and Rehabilitation of Sick Companies) and XX (Winding up) of the Companies Act, 2013 in February, 2015. Although the CLC reviewed and deliberated on those recommendations in detail, the BLRC came out with its final report very recently, in November, 2015, recommending a Bankruptcy Code for India. Based on the recommendations of the BLRC, the Government has recently introduced a Bill in the *Lok Sabha*, titled as the Insolvency and Bankruptcy Code, 2015. The Code proposes to repeal all provisions of Chapter XIX of the Act and those relating to winding up on the ground of insolvency in Chapter XX. It also proposes certain consequential amendments to the Act. After the Code is enacted, all insolvency related matters for companies will be covered under the Code. **Consequently, the CLC does not recommend any other changes in the Act for this purpose.**

29.2 The Committee noted that the provisions relating to winding of a company on grounds other than insolvency have been retained in the Companies Act, 2013, and the winding up proceedings relating to such grounds are to be carried out in accordance with the provisions of the Act. Given that the adjudicating authority for liquidation under the Bankruptcy Code and winding up under the Act is the same (i.e., the NCLT), winding of companies on non-insolvency related grounds should also be carried out in accordance with the procedure prescribed in the Bankruptcy Code (the winding up will not involve the Insolvency Resolution Process). **The Committee recommended appropriate amendments to the Act to facilitate this, which could be carried out at the time of enactment of the Bankruptcy Code or soon thereafter.**

End of Part I

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PART II

RECOMMENDATIONS PROPOSING AMENDMENTS TO THE RULES

1. COMPANIES (SPECIFICATIONS OF DEFINITIONS DETAILS) RULES, 2014

1.1 **In order to address changes recommended by the Committee in the definition of term subsidiary and associate company, Rule 2(1)(r) defining the term "total share capital" may be omitted.**

2. COMPANIES (INCORPORATION) RULES, 2014

INC-29

2.1 **The Committee felt that the option to use the integrated incorporation E-Form INC-29 in case name approval is separately obtained using INC-1 should be allowed, the option of giving more than one name as alternatives be permitted, and the number of allowed re-submissions should be increased from two to three times.**

2.2 **The Committee felt that certain improvements in e-form INC-29 may be implemented.**

- **In point no. 6(e), wherein registration number of a company incorporated outside India is required to be specified, alpha-numeric registration numbers may be accepted.**
- **In point no. 6(e), wherein the particulars of the authorized person of the company incorporated outside India are required to be specified, PAN or Passport number of the authorized person may be accepted. Also, the form may be enabled to accept the foreign address of the said authorized person in the field 'present address of the authorized person'.**
- **In point nos. 9 and 10 in relation to PAN, TAN and ESIC applications, it is mentioned that "this facility is available at the e-Biz portal only as per separate procedure prescribed by e-Biz portal". The facility for PAN, TAN and ESIC should be enabled as part of the integrated application form, and incorporation form INC-7, available on the MCA21 portal.**

2.3 It was suggested that two chances may be given for resubmission/clarification for submitting any form to ROC as it was alleged that in case forms are marked as 'Invalid and not to be taken on record', the refund process is lengthy. **The Committee did not agree with the above proposal to increase the number of resubmissions as provided in Rule 10(6) of the Companies (Registration Offices and Fees) Rules, 2014** as the earlier experience with this has not been very encouraging, and it also encourages slackness on the part of the professionals involved in filing of forms.

Rule 16: Removal of references to the word 'partnership firm'

2.4 Rule 16 requires specified particulars of every subscriber to the memorandum to be filed with the Registrar. It was pointed out that a reference to partnership firm as provided under Rule 16(2)(g), when the subscriber is a body corporate, is inappropriate. **The Committee agreed with the view and suggested for removal of references to the word 'partnership firm' in Rule no.16 (2)(g).**

Rule 16: Authentication of documents

2.5 Rule 16(2)(f) mandates only an authorized person/officer of body corporate subscriber to subscribe to the memorandum, based on the resolution passed by the body corporate conferring authority to sign the memorandum. **The Committee did not agree to expand the scope to allow outsiders such as legal counsel to represent the company, as it would be necessary and prudent to be able to clearly know and to track the original subscribers.**

Removal of duplication of information in forms

2.6 It was pointed out that various incorporation related forms like INC-7 and DIR-12 require information such as address proof, PAN Card, Utility Bill, Electricity Bill etc. whereas the system had already captured these particulars in the DIN of a director and the same ought not to be asked again. The suggestion was agreed to. **Changes in the MCA21 system/E-Forms may be made to ensure that in case of a person holding DIN, the form requiring such information should get prefilled and additional documentation would not be required.**

2.7 Similarly, it was also suggested to remove the requirement of Form INC-10 altogether (i.e. verification of signature of subscribers). The Committee observed that the subscriber sheet of the MOA has the photographs of the subscribers and further, there is an attestation by a witness to the effect that the subscriber/first director has signed in his presence. **In the light of the same, Rule 16(1)(q) be omitted along with Form INC-10.**

Formation of one person company (Section 3(1) read with Rule 3(2))

2.8 It was pointed out that the wordings in Rule 3(2) gives an impression that a natural person can incorporate only one OPC or be a nominee of one OPC in his lifetime while the spirit of the provision is that a person can be a member of only one OPC at any point of time and that the person can also be a nominee of another OPC. **The Committee recommended to suitably rephrase Rule 3(2), especially in view of Rule 3(3) which entails an obligation on a member holding membership in one OPC and a nominee-ship in another OPC, to opt for one of the OPCs in case he becomes a member of another OPC due to operation of the law.**

Registered office of company

2.9 **In view of the fact that the place of businesses of a large number of companies is also on the web/internet, the Committee felt that companies that have a website, for conducting online business or otherwise, should be required to provide the registered office and other details as required in section 12(3) on the landing/home page of the website(s). The Rule may be accordingly amended. Similar changes may also be carried out for foreign companies in Rule 6 of Companies (Registration of foreign companies) Rules, 2014.**

Rule 29: Alteration of memorandum

2.10 **The present Rule 29 does not allow change in the memorandum even after default in filing of statutory returns or payment of deposits, etc. is made good. Change in memorandum should be allowed after defaults are made good.**

Rule 28 and Rule 30: Shifting of registered office

2.11 Rule 28 read with Section 12 provides that shifting of registered office within the same State is not to be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending and rule 30(10) (proviso) also prescribes similar conditions in case of shifting of registered office from one State or Union Territory to another. **The Committee felt, with a view to provide a finite timeframe for such restriction, that an explanatory note should be provided in both rules to the effect that 'further provided that on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed'. Further, it may be provided that in case of a pending prosecution, on submission of an undertaking that the company would not seek any change in jurisdiction on account of shift in office, such shifting may be allowed.**

2.12 It was suggested that the requirements in Section 13(5) for the satisfaction of the Regional Director (RD), who is the delegated authority, that the alteration of situation of the registered office has the consent of the creditors and other persons concerned with the company be done away with as Rules already provide for a newspaper publication of proposed shifting and calling for objections within a specified time period to expedite the process. Hence, the RD should not ask NOCs from creditors and other connected persons. **The Committee felt that the suggestion does not merit consideration since the shifting of registered office from one state to another may jeopardise the creditors' interest vis-à-vis the applicant company. On the contrary, the Committee agreed with the suggestion that in the case of relocation of registered NBFCs, a NoC from RBI may be made necessary. Also, as requested by SEBI, requirement of serving a copy of the notice to SEBI (Rule 30(6)(c) may be dispensed with.** Moreover, the company should not have difficulty in getting NOCs from major creditors to enable RDs to form an opinion on the *bonafides* of the company on the proposed shifting, if it is having proper business relations with the creditors. **Further, suggestions to allow shifting based on special resolutions for private limited companies and providing deemed approval in case**

of non-disposal of the petition by the RD within 60 days were also considered undesirable.

Rule 8: Undesirable names

2.13 Rule 8 (2) (a) (ii) provides that '*it includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters'.* **The Committee recommends that this requirement should be changed and Rule should be modified to read as 'it includes the name of a '*trade mark registered* or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed thereunder*', unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters.**

2.14 Rule 8(5) provides that '*The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last five years the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes, details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not'.* **The Committee felt that the said rule is prescribed to prevent disputes on availing names, which were already being used in other forms of business organizations and hence, does not recommend any change.**

2.15 Suggestions were received from stakeholders that the name availability process should be automated and centralized. **The Committee noted that this step had already been initiated.**

2.16 Rule 13(1) and 13(2) prescribes that the subscriber sheet of a MOA and AOA shall be handwritten by the respective subscribers. Suggestions were received to allow even typewritten subscriber sheets as the subscriber is signing the same by hand in the presence of a witness. The **Committee recommended that this Rule should be suitably modified to allow typewritten subscriber sheets as the signing subscribers could not go back on the contents of the subscriber sheets after affixing their signatures. Similar modifications be carried out in Rule 13(2) with respect to entering of particulars of an illiterate subscriber electronically.**

2.17 Rule 13(4) prescribes that where a subscriber is a body corporate, the MOA and the director shall sign the AOA, officer or employee of the said body corporate duly authorised in that behalf by a resolution of the directors of the body corporate. However, this sub-rule does not envisage the eventuality of an LLP being a subscriber. **Accordingly, this sub-rule should be redrafted keeping in view that an LLP can also be a subscriber to the MOA.**

3. COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014 (PAS RULES)

Rule 3(6): Disclosures of Sources of Promoters' Contribution

3.1 Section 26(1)(a)(xiv) provides every prospectus to state disclosures in such manner as may be prescribed about sources of promoter's contribution. Rule 3(6) of the PAS Rules further provides for the disclosures to be made. It has been suggested that obtaining such a detailed level of disclosures from promoters invested in the shares of the Company since the beginning of the operations of companies having a long period of existence would be very difficult and, therefore, this provision should be done away with. **The Committee noted that as it has recommended for modification of Section 26 to allow prescription powers to SEBI (refer paragraph 3.1 of Part I of the report), consequential changes would result in omission/modification of the Rules and these requirements.**

Refund of Share Application Money

3.2 Rule 11(2) of the PAS Rules lays down the requirement that in case the stated minimum amount has not been subscribed, the application money to be refunded shall be credited only to the bank account from which the subscription was remitted. **The Committee did not agree with the contention that the company is dependent on the depository for investor related details and the account details are not available making it difficult for the subscription amount to be remitted, and does not recommend any change.**

Private Placement of Securities

3.3 **The private placement requirements have been comprehensively dealt with in paragraphs 3.3 to 3.13 of Part I of the report. The Committee recommended that consequential changes to Rules as identified in those paragraphs would need to be addressed in the Rules.**

3.4 It was indicated that as per the second proviso to Section 67(3) of the Companies Act, 1956, the limit of a maximum of forty-nine persons, to whom securities could be issued, by way of private placement, was not made applicable to the Public Financial institutions (PFIs), as defined under Section 4A of the said Act. However, Section 42 of the Companies Act, 2013, read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 does not provide such relaxation to PFIs. **The Committee felt that exemption, as in the case of NBFCs, from the Rule 14 can be extended to PFIs.**

4. COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014

Shares with Differential voting Rights

4.1 As per Rule 4(1) (g) of the Companies (Share Capital and Debentures) Rules, 2014, a company would be prohibited from issuing any shares with differential voting rights, if it has defaulted on the repayment of loans from banks and public financial institutions or interest thereon, payment of dividend on preference shares, payment of statutory dues for employees, or in depositing moneys into the Investor Education and Protection Fund. There is no reference period for such default because of which it appears that any default, even if subsequently rectified, would prevent a company from issuing such shares. **The Committee recommended that there should be a cooling off period of five years from the end of the financial year in which the said default was made good for a company to be eligible to issue such shares again. This may be provided for in the Rules.**

Issue of Bonus Shares

4.2 As per Section 63(2)(a) of the Act, in order to allot bonus shares, a company should have taken authorisation from shareholders in the general meeting which need not be a special resolution. However, clause 5(e) of e-form PAS-3 requires the date of the special resolution and Service Request Number (***SRN***) of relevant form in which the special resolution was filed. In order to overcome this difficulty, **the Committee recommended that clause 5(e) of PAS-3 be modified to replace the words 'special resolution' with the word 'resolution'**.

Conversion of Loans into equity

4.3 It was observed that Form PAS-3 treats 'conversion of loans into shares' as an allotment for consideration other than cash. **The Committee felt, considering judicial precedents and earlier circulars issued under the Companies Act, 1956, that genuine debt (including External Commercial Borrowings) converted into shares should be treated as allotment for cash and recommended appropriate modification of Form PAS-3.**

Change in number of members of a Guarantee company

4.4 The Committee noted that there is no requirement under the Act to intimate the Registrar of Companies of any change in the number of members of a Guarantee Company, which was earlier required under Section 97 of the Companies Act 1956. However, Rule 15 of the Companies (Share capital and Debentures) Rules, 2014 read with Section 64, prescribes filing of Form SH-7 with the ROC for any alteration of share capital and also provides a field for intimating any change in the number of members and date of special resolution approving the same. **The Committee recommends that an appropriate modification in Rule 15 be carried out to mandate notifying the increase in number of members of a guarantee company as part of an increase/alteration of capital.**

Issue of Debentures for period exceeding 10 years

4.5 It was represented by the stakeholders that Infrastructure finance companies as well as Infrastructure Debt Fund Non-Banking finance companies be allowed to issue secured debentures for a period exceeding ten years but not exceeding thirty years. However, Housing Finance companies regulated by National Housing Bank (NHB) have not been allowed to issue secured debentures for a period exceeding 10 years, putting them at the risk of asset - liability mismatch. **The Committee noted that Housing Finance Companies (HFCs) have already been allowed by way of notification GSR 841 (E) dated 06.11.2015.**

Creation of Debenture Redemption Reserve

4.6 Rule 18(7) (b) of the Companies (Share Capital and Debentures) Rules, 2014 requires the creation of Debenture Redemption Reserve (***DRR***) to the extent of twenty-five percent of the value of debentures by companies including manufacturing and infrastructure companies. **The Committee felt that in such cases the amount available for other appropriations stand reduced and recommends that the Rule be modified to explicitly mention that companies be allowed to set aside DRR on a step down basis with reference to the redemption schedule for the next one year. It also recommended that a proviso be inserted that companies be allowed to appropriate any amount in excess of the DRR required for immediate redemption.**

Maintenance of Liquid Funds for Redemption of Debentures

4.7 Rule 18(7)(c) of the Companies (Share Capital and Debentures) Rules, 2014 states that every company required to create DRR shall on or before the 30th day of April of each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent of the amount of its debentures maturing during the year ending 31st day of March of the next year in specified methods. **Though the Committee felt that it increases the cost of funds raised through Non-Convertible Debentures (*NCDs*), keeping the investors' interest in view, no relaxation could be allowed for maintenance of liquid funds. The Committee recommended that clarification may also be provided in the Rules that maintenance of liquid funds and DRR would be essential, irrespective of whether a company has sufficient profits.**

Creation of Security for Debentures

4.8 The mandate to secure only company(s) assets as security for debentures is placing a restriction on raising funds through debentures vis-à-vis bank borrowings as the banks accept (in fact insists) that the assets of all companies which form part of company(s) consolidated balance sheet or any other collateral security as security. **The Committee felt that Rule 18(1)(b) may be amended so as to enable issue of debentures secured by charge on the properties or assets of the company or any other entity or any other collateral security. Rule 18(1)(d) should also enable creation of security for debentures in favour of the debenture trustee of movable**

property or any other collateral security which could either be of the company or any other entity.

Perpetual Debentures

4.9 It was represented to the Committee that the companies shall also be permitted to issue perpetual debentures on the lines of Section 120 of the 1956 Act since RBI allows banks and systemically important NBFCs to issue such debentures. Section 71(13) gives broad rule making powers on matters relating to debentures. **The Committee felt that enabling provision for issue of perpetual debentures may be provided in the Rules.**

Issue of sweat equity shares

4.10 Rule 8(4) of the Companies (Share Capital and Debentures) Rules, 2014 restricts the issue of sweat equity shares to twenty-five percent of paid up equity share capital. On suggestion by the stakeholders to relax the cap, **the Committee deliberated on the issue of sweat equity shares in excess of the said twenty-five percent ceiling and recommended that start-ups, who may require such instruments may be permitted to issue sweat equity shares beyond twenty-five percent and up to fifty percent of the paid up equity share capital.**

Issue of employee stock options (ESOPs)

4.11 Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014 restricts issue of ESOPs to promoters or promoter directors even if they are employees of the company. **The Committee felt that, in order to encourage start-ups, this rule may be relaxed to enable issuance of ESOPs to promoters who may be working as employees or employee directors or whole time directors which would help the promoters to gain from increase in future valuation of the company without in any way impacting finances of the company during its initial years.**

Preferential Allotments

4.12 Rule 13(2)(h) of the Companies (Share Capital and Debentures) Rules, 2014 states that in case of a preferential issue of convertible securities, 'the price of securities to be issued on preferential basis shall be determined beforehand on the basis of a valuation report of a registered valuer'. Rule 13(3) states that "the price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of the valuation report of a registered valuer". The Committee felt that, in practice, upfront determination of valuation of a 'convertible security' is too restrictive. **The Committee recommended that Rule 13(2)(h) may be amended, to consider providing for convertible instruments to be valued at the time of conversion. It was felt that the formulation used in the FDI policy may be adopted.**

4.13 **Rule 13(2) (c) of the Companies (Share Capital and Debentures) Rules 2014 does not allow preferential allotment of partly paid-up shares. Department of**

Industrial Policy and Promotion vide its Press Note No. 9 (2015 Series) dated 15.09.2015 allows partly paid shares and warrants as eligible capital instruments for the purposes of FDI policy. The Committee recommended amending Rule 13(2)(c) to allow preferential allotment of partly paid-up shares.

Issue and Redemption of Preference Shares

4.14 **Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014** prescribes the terms and conditions for issue of securities through private placement under Section 42. **Rule 9 of the Companies (Share Capital and Debentures) Rules**, 2014 also provides for the conditions to be fulfilled by a company with respect to issue and redemption of preference shares under Section 55. Clarification had been sought during the public consultation as to whether both Rules have to be followed for issue of preference shares. **The Committee felt that there is no ambiguity and the issuer of preference shares (which is covered under the definition of securities) needs to follow both the Rules.**

5. COMPANIES (ACCEPTANCE OF DEPOSIT) RULES, 2014

Definition of Deposits - exclusions

5.1 Rule 2 (1)(c)(xii)(a) of the Companies (Acceptance of Deposits) Rules, 2014 (Deposits Rules) excludes advance received for supply of goods or provision of services from the definition of 'deposit' if it is appropriated within 365 days from the date of its acceptance. The Committee noted that there are many businesses like heavy engineering and IT Services industries where customer advance beyond 365 days is prevalent. Large companies also give advances to SMEs for creation of infrastructure etc., and adjust these against subsequent supply or conversion of goods by SMEs. Similarly, in the case of seasonal or cyclical industries, advances are usually taken much before the actual delivery of the goods, in most cases exceeding 365 days. **The Committee felts that there is a case for outstanding advances not be treated as deposits even after 365 days, if they are received in the ordinary course of business, as evidenced by a written contract and during normal business cycle subject to disclosure of details of such outstanding amounts in the financial statements. However, such relaxation should be made only after ensuring that all regulatory concerns have been addressed.**

5.2 In terms of Rule 2(1)(c) (ix) of the Deposits Rules, any amount raised by issue of debentures compulsorily convertible into shares of the company within five years is excluded from the definition of "deposits". **The Committee recommended excluding debentures compulsorily convertible into shares of the company within ten years from definition of deposit under Rule 2 (1)(c)(ix).**

5.3 Definition of the term 'deposit' exempts amounts received from various categories of institutions, banks and lenders, but amounts raised by the issuance of debentures/ bonds to SEBI registered entities such as Alternate Investment Funds, Domestic

Venture Capital Funds and Mutual Funds are not exempted. Further as these are institutional investors and well regulated, it may not be necessary to extend the extensive disclosure and compliance requirements intended to protect public debenture-holders/ bond-holders under the Deposits Rules to amounts raised from such entities. It was noted that the corresponding RBI guidelines for NBFCs expressly exclude such amounts from the definition of the term 'public deposit'. **The Committee recommended amendment of Rule 2(1)(c) of the Deposits Rules to exclude amounts directly received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI, from the definition of deposits.**

5.4 In terms of Rule 2(1)(c)(ix) of the Deposits Rules, only debentures secured by an exclusive first charge or charge ranking *pari passu* with the first charge on any of the specified assets excluding intangible assets are considered not to be deposits. It was suggested that, debentures secured by second and third charges, debentures with intangible assets as securities may also be exempted, and unsecured debentures may be excluded from definition of deposit. This would allow greater flexibility on issue of debentures. Security created over intangible assets is not a certain security and prone to high variability. Second and third charges are also not sufficient security for investors. **The Committee, therefore, did not recommend including debentures secured by second and third charges, or consideration of security created against intangible assets for secured debentures but it recommended that the MCA may consider excluding unsecured debentures listed as per SEBI Regulations from the definition of deposits.**

5.5 Convertible notes are promissory notes, which are not specifically recognized in the Companies Act, 2013 and are a mode of raising funds, especially for start-ups. It is felt that these may be considered as 'deposits' and resultantly, the compliance requirements for raising these would apply to 'start-ups' which would make it difficult to use these instruments to raise capital. **The Committee, therefore, recommended that convertible notes, convertible into equity or repayable within 5 years from the date of issue, if issued to a person with a minimum investment size of Rupees Twenty Five lakh brought in a single tranche, should not be treated as deposits under the Companies Act, 2013. Further, safeguards to prevent misuse may be finalised in consultation with RBI.**

Amount brought in by promoters

5.6 As per Rule 2(1)(c)(xiii) of the Deposits Rules, the amount brought in by promoters of a company pursuant to stipulation by a lending institution or a bank is excluded from the definition of deposit subject to certain conditions. It was suggested that unsecured loans brought by existing or new promoters coupled with repayment of some existing unsecured loans to fulfil the requirement of "quasi equity" stipulated by lending institution or bank may be treated as "exempt deposits". **The Committee felt that the present exemption is adequately worded and therefore recommended that no further exemption or change is required.**

Issues relating to section 462 exemption vis-a-vis Deposits Rules

5.7 Private companies have been exempted from complying with the provisions of Section 73(2)(a) to (e), while accepting deposits from its members, provided that the deposit monies shall not exceed 100 percent of aggregate of paid up share capital and free reserves. It has been suggested that some of the Deposits Rules are not in harmony with such exemptions provided. **The exemptions given under Section 462 of the Act would override the Deposit Rules. However, the Committee recommended that, with a view to provide clarity, the Deposit Rules may be amended to align with exemptions/modifications provided for private companies.**

Advertisement/Circular in the form of advertisement

5.8 Rule 4(1) of the Deposits Rules requires every company intending to invite deposits from its members to issue a circular to all members, and in addition gives flexibility to publish the circular in a newspaper. **It was suggested that it should not be mandatory to send individual circulars to members of the company under Rule 4(1) if an advertisement has been issued by a company for acceptance of deposits from public and also when the same is placed on the website of the company. The Committee agreed with the suggestion and recommended that the suggested option may be provided by amendment in the Rules.**

6. COMPANIES (REGISTRATION OF CHARGES) RULES, 2014

6.1 It was pointed out that as per the existing MCA-21 system, filings in respect of companies, which have not filed Balance Sheet or Annual Returns for three years, are blocked. In view of this, Asset Reconstruction Companies (***ARCs***), which acquire Non-Performing Assets (NPAs) of such companies, are unable to file for creation/modification of charges in respect of such companies. For the companies under liquidation, ARCs have an option to file an application before the Hon'ble High Court for securing their right as secured creditor but the same remedy is not available for companies which have a dormant status but are not in liquidation. The Committee upon examination found that there is nothing in the Act or the Rules that does not allow ARCs to create charges on the NPAs of dormant companies acquired by them. **The Committee recommended that, in order to protect interest of ARCs and for capital circulation, the MCA21 system should be modified to allow for filings of charge creation/modification by recognized ARCs on the assets of such companies.**

7. COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014

Register of members, etc.

7.1 **Rule 3** of the Companies (Management and Administration) Rules, 2014 provides that every company limited by shares shall, from the date of its registration, maintain a register of its members in Form No. MGT-1. It also provides that in the case of

existing companies, registered under the 1956 Act, particulars shall be compiled within six months from the date of commencement of these Rules. The Committee noted that the companies, which have been in existence for several years, may not have the relevant details of the shareholders, which are now required to be included in the Register of Members and it may be impractical for such companies to procure the required details from all its existing shareholders, given that some of them may not even be traceable. In view of this, **the Committee recommended that for the companies incorporated prior to 1 April 2014, the members' particulars as available under the 1956 Act should be allowed to be transferred to Register of Members under the 2013 Act. Further, it was recommended that particulars as are required to be captured in Form MGT-1 shall be mandatorily maintained in respect of all persons becoming members after 1 April 2014. Finally, , the Committee also recommended incorporation of additional fields in the transfer form SH-4 for obtaining the requisite particulars in MGT-1 for enabling compliance with Rule 3.**

7.2 As per **Rule 5(2*)*** of the Companies (Management and Administration) Rules, 2014, the registers shall be maintained at the registered office of the company unless a special resolution is passed at a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside. **The Committee felts that as this is a safeguard for members, which has been in place since the 1956 Act, no amendment is required for the purpose.**

7.3 As per **Rule 8** of the Companies (Management and Administration) Rules, 2014, every entry in the register maintained under Section 88 of the Act and index included therein is required to be authenticated by the Company Secretary or by any other person authorised by the Board along with the date of board resolution authorising the same. **It was pointed out that in respect of listed companies, there are huge transactions almost on daily basis and that the share transfer register and members register are maintained electronically, in most cases by Registrar and Transfer Agent (RTA) who is an outside agency, and that the RTA may be obligated to maintain the said registers and indexes in electronic form. The Committee felt that the Rule 8 already gives the powers to Board, and no change is required.**

Declaration in respect of beneficial interest in any share

7.4 Section 89 read with Rule 9(1) of the Rules provides that a person whose name 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 (hereinafter referred to as "the registered owner"), shall file with the company, a declaration to that effect in Form No. MGT-4 in duplicate, within a period of thirty days from the date on which his name is entered in the register of members of such company. Further, Form MGT-5 is prescribed for declaration to be given by beneficial owner whose name is not entered in the Register of members in duplicate. The concerned company, upon receipt of Forms MGT-4 and MGT-5, is required to file Form MGT-6 with the ROC electronically after attaching the scanned copies of Forms MGT-4 and

MGT-5. **The Committee recommended that the requirement of filing of Form MGT-4 and Form MGT-5 in duplicate may be done away with as original copies are not required to be filed with the ROC and only scanned copies of the said forms are required to be attached to Form MGT-6. However, the suggestion to consolidate the information in Forms MGT-4 and MGT-5 into one form was not found to be acceptable as purposes for these two forms are different.**

Annual Return

7.5 Section 92(1) read with Rule 11(1) prescribes that the annual return shall be in Form no. MGT-7. The Committee noted that Form MGT-7 requires furnishing of specific information which is already captured in the Board's report such as CSR spend, remuneration of directors, details of turnover and net worth etc. The Committee further noted that the Ministry vide its notification dated November 16, 2015 has substituted a new Form MGT-7 through the Companies (Management and Administration) Third Amendment Rules, 2015 removing the duplication and excess information issues. **However, the Committee recommended that the Annual Return may be further simplified by avoiding asking for repetitive information which may be available in other documents filed with ROC such as Financial Statements, Board's Report etc. and making disclosures more relevant. Further the suggestions for exempting the disclosure of certain particulars in the Annual Return for companies with less than twenty shareholders was not accepted as it was felt that it may lead to too many classifications of companies and consequently lead to lack of clarity. The Committee, however, was of the opinion that a simpler Annual Return form for OPCs and small companies could, be prescribed.**

7.6 Section 92(2) read with Rule 11(2) prescribes that an annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice in Form no. MGT-8. **The Committee considered the suggestions to expand the scope of certification of annual return and agreed that Company Secretaries in employment should be allowed to certify annual returns.**

7.7 Section 92(3) read with Rule 12 requires that an extract of annual return in form MGT-9 be attached to the board's report. As noted elsewhere also, deletion of this requirement without providing the information contained therein to the members may not be appropriate. **The Committee recommended that after including pertinent information as a disclosure requirement under section 134, Form MGT-9 may be omitted (Paragraph 9.11 of Part I of the Report).**

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

7.8 Section 93 read with Rule 13 requires every listed company to file with the Registrar, a return in Form no. MGT-10 along with fee with respect to changes relating to either increase or decrease of two percent or more in the shareholding position of promoters and top ten shareholders of the company on each occasion, within fifteen days of such change. **The Committee has recommended for omission of section 93 (*Paragraph***

***7.6 of Part I of the Report*). Consequential changes in the Rules would be required.**

Calling of extraordinary general meeting

7.9 Explanation to Rule 17(2) provides that requistionists should convene the extraordinary meeting at the registered office or in the same city or town where it is situated and such meeting should be convened on a working day. **It was suggested that the explanation should be modified to allow holding of EGMs by requisition on a day which is not a national holiday and the Committee agreed with the same as the AGMs are also allowed to be convened on any day which is not a national holiday as per Section 96(2).**

Postal Ballot

7.10 Rule 22(7) provides that if a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf. Similarly, Section 110(2) also provides that 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. **The Committee recommended that since these two provisions lead to repetition, the Rule 22(7) may be deleted. Also Rule 22(14) provides that the resolution shall be deemed to be passed on the date of a meeting convened in that behalf. This is also provided for in Section 110(2), hence the Committee recommended that the same may be omitted from the Rules.**

7.11 The Committee noted that there is a contradiction in the provision relating to maintenance of minutes book of general meetings, as provided in Rule 25 and section 119. While Rule 25(1)(e) permits that the minutes book of general meetings can be kept at either the registered office or such other place as may be approved by the Board, if the company desires not to keep the same in the registered office, Section 119 specifically provides that the general meeting minute book shall be kept only at the 'registered office' and does not allow any other option. **It would be appropriate that the minutes book for general meeting is maintained at the registered office only. Therefore, the Committee recommended that Rule 25(1)(e) may be made consistent with Section 119.**

7.12 **It was suggested, with respect to Section 120 of the Act, that a new form should be introduced by MCA to which extracts of all statutory registers and minute books for each financial year should be enclosed a which would be accessible only to the MCA officials and not to the public. Further, suggestions were also made to do away with pre-certification requirements on forms (without specifying the forms numbers) and discontinuing STP approvals, prescribed for certain forms. However, in the absence of any justifications behind these suggestions, the Committee did not agree to these suggestions.**

8. COMPANIES (DECLARATION AND PAYMENT OF DIVIDEND) RULES, 2014

Declaration of Dividend

8.1 The second proviso to sub-section (1) of Section 123 of the Act provides 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 it to the reserves, such declaration of dividend shall not be made except in accordance with the Rules prescribed by the Central Government. Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014 specifies the conditions in this regard. It was pointed that as per these provisions, compliance with Rule 3 would be required only when dividend is declared out of 'reserves'. The said Rule 3 allows declaration of dividend out of 'free reserves' only and it is not clear whether a company would be required to comply with the said Rule even when it proposes to declare dividend out of surplus in profit and loss account. **The surplus balance (i.e. carried forward balance of profit and loss account) is a part of "free reserves" but it does not represent an amount 'transferred' to reserves. It has been suggested that to avoid any legal challenges in application, the requirements of the Rule and the section should be harmonized appropriately.**

8.2 The Committee feels that Rules should use the same language as was provided in the Act. Thus, Rule 3 should provide for conditions only in situations where, in case of inadequacy of profits, the dividend is to be declared out of 'accumulated profits earned by the company in the previous years and transferred by the company to the reserves as has been referred to in the main section of the Act. The Committee discussed and felt that companies must have the freedom of utilizing the balance standing in the Profit and Loss account (not transferred to the reserves) for payment of dividend in case of inadequacy of profit in a year. **The Committee felt that once Rule 3 is aligned with the provisions of the Act, it would be clear that in case a company declares dividend out of surplus i.e. accumulated credit balance of Profit and Loss Account which has not been transferred to reserves, the provisions of the Act and Rule 3 would not applicable. The Committee recommended harmonization of Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 and Section 123 of the Act to provide clarity on the issue.**

Exemptions from Second proviso to section 123(1)

8.3 Item No. 6 of notification [G.S.R. 463(E)] dated 5 June 2015, provides that the provisions of Chapter VIII and second proviso to sub-section (1) of Section 123 (provisions relating to declaration of dividend in case of inadequacy or absence of profits), shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. It was suggested that this exemption should be extended to non-wholly owned Government companies as well. **The Committee felt that such exemption might not be a good practice, especially as some of the companies might be listed also. It noted that such exemption was also not given under the 1956 Act. The Committee, therefore, did not recommend a change.**

9. COMPANIES (ACCOUNTS) RULES, 2014

Location of servers for keeping backup of books and papers

9.1 The proviso to Rule 3 (5) of the Companies (Accounts) Rules, 2014 states that the backup of books of account and other books and papers of company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis. It has been argued that it may cause difficulties in compliance with the requirements where an Indian company maintains its books of accounts electronically outside India in a shared IT infrastructure and may find it difficult to segregate the data for the purpose of back-up. Major ERPs like SAP and Oracle do not allow for partial data back-up i.e. back up of data belonging to only one company or set of books of an entity, as it would increase IT costs and thus may negate benefits derived initially by centralizing IT processing. Further, it was felt that this provision might conflict with territorial laws of various countries as the data protection or privacy laws in Europe and US impose many restrictions on cross border sharing, storing and revealing of data. On the other hand, there are several jurisdictions across the world, for example UK, Belgium and other European countries where accounting records are required to be maintained locally for inspection, and therefore might lead to regulatory concerns with regard to grant of access to data maintained outside the country. **In view of the need to ensure access for regulatory requirements, the Committee recommended that the said proviso with regard to maintenance of local servers be retained. However, in case where free data access to all regulatory agencies of the country are allowed under a bilateral or multi-lateral treaty, in those cases, data servers may be allowed to be kept in the specific countries with which such treaties have been entered into.**

Accounts & manner of consolidation of Accounts

9.2 Rule 6 of the Companies (Accounts) Rules, 2014 deals with manner of consolidation of accounts. The third proviso to Rule 6 states that this Rule shall not apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on 1 April 2014 and ending 31 March 2015. **The Committee deliberated on extending this exemption perpetually, as demanded, and decided that this exemption was only a facilitative provision for transition and it should not be extended beyond 2014-15. Further, in case the company does not have subsidiaries but only associates and joint ventures, the Committee suggested that the exemption to consolidate the accounts of joint ventures and associates not be extended perpetually as AS 21 requirement are being suitably modified.**

9.3 **The Committee also deliberated on providing exemption from consolidation of accounts by one person companies, small companies and private companies. The Committee recommended that there is no justification in giving exemption, whatever the size of a company, wherever it has one or more subsidiaries etc. RBI suggested that the unhedged foreign exchange exposure of companies should either be disclosed in the annual financial systems, or captured through**

AOC-4. The Committee recommended for appropriate changes to capture the required information.

Disclosures in the Director's Report

9.4 Rule 8(1) of the Companies (Accounts) Rules, 2014 requires the Board of Directors' Report to contain a separate section on performance and financial position of each of the subsidiaries, associates and joint ventures. **The Committee recommended that the requirements under Rule 8(1) may be captured to the extent feasible in the statement under Rule 5 and therefore reduce the reporting requirement under Rule 8(1).**

9.5 Rule 8(3) of the Companies (Accounts) Rules 2014 mandates disclosure of certain information with respect to conservation of energy, technology absorption etc. **The Committee observed that as compared to the disclosure requirements of these items under the repealed rules i.e. Companies (Disclosure of particulars in the Reports of Board of Directors) Rules, 1988, there has been a substantial scaling down in these disclosures and hence, decided against dispensing with the same. Moreover, these disclosures are required for statistical purposes also. Hence, no amendment was recommended in this regard.**

Form AOC 2: Disclosure of Related Party Transactions (RPTs)

9.6 Section 134(3)(h) of the Act requires companies to disclose particulars of contracts or arrangements with related parties referred to in Section 188(1) in the prescribed form, AOC 2 read with Rule 8(2) of the Companies (Accounts) Rules, 2014. Section 188 of the Act applies to RPTs, which are not entered in the ordinary course of business or not on arm's length basis. However, Form AOC-2 (form for disclosure of related party transactions in the Board's Report) extends the requirement of disclosure also to material RPTs that are entered on arm's length basis, which goes beyond the requirements of the Act. The **Committee has already recommended that Form AOC-2 may be omitted as long as the required disclosures are made in the Financial Statements. It has also been recommended that the Board's Report should specifically discuss and refer to these disclosures (paragraph 9.10 of Part I of report may also be referred to). Consequential changes in the Rules may be required.**

9.7 Rule 13 of the Companies (Accounts) Rules, 2014 requires certain class of companies to appoint an internal auditor or a firm of internal auditors. A plain reading of the Rule gives the impression that a "company" (which in turn deploys cross section of professionals) cannot be appointed as an internal auditor for the purposes of Section 138. This does not appear to be the intent of the legislature or the practice with regard to appointment of internal auditors. **The Committee, therefore recommended that Rule 13 of the Companies (Accounts) Rules, 2014 be amended replacing the word 'a firm' with the term 'an entity' to avoid confusion.**

Disclosure of Remuneration of Directors and KMP

9.8 Sections 134(3)(a) and 92(3) of the Act read with Rule 12 of the Companies (Management and Administration) Rules, 2014 requires the Board's Report of a company to include an Extract of Annual Return in Form MGT-9. The said Form, inter alia, requires companies to disclose remuneration of Directors and key Management Personnel (KMP) and links the said remuneration to the salary and value of perquisites under the Income-tax Act, 1961. Further, Rule 5(2) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires disclosure of employees who are in receipt of remuneration not less than Rupees sixty lakhs per annum or Rupees five lakh per month. Disclosure of two different figures of remuneration in the Board's Report may create confusion. **The Committee has recommended for omission of MGT-9 requirements (paragraphs 7.5, 9.11 of Part I of the Report) In addition, the Committee recommended that the threshold of Rupees 60 lakh may be increased to Rupees One Hundred and Two lakh per annum, the requirements under the different Rules be harmonized.**

Compliance of all applicable laws referred to under Section 134(d)(f)

9.9 Section 134(5)(f) states that the Directors Responsibility Statement should state 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 efficiently. Further Form MR 3 of Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014 also requires the secretarial auditor to certify compliance on all applicable laws. **The Committee deliberated on restricting disclosure of compliance to important laws and felt that as the company has to comply with all applicable laws, restricting the Director's responsibility to compliance of specific laws only would not be acceptable. Moreover, the requirement in Form MR 3 form is for the Secretarial Auditor to satisfy himself that the concerned company has proper systems and processes at the Board level to ascertain compliance of applicable laws and this is a reasonable requirement for the secretarial auditors to enquire into and report.**

Corporate Social Responsibility

9.10 Rule 6 of the Companies (CSR Policy) Rules, 2014 states that the CSR Policy of the company shall deal with/disclose a list of CSR projects or programs which a company plans to undertake (which are listed in Schedule VII of the Act) specifying modalities of execution, implementation schedules as well as monitoring of such projects or programs. It was suggested that at the time of formulation of the Policy, it would be difficult for the CSR Committee to determine the exact list of projects or programs which a company plans to undertake. **However, the Committee was of the opinion that, keeping in view the requirement of disclosures, and the fact that the projects and programs are to be decided by the Board on the recommendations of the CSR Committee, there should not be a difficulty in finalising the required details and disclosing these. No change, therefore was recommended.**

9.11 Rule 3(2) of the Companies (CSR Policy) Rules, 2014 requires a company to spend on CSR for 3 financial years even when a company ceases to be covered under sub-Section (1) of 135. **The Committee recommended that Rule 3(2) may be amended to the effect that a company which ceases to be a company covered under sub-section (1) for any financial year may not be required to spend on CSR for that financial year.**

9.12 **The High Level CSR Committee had recommended that the administrative overhead expenditure on CSR should not include expenditure on capacity building of the implementing agencies, and should be increased from 5% to 10%. The Committee endorsed these recommendation and accordingly, suggested necessary changes in the Rule.**

9.13 **The Committee also endorsed recommendation of the High Level CSR Committee as contained in paragraph 9.9 of that report for providing differentiated treatment for implementing CSR policy depending on the available funds for CSR expenditure to a company.**

10. COMPANIES (AUDIT & AUDITORS) RULES, 2014

Appointment of Auditors not ratified at the General Meeting

10.1 The Explanation to Rule 3(7) of Companies (Audit and Auditors) Rules, 2014 states that if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor following the procedure laid in the Act. **The Committee has recommended for removal of the ratification requirement. Consequential changes only would be required once the change is carried out.**

11. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014

Appointment of Independent Directors

11.1 Section 149(4) of the Act, read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes appointment of independent directors in various classes of companies. **The Committee noted in case of joint venture companies, wholly-owned subsidiaries, and dormant companies that fall within the purview of Section 455 of the Companies Act, 2013, there does not appear to be sufficient justifiable grounds to prescribe for independent directors, who were primarily there to protect the interests of dispersed minority shareholders. The Committee, therefore, recommended for an amendment to be affected in the Rules, to exclude such companies from the requirement of appointing an independent director.**

Removal/Resignation of Independent Directors

11.2 Clause (2) of item VI of Schedule IV of the Act provides that a new independent director shall replace an independent director who resigns, or is removed from the Board of the company within a period of not more than one hundred and eighty days from the date of such resignation or removal. The second proviso to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later. The Committee noted that Regulation 25(6) of the SEBI (LODR) Regulations provides that an independent director who resigns or is removed from the Board shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later. **The Committee recommended, with a view to harmonise the provisions, that Schedule IV of the Act may be amended to provide for filling up of the vacancy within three months in line with Rule 4 and SEBI Listing regulation.**

ESOPs issued to IDs Prior to Commencement of the Act

11.3 Clarity was sought as to whether an independent director vested with ESOPs prior to commencement of the Act i.e. 1 April 2014 can continue to hold such ESOPs and exercise these in the subsequent years. **The Committee felt that prohibition under the Act cannot apply retrospectively and it is implied that any ESOPs issued or held prior to commencement of the Act would be valid and would be regulated as per the earlier regulations. The Committee felt that there was no need to issue any clarification on this matter.**

Separate Meeting of independent directors

11.4 Clause (1) of item VII of Schedule IV provides that the independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. Stakeholders requested that the term 'year' may be clarified as to whether it is a calendar year or financial year. **The Committee felt that since the compliances under the Act are mostly aligned to a financial year, the requirement should be linked to the financial year. The Schedule may be amended accordingly**.

11.5 The Committee also deliberated as to whether guidelines, for the separate meetings required to be held by Directors, need to be issued in light of demand from certain quarters in this regard. It, however, felt that these new concepts would evolve during the course of time and the Industry Chambers may guide their corporate members suitably through dissemination of best practices. **There may not be any need for guidelines to be issued by Government at this moment.**

11.6 **In the context of the above two paragraphs, the changes recommended in paragraph 12.7 of Part I of the Report may also be referred to.**

Woman Directors

11.7 The second proviso to Section 149 read with Rule 3 the Companies (Appointment and Qualification of Directors) Rules, 2014 lays the requirement for every listed company and every other public company having paid up share capital of Rupees one hundred crore or more; or turnover of three hundred crore rupees or more to appoint at least one woman director. **The Committee deliberated on the suggestions to increase the prescribed thresholds, making the requirement optional and penal provisions for non-compliance. The Committee felt that no change in the rule position is necessary.**

Resignation of a director

11.8 The proviso to Section 168 read with Rule 16 lays down requirement for a director to forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in form DIR-11. It was pointed out that many of the directors do not have digital signature and the directors who are willing to resign from the board but do not have a DSC are forced to take a DSC for the limited purpose of filing form DIR-11, which may not be useful for them thereafter, if they are not on the Board of any other company(ies). **The Committee noted that in the light of its recommendation to make intimation of resignation by the directors optional, the issue would be addressed. However, it was also noted that the proviso to Rule 16 already provides that a professional can file the relevant Form on behalf of a foreign director.**

11.9 It has also been suggested that the resigning director should be allowed to file Form DIR-11 which should record his resignation in register of directors, if the company does not notify the resignation of director in Form DIR-12 within the prescribed period. **The Committee understands that the Form DIR-11 is only a facility to the resigning director to intimate RoC of his resignation and filing of the said Form should not result in recording change of his status in the register of directors. The change should get recorded only after DIR-12 is filed by the company. This safeguard is needed to prevent unilateral departures from the Board by the directors. The Committee's recommendation in paragraph 11.17 of Part I of the report removing the mandatory requirement may also be noted.**

12. COMPANIES (MEETINGS OF BOARD AND ITS POWERS) RULES, 2014

Meetings of board held through Video-conferencing

12.1 Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 lays down the manner of conducting meeting of the Board through video conferencing. It was suggested that the procedure in this regard needed to be simplified and the requirement of recording entire proceedings of the meetings held through video conferencing should be done away with. **With a view to reduce the requirements, the Committee recommended that video recording may be preserved only until the minutes of the meeting are irrefutably confirmed by each of the Directors, as required under Rule 3(12)(b), and signed by the Chairman, as such minutes**

would be admissible evidence in the court of law. Further, the recording requirement of the meetings should be limited only to the summary of decisions taken at the meeting, as against the entire proceedings in line with the May 20, 2011 Circular of MCA. The Committee, however, feels that the provisions with regard to ensuring integrity, reliability, maintaining confidentiality, etc. are broad principles, and specific video conferencing services like Skype need not be mentioned in the Rules.

Audit Committee – omnibus approval

12.2 Attention was drawn to Regulation 23(3) of the SEBI (LODR) Regulations and proviso to Section 177(4)(iv) which empower the Audit Committee to give omnibus approval for related party transactions subject to prescribed conditions. It was indicated that the Act does not contain an explicit provision for granting omnibus approval for unforeseen transactions. **The Committee noted that relevant provisions of the Act were notified on 14 December, 2015 and the relevant Rules also provide, inter alia, that where the need for related party transaction cannot be foreseen and aforesaid details are not available, the audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction. The suggestion made, therefore, is already addressed.**

Rule 6: Thresholds specified under section 177

12.3 Rule 6 prescribes class of companies, in addition to listed companies, as required under Section 177 where the Board of Directors should constitute an Audit Committee. Suggestions were received to revise the thresholds so that these requirements do not apply to smaller unlisted companies. **The Committee recommended for reviewing the thresholds prescribed for independent directors, audit committees and nomination and remuneration committees keeping in view the suggestions already made by SEBI.**

Related Party Transactions

12.4 The third proviso to Section 188(1) has reference to the terms, 'ordinary course of business' and 'arm's length basis'. It has been suggested that these terms may be clarified/defined since these terms would differ on case-to-case basis. The Committee felt that these terms are known in general commercial parlance and enough accounting guidance is also available. **The Committee, therefore, did not recommend any change in the Act/Rules. It was noted that ICAI should also come up with suitable guidance note on these matters to guide its members on compliance with respect to Section 188 requirements.**

13. COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

13.1 **Form MR-1 has been prescribed under Section 196(4) for filing a return of appointment of managerial personnel but has also been extended for use of filing returns for CS, CFO and CEO who are KMPs. The details of KMPs are captured through Form DIR-12. The Committee, therefore, recommended for appropriate changes in the Form to restrict it to managerial personnel only.**

13.2 **The Committee also recommends that the disclosures under Rule 5 may be pruned to exclude information prescribed under Rule 5(1) except 5(1)(i) and 5(1)(iv). Further, the reporting requirement threshold of Rupees 60 lakh per annum for reporting of details of employees under Rule 5(2) may be changed to the top ten employees in terms of remuneration and employees receiving beyond the threshold of Rupees 102 lakh per annum (Rupees 8.5 lakh per month).**

13.3 **The Committee also deliberated on the requirements for reporting on compliance with company and other laws as part of Secretarial Audit. It felt that the Secretarial Auditor being an expert in corporate laws couldn't be expected to report compliance on other laws applicable to a company. Keeping this in view, it is expected that the Secretarial Auditor has to, therefore, satisfy himself that there are appropriate board processes as well as systems in the company to monitor and ensure the compliance with applicable laws. The reporting is accordingly prescribed in the Form MR-3. The Committee took the view that no change in these prescriptions is required.**

14. COMPANIES (AUTHORISED TO REGISTER) RULES, 2014

Conversion into companies

14.1 Section 366 of the Act enables conversion of a partnership firm, LLP, co-operative society, society or any other business entity formed under any other law for the time being in force into companies under the Act. The Rules, however, provide for registration/conversion of only LLPs into companies though references to other entities are there in Forms URC-1 and URC-2. **Hence, the Committee recommended to prescribe necessary Rules to enable other forms of business organizations also to convert into companies.**

14.2 At present, an LLP is required to first obtain availability of name from the Registrar before filing Form URC-1 which requires avoidable information to be furnished. The present procedure is as elaborate as for an entity being registered for the first time under the Companies Act, 2013. **The Committee recommended that the process for conversion of an LLP into a company may be made simpler by doing away with requirement for filing some documents, etc.**

Relaxations on requirements to provide NOCs from other regulators.

14.3 **Form URC-1 requires attachment of NOC from the Registrar of Firms. It was suggested that the same may be dispensed with. The Committee noted that registered as well as unregistered firms are enabled to be converted under Section 366. The requirement of NOC from existing regulators should be obtained by registered firms before effective conversion with a view to ensure that the applicant is reasonably compliant of the law by which it was hitherto governed.**

15. COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014

Companies incorporated outside India without a physical place of business in India

15.1 **Companies, which are incorporated outside India and are conducting business in electronic mode only without establishing any physical presence in India would not be able to mention place of business in India. The Committee felts that in such cases, the Rules may prescribe reporting of their principal place of business from where they are managing/administering their business in India.**

Closure of Liaison office/Branch Office/Project Office

15.2 **The 1956 Act provided a Form- 52 for the purpose of filing application for closure of Liaison office/Branch Office/Project Office. However, no corresponding form under Chapter XXII of the Companies Act, 2013 has been prescribed. The Committee recommended that necessary rule along with the Form may be prescribed for the purpose.**

Debentures, annual return, etc. and their inspection.

15.3 **Section 384 provides that the provisions of Chapter VI shall apply *mutatis mutandis* to charges on properties, which are created or acquired by any foreign company. Form FC-4 for filing of Annual Return of foreign companies provides only about the properties in India. The Committee recommends that clarity needs to be provided that these provisions will apply only to charges on funds raised in India**.

Annual Return

15.4 Section 384 (2) provides that the provisions of Section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India. **As in the case of a foreign company operating as a branch of foreign company e.g. a foreign bank, all the above details may not be available with it. Therefore, the Committee felt that disclosures required under Form FC-4 may be reviewed.**

Accounts of foreign company

15.5 Section 381 read with Rule 5(2) of the Companies (Registration Of Foreign Companies) Rules, 2014 provides that the provisions of Chapter X and Rules made thereunder, as far as applicable, shall apply *mutatis mutandis*, to foreign companies. Chapter X contains many provisions, which may not be relevant to foreign companies. The Committee noted that the intention of section 381 and Rule 5(2) is to apply only to those provisions, which relate to the manner of conduct of audit of Indian accounts of a foreign company. Since the board and shareholders of such a company are located outside India, the applicability of the provisions of Chapter X requiring approval of such authorities would not apply. **The Committee felt that the Ministry may clarify specifically the provisions of Chapter X that would be applicable in case of audit of Indian accounts of a foreign company (refer paragraphs 20.1 and 20.2 of Part I of the report).**

16. COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014

Rule 10: Limits on resubmission

16.1 As per Rule 10 (3) and Rule 10(4) of the Companies (Registration Offices and Fees) Rules, 2014, the Registrar of Companies allows fifteen days' time to the person or company which has filed the application or e-Form or document for furnishing further information or for rectification of defects etc. and if such information is not provided or is furnished partially within the time allowed, the Registrar is to either reject or treat the application or e-Form or document as invalid. Further, only one chance of resubmission is provided. Where the Registrar has recorded any document as invalid, the applicant/company can only re-file the document by fresh filing along with payment of fee and additional fee as applicable at the time of fresh filing. **The Committee felt that this is a reasonable requirement aimed to reduce slackness in the system, both on the part of the Government and professionals, and any grievances, due to mistakes or misuse of the system, should be addressed through the redress mechanism and no relaxation in the prescribed procedure is recommended.** The Committee also noted that qualified professionals, who should be fully equipped to submit complete and compliant applications, are preparing the forms.

17. NIDHI RULES, 2014

Loans

17.1 Rule 15(4) of the Nidhi Rules, 2014 permits only three kinds of securities against which a Nidhi can give loan to its members, namely:- (a) gold, silver, and jewellery; (b) immovable property and (c) fixed deposits receipts, National Savings Certificates, other Government Securities and insurance policies. A suggestion was received from stakeholders that in case of urban marginal or lower class, vehicles like auto-rickshaw, etc. are sources of income and are available on hypothecation of vehicle

itself and no other security is required. Further urban lower class has no immovable property or gold etc. Therefore**, it was suggested that vehicles should be allowed as security for hypothecation. The Committee deliberated and did not agree with the suggestion since vehicles are not *ejusdem generis* i.e. of the same kind as the other assets permitted.**

18. COMPANIES (MISCELLANEOUS) RULES, 2014

Dormant Company

18.1 Section 455 deals with dormant company. Rule 7 of the Companies (Miscellaneous) Rules, 2014, requires a dormant company to file a '*Return of Dormant Company*' annually in Form MSC-3, *inter alia*, indicating the financial position duly audited by a Chartered Accountant in practice along with the annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within thirty days from the end of each financial year. **The Committee discussed the suggestion that once a Company becomes dormant, whether it is prudent to have a requirement for such company to file any forms and returns. Since the Return of Dormant Company is a minimal form and only seeks to update its status in the Registry, the Committee did not recommend dispensing with it.**

Condonation of delay in certain cases

18.2 Section 460 provides that where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay. **The Committee discussed that for condonation of delay under Section 460, no e-Forms have been prescribed. The Committee felt that this is required in view of the ease of doing business. Therefore, the Committee recommended that, for this purpose a single pro-forma application form can be designed and necessary amendment may be made in the Rules.**

Power to exempt class or classes of companies from provisions of this Act

18.3 The Companies Act, 2013 provides the power to issue notifications under various sections of the Act. The Committee deliberated on the suggestion whether language to the effect that the notification shall come into force on the date it is published in the Official Gazette should be provided in all the notifications under the Act. The Committee discussed the need to provide clarity in each notification about the effective date on which the notification shall come into force. **The notifications issued by the Ministry of Corporate Affairs, unless a date is specifically provided, are effective from the date on which they are issued/published. The Committee however noted that care can be taken to provide such a date of enforcement, wherever feasible.**

ANNEXURE I: COPY OF ORDER CONSTITUTING THE COMPANIES LAW COMMITTEE

F. No. 2/19/2011-CL-V
Ministry of Corporate Affairs
Government of India

'A' Wing, 5th Floor, Shastri Bhawan
New Delhi – 110 001.

Dated: 4th June, 2015

ORDER

Subject: - Constitution of Companies Law Committee

The Government hereby constitutes a Companies Law Committee consisting of the following:-

S. No.	Name of Person/Institution	Position
1.	Secretary, Ministry of Corporate Affairs	Chairperson
2.	Ms. Reva Khetarpal, former Judge, Delhi High Court	Member
3.	Sh. Manoj Fadnis, President, The Institute of Chartered Accountants of India	Member
4.	Sh. Atul H Mehta, President, The Institute of Company Secretaries of India	Member
5.	Dr. A.S. Durga Prasad, President, The Institute of Cost Accountants of India	Member
6.	Shri Bharat Vasani, Chief Legal & Group General Counsel, Tata Sons Ltd, Industry nominee	Member
7.	Shri Y.M. Deosthalee, Chairman, L&T Finance Holdings, Industry nominee	Member
8.	Joint Secretary (Policy), Ministry of Corporate Affairs	Member-Convener

2. The Committee may invite or co-opt subject matter experts relating to corporate law or any other subject matter, as well as experts from SEBI, RBI, C&AG as needed. The Committee may also invite any other person or body in the interest of broad-based consultation.

3. The terms of reference of the Committee are as follows:

(i) to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 and

(ii) to examine the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies, while undertaking (i) above.

4. Non-official members of the Committee will be eligible for travelling, conveyance and other allowances as per extant Government instructions, wherever the sponsoring agency is unable to bear their expenditure. Secretarial support to the Committee will be given by the Ministry of Corporate Affairs.

5. The Committee shall submit its recommendations within six months of its first meeting.

(Alok Samantrai)
Director, Inspection and Investigation
Phone: 2338 9602

To

The Members of the Committee

Copy also to:-

(i) PS to CAM
(ii) Sr. PPS to Secretary
(iii) PS to AS
(iv) PSs to JS(M), JS(B), JS(SP), JS(K)
(v) All RDs/ROCs/OLs
(vi) President ASSOCHAM/FICCI/CII
(vii)Guard File
(viii) Website of the Ministry

ANNEXURE II: CHAPTER WISE BREAK UP OF SUGGESTIONS RECEIVED

Chapter Name	Suggest-ions received through portal	Suggestions received on paper	Total Suggestions
Chapter I -Preliminary. (1 - 2)	155	4	159
Chapter II -Incorporation of Company and Matters Incidental Thereto. (3 - 22)	97	2	99
Chapter III -Prospectus and Allotment of Securities. (23 - 42)	91	9	100
Chapter IV -Share Capital and Debentures. (43 - 72)	140	7	147
Chapter V -Acceptance of Deposits by Companies. (73 - 76)	85	1	86
Chapter VI -Registration of Charges. (77 - 87)	25	4	29
Chapter VII -Management and Administration. (88 - 122)	176	2	178
Chapter VIII -Declaration and Payment of Dividend. (123 - 127)	12	0	12
Chapter IX -Accounts of Companies. (128 - 138)	254	5	259
Chapter X -Audit and Auditors. (139 - 148)	159	1	160
Chapter XI -Appointment and Qualifications of Directors. (149 - 172)	158	3	161
Chapter XII -Meetings of Board and its Powers. (173 - 195)	340	10	350
Chapter XIII -Appointment and Remuneration of Managerial Personnel. (196 - 205)	143	0	143
Chapter XIV - Inspection, Inquiry and Investigation.(206 - 229)	3	0	3
Chapter XV -Compromises, Arrangements and Amalgamations. (230 - 240)	18	0	18
Chapter XVI-Prevention of Oppression and Mismanagement. (241 - 246)	8	1	9
Chapter XVII-Registered Valuers. (247)	4	0	4
Chapter XVIII-Removal of Name of companies from the Register of Companies. (248 - 252)	0	0	0
Chapter XIX-Revival and Rehabilitation of Sick Companies. (253 - 269)	8	0	8

Chapter Name	Suggest-ions received through portal	Suggestions received on paper	Total Suggestions
Chapter XX-Winding Up. (270 - 365)	5	0	5
Chapter XXI Companies Authorised to Register Under This Act & Winding Up of Unregistered Companies. (366 - 378)	14	0	14
Chapter XXII-Companies Incorporated Outside India. (379- 393)	19	1	20
Chapter XXIII-Government Companies. (394 - 395)	0	0	0
Chapter XXIV-Registration offices and fees. (396 - 404)	22	0	22
Chapter XXV-Companies to Furnish Information or Statistics. (405)	3	0	3
Chapter XXVI-Nidhis. (406)	2	0	2
Chapter XXVII-National Company Law Tribunal and Appellate Tribunal. (407 - 434)	2	0	2
Chapter XXVIII- Special Courts. (435 - 446)	6	0	6
Chapter XXIX Miscellaneous. (447 - 470)	31	1	32
Total No of suggestions received	**1980**	**51**	**2031**

ANNEXURE III: SUMMARY OF PROPOSED CHANGES

PART I: RECOMMENDATIONS PROPOSING AMENDMENTS TO THE ACT

PROVISION	NATURE OF AMENDMENT
CHAPTER 1: DEFINITIONS	
Section 2(6) Associate Company	a. Explanation to Section 2(6) to read as "For the purposes of this clause, 'significant influence' means control of at least twenty per cent of the total voting power, or control of or participation in taking business decisions under an agreement." b. 'Joint venture' to be assigned the same meaning as under Indian Accounting Standard (Ind AS) 28, as part of the Explanation to Section 2(6) itself. ***(Para 1.3, 1.4)***
Section 2(28) Cost Accountant	Provision to be amended to define cost accountant in practice. ***(Para 10.19)***
Section 2(30) Debenture	a. Exception to be made for instruments covered under Chapter III D of the RBI Act. b. Exception to also be made for deposits accepted by banking companies, and flexibility to be given to the Central Government, in consultation with RBI and SEBI, as applicable, to carve out other instruments from the definition, as may be required. ***(Para 1.7)***
Section 2(41) Financial Year	To expand the first proviso to Section 2(41), to allow a company having associates and joint ventures incorporated outside India to apply for a different financial year to the Tribunal. ***(Para 1.9)***
Section 2(46) Holding Company	To add an explanation in Section 2(46) in line with explanation (c) to Section 2(87). ***(Para 1.11)***
Section 2(49) Interested director	To omit Section 2(49). ***(Para 1.12)***
Section 2(51) Key managerial personnel	To allow the Boards of relevant companies to appoint any other person as KMP/whole-time KMP (***Para 13.10***)
Section 2(57) Net worth	To include 'debit or credit balance of profit and loss account' in the definition of net worth. ***(Para 1.15)***
Section 2 (57A) Nominee director	New definition to be inserted. (***Para 11.6***)
Section 2(76) Related Party	a. To amend Section 2(76) (viii) to substitute the word 'company' with the word 'body corporate' and to also include investing company or the venturer of a company. b. To bring the Companies (Removal of Difficulties) Fifth and Sixth Order, 2014 into the Act. ***(Para 1.20)***
Section 2(85)	a. To replace the words 'last profit and loss account' with the words 'last

PROVISION	NATURE OF AMENDMENT
Small Company	audited profit and loss account'. b. To incorporate the Companies (Removal of Difficulties) Order, 2015 into the Act. c. Review of the thresholds to be done by the MCA, at an appropriate time. ***(Para 1.21)***
Section 2(87) Subsidiary Company	a. To replace the words 'total share capital' with the words 'total voting power in Section 2(87) (ii), with consequential changes in the Rules to be also carried out. b. To omit the proviso in Section 2(87) dealing with restrictions on layers of subsidiaries. ***(Para 1.23, 1.24)***
Section 2(91) Turnover	To revise the definition of 'turnover' as "the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by the company during a financial year." ***(Para 1.25)***
CHAPTER 2: INCORPORATION OF COMPANIES	
Section 4(1) (c) Memorandum	a. To amend Section 4(1)(c) to allow companies to have an option to have a more generic object clause, i.e., 'to engage in any lawful act or activity or business as per the law for the time being in force' in the MOA. b. To amend Section 4(5)(i), to reduce the period of name reservation from sixty to twenty days from the date of approval, and simultaneously, the fees for such reservation to be reduced to Rupees Five Hundred. ***(Para 2.1, 2.2)***
Section 7(1) (c) Incorporation of companies	The requirements with respect to affidavits under Section 7(1) (c) to be replaced with self-declarations. ***(Para 2.3)***
Section 12(1) and 12(4) Registered office of company	a. Section 12(1) to be amended to provide for a company to have its registered office within thirty days of its incorporation. b. Section 12(4) to be amended so as to increase the time limit for registering change in registered office to thirty days. ***(Para 2.4, 2.5)***
Section 21 Authentication of documents, proceedings and contracts	Section 21 to be amended to allow 'any employee of the company duly authorised by the Board' to authenticate company's documents. ***(Para 2.6)***
New section Effect of number of members falling below minimum required	a. To provide for consequences of number of members falling below the prescribed minimum i.e. fastening the continuing members with the liability for all the debts incurred by the company till the prescribed minimum is restored. b. Provision to be made for the maximum period of 6 months within which the default shall be made good, failing which the violation triggers. ***(Para 2.7)***
CHAPTER 3: PROSPECTUS AND ALLOTMENT OF SECURITIES	
Section 26 Matters to be stated in prospectus	Section 26(1) to be modified to empower SEBI to prescribe the contents of a prospectus, in consultation with the MCA. MCA and SEBI to devise the minimum disclosures to be included in the prospectus to reduce the size of the prospectus. ***(Para 3.1)***
Section 35	Provision to be amended to hold experts identified in the prospectus, liable for

PROVISION	NATURE OF AMENDMENT
Civil liability for misstatement in prospectus	statements prepared by them, and on which the directors relied upon. ***(Para 3.2)***
Section 42 Private placement	a. Requirement under Section 42 and Rule made thereunder with regard to preparation and filing of the private placement offer letter and form PAS 4 to be discontinued. b. Disclosures mandated under Rule 13(2) (d) of the Companies (Share Capital and Debenture) Rules, 2014 to be embodied in the Private Placement Application Form. c. Important information presently provided in Form PAS-4 to be shifted as disclosure requirement under Rule 13(2) (d). In case of private placement of non-convertible debentures within the ceiling specified under Section 180(1) (c), the Board resolution under Section 179(3) (c) to provide for reasonable details about the proposed offer. d. Subject to the limit on the number of persons who could be made the offer of securities as prescribed under Section 42(2), a company to be allowed to open more than one issue of securities, at the same time, in a year, to such classes of investors as may be prescribed by Rules. e. Section 42(3) to be made explicit about the simultaneous offering of securities of different kinds, as currently prescribed in the Rules. f. To modify Section 42(7) to offer securities only to persons whose details as may be prescribed, are recorded by the company, prior to the invitation to subscribe, with no requirement to file it with the Registry. g. New Rule to be inserted to the effect that companies would initiate circulation of application form and collect monies only after the resolution (i.e. Special resolution or the Board resolution) is filed with the Registry. h. Consequential change to be made to Rule 14(3) and form PAS-5 to be omitted. i. In case of non-convertible debentures, the proviso to Rule 14(2)(a) to be amended to prescribe that the relevant board resolution under Section 179(3)(c) would be adequate in case the offer under Section 42 is for debentures up to the amount permissible for Board under Section 180(1)(c) of the Act. j. Board resolution to clearly mention (in the body of the resolution) that the offer of debentures being approved by the Board is through private placement under Section 42 and certain other minimum details to be provided in the Board resolution, as may be prescribed in the Rules. k. Private companies (who have been given exemption from Section 117(3) (g) through Section 462 notification) to be required to file board resolutions under Section 179(3) (c) or pass a special resolution. l. Section 42(1) to clearly provide that provisions of Section 42 and rules made thereunder shall also apply to offer of convertible securities referred to in Section 62(1) (c) read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014. m. Companies to be required to file return of allotment (PAS-3) within the prescribed timeline, and to be made liable for penalties under Section 42 in case of non-compliance. n. Act/Rules to provide that companies would not be allowed to utilise the monies raised through private placement unless such return of allotment is filed.

PROVISION	NATURE OF AMENDMENT
	o. Company to be mandated to get valuation done (in respect of equity and convertible securities), but the report of the valuer not to be required to be filed/ circulated. p. Section 62(1)(c) and Rule 13(3) requiring price of securities to be decided in advance to be modified and provisions allowing pricing as per a formula (on the lines of RBI regulation/FDI Policy) to be considered. q. For equity or mandatorily convertible securities, the minimum investment size to be Rupees Twenty Thousand with no linkage to face value. For non-convertible preference shares or non-convertible debentures, the minimum investment size to be Rupees One Lakh with no linkage to face value. r. An accountable way of use of renunciation rights by shareholders to be prescribed. ***(Para 3.4-3.13)***
CHAPTER 4: SHARE CAPITAL AND DEBENTURES	
Section 53 Prohibition of shares at discount	a. The words 'discounted price' to be replaced with the word 'discount'. b. Companies to be allowed to issue shares at a discount pursuant to RBI's Strategic Debt Restructuring Scheme. ***(Para 4.1)***
Section 62 Further issue of share capital	a. To allow any mode of delivery that would provide irrefutable/certain proof of delivery. b. Section 62(1)(c) and Rule 13(3) to be amended to allow pricing of convertible securities at the time of conversion as per a formula (on the lines of RBI regulation/FDI Policy). ***(Para 4.3, 3.11)***
CHAPTER 5: ACCEPTANCE OF DEPOSITS BY COMPANIES	
Section 73 Prohibition of acceptance of deposits from public	a. In Section 73(2) (c), the requirement for the amount to be deposited and kept in a scheduled bank in a financial year to be not less than 20% of amount of deposits maturing during that financial year. b. Provisions of Section 73(2) (d) along with the relevant rules providing for deposit insurance to be omitted. c. Section 73(2) (e) to be amended to enable companies which have made good the default to accept deposits after five years from the date the default was made good, with full disclosures. d. Exemptions to be provided to private companies engaged in the infrastructure sector from the upper limit. e. Limits with regard to raising of deposits from members for 'Start-ups' which are private companies to be removed for the first five years from their incorporation by using Section 462 of the Act. ***(Para 5.1-5.5)***
Section 74 Repayment of deposits accepted before the commencement of this Act	To bring Rule 19 of Companies (Acceptance of Deposits) Rules, 2014 into the Act. ***(Para 5.6)***
Section 76A Punishment for contravention of Section 73 or Section 76	Minimum fine to be modified to Rupees One Crore, or twice the amount of deposit accepted, whichever is lower, and the maximum amount to be as already provided. ***(Para 5.7)***

PROVISION	NATURE OF AMENDMENT
CHAPTER 6: REGISTRATION OF CHARGES	
Section 77 Duty to register charges, etc.	Section 77(3) to provide for prescriptive powers, to allow certain liens or securities or pledges to be exempted from filing. ***(Para 6.2)***
Section 82 Company to report satisfaction of charge	Time limits, as provided for under Section 77 for registration of charge to be allowed for reporting satisfaction of charges under Section 82. ***(Para 6.3)***
	CHAPTER 7: MANAGEMENT AND ADMINISTRATION
Section 89 Declaration of beneficial interest	Definition of beneficial interest in a share, to be provided as an Explanation. ***(Para 7.1, 7.2)***
New section Declaration of beneficial ownership etc.	a. Definition to be provided for the beneficial ownership in a company. b. Companies and individuals to be obligated to obtain information on beneficial ownership and companies to be empowered to seek information from members and in case of failure to supply the required information, apply sanctions in the form of suspension of rights against the beneficial interests, subject to adequate safeguards. c. Companies to be mandated to maintain register of beneficial owners and provide the information to the registry (MCA21). Periodic updating to also be mandated. Data privacy concerns to be addressed by making only part of the filed information available to the public. d. Companies not complying with the requirements to be liable to fine and criminal prosecution. ***(Para 7.2)***
Section 92 Annual Return	a. The Companies (Second) (Removal of Difficulties) Order, 2014, replacing the words *"paid up capital and turnover"* with the words *"paid up capital or turnover"* to be included in the Act by way of an amendment. b. Prescriptive powers for separate Annual Return format for small companies and OPCs, with lesser detail to be included in the Section. c. The requirement of attaching extract of the annual return to the Board's Report under Section 92(3) to be omitted. The web address/link of the Annual Return filed by the company and hosted on its website, if any, to be provided in the Board's Report. Information with regard to shareholding pattern to be provided as part of Section 134 requirements. ***(Para 7.4, 7.5)***
Section 93 Return to be filed with Registrar in case promoters' stake changes	Requirement to be omitted. ***(Para 7.6)***
Section 94 Place of keeping and inspection of registers, returns etc.	Personal information in the register of members, as may be prescribed in the Rules, not to be made available publicly. ***(Para 7.7)***
Proviso to	The requirement of providing the Registrar with an advance copy of a

PROVISION	NATURE OF AMENDMENT
Section 94 (1) Place of keeping and inspection of registers, returns, etc.	proposed special resolution as required under Section 94(1) to be done away with. ***(Para 7.8)***
Section 96 Annual General meeting	a. Private limited companies and wholly owned subsidiaries of unlisted companies to be allowed to convene AGMs at any place in India, provided approval of 100% shareholders is obtained in advance. b. Section 96(2) to be amended to provide for exemption to a class of companies. ***(Para 7.9)***
Proviso to Section 101 (1) Requirement of consent	a. Requirement of consent of ninety-five percent of the votes exercisable at a general meeting at a short notice, to be applicable in the case of extraordinary general meetings only. ***(Para 7.10)***
Section 100 and applicable rule Calling of extraordinary general meeting	a. Explanation to Rule 18(3) Companies (Management and Administration) Rules, 2014 to be deleted and an explanation to be incorporated at the end of Section 100 mandating that EGMs shall be held only in India. b. Exemptions to be provided to wholly owned subsidiaries of companies incorporated outside India. ***(Para 7.11)***
Section 110 Postal Ballot	Section 110 to be amended, such that Rule 22(16) of the Companies (Management and Administration) Rules, 2014 would provide that if a company is required to provide for electronic voting, then the mandatory items to be transacted through postal ballot could be transacted through e-voting in the general meetings. ***(Para 7.12)***
117 Resolutions and agreements to be filed	a. Clause (e) of Section 117(3) to be deleted. b. Exemption for banks from compliance of Section 117(3) (g) w.r.t. resolutions passed under section 179(3)(f). ***(Para 7.14, 7.16)***
CHAPTER 8: DECLARATION AND PAYMENT OF DIVIDEND	
Section 123 Declaration of dividend	Section 123(3) be amended in such a way as to allow declaration of interim dividend from out of the profits of the current financial year, generated till the date of declaration, including brought forward surplus in the Profit & Loss Account, and the same could be declared anytime up to convening of AGM for the said financial year. ***(Para 8.3)***
CHAPTER 9: ACCOUNTS OF COMPANIES	
Section 129(3) read with Section 136 Consolidated Financial statement	a. To provide that where a CFS was statutorily required to be prepared as per the law of the jurisdiction in which the overseas subsidiary is established and is placed on the website in the statutory format, there would be no requirement for standalone financial statements of the step down subsidiaries to be attached to the financial statement of the company. No exemption to be provided in other cases. b. The reference to 'associates' and 'joint ventures' under Section 129 to be amplified/clarified to be in accordance with the applicable Accounting Standards. ***(Para 9.3, 9.5)***
Section 130	a. A provision to be included to enable the Court/Tribunal to give notice to any other party/person concerned in the matter, who has not been

PROVISION	NATURE OF AMENDMENT
Re-opening of accounts	specifically referred to in the provisions. b. Applicability of provisions of Section 130 for the re-opening of accounts to be restricted to eight years, unless a longer period is required through a specific direction issued by the Central Government, under Section 128(5). ***(Para 9.7, 9.8)***
Section 134 Financial Statement, Board's Report, etc.	a. In case of a company not having a managing director, the Chief Executive Officer to be mandated to sign the financial statements. The words *"if any"*, to be inserted after the words *"managing director"* in Section 134(1). b. Form MGT-9 to be omitted with details regarding shareholding, etc. to be specifically prescribed under Section 134(3). c. Salient points of the CSR Policy, Remuneration Policy to be included in the Board's Report and the detailed documents/policies to be placed on the website of the company, if any, and web address or link of these documents/policies to be provided in the Board's report. Changes in the policies to be specifically highlighted in the salient points. d. Disclosures/ attachments with regard to loans or investments under Section 186 and particulars of contracts with related parties under Section 188 to be omitted if provided in the financial statements. Such matters to be discussed only in the main Report. Disclosure requirements under Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 to be pruned. e. For small companies, separate format for the Board's Report to be prescribed. f. Disclosures in the Director's Report, Financial Statements and the Corporate Governance reporting requirements of SEBI to be harmonized to avoid repetition and make the Annual Report more structured. g. Board's Report to disclose compliance with regard to maintenance of cost records, where mandated. h. Disclosures of compliance under CARO 2015 to be provided in Section 134(3). ***(Para 9.10, 9.11, 9.12, 9.14, 10.20)***
Section 135 Corporate Social Responsibility	a. Companies not required to appoint Independent Directors to have CSR Committee with two or more directors. b. The words *"any financial year"* to be replaced by the words 'preceding financial year'. c. The inconsistency between Rule 2(1) (f) of CSRP Rules, 2014 and provisions of the Act to be removed by 'providing prescriptive powers to exclude certain income from net profit' in Section 135(1) itself. d. Section 135 (3) (a) to be modified to refer to subjects in Schedule VII within which CSR activities could be taken up by an eligible company. e. The term *"average net profit"* in Section 135(5) to be replaced with the words *"net profit",* to remove any ambiguity, and prescriptive powers to be introduced for specifying the manner of calculation of 'net profits' of a foreign company, through Rules, while referring to Section 381. ***(Para 9.16, 9.17, 9.18, 9.20, 9.21)***
Section 136 Right of member to copies of audited financial statement	a. Financial statements to be allowed to be circulated at a shorter period as per requisite approval of shareholders. b. Requirements in item (a) of the 4th proviso to Section 136 (1) to be limited to listed companies. ***(Para 9.26, 9.27)***

PROVISION	NATURE OF AMENDMENT
CHAPTER 10: AUDIT AND AUDITORS	
Section 139 (1) Appointment of Auditors	a. Provisions relating to ratification to be omitted. b. Provision to make it explicit that if the auditor was unwilling to continue at any stage before completion of his five-year term, it would be treated as a case of resignation, and provisions of Section 139(8) for the filling up such casual vacancy arising due to resignation would apply. ***(Para 10.2, 10.3)***
Third proviso to Section 139 (2)- Transitional period for rotation of auditors	Rule 6 to provide clarity over the fact that the three years' transition period would be counted from AGM to AGM, and not from the commencement of the Act. ***(Para 10.5)***
Section 141 Disqualifications of auditors	a. For the purposes of Section 141(3)(d), the term *"relative"* to be suitably modified. b. Section 141(3)(i) to be amended to provide clarity on the restriction provided therein linked to the services prohibited under Section 144. ***(Para 10.8, 10.9)***
Section 143 Powers and duties of auditors and auditing standards	First proviso to Section 143(1) to be amended to provide the auditor of a holding company a right of access to accounts and records of an associate company and joint venture. ***(Para 10.10)***
Section 143 (3) (i) Reporting on Internal Financial Control	a. To provide for reporting obligations for auditors on internal financial controls to be with reference to the financial statement. b. Auditor to express true and fair opinion on the consolidated financial statements and report on the relevant and significant matters concerning subsidiaries/associates requiring attention of shareholders, rather than the entire reporting requirements of section 143(3) of the Act. ***(Para 10.11, 10.12)***
Section 143(12) Reporting of fraud by auditor	Form ADT-4, which specified the manner of reporting fraud, to be modified to allow an auditor to explain his comments. ***(Para 10.14)***
Section 147 Punishment for contravention	a. Provisions of Rule 9 to be brought in the Act. b. Punishment under Section 147(2) and 147(3) to be aligned. ***(Para 10.17, 28.17 and 28.18)***
Section 148 Central Government to specify audit of items of cost	The name of Institute of Cost and Works Accountants of India (ICWAI) to be corrected as Institute of Cost Accountants of India (ICAI). ***(Para 10.21)***
CHAPTER 11: APPOINTMENT AND QUALIFICATIONS OF DIRECTORS	
Section 149 (3) Residence requirement for	Provision to provide for the residence requirements to be for the current financial year, with the requirement affected after a period of six months from incorporation. ***(Para 11.1)***

PROVISION	NATURE OF AMENDMENT
Directors	
Section 149 (6) Independent Directors	a. To introduce the test of materiality, for the purpose of determining whether pecuniary relationships could impact the independence of an individual for becoming an independent director. b. In Section 149(6)(d), the scope of the restriction on *"pecuniary relationship or transaction"* entered into by a relative to be made more specific by clearly categorizing the types of transactions as provided under Section 141(3)(d). c. In Section 149(6)(e)(i), the scope of the restriction to be modified. For the preceding years, the restriction is to be for relatives holding Board or KMP/one level below Board position similar to that contained in Section 141(3)(f). This scope of restriction after appointment is to be retained as provided. ***(Para 11.2-11.5)***
Definition Clause Nominee Director	Definition of 'nominee director' to be specifically included in the definition clause. ***(Para 11.6)***
Section 160 Rights of persons other than retiring directors to stand for directorships	In case of appointment of Independent Directors and Directors recommended by the Nomination and Remuneration Committee, requirements of Section 160 to be dispensed with. ***(Para 11.7, 11.8)***
Section 161 (2) Appointment of additional, alternate and nominee directors	Section to prohibit appointment of a director of a company as an alternate director in the same company. ***(Para 11.9)***
Section 161 (4) Casual vacancy	Right to fill a casual vacancy to be made available to the Boards of private companies as well. ***(Para 11.10)***
Section 165 Number of directorships	Directorship in a dormant company to be excluded for reckoning the limit of directorships specified. ***(Para 11.12)***
Section 167 (1) (a) Disqualifications from appointment as, and vacation of office of director	Scope of Section 167(1) (a) to be limited to only disqualifications under Section 164(1). ***(Para 11.13)***
Section 164 Disqualifications for appointment of director	a. Inconsistency between proviso to sub-section (3) of Section 164 and Section 167(1)(f) to be corrected and in case of requirement for vacation of office of a Director, it would not take effect until the appeals are disposed off, while in case of disqualification, provisions for pendency of appeal not to be provided. b. Disqualification under Section 164(2) to be only applicable to a person

PROVISION	NATURE OF AMENDMENT
	who was a director at the time of the non-compliance, and in case of a continuing non-compliance, a period of six months is to be allowed for a new Director to make the company compliant. ***(Para 11.14, 11.15)***
Section 168 Resignation of director	a. In the proviso to Section 168(1), director to be given an option for filing his resignation, instead of making it mandatory**.** b. Necessary flexibility to be provided in the Act to do away with the requirement of DIN or provide an option to shift to AADHAAR or any other universally accepted identification number at a future date. ***(Para 11.17, 11.18)***
CHAPTER 12: MEETINGS OF BOARD AND ITS POWERS	
Section 173 (2) Participation through video-conferencing	Flexibility to be provided to allow participation of Directors through video conferencing, subject to such participation not being counted for the purpose of quorum, but considered for the purpose of sitting fees. ***(Para 12.1)***
Section 174 (3) Interested directors: exemptions from Section 174(3) to private companies	Exemption to be provided under Section 174(3) to enable participating interested Directors for the purposes of quorum, using Section 462 of the Act. ***(Para 12.2)***
Section 177 (4) Audit Committee	a. For transactions not covered under Section 188, the Audit Committee to give its recommendation to the Board in case it is not approving a particular transaction. b. Subject to safeguards, Audit Committee to allow ratification subject to an upper threshold of Rupees One Crore on such transactions. c. Section 177 to be amended to provide that related party transactions between a holding company and its wholly owned subsidiaries not requiring Board approval under Section 188 need not require the approval of the Audit Committee. d. A clarification to be issued, stating that dormant companies are exempt from the requirement to constitute Audit Committee. ***(Para 12.3, 12.4, 12.5, 12.6)***
Section 178 (4) Nomination and Remuneration Committee	a. Amendment of Schedule IV, to enable the NRC to prescribe 'a methodology for the evaluation of performance of individual Directors, Committee(s) of the Board and the Board as a whole', and the Board to carry out the performance evaluation as per the methodology approved by the Board. b. Companies to be allowed place the remuneration policy on its website, if any, and to disclose only the salient features of the policy, along with the web-link in the Board's report. ***(Para 12.7, 12.8)***
Section 177 and 178 Audit Committee	With respect to private companies which have debt securities listed in a stock exchange, review to be done of existing thresholds, or exemptions under Section 462 to be given, if required. ***(Para 12.9)***
Section 180 (1) (c)	To include securities premium for calculation of aggregate of paid up capital and free reserves. ***(Para 12.11)***

PROVISION	NATURE OF AMENDMENT
Restriction on Board Power	
Section 184 (5) Disclosure of interest by directors	To include body corporate (foreign company) in this provision, to align it to Section 184(2), where the words 'body corporate' have been used to evaluate the interest of a director. ***(Para 12.13)***
Section 185 Loans to Directors, etc.	a. Companies to be allowed to advance loans to any other person in whom the director is interested, subject to the prior approval of the company by a special resolution. b. Loans extended to persons, including subsidiaries, falling within the restrictive purview of Section 185 to be used by the subsidiary for its principal business activity only, and not for further investment or grant of loan. c. Interest rate prescribed in the proviso to be aligned with the rate provided under Section 186(7). ***(Para 12.14, 12.15)***
Section 186 (1) Loan and Investment by company	a. To remove restrictions on layering. b. 'Principal business' of an investment company to be clarified in the explanation below sub-section (13) of Section 186 on the lines of RBI's stipulations. ***(Para 12.16)***
Section 186 (2) Loan and Investment by company	a. Provisions of Rule 13(1) of the Companies (Meetings of Board and its Powers) Rules, 2013 relating to aggregation of loans and investments for the purpose of calculating the limits under Section 186(2) to be provided in the Act. b. An 'explanation' to be inserted to clarify the exclusion of employees from the requirement of the sub-section/clause. ***(Para 12.17, 12.18)***
Section 186 (7) Loan and Investment by company	The loan given to foreign entity should be at the effective yield which should not be less than the rate provided under Section 186 (7). ***(Para 12.20)***
Section 186 (11) Loan and Investment by company	a. The Removal of Difficulty Order for Section 186(11) with regard to Insurance and Housing Finance Companies, etc. issued in January 2015, subject to legal clarification, to be included in the sub-section itself through an amendment. ***(Para 12.21)***
Second proviso to Section 188 (1) Related Party Transactions	a. MCA circular no. 30/2014 in relation to Section 188 (1) to be withdrawn. b. Related parties in case of joint ventures and closely held public companies where they are not allowed to vote, to be specifically excluded from the requirements of the second proviso. ***(Para 12.22)***

PROVISION	NATURE OF AMENDMENT
Section 194 and 195 Prohibition on forward trading and insider trading of securities	To be deleted. ***(Para 12.23)***
CHAPTER 13: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL	
Section 197 Managerial remuneration	The requirement for government approval to be omitted altogether, and necessary safeguards in the form of additional disclosures, audit, higher penalties, etc. may be prescribed instead. ***(Para 13.5)***
Section 198 (4) Calculation of profits	a. Amendment of Section 198(4)(l), to include brought forward losses of the years subsequent to the Companies (Amendment) Act, 1960. b. Specific provisions for investment companies, whose principal business is sale and purchase of investments, to be incorporated in the Act. ***(Para 13.8, 13.9)***
Section 203 read with Schedule V Appointment of key managerial personnel	a. Board to be empowered to designate other whole time officers of the company as key managerial personnel and the definition of key managerial personnel in Section 2(51) to be accordingly modified. b. A whole time key managerial personnel, holding necessary qualifications, to be allowed to hold more than one position in the same company at the same time. c. Companies to file information (similar to that for auditors) on the resignation of any of the KMPs in the Registry. d. The requirement under Schedule V for a foreign national to have stayed in India for a year in order to be a Managing Director/ Whole time director to be done away with. ***(Para 13.10,13.11, 13.12, 13.14)***
CHAPTER 14: INSPECTION, ENQUIRY AND INVESTIGATION	
Section 223 Inspection, Inquiry and Investigation	Reports to be made available to the members of the company and other body corporate, and also to any other person, whose interests as a creditor of the company and other body corporate appear to the Central Government to be affected. ***(Para 14.1)***
CHAPTER 15: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS	
Section 236 Purchase of Minority Shareholders	References to the phrase 'transferor company' in Section 236, to be modified to a 'company whose shares are being transferred' or alternatively, an explanation to be provided in the provision clarifying that Section 236 only applies to the acquisition of shares. ***(Para 15.1)***
CHAPTER 16: PREVENTION OF OPPRESSION AND MISMANAGEMENT	
No amendments recommended.	
CHAPTER 17: REGISTERED VALUERS	
Section 247 (2) (d) Registered Valuers	a. Government to decide on framework after taking into account views of all stakeholders. b. Valuer to be disqualified for valuing any asset, if he had any interest in such an asset, at any time during three years prior to his appointment, and three years after his cessation as a valuer. ***(Para 17.1, 17.2)***

PROVISION	NATURE OF AMENDMENT
CHAPTER 18: REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES	
No amendments recommended.	
CHAPTER 19: COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT	
Section 366 (2) Companies authorized to register under this Act.	a. Provision to be amended to allow for conversions to companies from partnership firms, etc. with 'two or more members', provided that in case of less than seven members, the conversion would be to a private company. b. Changes in the Rules to be made to allow registration of partnership firms as companies. ***(Para 19.1, 19.2)***
CHAPTER 20: COMPANIES INCORPORATED OUTSIDE INDIA	
Section 379 Application of Act to Foreign Companies	Clarity to be provided in respect of applicability of relevant provisions of Chapter XXII to foreign companies in which the Indian citizens/bodies corporate do not hold 51% or more shareholding, on the lines of Section 591(1) of the Companies Act, 1956. Amendment in Section 379 with respect to the threshold of transactions etc. conducted by such companies, to be prescribed in the relevant Rules. ***(Para 20.2)***
Section 384 Debentures, annual return, registration of charges, books of account and their inspection	Provision to be amended to incorporate the provisions of Rule 3 of the CSR Policy Rules, 2014. ***(Para 9.19)***
CHAPTER 21: GOVERNMENT COMPANIES	
No amendments recommended.	
CHAPTER 22: REGISTRATION OFFICES AND FEES	
Section 403 (1) Fee for filing etc.	a. Necessary changes to be made in the Act to bring clarity that the requirement of filing with additional fee for 270 days under first proviso to Section 403 is applicable only to the six sections. b. Additional fees to be enhanced substantially (by up to ten times of the current prescribed amount) to deter non-compliance, and if a company files a document within the original period, not including the period allowed with additional fees. A separate requirement for additional fees for other than six sections to also be prescribed. c. Rules to clarify that, irrespective of the delay, obtaining condonation of delay is not a pre-requisite to filing a document. ***(Para 22.2, 22.3)***
CHAPTER 23: COMPANIES TO FURNISH INFORMATION OR STATISTICS	
No amendments recommended.	
CHAPTER 24: NIDHIS	
Section 406 Nidhi	Nidhis to be regulated at a central level in the Ministry, or through one or more Regional Directors. ***(Para 24.1)***
CHAPTER 25: NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL	
Section 409, 411, 412 NCLT and	Sections 409(3)(a) & (e), 411(3) and 412(2), as directed by the Honourable Supreme Court, to be included in the Act. ***(Para 25.1)***

PROVISION	NATURE OF AMENDMENT
NCLAT	
CHAPTER 26: SPECIAL COURTS	
Section 435 Establishment of Special Courts	Early establishment/designation of the Special Courts to be done. Special Courts at the subordinate level to also be established, in addition to the Sessions Judge or Additional Sessions Judge. ***(Para 26.1)***
Section 439 (2) Establishment of Special Court	The word '*shareholder'* to be replaced by the words '*shareholder or member*'. ***(Para 26.2)***
Section 441 Compounding of Offences	a. Under sub-section (1), the Tribunal to have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both. b. Consequential change in Section 441(6) to be made to refer to Special Courts, as well as other courts with whose permission the compounding may be allowed. ***(Para 26.3)***
CHAPTER 27: MISCELLANEOUS	
No amendments recommended.	
CHAPTER 28: PENALTIES	
Section 92 and 137 Annual Returns and Financial Statements	Fines under sections 92(5) and 137(3) to be reduced to half for a prescribed class of companies. ***(Para 28.6)***
Section 403 Fee for filing	a. Clarification to be issued under Note 3 of Table B, that on a combined reading of the second proviso of sub-section (1) of Section 403 along with Table B, documents are permitted to be submitted, filed, registered or recorded under the provisions of the Act even after a delay of two hundred and seventy days from the date on which it should have been filed, on a payment of additional fee as prescribed. b. The fees prescribed in Table A pursuant to Rule 12 of the Companies (Registration of Offices and Fees) Rules, 2014 to be halved for small companies and OPCs. c. Fees for timely filing may be reduced to zero and additional fees may be increased to up to 10 times of the current additional fees with steep slabs after the first slab. Non-compliance should result in deprival of moratorium from prosecution as specified and levy of higher level of additional fees.. ***(Para 28.8, 28.9, 28.10)***
Section 177, 178 Audit Committee and Nomination & Remuneration Committee and Stakeholders Relationship Committee	Punishment provided for officer in default under Section 178(8) to be aligned with the punishment provided under Section 292A (11) of the Companies Act, 1956. ***(Para 28.11)***
Section 184	Deletion of the minimum fine of Rupees Fifty Thousand. ***(Para 28.12)***

PROVISION	NATURE OF AMENDMENT
Disclosure of interest by director	
Schedule V Conditions to be fulfilled for the appointment of certain directors	Revision of the disqualifying fine in Part I of Schedule V to Rupees Fifty Thousand in respect of conviction of offences under the Act to be done. ***(Para 28.13)***
Section 447 Punishment for fraud	Provision to be amended to provide that frauds, which involve at least an amount of Rupees Ten Lakh or one percent of the turnover of the company, whichever is lower, (and non-compoundable). Frauds involving amounts below such limits which do not involve public interest to be given a differential treatment and to be made compoundable. ***(Para 28.15)***
Section 441 Compounding of offences	Under sub-section (1), the Tribunal to have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both. ***(Para 28.16)***
Section 147 Punishment for contravention by auditors	a. The term 'any other persons' in sub-section (3) to be replaced with the phrase 'shareholder or creditor'. b. Under sub-section (2), minimum fine as specified to be retained and maximum fine to extend to Rupees Five Lakh or four times the audit fees, whichever is less, and under the proviso to sub-section (2), the minimum fine to be Rupees Fifty Thousand, and which may extend to Rupees Twenty-Five Lakh or eight times the audit fees, whichever is less. ***(Para 28.18)***
Section 132 National Financial Reporting Authority	The minimum fine on the firm to be rationalised to Rupees Five Lakh. ***(Para 28.19)***
Section 140 Removal, resignation of auditor and giving of special notice	In Section 140(3), the minimum fine is to be reduced to Rupees Fifty Thousand or the audit fees, whichever is lesser. ***(Para 28.20)***
Section 42 Offer or invitation for subscription of securities on private placement	a. Contravention of sub-section (7) and (9) of Section 42 to be subject to a penalty (adjudicated under Section 454) of Rupees One Thousand per day of default, not exceeding Rupees Twenty Lakh, commencing from the expiry of the time period within which the filings have to be made under the said sub-sections. Section 403 not to be applicable to such contraventions. b. Other contraventions under Section 42 to result in the company, its promoters and directors being punishable with penalty which is to extend to the amount involved in the offer or invitation, or Rupees Two Crore, whichever is lower. Refund of all monies, as prescribed, to continue in both

PROVISION	NATURE OF AMENDMENT
	the sub-sections. ***(Para 28.22)***
Section 117 Resolutions and agreements to be filed	The minimum fine for both company and officer in default to be reduced to Rupees One Lakh and Rupees Fifty Thousand respectively, and a proviso to be inserted in sub-section (2) of Section 117, wherein the punishment prescribed for OPCs and small companies is to be halved to that under sub-section (2). ***(Para 28.23)***
Section 185 and 186 Inter-corporate loans and investments	Punishments under Section 185 and 186 to be reduced. ***(Para 28.25, 28.26)***
CHAPTER 29: REVIVAL AND REHABILITATION AND WINDING UP	
Chapter XIX and XX Revival and Rehabilitation and Winding Up	Appropriate amendments to the Act to be carried out at the time of enactment of the Bankruptcy Code or soon thereafter. ***(Para 29.2)***

PART II: RECOMMENDATIONS PROPOSING AMENDMENTS TO THE RULES

PROVISION	NATURE OF AMENDMENT
CHAPTER 1: COMPANIES (SPECIFICATIONS OF DEFINITIONS DETAILS) RULES, 2014	
Rule 2(1)(r) Total share capital	To be omitted. ***(Para 1.1)***
CHAPTER 2: COMPANIES (INCORPORATION) RULES, 2014	
Form INC-29	a. Option to use the integrated incorporation E-Form INC-29 in case name approval is separately obtained using INC-1 to be allowed. b. Option of giving more than one name as alternatives to be permitted. c. The number of allowed re-submissions to be increased from two to three times. d. In point no. 6(e) of INC-29, wherein registration number of a company incorporated outside India is required to be specified, alpha-numeric registration numbers to be accepted. e. In point no. 6(e) of INC-29, wherein the particulars of the authorized person of the company incorporated outside India are required to be specified, PAN or Passport number of the authorized person to be accepted. Also, the form to be enabled to accept the foreign address of the said authorized person in the field 'present address of the authorized person'. f. The facility for PAN, TAN and ESIC is to be enabled as part of the integrated application form, and incorporation form INC-7, available on the MCA21 portal. ***(Para 2.1, 2.2)***
Rule 16 Removal of references to the word 'partnership firm'.	References to the word 'partnership firm' in Rule no.16(2)(g) to be removed. ***(Para 2.4)***
Removal of duplication of information in forms	a. Changes in the MCA21 system/E-Forms to be made to ensure that in case of a person holding DIN, the form requiring such information has to be prefilled and additional documentation would not be required. b. Rule 16(1)(q) to be omitted along with Form INC-10. ***(Para 2.6, 2.7)***
Rule 3(2) Formation of one person company	To be suitably rephrased, to bring clarity. ***(Para 2.8)***
Rule 25 Registered office of company	To be amended to make companies that have a website, for conducting online business or otherwise, to require to provide the registered office and other details as required in Section 12(3) on the landing/home page of the website(s). Similar changes to also be carried out for foreign companies in Rule 6 of Companies (Registration of Foreign Companies) Rules, 2014. ***(Para 2.9)***
Rule 29 Alteration of memorandum	Change in memorandum to be allowed after defaults are made good. ***(Para 2.10)***
Rule 28 and 30 Shifting of registered office	a. Explanatory note to be provided in both rules to the effect that 'on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed'. In case of a pending prosecution, on submission of an undertaking that the company would not seek any change in jurisdiction on account of shift in office, such shifting is to be allowed.

PROVISION	NATURE OF AMENDMENT
	b. Requirement of serving a copy of the notice to SEBI in Rule 30(6)(c) to be dispensed with. ***(Para 2.11, 2.12)***
Rule 8 Undesirable names	Requirement in Rule 8(2) (a) (ii) to be changed and rule to be modified to read as 'it includes the name of a '*trade mark registered or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed thereunder*', unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters. ***(Para 2.13)***
Rule 13 Signing of Memorandum and Articles	a. Rule to be suitably modified to allow typewritten subscriber sheets. Similar modifications to be carried out in Rule 13(2) with respect to entering of particulars of an illiterate subscriber electronically. b. Rule 13(4) to be redrafted keeping in view that an LLP can also be a subscriber to the MOA. ***(Para 2.16, 2.17)***
CHAPTER 3: COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014	
Rule 3(6) Disclosures of Sources of Promoters' Contribution	Section 26 to be modified to allow prescription powers to SEBI, consequential changes resulting from the same to result in omission/modification of the Rules and these requirements. ***(Para 3.1)***
Rule 14 Private placement of securities	a. The private placement requirements to be changed in the Act. Consequential changes to Rules to be addressed in these Rules. b. Exemption, as in the case of NBFCs, from the Rule 14 to be extended to PFIs. ***(Para 3.3, Para 3.4)***
CHAPTER 4: COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014	
Rule 4(1)(g) Shares with Differential voting Rights	A cooling off period of five years to be prescribed from the end of the financial year in which the default was made good for a company to be eligible to issue such shares again. ***(Para 4.1)***
Form PAS-3 Issue of bonus shares	Clause 5(e) of Form PAS-3 to be modified to replace the words 'special resolution' with the word 'resolution'. ***(Para 4.2)***
Form PAS-3 Conversion of Loans into equity	Form PAS-3 to be appropriately modified so that genuine debt (including External Commercial Borrowings) converted into shares can be treated as allotment for cash. ***(Para 4.3)***
Rule 15 Change in number of members of a Guarantee company	Appropriate modification in Rule 15 to be carried out to mandate notifying the increase in number of members of a guarantee company as part of an increase/alteration of capital. ***(Para 4.4)***
Rule 18(7) (b) Creation of Debenture Redemption Reserve	a. Rule to be modified to explicitly mention that companies be allowed to set aside DRR on a step down basis with reference to the redemption schedule for the next one year. b. Proviso to be inserted that companies be allowed to appropriate any amount in excess of the DRR required for immediate redemption. ***(Para 4.6)***
Rule 18(1)	a. Rule 18(1)(b) to be amended so as to enable issue of debentures secured by charge on the properties or assets of the company or entities that form part of

PROVISION	NATURE OF AMENDMENT
Creation of Security for Debentures	consolidated balance sheet of the company or any other collateral security. b. Rule 18(1)(d) to also enable creation of security for debentures in favour of the debenture trustee of movable property which could either be of the company or entities that form part of the consolidated balance sheet or any other collateral security. ***(Para 4.8)***
New Rule Perpetual Debentures	Enabling provision for the issue of perpetual debentures to be provided. ***(Para 4.9)***
Rule 8(4) Issue of sweat equity shares	Start-ups to be permitted to issue sweat equity shares beyond twenty-five percent and up to fifty percent of the paid up equity share capital. ***(Para 4.10)***
Rule 12 Issue of employee stock options (ESOPs)	Rule to be relaxed to enable issuance of ESOPs to promoters who may be working as employees or employee directors or whole time directors. ***(Para 4.11)***
Rule 13 Preferential Allotments	a. Rule 13(2)(h) to be amended, to consider providing for convertible instruments to be valued at the time of conversion. Formulation used in the FDI policy to be adopted. b. Rule 13(2)(c) to be amended to allow preferential allotment of partly paid-up shares. ***(Para 4.12)***
CHAPTER 5: COMPANIES (ACCEPTANCE OF DEPOSIT) RULES, 2014	
Rule 2(1)(c) Definition of Deposits - exclusions	a. In Rule 2(1)(c)(xii) a), relaxation to be given for outstanding advances, such that they are not treated as deposits even after 365 days, if they are received in the ordinary course of business, as evidenced by a written contract and during normal business cycle, subject to disclosure of details of such outstanding amounts in the financial statements, and regulatory concerns. b. Debentures compulsorily convertible into shares of the company within ten years to be excluded from the definition of deposit under Rule 2(1)(c)(ix). c. Amounts directly received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI, to be excluded from the definition of deposits. d. To consider excluding unsecured debentures listed as per SEBI Regulations from the definition of deposits. e. Convertible Notes, convertible into equity or repayable within 5 years from the date of issue, if issued to a person with a minimum investment size of Rs.25 lakh brought in a single tranche, not to be treated as deposits. Safeguards to prevent misuse to be finalised in consultation with RBI. ***(Para 5.1-5.5)***
Issues relating to Section 462 exemption vis-à-vis Deposits Rules	Exemptions given under Section 462 of the Act to override the Deposit Rules. Deposit Rules to be amended to align with exemptions/modifications for private companies. ***(Para 5.7)***
Rule 4(1) Advertisement/ Circular in the form of advertisement	Rule to be amended to provide that individual circulars to members of the company under Rule 4(1) not to be sent if an advertisement has been issued by a company for acceptance of deposits from public and also when the same is placed on the website of the company. ***(Para 5.8)***
CHAPTER 6: COMPANIES (REGISTRATION OF CHARGES) RULES, 2014	
Filings of charge creation/modification by recognized	MCA21 system to be modified to allow filings of charge creation/modification by recognized ARCs on the assets of dormant companies. ***(Para 6.1)***

PROVISION	NATURE OF AMENDMENT
ARCs	
CHAPTER 7: COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014	
Rule 3 Register of members, etc.	a. For the companies incorporated prior to 1 April 2014, the members' particulars as available under the Companies Act, 1956 to be transferred to the Register of Members, and particulars as are required to be captured in Form MGT-1 in respect of all persons becoming members after 1 April 2014. b. Incorporation of additional fields in the transfer form SH-4. ***(Para 7.1)***
Rule 9(1) Declaration in respect of beneficial interest in any share	Requirement of filing of Form MGT-4 and Form MGT-5 in duplicate to be done away and only scanned copies to be attached to Form MGT-6. ***(Para 7.4)***
Rule 11(1) Annual Return	a. Annual Return to be further simplified by avoiding asking for repetitive information which may be available in other documents filed with ROC b. A simpler Annual Return form for OPCs and small companies to be prescribed. ***(Para 7.5)***
Rule 11(2) Annual Return	Company Secretaries in employment to be allowed to certify annual returns. ***(Para 7.6)***
Rule 12	Form MGT-9 to be omitted after including pertinent information as a disclosure requirement under Section 134. ***(Para 7.7)***
Rule 13 Return to be filed with Registrar in case promoters' stake changes	Section 93 to be omitted and consequential changes in the Rules to be affected. ***(Para 7.8)***
Rule 17(2) Calling of extraordinary general meeting	Explanation to Rule 17(2) to be modified to allow holding of EGMs by requisition on a day which is not a national holiday. ***(Para 7.9)***
Rule 22 Postal Ballot	a. Repeated provision from Rule 22(7) to be deleted. b. Rule 22(14), which provides that the resolution shall be deemed to be passed on the date of a meeting, convened in that behalf, to be omitted from the rules. ***(Para 7.10)***
Rule 25	Rule 25(1) (e) to be made consistent with Section 119, to enable the minutes book for general meetings to be maintained only at the registered office. ***(Para 7.11)***
CHAPTER 8: THE COMPANIES (DECLARATION AND PAYMENT OF DIVIDEND) RULES, 2014	
Section 123(1) and Rule 3 Declaration of dividend	a. The requirements of the Rule and the Section to be harmonized appropriately. b. Rules to be amended to align Rule 3 with the provisions of the Act, to make it clear that in case a company declares dividend out of surplus i.e. accumulated credit balance of Profit and Loss account which has not been transferred to reserves, the provisions of the Act and Rule 3 would not be applicable. ***(Para 8.1, 8.2)***
CHAPTER 9: THE COMPANIES (ACCOUNTS) RULES, 2014 AND COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014	
Rule 3(5) Location of servers	While the proviso with regard to maintenance of local servers to be retained, in case where free data access to all regulatory agencies of the country are allowed under a bilateral or multi-lateral treaty, data servers may be allowed to be kept in the specific countries with which such treaties have been entered into. ***(Para 9.1)***

PROVISION	NATURE OF AMENDMENT
for keeping backup of books and papers	
Rule 8(1) Disclosures in the Director's Report	Reporting requirements under Rule 8(1) to be reduced and to be captured to the extent feasible in the statement under Rule 5. ***(Para 9.4)***
Rule 8(2) Disclosure of Related Party Transactions (RPTs)	To omit Form AOC-2 and instead the Board's Report to specifically discuss and refer to relevant disclosures. Consequential changes in the Rules to be made in order to give effect to these recommendations. **(*Para 9.6*)**
Rule 13 Companies required to appoint internal auditor	The words "a firm" to be replaced by "an entity". **(*Para 9.7)***
Form MGT-9 and Rule 12 Disclosure of remuneration of directors and KMP	MGT-9 requirements to be omitted and the threshold of Rupees Sixty Lakhs to be increased to Rupees 102 Lakhs per annum. Requirements under different Rules to be harmonized. (***Para 9.8***)
Rule 3(2) Corporate Social Responsibility	A company which ceases to be covered under Section 135 (1) of the Act for a financial year not be required to spend on CSR for that particular year. ***(Para 9.11)***
Rule 4(6) CSR Activities	Expenditure on building CSR capacities in one financial year to be increased from 5% to 10%. **(*Para 9.12*)**
Differentiated treatment for implementing CSR policy	Differentiated treatment for implementing CSR policy to be allowed depending on the available funds for CSR expenditure to a company. **(*Para 9.13*)**
CHAPTER 10: THE COMPANIES (AUDIT AND AUDITORS) RULES, 2014	
Rule 3(7) Manner and procedure of selection and appointment of auditors	Removal of the requirement to ratify the appointment of an auditor. ***(Para 10.1)***
CHAPTER 11: THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014	
Rule 4 and Schedule IV Number of Independent Directors	a. Joint venture companies, wholly-owned subsidiaries, and dormant companies that fall within the purview of Section 455 of the Companies Act, 2013 to be excluded from the requirement of appointing an independent director. b. Schedule IV of the Act to be amended to provide for filling up an intermittent vacancy of an Independent Director within three months in line with Rule 4 and SEBI Listing regulation. ***(Para 11.1, 11.2)***
Schedule IV	Requirement for Independent Director to hold at least one meeting in a year without

PROVISION	NATURE OF AMENDMENT
Code for Independent Directors	the presence of non-independent directors to be linked to the financial year. **(*Para 11.4*)**
Form DIR-11 and DIR-12 Resignation of directors	a. Professional can file DIR-11 on behalf of a foreign director. b. Form DIR-11 is only an information by resigning director. The change in status in Register of directors to get triggered only on filing DIR-12. **(*Para 11.9*)**
CHAPTER 12: THE COMPANIES (MEETINGS OF BOARD AND ITS POWERS) RULES, 2014	
Rule 3(12)(b) Meetings of Board held through video conferencing	a. Video recording to be preserved only until the minutes of the meeting are irrefutably confirmed by each of the directors as required under Rule 3(12)(b) and signed by the chairman. b. Recording requirement of the meetings to be limited only to the summary of decisions taken at the meeting in line with the MCA circular dated 20 May 2011. (***Para 12.1***)
Rule 6 Committees of the Board	Prescribed thresholds for the setting up Audit Committee and Nomination and Remuneration Committee to be reviewed keeping in view the suggestions already made by SEBI. **(*Para 12.3*)**
CHAPTER 13: THE COMPANIES (APPOINTMENT AND REMUNERATION OF DIRECTORS) RULES, 2014	
Form DIR-12 Particulars of appointment of directors and the key managerial personnel and the changes among them	Form to be amended to restrict filing requirement pertaining to the return of appointment for managerial personnel. **(*Para 13.1*)**
Rule 5 Disclosure in Board's Report	a. The specific part of Rule 5(1)(vii) related to unlisted companies to be deleted. b. Ruled 5 to be pruned to exclude information prescribed under Rule 5(1) except Rule 5(1(i) and Rule 5(1)(iv). c. The reporting requirement threshold of Rupees 60 Lakhs per annum for reporting of details of employees to be changed to the top ten employees in terms of remuneration and employees receiving remuneration beyond the threshold of Rupees 102 Lakhs per annum. **(*Para 13.2, 13.3*)**
CHAPTER 14: THE COMPANIES (AUTHORIZED TO REGISTERED) RULES, 2014	
New Rules Conversion into companies	a. Necessary rules to be prescribed to facilitate easy conversion of forms of businesses other than LLPs into companies. b. The process for conversion of an LLP into a company to be made simpler by doing away with requirement for filing some documents, etc. **(*Para 14.1, 14.2*)**
CHAPTER 15: THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014	
Companies incorporated outside India without a physical place of business in India	a. Rules to prescribe reporting of principal place of business from where the management/administration of business in India is being carried out. **(*Para 15.1*)** b. Clarity to be provided that provisions with respect to charges will apply only on funds raised in India ***(Para 15.3)***
New Rule and Form	New Rule and Form along the lines of Form-52 of the Companies Act 1956 for the purpose of filing application for closure of liaison office/branch office/project office to be prescribed. (***Para 15.2***)

PROVISION	NATURE OF AMENDMENT
Form FC-4 Annual Return of a Foreign Company	Disclosures needed to be made under Form FC-4 to be reviewed. **(*Para 15.4*)**
CHAPTER 16: THE COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014	
No amendments recommended.	
CHAPTER 17: NIDHI RULES, 2014	
No amendments recommended.	
CHAPTER 18: THE COMPANIES (MISCELLANEOUS) RULES, 2014	
E-form for condonation of delay under Section 460 of the Act	A pro-forma application form to be designed for condonation of delay under Section 460. Consequent changes in Rules to be affected. **(*Para 18.2*)**

LIST OF ABBREVIATIONS

AGM	Annual General Meeting
AOA	Articles of Association
AS	Accounting Standards
BLRC	Bankruptcy Laws Reforms Committee
CARO	Companies (Auditor's Report) Order
CFS	Consolidated Financial Statement
CLC	Companies Law Committee
CSR	Corporate Social Responsibility
C&AG	Comptroller and Auditor General of India
DPE	Department of Public Enterprises
DRR	Debenture Redemption Reserve
EGM	Extra Ordinary General Meeting
ESOP	Employees Stock Option Plan
FICCI	Federation of Indian Chambers of Commerce and Industry
FDI	Foreign Direct Investments
GAAP	Generally Accepted Accounting Principles
ICAI	Institute of Chartered Accountants of India
ICoAI	Institute of Cost Accountants of India
ICSI	Institute of Company Secretaries of India
IEPF	Investors Education and Protection Fund
IndAS	Indian Accounting Standard
IDFC	Industrial Development Finance Corporation
JV	Joint Venture
KMP	Key Managerial Personnel
LLP	Limited Liability Partnership
LIC	Life Insurance Corporation
MCA	Ministry of Corporate Affairs
MOA	Memorandum of Association
MoU	Memorandum of Understanding
NBFC	Non-Banking Financial Company
NCD	Non-convertible Debentures
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
NFRA	National Financial Reporting Authority
NRC	Nomination and Remuneration Committee
NVGs	National Voluntary Guidelines
NOC	No Objection Certificate
OPC	One Person Company
PAN	Permanent Account Number

PPOL	Private Placement Offer Letter
QIB	Qualified Institutional Buyer
RBI	Reserve Bank of India
RD	Regional Director
ROC	Registrar of Companies
SEBI	Securities and Exchange Board of India
SMEs	Small and Medium Enterprises
STP	Straight Through Process
SUUTI	Specified Undertaking Unit Trust of India

To

Honourable Union Minister of Finance, Corporate Affairs and I&B

Sir,

We have the privilege and honour to present the report of the Companies Law Committee, set up on 4th June, 2015, to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 as well as on the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies.

2. The Committee had the benefit of participation by various institutes, industry chambers and experts in various disciplines. It has tried to take a holistic and comprehensive view while suggesting changes in the Act/Rules keeping in mind the difficulties and challenges expressed by various stakeholders. It has endeavoured to reconcile their competing interests, being mindful of the need for facilitating "ease of doing business" in India, and incentivising start-up companies.

3. We thank you for providing us an opportunity to present our views on the suggestions made by stakeholders on various issues of corporate law.

Yours sincerely,

(Shri Tapan Ray)
Chairman

(Ms. Reva Khetrapal)
Member

(Shri Y.M. Deosthalee)
Member

(Shri N. S. Vishwanathan)
Member

(Shri Manoj Fadnis)
Member

(Dr. A.S. Durga Prasad)
Member

(Shri Atul H Mehta)
Member

(Shri Bharat Vasani)
Member

(Shri P. K. Nagpal)
Member

(Shri Amardeep S Bhatia)
Member Convener