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**STANDING COMMITTEE ON FINANCE  
(2016-17)**

**SIXTEENTH LOK SABHA**

**THE COMPANIES (AMENDMENT) BILL, 2016  
(MINISTRY OF CORPORATE AFFAIRS)**

**THIRTY-SEVENTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**December, 2016 / Agrahayana, 1938 (Saka)**

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Presented to Lok Sabha on \_\_\_\_\_, 2016

Laid in Rajya Sabha on \_\_\_\_\_, 2016



LOK SABHA SECRETARIAT  
NEW DELHI

December, 2016 / Agrahayana, 1938 (Saka)

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## **COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2016-17**

**Dr. M. Veerappa Moily - Chairperson**

### **MEMBERS**

#### **LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Shri Gopalakrishnan Chinnaraj
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Shyama Charan Gupta
7. Prof. Sanwar Lal Jat
8. Shri Rattan Lal Kataria
9. Shri Chandrakant B. Khaire
10. Shri Bhartruhari Mahtab
11. Shri Prem Das Rai
12. Shri Rayapati Sambasiva Rao
13. Prof. Saugata Roy
14. Shri Jyotiraditya M. Scindia
15. Shri Gajendra Singh Sekhawat
16. Shri Gopal Chinayya Shetty
17. Shri Anil Shirole
18. Dr. Kiritbhai Solanki
19. Dr. Kirit Somaiya
20. Shri Dinesh Trivedi
21. Shri Shivkumar C. Udasi

#### **RAJYA SABHA**

22. Shri Naresh Agrawal
23. Shri Naresh Gujral
24. Shri Satish Chandra Misra
25. Shri A. Navaneethakrishnan
26. Dr. Mahendra Prasad
27. Shri C.M. Ramesh
28. Shri T.K. Rangarajan
29. Shri Ajay Sancheti
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

#### **SECRETARIAT**

- |    |                              |   |                     |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi   | - | Joint Secretary     |
| 2. | Shri P.C. Tripathy           | - | Director            |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora    | - | Deputy Secretary    |

## INTRODUCTION

I, the Chairperson of the Standing Committee on Finance having been authorised by the Committee present this Thirty-Seventh Report on the Companies (Amendment) Bill, 2016.

2. The Companies (Amendment) Bill 2016, introduced in Lok Sabha on 16 March 2016 was referred to the Committee on 12 April 2016 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took evidence of the representatives of Ministry of Corporate Affairs at their Sittings held on 25 May 2016 and 22 September 2016.

4. The Committee at their Sitting held on 3 June 2016 and 30 August 2016 heard the views of the representatives of the Institute of Chartered Accountants of India (ICAI). At the Sitting held on 10 June 2016 representatives of Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII) and Associated Chambers of Commerce and Industry of India (ASSOCHAM) presented their views before the Committee. The Committee also heard the views of representatives of Institute of Company Secretaries of India (ICSI) at their Sitting held on 23 June 2016.

5. The Committee during their study visit to Mumbai and Bengaluru in July 2016 held informal discussions with the representatives of Bombay Chambers of Commerce, Indian Merchants' Chamber, Investors' Grievances Forum, the Chamber of Tax Consultants and National Association of Software and Services Companies (NASSCOM).

6. The Committee considered and adopted this report at their Sitting held on 30th November, 2016.

7. The Committee wish to express their appreciation to the officials of the Ministry of Corporate Affairs concerned with the Bill for their co-operation and all the organisations for their valuable suggestions on the Bill.

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

**New Delhi**  
**01 December, 2016**  
**10 Agrahayana, 1938(Saka)**

**Dr. M Veerappa Moily**  
**Chairperson,**  
**Standing Committee on Finance**

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**New Delhi**  
**November, 2016**  
**Kartika, 1938(Saka)**  
**Finance**

**Dr. M Veerappa Moily**  
**Chairperson,**  
**Standing Committee on**



## Report

### **1. Background**

To bring the law relating to formation, functioning and regulation of the companies in India in line with the current global scenario of corporate regulation, the Companies Bill, 2009 was introduced in the Lok Sabha on 3rd August, 2009. It was referred to the Parliamentary Standing Committee on Finance for examination and report thereto. The Committee submitted its Twenty-First Report on the Bill to both the Houses of Parliament on 31st August, 2010. The Twenty-First Report was examined in the Ministry of Corporate Affairs and out of 178 recommendations made by the Committee, 167 have been incorporated fully; six have been partially incorporated and in respect of five recommendations, a different view was taken by the Ministry.

1.2. Accordingly, in view of such examination and after obtaining due approval, a revised Bill, the Companies Bill, 2011 was introduced in the Lok Sabha on 14th December, 2011. The Honourable Speaker, Lok Sabha decided to refer this Bill also to the Committee as a view was expressed by some Honourable Members of Parliament that it contained provisions which were added after the 2009 Bill was examined by the Committee and that in view of the importance of some of these provisions they needed to be examined by the Committee.

1.3. The Standing Committee on Finance presented their Fifty-seventh Report on the revised Companies Bill, 2011 to the Honourable Speaker, Lok Sabha on 26th June, 2012 and presented/laid the same in both the houses of Parliament on 13th August, 2012. The recommendations made in the Fifty-Seventh Report were examined in the Ministry of Corporate Affairs and out of 15 recommendations 13 were accepted and on 2 recommendations a different view was expressed.

1.4. It may be, thus, mentioned that out of 193 recommendations made by the Standing Committee on Finance in both of its reports, 180 recommendations have been agreed fully, 6 recommendations have been agreed partially and on 7 recommendations different view was taken by the Ministry of Corporate Affairs. The relevant recommendations, accordingly, were incorporated in the form of new Bill i.e. Companies

Bill, 2011 (in case of Twenty-First Report) and in the form of official amendments to Companies Bill, 2011 (in case of Fifty-Seventh Report).

1.5. On the basis of Fifty-Seventh Report of the Committee, official amendments to the Companies Bill, 2011 were introduced in the Parliament. Subsequently, the Companies Bill, 2011 and the official amendments thereto were considered and passed by the Parliament and the legislation was assented to by President in August, 2013.

1.6. The Companies Act, 2013 (the Act) was notified on the 29<sup>th</sup> August, 2013. The Act introduced significant changes related to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. However, Government has been receiving representations from industry Chambers, Professional Institutes, legal experts and Ministries/ Departments regarding difficulties faced in compliance of certain provisions. Amendments of the Act were carried out through the Companies (Amendment) Act, 2015 to address the immediate difficulties arising out of the initial experience of the working of the Act, and to facilitate “ease of doing business”.

1.7. During the consideration of the Companies (Amendment) Act, 2015 in the Rajya Sabha, views were expressed that more amendments would be required. A Companies Law Committee (CLC) consisting of representatives from the industry, professional institutes of chartered accountants, cost accountants and company secretaries, and a former High Court Judge was constituted under the chairmanship of Secretary, Ministry of Corporate Affairs, to examine the need for further amendments.

1.8. During its public consultation, the CLC received over 2000 suggestions. The CLC also examined the interim recommendations of the Bankruptcy Law Reforms Committee (BLRC), the High Level Committee on Corporate Social Responsibility (CSR), the Law Commission and other agencies. The report of the CLC was submitted to the Government on the 1<sup>st</sup> February 2016, which was placed in the public domain for comments for a period of fifteen days. Around 1200 comments were received during the period on the report primarily related to amendments in the Act.

1.9. While most of these comments were in general agreement with the recommendations of the CLC, and some suggested improvements in the form of safeguards or greater clarity, yet a few required reconsideration of the CLC recommendations.

1.10. The Companies (Amendment) Bill, 2016 is based on the recommendations of the Companies Law Committee after taking into account the comments received on the report.

1.11. The Bill proposes to amend 87 sections of the Companies Act, 2013. The amendments proposed, inter alia, include changes in definitions to remove ambiguities; allowing greater flexibility in incorporating and running a company by simplifying Memorandum of Association and doing away with Central Government approvals, etc.; easing raising of capital, procedures; rationalizing penal provisions related to auditors, reconciling the competing objectives of improving corporate governance, incentivising individuals to take up positions of responsibility in boards and reducing compliance cost. Some changes to remove ambiguities in the CSR provisions based on the recommendations of the High Level Committee on CSR and as recommended by CLC have also been included. No change has been proposed with regard to revival and rehabilitation of companies (Chapter XIX) and winding up (Chapter XX) provisions of the Act as the Insolvency and Bankruptcy Code, 2015 already introduced in the Parliament comprehensively includes the changes required.

### **Objective/Guiding Principles Behind Amending The Companies Act, 2013**

1.12. The amendments proposed in the Companies (Amendment) Bill, 2016 are guided by the following objectives:-

- (i) addressing difficulties in implementation owing to undue stringency of compliance requirements,
- (ii) facilitating ease of doing business for companies, including start-ups, in order to promote growth with employment,
- (iii) harmonization with accounting standards, and other financial/economic legislations,
- (iv) rectifying omissions and inconsistencies in the Act, and

- (v) carrying out amendments in provisions relating to qualification and selection of members of NCLT and NCLAT in accordance with Supreme Court directions.

### **Amendments made in the Companies Act, 2013**

1.13. The Companies Act, 2013 (the Act) was notified on the 29<sup>th</sup> August, 2013. Out of total 470 sections of the Act, 329 sections have been brought into force as on date. 141 sections are yet to be commenced for various reasons as indicated below. It may also be stated that out of the 141 sections, 39 sections would be omitted and changes would be made in 31 sections relating to winding up once the corresponding provisions of Insolvency & Bankruptcy Code, 2016 [IBC-16] are notified. Out of the remaining 102 sections (excluding the to-be-omitted sections), commencement of 99 sections is linked to the transfer of powers and functions presently being exercised by BIFR/AAIFR (under SICA, 1985) and by High Courts under Companies Act, 1956 [CA-56] to NCLT/NCLAT. These are in turn linked to implementation of the Insolvency & Bankruptcy Code, 2016 and the readiness of NCLT/NCLAT to take on these responsibilities.

1.14. Amendments of the Companies Act, 2013 were carried out through the Companies (Amendment) Act, 2015 to address the immediate difficulties arising out of the initial experience of the working of the Act, and to facilitate “ease of doing business”. A summary of the amendments carried out in the Companies (Amendment) Act, 2015 is given as under:-

- (a) Omitting requirement for minimum paid up share capital, and consequential changes. (For ease of doing business) -*[section 2(68)/2(71) of the Companies Act, 2013 (Act)]*.
- (b) Making common seal optional, and consequential changes for authorization for execution of documents. (For ease of doing business) -*[sections 9, 12, 22, 46 and 223 of the Act]*.
- (c) Doing away with the requirement for filing a declaration by a company before commencement of business or exercising its borrowing powers. (For ease of doing business) -*[Omission of section 11 of the Act and consequential change in section 248]*
- (d) Prescribing specific punishment for deposits accepted under the new Act. To deal with defaults in repayment of depositor. (For protection of depositors' interests) – *[New Section 76A of the Act]*

- (e) Prohibiting public inspection of Board resolutions filed in the Registry. (To provide for confidentiality of commercial interests discussed in resolutions) - [section 117(3) of the Act].
- (f) Including provision for setting off past losses/depreciation before declaring dividend for the year- (Standard prudential clause). [section 123(1) of the Act]
- (g) Rectifying the requirement of transferring equity shares for which unclaimed/ unpaid dividend has been transferred to the Investor Education and Protection Fund (IEPF) even though subsequent dividend(s) has been claimed - [section 124(6) of the Act].
- (h) Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee/ Board). Disclosures for the latter category also to be made in the Board's Report. [section 143(12) and 134(3) of the Act].
- (i) Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and increase ease of doing business)- [section 177(4) of the Act].
- (j) Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries. (This was provided under the Rules but being included in the Act as a matter of abundant caution). [section 185(1) of the Act].
- (k) Replacing 'special resolution' with 'resolution' for approval of related party transactions by non-related shareholders. (Balance the process for majority supported genuine commercial decisions) - [section 188(1) of the Act].
- (l) Related party transactions between holding companies and wholly owned subsidiaries exempted from the requirement of approval of non-related shareholders. - [section 188(1) of the Act].
- (m) Bail restrictions to apply only for offences relating to fraud u/s 447. [section 212(6) of the Act].
- (n) Winding up cases to be heard by 2-member Bench instead of a 3-member Bench. - [section 419 of the Act].
- (o) Special Courts to try only those offences carrying imprisonment of two years or more. (Rationalization of jurisdiction, to let magistrates try minor violations, with the objective of speeding up disposal). [section 435 and 436 of the Act].

(p) Rationalizing the procedure for laying draft notifications granting exemptions to various classes of companies or modifying provisions of the Act in Parliament, in order to ensure speedier issue of final notifications. (For a faster process of giving exemptions to classes of companies). [section 462 of the Act].

The Amendment Act has been brought into force in two phases – first on 29<sup>th</sup> May, 2015 and second on 14<sup>th</sup> December, 2015.

### **Key Amendments proposed in the Companies (Amendment) Bill,2016**

1.15. Key amendments proposed in the Bill are as under:-

- a) Simplification of the private placement process, involving doing away with separate offer letter, details/record of applicants to be kept by company and to be filed as part of return of allotment only, and reducing number of filings to Registrar [section 42].
- b) Allowing unrestricted object clause in the Memorandum of Association dispensing with detailed listing of objects, with a view to ease incorporation of companies; Self-declarations to replace affidavits from subscribers to memorandum and first directors [sections 4 and 7].
- c) Provisions relating to forward dealing and insider trading to be omitted from Companies Act as these are covered under SEBI regulations [sections 194 and 195].
- d) Requirement of approval of Central Government for Managerial remuneration above prescribed limits to be replaced by approval through special resolution by shareholders in general meeting [sections 196 and 197].
- e) Companies may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement [section 185].
- f) Amendment of definitions of associate company and subsidiary company to ensure that 'equity share capital' is the basis for deciding holding-subsidary relationship rather than "both equity and preference share capital" [section 2].
- g) Restriction on layers of subsidiaries and investment companies to be removed [sections 2(87) and 186(1)].
- h) Change in the definition of term 'relative' for determining disqualification of auditor [section 141].
- i) Rationalization of penal provisions with reduced liability for procedural and technical defaults. Penal provisions for small companies and One Person Companies to be reduced [various sections].

- j) Auditor reporting on internal financial controls to be restricted with regard to financial statements [section 143].
- k) Frauds involving an amount less than Rupees 10 Lakh to be compoundable offences. [section 447].
- l) Reducing requirement for maintaining deposit repayment reserve account from 15% each for two years to 20% during the maturing year [section 73].
- m) Foreign companies having incidental transactions through electronic mode to be exempted from registering and compliance regime under the Act [section 379].
- n) Align prescription for companies to have Audit Committee and Nomination and Remuneration Committee with that of Independent Directors (IDs) [sections 149, 177 and 178].
- o) Test of materiality to be introduced for pecuniary interest for testing independence of IDs [section 149].
- p) Disclosures in the prospectus required under the Act and SEBI Regulations to be aligned, with a view to make these simpler, by allowing prescriptions to be made by SEBI in consultation with Central Government [section 26].
- q) Recognition of the concept of beneficial owner of a company proposed in the Act. Register of beneficial owners to be maintained by a company, and filed with the Registrar. [new section].
- r) Provisions with regard to attachment of standalone accounts of foreign subsidiaries to be relaxed in certain cases [sections 129 and 136].
- s) Re-opening of accounts to be limited to 8 years [section 130].
- t) Mandatory requirement of taking up some items only through postal ballot to be relaxed in case of a company that is required to provide electronic voting at its General Meetings [section 110].
- u) Requirement for annual ratification of appointment/continuance of auditor by members to be removed [section 139].
- v) Amend provisions relating to Corporate Social Responsibility to bring greater clarity [section 135].

**Changes in certain provisions of the Companies Act, 2013 [CA-13] which are presently not included under the Companies (Amendment) Bill, 2016 [CAB-16].**

1.16. The Ministry of Corporate Affairs vide their post evidence reply furnished the following statement showing changes in certain provisions of the Companies Act, 2013 [CA-13] which are presently not included under the Companies (Amendment) Bill, 2016 [CAB-16] for consideration of Standing Committee on Finance.

| Section/ Nature of provisions   | Change being proposed by MCA   | Justification   |
|---|--|---|
| 2(72) / Definition of "Public Financial Institution"  | It is proposed to insert an explanation in this definition clause to clarify that Companies Act, 2013 or previous company law would not be deemed to be a Central Act for the purposes of clause (A) of proviso to section 2(72)                   | There is an ambiguity as to whether the companies incorporated under the Companies Act, 2013 or previous company law can be allowed for notification as "Public Financial Institution" (PFI). It is felt that "Companies Act, 2013" or "previous company law" should not be treated as Central Act under clause (A) of proviso to section 2(72) for the purpose of companies registered under such Act/previous company law being considered as PFIs without having share capital held/controlled by Government as indicated in clause (B) of such proviso. The intention behind provisions of Clause (A) of proviso to section 2(72) appears to be to empower Central Government to notify as PFIs only those institutions which are constituted under Central or State Special Statutes and not under general Act like Companies Act. |
| 26(1)(d) / Matters to be stated in prospectus   | It is proposed to omit clause (d) of section 26(1) of the Act.   | Clauses (a) and (b) of section 26(1) are proposed to be omitted through clause 8(ii) of CAB-216. As a consequence of such omission, clause (d) of section 26(1) is rendered redundant.  |
| 76A(b)/ Punishment for contravention of section 73 or section 76.                                       | It is proposed to replace the words "seven years or with fine" appearing in section 76A(b) with the words "seven years and with fine". Also the words "or with both" appearing at the end in such clause may be omitted as a consequential change. | Since acceptance of deposits under section 73/76 is an important provision and non-compliance with such provision needs to be taken seriously, it is proposed to make this offence as non- compoundable on the lines of provisions under CA 56.   |
| Section 197(1) and 197(10) - proviso regarding prior approval of bank, public financial institution etc | Change in the proviso to provide that prior approval shall not be required if there is no default in the repayment.  | It is proposed to make the provisions practical since it would be harsh if a company having subsisting term loan or non-convertible debentures or debt of secured creditor is required to obtain prior approval of bank or public financial institution or debenture holders or secured creditors even when there is no default in repayment. It is proposed to modify such proviso to provide that prior approval provided under such provisions would be required if the term loan/ debentures/ debt is subsisting <b>and</b> the company has made default in repayment.  |
| Section 374 — Obligations of companies registering under this Part                                      | Amendment in section 374(c) with regard to dissolution of the Limited Liability Partnership (LLP) which is allowed to be converted/ registered as company pursuant to Part I of Chapter XXI of Companies Act, 2013                                 | It has been examined and considered that the requirement under section 374(c) of the CA-13 may not be required in case of registration/conversion of LLPs under Chapter XXI -Part 1 of CA-13 since both the entities (i.e. LLPs and companies) are being registered by the same registrar/registry. It is proposed to insert a new proviso to section 374(c) to provide that upon registration as a company under Part I of Chapter XXI of CA-13, an LLP (incorporated under LLP Act, 2008) shall be deemed to have been dissolved under LLP Act, 2008 without any further act or deed.   |



|   |   |   |
|---|---|---|
| Proviso to section 458(1) -<br><br>Delegation by Central Government of its powers and functions | It is proposed to omit proviso to section 458(1) which provides that powers to enforce provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to SEBI for listed companies. | The proviso to section 458(1) would become redundant as section 194 (Prohibition on Forward dealing) and 195 (Prohibition of Insider trading) of CA-13 are proposed to be omitted through CAB-16. |
|---|---|---|

### **Matters left for delegated legislation in the Bill**

1.17. The Companies (Amendment) Bill, 2016 contains provisions which propose to delegate the Central Government the power to prescribe, by way of rules, the details with regard to - certain time-limits, contents and manner of issuing/filing of certain forms including abridged forms, amount of fees to be paid and other similar items of subordinated legislation. A Memorandum Regarding Delegated Legislation (MRDL) explaining such delegation has been attached to the Companies (Amendment) Bill, 2016. This Memorandum is reproduced as under:

#### Companies (Amendment) Bill, 2016 MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (iii) of clause 2 of the Bill confers power upon the Central Government to prescribe under clause (30) of section 2 of the Companies Act, 2013 (the Act) any other kind of instrument in consultation with Reserve Bank of India, which shall not be treated as debenture under the Act.

Sub-clause (vii) of clause 2 of the Bill proposes to empower Central Government to prescribe any other officer as "key managerial personnel" under clause (51) of section 2 of the Act.

Sub-clause (ii) of clause 4 proposes to empower Central Government to prescribe the period for reserving the name of the Company by Registrar under clause (i) sub-section (5) of section 4 of the Act.

*Clause 10, inter alia* proposes to empower Central Government to prescribe under section 42 of the Act—

(1) higher number for making private placement by companies and the conditions subject to which private placement can be made under sub-section (2) of section 42 of the Act.

(2) under sub-section (3) of section 42 of the Act—

(a) form and manner for issuing private placement offer and application form to identified persons; and

(b) the manner in which the names and addresses of identified persons shall be recorded by company.

(3) class of identified persons for making more than one issue of securities by way of private placement under proviso to sub-section (5) of section 42 of the Act.

(4) under sub-section (8)—

(a) the manner in which a return of allotment for private placement shall be filed with Registrar; and

(b) other relevant information of allottees to be filed with the return of allotment.

Sub-clause (i) of clause 14 proposes to empower Central Government to prescribe the conditions for compliances under clause (c) of sub-section (1) of section 62.

*Clause 18* proposes to empower Central Government to prescribe in consultation with Reserve Bank of India the charges to which provisions of section 77 of the Act shall not apply.

Sub-clause (ii) of clause 20 proposes to empower Central Government to prescribe additional fee for allowing filing of intimation of payment or satisfaction of charge under the proviso to sub-section (1) of section 82 of the Act.

*Clause 22, inter alia*, proposes to empower Central Government to prescribe under section 90 of the Act—

(a) other percentage of beneficial interest in shares in sub-section (1),

(b) period within which and manner in which declaration regarding beneficial interest in shares shall be given in sub-section (1),

(c) class or classes of persons which shall not be required to make declaration under proviso to sub-section (1),

(d) other details which may be included in the register of interest declared by individual in sub-section (2),

(e) fees on payment of which the member may inspect the register under sub-section (3),

(f) other details of significant beneficial owners of the company which may be included in the return of significant beneficial owners to be filed with the Registrar and also to prescribe form and manner of such filing in sub-section (4),

(g) manner in which the company may give notice in sub-section (7),

(h) matters, on which Tribunal may make order w.r.t restrictions on shares in question under sub-section (5) of section 90 of the Act,

(i) period, other than the sixty days period as already provided in the sub-section (8) of section 90, for making orders by the Tribunal.

Sub-clause (1) of *clause 23* proposes to empower Central Government to prescribe under sub-section (1) of section 92 of the Act, an abridged form of annual return for one person company and small company.

*Clause 25* empowers Central Government to prescribe particulars about register, index or return which shall not be available for inspection under section 94 of the Act.

*Clause 32* proposes to substitute sub-section (3) of section 129. The provisos thereto propose to empower Central Government to prescribe—

(a) form for attaching separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries by a holding company;

(b) manner of consolidation of accounts of companies.

*Clause 35* proposes to insert new sub-section (3A) in section 134 to empower Central Government to prescribe abridged Board's report for small company or one person company.

*Clause 36, inter alia*, proposes to empower Central Government to prescribe sums, which shall not be included in the net profit of a company under section 135 of the Act.

*Clause 45, inter alia*, proposes to empower Central Government to prescribe,—

(i) threshold amount for treating pecuniary relationship for the purpose of determining independence of a director under sub-section (6) of section 149.

(ii) higher amount of securities or interest for holding by relatives, which shall not be construed as pecuniary relationship of Independent Directors in sub-section (6) of section 149.

(iii) the amount to specify indebtedness of relative of Independent Directors for determining eligibility of an Independent Director as provided in sub-section (6) of section 149.

(iv) amount up to which guarantee may be given or security may be provided by relative of Independent Director in connection with the indebtedness of any third person in sub-section (6) of section 149.

*Clause 47* proposes to empower Central Government to prescribe under section 153 other identification number which shall be treated as Director Identification Number for the purpose of this Act and to prescribe the manner in which requirement of section 153 shall apply.

*Clause 65* proposes to empower Central Government to prescribe under sub-section (16) of section 197 other details to be given by auditors while making his report under section 143 about remuneration paid to Directors.

*Clause 76* proposes to empower Central Government to prescribe additional fees or higher additional fees on payment of which certain documents [referred to in sub-clause (i) of clause 76] may be filed after expiry of period specified.

1.18. The Companies (Amendment) Bill, 2016 was referred to the Standing Committee on Finance of Parliament on 12 April 2016 for detailed examination and report thereto.

**1.19. The Committee note that the Companies (Amendment) Bill, 2016 seeks to bring in changes in the Companies Act 2013, broadly aimed at**

- (a) addressing difficulties in implementation owing to stringency of compliance requirements,**
- (b) facilitating ease of doing business in order to promote growth with employment,**
- (c) harmonisation with accounting standards, SEBI regulations and RBI regulations and,**
- (d) rectifying omissions and inconsistencies in the Act.**

**1.20. Keeping these broad objectives in view, the Committee would, in general, make the following observations and recommendations to impart greater vibrancy to the companies statute:**

- (i) The compliance threshold should be based on business volume or turnover or scale of operations rather than the form of the company. This will ease the compliance burden for smaller companies including start-ups**

and MSMEs. In this regard, a distinction may also be made between corporates involving public funds and substantial employment and other enterprises operating on a smaller scale. In any case, the Rules framed and circulars issued under the Companies Act 2013 should be waived/modified with a view to making the compliance processes simpler and easier for all companies incorporated under the Act. Towards this end, duplication, superfluity and purposeless documentation should be avoided. The prescribed procedures/processes should be subject to constant review depending on feedback received from stakeholders. A structured mechanism may be set up in the Ministry of Corporate Affairs for this purpose.

- (ii) Any contradiction between the substantive provisions or that with the Rules should be examined and rectified; as for instance, Section 73 of the Act contains provisions prohibiting acceptance of deposits from public under certain circumstances which is to be read with Section 76, which allows a public company of prescribed size to invite deposits from persons other than its members; while the existing Rules allow an eligible company to invite deposits from its members, contrary to Section 76. Therefore, in such cases, the Rules require to be amended corresponding to the relevant Section in the main Act. The Committee desire that such ambiguities should be rectified forthwith.
- (iii) Section 197 of the Act dealing with Managerial remuneration is sought to be amended by way of changes in sub-sections (1), (3), (9), (10) and (11) and inserting new sub-sections (16) and (17) with a view to omitting altogether the requirement for government approval with necessary safeguards in the form of additional disclosures, special resolutions and auditor certifications etc.

The Committee, while welcoming the waiver of seeking approvals for managerial remuneration, would however suggest that the government should retain the right to seek necessary information on aspects relating to

managerial remuneration [Managing Director or CEO and the Key Managerial Personnel (KMPs) together] of listed companies and companies operating with public funds from time to time, keeping in view factors such as adequacy of volumes, profits, reserves, repayment of debt etc. As 'ease of doing business' is conjoined with the object of 'promoting economic growth' in the country, it is necessary that an element of control, as suggested above, is retained in the Act.

- (iv) Presently, the Companies Act 2013 permits companies to avail of loans from directors and their relatives, subject to a restriction that they furnish a declaration that it is out of their own funds. As such funds remain the main source of financing for MSMEs in the absence of bank credit, the restrictions as to loans advanced by shareholders (presently limited to 100% of net worth to companies with less than 50 members to those making profit to those who have not defaulted in repayments) should be removed to enable growth and revival in the MSME sector. The prohibition, as to any loan in excess of the prescribed limits, to be treated as 'deposit' subject to rating by recognised rating agencies and maintenance of redemption reserves should also be waived with a view to bolstering the finances of a MSME. The Committee desire that such prohibitions and controls inhibiting the growth of companies, particularly in the MSME sector, should be removed.
- (v) Clause 23 (i) of the Bill proposes separate Annual Return format with lesser details in abridged form for small companies and One Person Companies (OPCs). While welcoming this change from 'ease of doing business' perspective, the Committee would like the Ministry to analyse and review the new concept of 'One Person Company' and its sustainability in company law and practice, particularly considering the shelter or scope it provides for incurring huge and needless liabilities without concurrent responsibility to discharge them.

## **2. Clause-by-Clause examination of the Bill**

2.1. In view of the detailed examination of the Companies (Amendment) Bill, 2016 and suggestions received from the stakeholders the Committee have commented upon on some of the important clauses of the Companies (Amendment) Bill 2016, which are as under:-

### **Clause 2(6) – definition of term “associate company”:-**

2.2. Clause 2 (i) (a) (b) reads as under:-

In section 2 of the Companies Act, 2013 [CA-13]-

(i) In clause (6), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

*'Explanation.*—For the purpose of this clause—

(a) the expression "significant influence" means control of at least twenty percent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;'

2.3 The Stakeholders in their written memorandum suggested on this clause as under:-

"The words “or control of or participation in business decisions under an agreement” from the explanation (a) may be deleted.

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

"Various innovative and complex instruments are being used by business entities to exercise control or significant influence over other entities. It is felt that in order to cover various situations including through issue of instruments referred to above through which companies may exercise significant influence over other companies, the phrase “or control of or participation in business decisions under an agreement” needs to be retained in the explanation. "

**2.5 While agreeing with the Ministry's view on the explanation to Clause 2(6) of the Bill relating to "significant influence" the Committee desire that the proposed amendment incorporating 'control of or participation in business decisions under an agreement' may be retained in order to provide for various**

**situations and instruments through which companies may exercise significant influence over other companies/entities.**

**Clause 2(v) - (definition of “holding company”)**

2.6. Clause 2 (v) relating to Section (46) of the Companies Act, 2013 reads as under:-

"In Section 46 of the CA 2013, the following *Explanation* shall be inserted:—

*'Explanation.—*For the purposes of this clause, the expression "company" includes any body corporate;"

2.7 The Stakeholders in their written memorandum suggested on this clause as under:-

"The proposed insertion should not take place in view of the "ease of doing business" in Indian Companies."

2.8 While submitting their written information, the Ministry on the above said suggestion stated as under

"Attention is invited to section 4 of the erstwhile Companies Act, 1956, wherein the proposed explanation was applicable for both the terms 'holding company' and 'subsidiary company'. The intention behind the change in section 2(46) is to bring harmony between provisions of section 2(87) and 2(46) of the Bill. It goes without saying that overseas holding companies will have to comply with the provisions of the jurisdictions in which these are incorporated. However, it would be appropriate to have this provision to ensure that transactions entered with overseas holding companies are carried out with adequate disclosures and thus any abuse. The suggestion, therefore, may not be considered."

**2.9 The Committee, while endorsing the view of the Ministry, recommend that the proposed amendment in Explanation to Clause 2(v) relating to clause (46) of the CA, 2013 on definition of "holding company" may be retained in order to ensure adequate disclosure in regard to transactions entered with overseas holding companies.**

**Clause 2(x) Section 2(76) - (definition of “related party”)**

2.10 Clause 2(x) reads as under:

In section 2(76)(viii) of the CA, 2013 the following shall be substituted, :—

"(viii) any body corporate which is—



- (A) a holding, subsidiary or an associate company of such company;
- (B) a subsidiary of a holding company to which it is also a subsidiary;

2.11 The Stakeholders in their written memorandum suggested on this clause as under:-

"It is suggested to retain the current definition as it is without making the amendments to include "body corporate" in section 2(76)(viii)." of the Companies Act, 2013

Further, specific exemption should be provided that a wholly-owned subsidiary whose accounts are consolidated with the holding company be excluded from the definition of related party.

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

"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'

**2.13 The Ministry have expressed the view that this amendment has been proposed in order to correct 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. According to the Ministry, this would be unintended by the statute and would affect the compliance requirements of "related parties" under the Act.**

The Committee, while agreeing with the Ministry's view on this issue, endorse the proposed amendment.

**Insertion of new section 3A after section 3.**

2.14 Clause 3A of the Bill reads as under:-

3A.If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore."

2.15 The Stakeholders in their written memorandum suggested on this clause as under:-

"Similar provision should also be incorporated in case the number of directors falls below the minimum prescribed. A provision for exemption from liability during the period when the number of Directors falls below the statutory minimum should also be provided in the Act."

2.16. The Ministry on the above said suggestion stated as under:-

"(i) The proposed section 3A has been proposed to be inserted in the Companies Act, 2013 [CA-13] as similar provision was provided under Section 45 of the Companies Act, 1956 [CA-56] and was considered to be relevant under CA-13 also.

(ii) The Companies Law Committee (CLC) had recommended for inclusion of this provision in the CA-13. [Para 2.7 of Part I of the CLC report].

(iii) The relevant provision of section 45 of CA-56 also provided for liability only in case number of members was reduced below statutory minimum. It did not provide for such liability if number of directors was reduced below minimum prescribed.

(iv) It may also be stated that the CA-13 contains provisions for cases where all the directors resign or vacate their offices or where their number falls below the quorum. Kind attention is drawn to following provisions of the CA-13:-

168 (3): Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

174(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for

the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

(v) In view of above, the provisions of proposed section 3A may be retained without any change. "

**2.17. The Committee do not see any merit in the suggestion for contingent exemption from liability for Directors, as the Companies Act 2013 contains adequate provisions for cases where all the directors in a company resign or vacate their office or where their number falls below the quorum fixed for a Board meeting. The proposed amendment may accordingly be retained without any further modification.**

#### **Clause 4(ii) - Period of filling of incorporation documents**

2.18. Clause 4(ii) of the Bill reads as under:-

"4(ii) in sub-section (5), in clause (i), for the words "sixty days from the date of the application", the words "twenty days from the date of approval or such other period as may be prescribed" shall be substituted."

2.19. The Stakeholders in their written memorandum suggested this clause as under:-

The proposed time limit of 20 days from the date of approval be increased to 60 days from the date of approval and after amendment, section 4(5)(i) may read as under:

"Upon receipt of an application under sub-section (4) the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of 60 days from the date of approval or such other period as may be prescribed".

2.20. The comments of the Ministry of Corporate Affairs on the above said suggestion as follows

"The proposed change also allows Central Government to prescribe any period, other than twenty days (in the rules) upto which the Registrar may reserve the name. Lesser period has been prescribed in sync with the faster communication channels etc and to weed out non-serious applicants at the stage of incorporation of companies. Flexibility has been kept which can be used for prescribing longer period in case of any difficulty. The suggestion to allow longer reservation period in case of change of name by a company, subsequent to its incorporation, may be accepted."

**2.21. In view of the acceptance by the Ministry of the above suggestion for increasing the time limit for reserving the name of the company by the Registrar**

**subsequent to its incorporation from the proposed 20 days to 60 days or a longer period as may be prescribed, the proposed clause may be modified accordingly .**

**Clause 7-Authentication of documents, proceedings and contracts**

2.22. Clause 7 reads as under:

"In section 21 of the Principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted."

2.23. The Stakeholders in their written memorandum suggested this clause as under:-

"It is proposed that after the words "an officer or employee of the company" the words "or any other person" be inserted."

2.24. The Ministry in their written reply on the above suggestion commented as under:-

"(i) Kind attention is drawn to para 2.6 (Part I) of the CLC report which reads as under:-

"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'."

"(ii) Kind attention is drawn to similar provisions under Companies Act, 1956 which read as under:-

54. Authentication of documents and proceedings.- Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, the manager, the secretary or other authorised officer of the company, and need not be under its common seal."

(iii) It is felt that CA-13 should recognize only officer (director or KMP or other officer) or employee of the company only to sign documents on behalf of the company.

(iv) The change proposed in section 21 of CA-13 through CAB-16, on the basis of aforesaid recommendation of the CLC, already provides substantial flexibility and ease of doing business. It may not be appropriate to provide any further relaxation on the matter at this stage."

**2.25. The Committee believe that the proposed amendment provides adequate flexibility for authentication of documents proceedings etc. duly authorised by the Board, hence, the amendment may be retained without any change.**

**Clause 10 - Offer or invitation for subscription of securities on private placement-**

2.26. Clause 10- section 42 (9) and (10) reads of as under:-

Section 42(9) - If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

Section 42(10) - Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

2.27. The Stakeholders in their written memorandum suggested this clause as under:-

"Promoters should not be held liable for violation of the provisions of Section 42 of the Act."

2.28. The Ministry on the above suggestion furnished their following comments:-

"(i) The liability for promoters was already provided under section 42(10) of the CA-13. This has been retained in the CAB-16 in view of such earlier provisions. It may be noted that non-compliance of the provisions may lead to companies disguising public offers as private placement, which is a serious violation and cannot happen unless promoters are involved like what had happened in a major case during 2013-14. Further, only monetary penalty is prescribed under the section. Since the Court/ Adjudicating officer would take into account all relevant factors before passing an order for penalty/ fine, the promoters, if not involved in the default, would be allowed to present their case and may not be held liable if they prove so.

(ii) No change, therefore, may be considered on this matter. "

**2.29. As the Committee agree with the Ministry's view that some companies may disguise public offers on private placement to escape compliance requirements,**

**the prescribed penal liability for promoters may be retained in order to protect the interest of investors.**

### **Clause 23-Annual Return**

2.30. Clause 23 (3) reads as under:

In section 92 (3) of the Principal Act, -

(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

2.31. The Stakeholders in their written memorandum suggested this clause as under:-

"Disclosures in Annual Return are very detailed and their applicability to Private companies would make compliance unnecessarily onerous. Hence, Private companies should be exempted from the same."

2.32. The Ministry on the above suggestion furnished their following comments:-

"In view of recommendation made by the Company Law Committee (CLC), an abridged form of annual return is proposed to be prescribed for small companies and OPCs. The format of annual return for other companies would also be reviewed to avoid giving of repetitive information. The suggestion, therefore, is being considered already."

**2.33. The Committee find merit in the suggestion for a less cumbersome/onerous Annual Return to be filed by companies. Thus, as already agreed to by the Ministry and as recommended elsewhere, an abridged and simple form of annual return may be prescribed for small companies, one person companies and private companies (less than an annual sales turnover of say, Rs 100 crore). For other forms of companies as well, the annual return format should also be devised in a manner avoiding repetitive or superfluous information.**

### **Clause 28- Notice of meeting**

2.34. Clause 28 reads as under:-

In Section 101 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted namely:-

Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section, if consent in writing or by electronic mode is accorded thereto:

- i. in the case of an annual general meeting, by not less than ninety-five per cent of the members entitled to vote thereat; and
- ii. in the case of any other general meeting, by members of the company-
  - (a) holding, if the company has a share capital, not less than ninety-five of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
  - (b) having, if the company has no share capital, not less than ninety-five percent of the total voting power exercisable at that meeting.

2.35. The Stakeholders in their written memorandum submitted the following suggestion on the above clause:-

"It is suggested that a general meeting of Companies having share capital may be called after giving shorter notice if consent thereto is accorded by majority of members in number entitled to vote and representing holding not less than 95% percent of such part of the paid-up share capital of the company entitled to vote thereat;

In case of Companies not having share capital a general meeting may be called after giving shorter notice if consent thereto is accorded by majority of members representing not less than 95% of the voting rights exercisable at the meeting."

2.36. The Ministry of Corporate Affairs on the above suggestion commented as under:-

"Keeping in view the need to ensure protection of interests of minority shareholders, the suggestion may be accepted."

**2.37. The Committee would endorse the Ministry's acceptance of the above suggestion to enable holding a general meeting of a company on a shorter notice. This will bring in necessary flexibility in procedural matters.**

### **Clause 32- Preparation of Consolidated financial statements -**

2.38. Clause 32- Section 129 (3) reads as under:-

In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated

financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."

2.39. The Stakeholders on the above clause furnished the following suggestion:-

"Regardless of whether there is a statutory requirement of consolidation in the overseas country, if an overseas subsidiary prepares and presents consolidated financial statements (even voluntarily), that should dispense the need to provide step down subsidiaries' financial statements on the website of the Indian parent company. "

2.40. The Ministry have furnished their following comments on the above suggestion:-

The Companies Law Committee has observed in this regard that:-

"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 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. It is recommended that in such cases, where a Consolidated Financial Statement 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 however be no exemption in other cases".

The Ministry is in agreement with the views of the Company Law Committee. The intent is to provide for those jurisdictions, where because of consolidation requirements, standalone statements of step down subsidiaries may not be required. No further change in the provisions may be warranted:-



**2.41. The Committee are in agreement with the views of the Ministry that in the absence of a statutory requirement of Consolidated Financial Statement in an overseas jurisdiction, it may be difficult to ensure compliance at a standard level. Hence there is no scope for any further exemption in the preparation and disclosure of Consolidated Financial Statements beyond that provided in clause 32 of the Bill.**

**Clause 37- Right of member to copies of audited financial statement –**

2.42. Clause 37- Section 136 of the Principal Act reads as under:

In section 136,—

(i) in sub-section (1),—

(b) ...the following shall be substituted, namely:—

"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by ninety-five per cent of the members entitled to vote at the meeting:

2.43. The Stakeholders on the above clause in their written memorandum have suggested clause as under:-

"As per the proposed amendment, copies of the documents referred to in Section 136(1) of the Act can be sent at a shorter notice if it is so agreed to by ninety-five percent of the members entitled to vote at the meeting even if the percentage of voting capital held by such members is negligible.

It is suggested that if copies of the documents referred to in Section 136(1) of the Act are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members holding not less than ninety-five percent of such part of the paid-up share capital of the company as gives a right to vote at the meeting. "

2.44. The Ministry have accepted the above suggestion.

**2.45. The Committee would thus recommend that keeping in view the need to ensure protection of interests of minority shareholders, the suggestion made above by some stakeholders may be suitably incorporated in the Bill. The Committee would further recommend in this regard that in order to facilitate "ease of doing business", the Ministry should further amend clause 37 and exempt the companies from the requirement of uploading financial statements of**

**foreign subsidiaries, in case such companies upload the consolidated financial statement on website of such foreign companies.**

**Clause 38-Copy of financial statement to be filed with the Registrar**

2.46. Clause 38 of the Bill reads as under:

In Section 137(1), the following proviso shall be inserted after the fourth Proviso :—

'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'

2.47. The Stakeholders in their written memorandum have suggested as under:-

"The proviso should be applicable to all holding Indian Companies and the word 'listed' should be removed in the proposed insertion. "

2.48. The Ministry of Corporate Affairs in their written submission have accepted the above suggestion.

**2.49. The Committee would therefore recommend that the suggestion to broaden the applicability of the clause to all holding Indian Companies for filing copy of financial statement with the Registrar may be suitably incorporated in the Bill. The Committee also recommend that in order to facilitate "ease of doing business" in case a company files consolidated financial statements (which in any case has been mandated under the law), it should be exempted from the requirement of filing individual financial statement of subsidiary companies.**

**Clause 41- Definition of Relative**

2.50. Clause 41 of the Bill reads as under:

In section 141 of the principal Act, in sub-section (3),—

(i) in clause (d), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments;'

2.51. The Stakeholders in their written memorandum on the above clause suggested as follows:-

"The words "or who consults such person in taking decisions in relation to his investments" be removed from the explanation."

2.52. The Ministry of Corporate Affairs on the above said suggestion commented as under:

"(i) The intention is to cover following persons as relative for the purposes of proposed Explanation in section 141(3)(d):-

(a) spouse of the person; and

(b) a parent, sibling or child of such person or of the spouse who -

(A) is financially dependent on such person, or

(B) consults such person in taking decisions in relation to his investments

(ii) Drafting improvement to convey intent more clearly is noted to be addressed through legislative vetting."

**2.53. The Committee are inclined to accept the suggestion for removal of the words "or who consults such person in taking decisions in relation to his investments", as these words make the intended definition of 'relative' under clause 41 too broad and open-ended, leaving scope for mis-interpretation. Instead, the words "institutionalized consultation in the usual course of business" may be substituted to bring greater clarity. The Committee are of the view that such phraseology in the main clause or explanations thereunder should be avoided, as it will only obfuscate the intent behind the law, leading to avoidable disputes and litigation. Necessary modifications may accordingly be made in the Bill.**

**Clause 48 Right of persons other than retiring directors to stand for directorship.**

2.54. Clause 48 reads as under:-

The following proviso shall be inserted in Section 160(1):—

"Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178."

2.55. The Stakeholders on the above clause submitted the following suggestion:-

“or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination & Remuneration Committee” should be included in the proviso at the end.”

2.56. The Ministry of Corporate Affairs have accepted the above suggestion

**2.57. Keeping in view the need for procedural flexibility, wherever possible, the Committee recommend that the suggestion made above with regard to clause 48 in case of companies not required to constitute Nomination and Remuneration Committee may be suitably incorporated in the Bill.**

**Clause 65 Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits**

2.58. Clause 65 (a) reads as under:-

Section 197 – "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years of such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."

2.59. The Stakeholders in their written memorandum have suggested as under:-

"The proviso in sub-section (1) of section 197 may read as under :

Provided also that, where the company is in default for period exceeding 30 days in payment of dues in respect of term loan taken from any bank or financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."

Similar changes may be carried out in proviso to sub-section(10)"

2.60. The Comments of the Ministry on the above said suggestion are as follows:-

"Since the requirement for approval of Central Government has been proposed to be omitted from the provisions, it was considered necessary that necessary safeguards in other manner are put in place so that the relaxation in the provisions is not misused. The requirement for approval of banks or public financial institutions (PFIs) or debenture holders/ secured creditors has been provided in that perspective. Banks and financial institutions, who have lent monies to a company and if relevant loans are still subsisting, should have some say in case the company does not have adequate profits and it proposes to pay

remuneration to its managerial personnel in excess of what is provided in Schedule V. It is expected that lenders/creditors would give their approvals to the borrowing companies in all genuine cases and this additional check would safeguard their interests. The provisions, as proposed, may, therefore, be retained."

**2.61. The Committee have commented upon the issue of managerial remuneration separately. The safeguards proposed in the Bill may be further strengthened accordingly to protect the interests of secured creditors, debenture-holders etc.**

**Clause 76 Fee for filing etc.**

**2.62.** Clause 76 reads as under:-

In section 403 of the principal Act,—

(i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

"Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89, 92, 117, 121, 137 or 157 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, it may be submitted, filed, registered or recorded, as the case may be, within a period of two hundred and seventy days from the expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed:

Provided further that where the document, fact or information, is not submitted, filed, registered or recorded, as the case may be,—

(a) in case of document, fact or information referred to in section 89, 92, 117, 121, 137 or 157, within the period of two hundred and seventy days as provided in the first proviso; or

(b) in any other case within the period in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee or additional fee, as may be prescribed:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information under section 89, 92, 117, 121, 137 or 157, the provisions of the first and second provisos shall not apply, until the document, fact or information is submitted, filed, registered or recorded, as the case may be, with additional fee, without prejudice to any legal action or liability under this Act.";

(ii) in sub-section (2), for the words "first proviso to that sub-section", the words "relevant section" shall be substituted.

2.63. The Stakeholders in their written memorandum have suggested that the proposed substitution should not take place.

2.64. The Ministry on the above suggestion have commented as under:

- "(i) Kind attention is drawn to Company Law Committee (CLC) observations that 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. Necessary changes may 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.
- (ii) During implementation of provisions of 403 of CA-13 read with Companies (Registration Offices & Fees) Rules, 2014, the Ministry had noted the difference between provisions on filing of documents under 6 sections indicated in CLC recommendation (i.e. Section 89, Section 92, Section 117, Section 121, Section 137 and Section 157) and other sections requiring filing in Registry. In view of this, the Ministry treats filings under two sets of provisions differently. However, this has impacted the on-time filing of documents in the registry, which is a matter of regulatory concern.
- (iii) The Ministry feels that review of section 403 is necessary to ensure that companies file all documents in the registry within time and delayed filing should be allowed but with higher to very higher additional fees depending upon the nature of document and the size of the company concerned and without any bar from prosecutions for delayed filing.
- (iv) In view of above, it is proposed that different treatment provided presently under the CA-13 for filing of documents under six sections and remaining sections may

be considered to be reviewed/removed and similar procedure should apply for both sets of documents. In addition, taking into account the regulatory concern for an updated registry, the time period of 270 days provided under section 403 may be considered to be reduced to 150 days (for all documents). It is also proposed that the Companies (Registration Offices and Fees), Rules, 2014 which prescribe the slabs of additional fees for late filing may be revised. It is proposed that for the 150 days' period, upto which late filing of documents is proposed to be allowed, the slabs for additional fees may have two broad categories. In the first category, the delayed filing upto 60 days may be allowed on payment of additional fee (depending upon number of days of delay) at a particular rate. In the second category, the delayed filing upto 90 days, subsequent to such 60 days of delay, may be allowed on payment of a higher/steeper fee and additional fee than the first category."

**2.65. The Committee apprehend that the proposed amendments with regard to fee structure for delayed filing of documents may turn out to be a revenue-mobilising proposal for the Ministry and the government, rather than a step towards ensuring timely compliance by companies and an up-to-date registry. The Ministry, themselves, have stated in their reply that a low level of annual statutory filings have been reported currently as compared to previous years. The Committee believe that enhanced fee may not actually deter non-compliance. It may thus be a fallacious assumption that the fee structure can be used to ensure statutory compliance. The Committee would rather suggest in this context that the compliance requirements may be made less onerous with a reasonable time-period for all companies, and simultaneously, non-compliance within the stipulated period should invite strict penalty and prosecution. In view of the Committee, only such an approach will ensure an up-to-date registry of companies. The present approach of condonation of delay, late filing by payment of higher fee etc. may not really help achieve this objective, as borne out by the Ministry's own experience in the matter.**

#### **Clause 87- Punishment for fraud**

2.66. Clause 87 reads as under:-

In section 447 of the principal Act, —

(i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower" shall be inserted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."

2.67. The Stakeholders in their written memorandum suggested this clause as under:-

"The amount of ten lakh rupees should not be specified in the Act and the power may be delegated to the Central Government to prescribe the limits from time to time."

2.68. The Comments of the Ministry on the above suggestion are as under:-

"(i) Provisions of section 447 are considered to be important provisions for regulation of fraud under the Act. The changes proposed in section 447 for specifying the amount of Rs. 10 Lakh or 1% of turnover of company (whichever is lower) seek to meet two objectives. Firstly, such limit would be a factor for distinguishing fraud of non-serious nature with fraud of serious nature. Secondly, based on such limit the offence would be categorized as compoundable or non-compoundable.

(ii) Taking into account the nature of provisions (being penal provisions) and need for ensuring clarity in the main Act itself, it is submitted that the specific amount may be retained to be provided in the Act itself rather than through rules. The suggestion, therefore, may not be considered. "

**2.69. The Committee agree that, being a substantive matter, monetary thresholds may be prescribed in the main Act itself for the sake of clarity with regard to the nature of fraud and for categorising the offence as compoundable or non-compoundable.**

### **3. Other Issues**

3.1 During the course of evidence of the stakeholders, some important issues emerged on which the Committee has commented in the succeeding paragraphs:

#### **Section 134(5)(e) Certification by Board of Directors in Board's report on adequacy of Internal Financial Controls (IFC)**

3.2. The Stakeholders in their written memorandum suggested on this section as under:-



"The words Internal Financial Controls under section 134(5)(e) to be replaced with 'Internal Controls Over Financial Reporting' in line with the proposed amendment of Section 143(3)(1) in the Companies (Amendment) Bill, 2016.

The certification requirements be limited to listed entities only."

3.3. In this regard, the Ministry have stated that reference may be made to the observations of the Company Law Committee (CLC) on this subject, which is cited as follows:

"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.

The Ministry has concurred with this view expressed by the CLC. Further, the requirement is applicable only for listed companies and boards of such companies should not find it difficult to ensure such a compliance. The suggestion, therefore, may not be considered."

**3.4 The Committee agree that the certification required from the Board of Directors on the Internal Financial controls in a listed company is a necessary responsibility cast on the Board, which is in consonance with the fiduciary duty entrusted to the Directors under the Companies Act. Thus, no dilution in this regard is called for at this stage of the evolution of the Act.**

#### **Inconsistencies between SEBI Regulations and the Act**

3.5. The Stakeholders in their written memorandum pointed out that the differences between SEBI Regulations and section 188(1) have led to the following practical difficulties:

##### **Related Party Transaction**

- The thresholds for determining which transactions should be approved by a special resolution are different under both the sets of laws.

- Listing agreement does not give exemption to transactions entered into in the company's ordinary course of business other than transactions which are not on an arm's length basis.

The differences may lead to different policies and consequently different disclosures to comply with both the requirements.

Disqualifications and performance evaluation of Independent Director:

- Independent Director – Independence requirements are not aligned with SEBI (LODR) Regulations, 2015.
  - Disqualification due to pecuniary relationship should arise if it is material and in the opinion of the Board affects the independence
  - Performance evaluation of independent directors should be performed only after completion of at least 3 years.

The Board's Report, 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. These need to be harmonized so that the repetition is avoided and made more readable."

3.6. While submitting their written information on the above suggestion, the Ministry have stated as under:

(i) It has been provided that all essential requirements/ principles w.r.t. corporate governance are recognized in the CA-13 and SEBI is allowed to prescribe additional or more stringent requirements for listed companies.

(ii) Subsequent to the enactment of the CA-13, SEBI also carried out amendments in its listing requirements and brought out comprehensive SEBI (Listing Obligations and Disclosure Requirements) Regulations [SEBI-LODR] on 2<sup>nd</sup> September, 2015 keeping in view the provisions of CA-13. The changes aimed at harmonizing the corporate governance requirements especially with regard to following aspects:-

- (a) Qualifications, attributes and tenure of independent directors;
- (b) Committees to the Board;
- (c) woman director requirement;
- (d) vigil mechanism.

(iii) The CAB-16 has also sought to further harmonize the regulatory requirements under the CA-13 and SEBI Act. Kind attention in this regard is drawn to following clauses of the Bill:-

(a) Clause 8 seeks to amend section 26 with a view to align disclosures in the prospectus required under the Companies Act and the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder by omitting

prescriptions in the Companies Act and allowing these prescriptions to be made by the Securities and Exchange Board of India in consultation with the Central Government.

(b) Clauses 62 and 63 of the Bill seek to omit section 194 and section 195 relating to forward dealing and insider trading as these are regulated under the SEBI Act.

(c) Clause 2(iii), clause 12 and clause 18 of the Bill seek to bring harmony between provision under CA-13 and RBI Act, 1934/ Banking (Regulation) Act, 1949/ Regulations made thereunder with regard to issue of debentures, issue of shares on discount in certain cases and registration of charges respectively;

(d) Clause 24 of the Bill seeks to omit section 93 of the Act w.r.t. return to be filed in case of change in stakes of promoters and top ten shareholders since this requirement is covered under SEBI Law.

**3.7. The Committee recommend that the provisions in the Companies Act 2013 and Rules framed thereunder should be harmonised with SEBI Regulations and vice-versa, wherever some dis-harmony exists. In this context, particular attention may be paid to provisions relating to 'related party transaction', 'independent director' and other corporate governance matters covered in SEBI regulations. Duplication and superfluity in the Regulations may thus be removed.**

#### **Exemptions to unlisted closely held public companies**

3.9. The Stakeholders on the issue of exemptions of unlisted closely held public companies have submitted the following suggestion:

"Closely held Public companies with less than 10% public shareholding are still required to comply with many onerous requirements like appointing women directors, restrictions on related party transactions, Board committees and so on. Therefore, exemptions given to Private Companies may also be extended to public companies with public share ownership of less than 10%."

3.10. The Ministry of Corporate Affairs submitted the following comments on the above suggestion:-

(a) The corporate governance requirements like appointment of Independent Directors (IDs), Board committees, woman director, internal audit under the Companies Act, 2013 [CA-13] read with relevant rules are applicable only to the larger unlisted public companies as per criterion of paid-up share capital, turnover or bank borrowings/ deposits. The thresholds for such criterion were

prescribed after detailed discussions and consultations and can be reviewed from time to time. The Companies Law Committee (CLC) has made recommendations to review some of such thresholds which are being examined.

(b) Through the Companies (Amendment) Bill, 2016 [CAB-16] changes have also been proposed in following provisions to provide relaxations to unlisted companies:-

Clause 26: Unlisted companies to be allowed to convene AGMs at any place in India, provided approval of all the members of the company is obtained in advance.

Clause 61(i): A company is free from the prohibition that no member of the company shall vote on resolutions to approve contracts etc if, such member is a related party in the case 90% or more members of such company are relatives of promoters or related parties.

(c) The suggestion made, therefore, is addressed partially. It is felt that treating unlisted public companies at par with private companies for the purposes of the regulation of CA-13 may not be appropriate since the nature/type of such companies vary significantly. In any case, the option of conversion of a public company into private company is always available.

**3.11. As observed by the Committee earlier, it is desirable that compliance requirements, in general, are made less onerous for all forms of companies. However, companies with a business volume or sales turnover of less than say, Rs. 100 crore annually,(which do not accept public deposits) whatever their form, may be treated on a different footing with simplified formats of disclosure and minimum compliance. This will also keep the compliance and scrutiny load manageable at the levels of the Registry, regulators and other mandated authorities, while facilitating 'ease of doing business' for smaller entities. Regulators will thus be in a better position to ensure effective oversight.**

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

3.12. The stakeholder in their written memorandum on the Corporate Social Responsibility under Section 135 of the Principal Act, submitted the following suggestion:-

"There are stringent requirements concerning constitution of CSR Committee, formulation of CSR Policy, monitoring the Policy and various other matters about project-based expenditure and so on. Such elaborate requirements are quite unnecessary and cumbersome for Private companies. The provisions made applicable to private companies here seem unintentional.

The expenses towards capacity building of the CSR personnel of the corporate should also constitute the CSR spend, especially where projects are being directly executed. The administrative expenses should be on actual basis and not tied up with percentage of CSR spend.

Private companies which get covered under Section 135 should have simplified procedures for such compliances & implementation.

Clarification is required in terms of reporting as to whether only what is planned is to be reported or also what is executed along with what is planned is to be reported. The annual report includes CSR projects undertaken with budget and spent by the company in that financial year. However the Rules specify only about what is planned by the company need to be reported"

3.13. The Ministry of Corporate Affairs submitted the following comments on the above suggestion:

"Taking into account the objective behind the provisions of section 135 of the CA-13, all companies covered under sub-section (1) of that section should be covered within CSR requirements. The difficulties expressed by companies (including private companies) with regard to compliance with these provisions have been considered by the CLC/MCA and necessary changes are being proposed in section 135 of the CA-13. Exemptions for private companies from section 135 may, therefore, not be considered."

**3.14. The Committee recommend that the proviso to Section 135(5) of the Companies Act, 2013 stipulating that "the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities" should be strictly enforced to preserve the true letter and spirit of the CSR mandate. For instance, in mining areas in Jharkhand, it is seen that the CSR spend by companies is miniscule as compared to the profits /incomes accruing from there and much lower than the mandated percentage. Such gross mismatch in local CSR expenditure vis-a-vis CSR expenditure of an organisation at headquarter/other areas is contrary to the afore-mentioned proviso to Section 135(5), which should be squarely addressed. In this context, contradictions and ambiguities, if any, regarding CSR reporting should also be removed forthwith. The Ministry should also regularly monitor scrupulous compliance of CSR provisions by corporates and follow-it up with them in a structured manner through a proactive Management Information System (MIS) which will improve awareness about CSR activities as also facilitate MIS in government system**

## **Auditor Rotation**

3.15. The stakeholder in their written memorandum on the Auditor Rotation under Section 139 of the Principal Act, submitted the following suggestion:-

Auditors rotation should not be mandated

Unlisted Indian subsidiaries of foreign multinationals should be permitted to align their auditors with that of the parent company, thus, exempting them from mandatory auditor rotation requirements. Similarly private limited companies should also be exempted from mandatory audit rotation since there is very little public interest involved in the same.

3.16. The Ministry of Corporate Affairs submitted the following comments on the above suggestion:

" (i) On the basis of recommendation made by Honourable Committee, the provisions on rotation of auditors were incorporated in the form of section 139(2) of the CA-13. These provisions are applicable to all listed companies and bigger companies i.e. companies having thresholds w.r.t. paid up share capital and public borrowings/ public deposits.

(ii) It may be noted that as per data available in the MCA-21 system, only 1.6% (appx) of total number of unlisted companies are required to rotate their auditors under CA-13.

(iii) The Ministry feels that rotation of auditors is important to promote good corporate governance and the applicability of such provisions to all specified companies including multinational companies should be retained as provided under section 139(2) read with Companies (Audit and Auditors) Rules, 2014. The suggestion, therefore, may not be considered.

**3.17. The Committee find from the Ministry's reply that only about 1.6% of total number of unlisted companies are required to rotate their auditors as per the prescribed criteria under the Companies Act 2013. Since this is a miniscule coverage, it is only appropriate that subsidiaries of foreign companies and private companies are given justifiable relief depending upon their capital and turnover thresholds. Accordingly, the exemption limits/thresholds prescribed under the Rules may be reviewed in consultation with the ICAI.**

### **Constitution of National Financial Reporting Authority (Section 132 of the Companies Act 2013)**

3.18. Sec 132 of the Act provides for the creation of National Financial Reporting Authority (NFRI) for matters relating to accounting and auditing standards under the Act. However this section is yet to be notified

The key functions of NFRA as envisaged by the Act include:

- Recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors.
- Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed.
- Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed.
- Have the power to investigate, either *suo motu* or on a reference made to it by the Central Government, for specified class of bodies corporate or persons, into the matters of professional or other misconduct committed by any member or firm of Chartered accountants.

3.19. The Institute of Chartered Accountants of India (ICAI) have expressed their reservations over the constitution of NFRA as follows:

- a) Multiple Regulatory Bodies:** Creating NFRA would result in two regulatory bodies (ICAI and NFRA) governing the same audit profession. This would result in duplication of efforts, added huge costs with no significant incremental benefits. This would also change the self-regulated profession to an externally regulated body.
- b) The ICAI Context:** NFRA might seem necessary to ensure that standard setting and enforcement are not carried out by the same body (ICAI). However, it would be pertinent to mention that the ICAI, has been created by an Act of Parliament for this specific dual role (like SEBI).

The constitution of NFRA needs to be re-examined in the mentioned contexts where relevant mechanisms and units have been enabled by and/or within the ICAI organisation to deliver the twin objectives of robust policy making and unbiased enforcement in a timely manner.

- c) Relevance of NFRA in the context of the Companies Act 2013:** The objective of NFRA is to regulate audit quality and protect public interest. These, in any

case, are also the main objectives of ICAI which strives to be a world class regulator.

It is pertinent to note that the new Companies Act 2013 has significantly enhanced provisions, pertaining to Accounts, Audit and Corporate Governance which can deliver the above objectives very well.

Specific aspects to regulate audit quality include integration of financial statement reporting with Internal Financial Controls, restrictions on auditors rendering conflicting services, audit rotation, audit limits and penalties on the audit profession have been included in the new Act. Similarly entity level discipline is sought to be enhanced by significant controls over related party transactions, acceptance of deposits, code of independent directors, mandatory internal audits for large enterprises, enhanced board responsibility etc. These controls enshrined in the Act, in addition to the efforts of ICAI will enable higher audit quality especially for public interest entities. Incremental benefits by creating NFRA need to be reexamined before notification of Section 132.

- d) **Auditing Standards:** ICAI as a world class regulator would be more aligned to market needs, international practices and risks to be able to define and improve Auditing standards rather than NFRA.
- e) **Disciplinary Mechanism:** The Disciplinary Committee of ICAI normally completes the process in a reasonable period of about three to four years.
- f) **International benchmarks:** The Public Companies Accounting Oversight Board (PCAOB) of the US may be regarded as a possible closely comparable body to NFRA, if notified. It is relevant to note that PCAOB has evoked mixed responses in its ability to improve audit quality. The PCAOB budget for 2016 is estimated at \$250 million and is enabled by 750 audit staff. The Challenges of availability of trained and qualified audit staff and the cost thereof may need to be appreciated ahead of the decision to notify NFRA.
- g) **NFRA reporting and market perception:** As a regulatory oversight body, it would be incumbent on NFRA to share their findings, at least in part, on their audits to the public. A particular issue would be on the ability and maturity of stakeholders and markets to distinguish between audit defects as identified by NFRA (highly likely) and a total audit failures (less likely).
- h) **Uniform administration:** Scale based differentiation of regulating authority may result in conflicting judgements on the same issue. Seamless coordination may always not be possible between NFRA and ICAI due to the multiplicity of disciplinary issues that may be handled by both agencies.
- i) **Challenges in adjudication :** The setting up and managing a standard setting, review and quasi-judicial authority requires sustained effort on timely availability of adequate competent personnel which may be a challenge for NFRA."



3.20. Further ICAI offered their following suggestions on the above:-

"The years commencing 2015 are vastly different for the auditing profession in terms of the perception of the auditor's roles and responsibilities. Additionally, the CA fraternity is in the process of coping with new changes such as penalties, rotation, restricted services, Internal Financial Controls over Financial Reporting and other aspects imposed by the Companies Act. The profession would, rightly, need some more time to understand and assess the expectations of a NFRA regime which, in our view shall not be notified.

The ICAI has sufficient regulatory, supervisory, organisational and budgetary independence as regards the audit profession although we both a standard setter and a regulator. We would continue to discharge our obligations to ensure the highest standards of audit quality as well as to protect public interest."

3.21. The Ministry of Corporate Affairs have furnished their comments on the concern and suggestion of ICAI on the above issue as under:

"(i) Companies laws across major jurisdictions across the world have provided for outside auditors to perform the important gatekeeper function – which can be viewed as a form of delegation of responsibilities of the state – towards verifying and ensuring the quality i.e. the truthfulness and correctness of financial accounts and statements before these are presented by a company to its various stakeholders. Such a role requires complete independence, thoroughness and accountability on the part of auditors. However, there is an inherent conflict of interest in the auditing process as the auditee company also pays the auditor. In order, therefore, to ensure that the auditor performs his responsibility to the desired levels, they are regulated and subject to auditing standards and potential liability. The enforcement of the auditing standards and ensuring the quality of audits moved from self-regulating bodies, in the wake of the accounting scams worldwide, to independent regulators like the Public Company Accounting Oversight Board (PCAOB) and Financial Reporting Council (FRC) in the US and UK respectively. Other major countries have also followed. It was recognised in these jurisdictions that establishing independent regulators, independent from those it regulates, would strengthen the independence of audit firms, quality of audits, enhance investor and public confidence in financial disclosures of companies.

(ii) The Parliamentary Standing Committee on Finance also took note of these concerns, especially in view of the Satyam scam and the nature and scope of National Advisory Committee on Accounting and Auditing Standards [NACAAS] proposed under Companies Bill, 2009 was modified/widened in view of recommendation made by Honourable Standing Committee in its 21<sup>st</sup> Report which is reproduced as under:-

*“9.23 The Committee while welcoming the introduction of auditing standards as a concept in the Bill, would like the National Advisory Committee on Accounting and Auditing Standards (NACAAS) to be institutionalized not only as a body for setting up auditing standards but also as a quasi-regulatory body for generally supervising the quality of audit undertaken. The Committee would expect the Ministry to clearly delineate the role and responsibilities of this body accordingly.”*

(iii) Since a substantial part of functions of the proposed body was already provided for under the Companies Bill, 2009 (in the form of NACAAS), it was decided, in accordance with the recommendation of Honourable Committee to provide for such body in the Companies Act itself. The Committee had recommended *in its 21<sup>st</sup> Report* that “the proposed body namely, NACAAS would be given sufficient mandate not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit undertaken across the corporate sector. It should, therefore, be manned by professionals. Its role may be expanded depending upon experience gained. [Para 37 of Report].”

(iv) The Standing Committee on Finance which considered the Companies Bill, 2011 noted the changes incorporated in the Bill expanding the scope of NACAAS as per recommendations made in its 21<sup>st</sup> Report and the change in nomenclature to NFRA.

(v) The Company Law Committee (CLC) had also considered the representations made by the ICAI and suggested as under:-

*“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.”

(vi) World over, the number of independent audit regulators have increased over a period as can be seen from the membership of International Forum of Independent Audit Regulators (IFIAR) which was established in 2006 by independent audit regulators from 18 jurisdictions and now covers 51 jurisdictions (including PCAOB and FRC). IFIAR, inter alia, promotes international collaboration between the regulators. The oversight structure of auditors within ICAI has not been recognized as independent by IFIAR and India is not represented on this body.

(vii) The increasing recognition of having an independent oversight /regulation over professionals as well as the deficiencies in the self-regulation model have also been taken note of in other legislations and sectors also. The Insolvency & Bankruptcy Code, 2016 provides for the Insolvency & Bankruptcy Board of India to provide oversight over the Insolvency Professionals over and above the role of self-regulatory bodies. The reforms in the Medical Council of India proposed by NITI Aayog does away with the self-regulatory structure. Para 3.1 of the preliminary report of NITI Aayog on the proposed reforms succinctly captures the problems of elected regulators as in the ICAI, and is reproduced below:

“The current electoral process of appointing regulators is inherently saddled with compromises and attracts professionals who may not be best suited for the task at hand. Indeed, there is ample evidence that the process has failed to bring the best in the field in the regulatory roles. The process is based on what is now widely regarded as a flawed principle whereby the regulated elect the regulators. It creates an ab-initio conflict of interest and therefore this system must be discarded in favour of one based on search and selection. Regulators of highest standards of professional integrity and excellence must be appointed through an independent and a transparent selection process by a broad based Search cum Selection Committee.”

(xii) SEBI had engaged M/s Oliver Wyman (OW), an international consultant to revisit the structural and organisational issues, re-prioritize areas of focus and to look at the technological and manpower needs of SEBI. OW in its report has inter-alia stated that "Currently the Institute of Chartered Accountants of India (ICAI) is responsible for maintenance of accounting, auditing and ethical standards. However the ICAI's oversight is passive in nature and with limited focus on active investigations. In addition, oversight is rendered challenging given the large number of auditors in India (around 15000 vs around 3000 in USA). Scope to enhance the quality of audit has been recognised by multiple

supervisory bodies including SEBI, RBI and Comptroller & Auditor General of India. In the long term, we recommend that SEBI drive the case for establishing a separate regulator for auditors which is independent of audit profession. This body must be set up with a clearly defined mandate, adequate resources for active monitoring and appropriate enforcement process. In the near term it is recommended that SEBI provide inputs for the role of function of National Financial Reporting Authority with respect to supervision of auditors (providing services to listed companies) and mechanisms for interaction with SEBI".

- (ix) Ministry of Finance and Chairman, SEBI has recently written to MCA for the establishment of NFRA as it would lead to enhanced institutional oversight over auditors and would lead to enhanced market integrity and transparency as well as protection of the interest of investors and other stakeholders like banks, lending institutions, suppliers, etc.
- (x) Complaints received against its members are examined by the Institute of Chartered Accountants of India (ICAI) through its mechanism of Director (Discipline), Board of Discipline and Disciplinary Committee and an Appellate Authority. Information was obtained on the complaints against its members available with it. Analysis of the details provided by ICAI is as below:
  - a) Of the 1972 cases taken up by the Disciplinary Committee/Board of Discipline of the ICAI, only in the matter relating to Satyam Computers have the members been permanently removed. Only in 14 of these cases, members have been imposed penalty of one year or more. In majority of the cases, the members have been found as not guilty. Further, in majority of the cases where members have been found guilty, they have been merely reprimanded or cautioned.
  - b) 1226 cases were closed at prima facie stage by the Board of Discipline/Disciplinary Committee. Of these, 117 cases were referred by various Government agencies/regulators. 49 of these cases were referred by MCA/SEBI and the professional involved were found to be not guilty at the prima facie stage. The closure of these cases took from 1-4 years.
  - c) Only 4 percent of the 746 cases which proceeded beyond the prima facie stage before the Disciplinary Committee/Board of Discipline of the ICAI since 2007 have been on a suo-moto basis. Other than Satyam matter, only in 6 of these cases have the Members been found guilty and they have been reprimanded or cautioned.

d) 137 of 746 cases taken up for considered beyond the prima facie stage by the Disciplinary Committee/Board of Discipline were based on complaints by government/regulatory agencies. The Committee found members guilty in 54 of these cases, of which in 5 cases, the Committee imposed a penalty of name removal for one year or more and/or fine.

(xi) It may also be pertinent here to draw attention to the reference in November 2015 to ICAI by MCA for examining the role of auditor and possible misconduct on their part in case of 132 listed companies whose scrips were suspended by SEBI for abnormal price rise which was not supported by the fundamentals of the companies, non-existent companies, etc. and on which even preliminary action had not been initiated by the ICAI despite several reminders. In another example, SFIO, in its report in a specific case had identified 56 professionals, including 34 chartered accountants, who worked as mediators in money laundering with the help of a group of companies. A copy of the report was submitted to SIT on Black Money on 25.04.2016, which in turn issued directions to the ICAI to identify all the Chartered Accountants involved in the money laundering and initiate disciplinary proceedings against them. ICAI vide letter dated 20.07.2016 informed that it had identified five chartered Accountants and initiated proceedings against them while for the remaining chartered accountants, ICAI had asked SFIO to furnish details of membership number and professional addresses.

(xii) The Chartered Accountants Act, 1949 provides for self-regulation through an electoral process and, therefore, the present provisions in respect of quality review and discipline provided therein rely substantially on such principles. In view of this, envisaging an independent body under the Act would be difficult. In order to address the overlap between the two Statutes with regard to quality review and professional and other misconduct, the provisions under the CA-13 provide for regulation of such aspects only for specified (bigger) classes of companies/auditors and further that overriding effect over other laws has been specifically provided under the CA-13.

(xiii) NFRA is proposed to be established as an independent body with representation from concerned stakeholders including ICAI. Once it is constituted, the authority would function in accordance with the mandate and role provided under the Act/Rules to be made thereunder. The accountability of the authority to the Parliament has also been provided through laying of report on its functioning in Parliament every year like any other statutory regulator.

(xiv) This Ministry would, therefore, reiterate its views that the self-regulatory mechanism of ICAI has inherent weaknesses as far as disciplining and

enforcement is concerned and increasingly in different jurisdictions an independent regulator is being established for such oversight. NFRA is, therefore, required to be established. As far as overlap of jurisdiction is concerned, kind attention is drawn to Section 132 (4) of the CA-13 which specifically provides that notwithstanding anything contained in any other law for the time being in force, the NFRA shall have the power to investigate the matters of professional or misconduct **for prescribed class of body corporate or persons**. It further provides that in case NFRA has initiated action no other Institute or Body shall initiate or continue any proceedings in such matters of misconduct. Further, once the authority is constituted and starts functioning, it would be recognized in international forums also, and some of the difficulties being expressed viz parity in respect of legal action/liability of Indian partners/firms vis-à-vis global/multinational and other similar aspects would get evolved as per international practices. It may be noted that the Ministry has already initiated the process for establishment of NFRA and would be in a position to establish the body before the close of this financial year.

**3.21. Consistent with its position on strengthening the oversight of corporate audit, the Committee desire that the existing mechanism in this regard under the ICAI Act should be streamlined and strengthened without needlessly adding to regulatory levels. This may be undertaken in consultations with the Institute of Chartered Accountants of India (ICAI), which is the designated elected self-regulatory body for professional audit in the country. Necessary amendments to the ICAI Act may be brought before Parliament, if required, for this purpose so that adequate transparency can be ensured in maintaining accounting and auditing norms as well as ethical standards with a view to protecting the interest of investors and stakeholders.**

#### **Ease of compliance for Start-ups**

3.22. For ease of compliance for start-ups, it has been suggested by the stakeholders that start-ups as defined under start-up India program should qualify for benefits as available to small companies under Section 2 (85) even if they exceed the thresholds.

3.23. The Ministry of Corporate Affairs have furnished the following comments on the above suggestions:

"(i) The suggestion to provide exemptions to 'start-ups' [as defined under notification dated 17<sup>th</sup> February, 2016 issued by the Department of Industrial

Policy and Promotion (DIPP)] from provisions of the CA-13, which are not applicable to small companies, is noted. This can be addressed through issue of notification under section 462 which allows providing exemptions to classes of companies in accordance with procedure of draft laying stated in such provisions.

(ii) Steps taken/ being taken by this Ministry for providing conducive eco-system to start-ups through CA-13 were informed to Honourable Committee. The Ministry re-iterates such comments. Many of the changes can be done through changes in the Rules which have been already done. Proposal to move notification under section 462 for providing more exemptions to private companies (including startups) is being examined in the Ministry."

**3.24. The Committee would recommend that in conformity with government policy on Start-ups under the Start-up India Programme, appropriate exemptions from compliances may be given to start-ups. The relevant Rules and procedures may accordingly be modified to give necessary relief to start-ups including ease of raising finance at the earliest. As observed by the Committee earlier, these exemptions and waivers should be linked to thresholds of business volume or turnover, regardless of the form of the company, which would enable smaller players to organise themselves easily and do business in an unhindered and smooth manner.**

### **Role of Independent Directors**

3.25. The stakeholders suggested that the institution of Independent Directors should be made more effective and there is need to reduce their liability to make their role more purposeful.

3.26. The Ministry of Corporate Affairs offered their following comments on the above suggestion:

"(i) Anecdotal evidence indicates that the provisions with regard to Independent Directors (IDs) have resulted in improvement in corporate governance owing to greater transparency and accountability provided under CA-13. Stakeholders had expressed certain concerns with regard to manner of appointment of IDs, tenure of IDs, provisions of Schedule IV and transitional provisions etc which were addressed through amendments in the Rules and issue of general circulars. Through the CAB-16, changes have been proposed in section 149 (6) (c) and (d) with regard to manner of determination of pecuniary relationship of IDs etc.

(ii) Kind attention is drawn to sub- section (12) of section 149 which provides immunity to IDs. Such provisions provide that an ID shall be held liable only in respect of such acts of omission or commission by a company which had

occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(iii) Keeping in view the suggestions made by stakeholders and recommendation of Company Law Committee, it has been proposed in the CAB-16 to relax restrictions w.r.t. pecuniary relationship and certain other disqualifications for IDs provided in section 149. It is also proposed to amend section 160 of the Act to provide that the requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors.

(iv) It is felt that provisions on IDs under the Act are adequate. Since the provisions are relatively new, especially for unlisted public companies, it may be appropriate to experience these provisions for another 2-3 years and consider change, if any, thereafter."

**3.26. The Committee are of the view that the Ministry should encourage and create a conducive and positive legal environment for the institution of Independent Directors to evolve in the country. As there is a shortage of Independent Directors, the Ministry must play a pro-active role to develop a credible data-bank of Independent Directors, wherefrom corporates can choose. It should be recognised that this mechanism is meant for rendering non- partisan expert advice to the Board as integral part of corporate governance . Therefore, it is not necessary or fair to saddle Independent Directors with penal liabilities. The Committee would thus expect the Ministry to review the position accordingly.**

#### **Key Managerial Personnel (KMP)**

3.27. Section 2(51) of the Companies Act 2013, defines Key Managerial Personnel (KMP), in relation to a Company as the Chief Executive Officer or the managing director or the manager, the company secretary, the whole-time director, the Chief Financial Officer (CFO) and such other officer as may be prescribed;

The Rules under the Act specify that every listed company and every other public company having a paid-up share capital of Rs 10 crore rupees or more shall have whole-time key managerial personnel. (Rule 8 of Appointment and remuneration of managerial personnel rules).

3.28. The Institute of Chartered Accountants of India (ICAI) have expressed the following concern on the above section:



"The Act does not, presently, specify the qualifications of a Chief Financial Officer. In view of the significantly enhanced compliance requirements and the overarching role of the finance function in the present day context, it may be relevant to consider appointing Chartered Accountants in such CFO positions which are to be mandatorily filled up under the above mentioned KMP requirement.

Chartered Accountants on account of the unique academic curriculum and practical training will enhance the quality of the accounting and oversight function within the enterprise and significantly protect stakeholder and public interest.

It is pertinent to mention that all public companies with a paid up share capital of more than Rs 5 crores are required to appoint a Company Secretary compulsorily."

The Institute of Chartered Accountants of India (ICAI) has suggested that in case of companies required to appoint KMP's, persons who are designated as CFO's should be Chartered Accountants.

3.29. On the above issue, the Ministry of Corporate Affairs offered their following comments:

"(i) Similar suggestion was made by stakeholders before the Honourable Committee during examination of the Companies Bill, 2009 and the following submissions were made by this Ministry:-

*"This definition gives the companies the flexibility to appoint any suitable qualified or experienced person for the position of CFO. Placing any specific qualification for this position may bring rigidity in the provisions.*

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

(ii) The above view of MCA was accepted by Honourable Committee and accordingly, section 2(19) of the Companies Act, 2013 [CA, 2013] defines "Chief Financial Officer" [CFO] to mean a person appointed as the Chief Financial Officer of a company. Thus, the qualification of the CFO has been left to be decided by companies themselves.

(iii) The Ministry reiterates the earlier comments and expresses the view that the specific qualification may not be provided for CFO under the Companies Act, 2013 and the definition under section 2(19) may be retained as presently provided. The suggestion of ICAI, therefore, may not be considered."

**3.30. The Committee agree with the Ministry's view that the qualifications for appointment as Chief Financial Officer (CFO) may be best left to the concerned**

**company. As it is mandatory to appoint a CFO by every listed company and every other public company having a paid-up share capital of Rs. 10 crore or more, it will in the natural course open up avenues for employment of Chartered Accountants, who are the best equipped for the post.**

### **Removal of "Object Clause"**

3.31. When asked as to what extent the removal of "object clause" in the Bill is justified and whether such blanket exemption from stating the objects of the company at the time of its incorporation not lead to many bogus entities entering the market, the Ministry in their post evidence reply stated as under :-

"(i) The Company Law Committee during deliberations on incorporation related provisions of the CA-13 had suggested more liberalized or relaxed norms for specifying objects by a company. It referred to English Companies Act, 2006 which allows companies to have unrestricted objects. Singapore also follows similar provisions. Kind attention is drawn to the recommendation made by them on the matter which reads as under:-

*"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. 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."*

(ii) It may be submitted that earlier the change in objects clause of MOA was considered to be a very important corporate action since it affected creditors/members. In view of applicability of doctrine of ultra vires, any object not included in the objects clause of MOA undertaken by companies was considered to be void ab initio and company/management was liable for resultant legal actions and liabilities. It was noted that internationally, the provisions for allowing

change in the objects clause of MOA have been relaxed since 1990s. In India also, prior to 1996 the approval of quasi-judicial body (CLB) was required for change in objects by a company. Subsequently this was allowed on the basis of special resolution passed by companies. This diluted the doctrine of ultra vires to a significant level and recently various jurisdictions have further allowed companies to undertake any lawful object and the practice of enumeration of detailed objects in the MOA has not been considered essential.

(iii) With this perspective, the change in section 4(1) to allow companies the option of having an unrestricted object has been considered appropriate. It may be noted that proposed change in section 4(1) states that in case a company seeks to have specific objects in pursuance of requirements of a sectoral regulator, it has the option of specifying the objects in their MOAs.

(iv) It is not expected that on account of this, the number of bogus companies will increase, as the requirement for verification of antecedents of the initial subscribers/members/ directors is not being changed".

**3.32. The Committee find that the amendment proposed in Section 4(1)(c) (vide clause 4(iii)) of the Companies Act 2013) allows companies to have an option to have an unrestricted or generic object clause, that is, to engage in any lawful activity or business in their Memorandum of Association filed at the time of their incorporation. The Committee note that this proposed amendment is a culmination of the process of relaxing the objects clause since the 1990s. Earlier, the approval of the Company Law Board was required for any change in objects by a company. Subsequently, this change was allowed on the basis of a special resolution passed by companies. The Committee are of the view that although enumeration of detailed objects in the Memorandum of Association may not be essential, making the object clause itself redundant is far-fetched. It cannot be anybody's case that a company should incorporate itself in a vacuum without specifying the objects or its business. An open-ended provision such as this may lead to incorporation of bogus entities without any specified business activity, which would be counter-productive. The Committee believe that mere requirement of stating the object of a company at the time of incorporation is not such a cumbersome or complex task, which needs relaxation. In fact, the Committee believe that such a statement of object(s) is necessary for establishing the credentials and seriousness of intent of the promoter(s) of the company and build confidence of investors and creditors. The Committee would,**

therefore, recommend that the proposed amendment in clause 4(iii) of the Bill may be re-considered and the status quo ante restored.

New Delhi

01 December, 2016

10 Agrahayana, 1938 (Saka)

Dr. M Veerappa Moily

Chairperson,

Standing Committee on Finance

**Minutes of the Sixteenth sitting of the Standing Committee on Finance**

**The Committee sat on Friday, the 03 June, 2016 from 1100 hrs. to 1230 hrs. in  
Committee Room 'D', Parliament House Annexe, New Delhi.**

**PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

**LOK SABHA**

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Chandrakant B. Khaire
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Shri Rayapati Sambasiva Rao
10. Prof. Saugata Roy
11. Shri Gopal Shetty
12. Shri Anil Shirole
13. Dr. Kirit Somaiya

**RAJYA SABHA**

14. Shri Naresh Agrawal
15. Shri Naresh Gujral
16. Shri T.K. Rangarajan
17. Shri Ajay Sancheti
18. Dr. Manmohan Singh

**SECRETARIAT**

- |    |                              |   |                     |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi   | - | Joint Secretary     |
| 2. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 3. | Shri Kulmohan Singh Arora    | - | Deputy Secretary    |

## **WITNESSES**

### **The Institute of Chartered Accountants of India (ICAI)**

1. C.A. M. Devaraja Reddy, President
2. C.A. Nilesh Vikamsey, Vice-President
3. C.A. Manoj Fadnis, Past President
4. C.A. Dhinal Shah, Chairman, Corporate Laws and Corporate Governance Committee
5. C.A. K. Sripriya, Vice-Chairperson, Corporate Laws and Corporate Governance Committee
6. C.A. Sarika Singhal, Secretary, Corporate Laws and Corporate Governance Committee

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. Thereafter, the President, Institute of Chartered Accountants of India (ICAI) made a power point presentation highlighting key amendments to be made through the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included removal of requirement of annual ratification in appointment of auditors, definition of relative with respect to auditors' disqualification, reporting obligations for auditors on internal financial controls with reference to the financial statement and most importantly rationalisation of penalties for the auditors, appointment of independent directors, appointment of auditors, role of National Financial Reporting Authority (NFRA), impact of CFS on small scale industries, medium scale industries and unlisted companies / entities, ease of doing business, Corporate Social Responsibility etc. The Chairperson directed the representatives of ICAI to furnish written replies to the points raised by the Members and which could not be answered to / adequately responded to during the discussion within 10 days to the Committee Secretariat.

3. The Committee also decided to undertake a study tour of the Committee.

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*(The witnesses then withdrew).*

A verbatim record of the proceedings has been kept.

*The Committee then adjourned.*

**Minutes of the Seventeenth sitting of the Standing Committee on Finance**

**The Committee sat on Friday, the 10 June, 2016 from 1100 hrs. to 1330 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.**

**PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

**LOK SABHA**

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Rattan Lal Kataria
7. Shri Bhartruhari Mahtab
8. Shri Rayapati Sambasiva Rao
9. Prof. Saugata Roy
10. Shri Gajendra Singh Sekhawat
11. Shri Gopal Shetty
12. Shri Anil Shirole
13. Dr. Kiritbhai Solanki
14. Dr. Kirit Somaiya

**RAJYA SABHA**

15. Shri Naresh Gujral
16. Shri Satish Chandra Misra
17. Shri A. Navaneethakrishnan
18. Dr. Mahendra Prasad
19. Shri Ajay Sancheti
20. Dr. Manmohan Singh

**SECRETARIAT**

1. Smt. Abha Singh Yaduvanshi - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Additional Director

**PART- I**

**(1100 hrs. to 1215 hrs.)**

**WITNESSES**

**Federation of Indian Chambers of Commerce and Industry (FICCI)**

1. Shri Harshavardhan Neotia, President, FICCI & CMD, Ambuja Neotia

2. Shri Y.K. Modi, Past President, FICCI and Executive Chairman, Great Eastern Energy Corporation Ltd.
3. Shri Ashok Gupta, Co-Chair, FICCI's Corporate Laws Committee and Group Legal Counsel & Chief Legal Officer, Aditya Birla Management Corporation Pvt. Ltd.
4. Shri Puneet Bansal, Vice President, Legal, Aditya Birla Management Corporation Pvt. Ltd.
5. Shri Harinderjit Singh, Partner, PWC
6. Ms. Jyoti Vij, Deputy Secretary General, FICCI

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. The Committee, thereafter, heard the views of FICCI on the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included addressing the chief difficulties that had arisen during the course of implementation of the statute and the rules framed thereunder, facilitating 'ease of doing business' in the country to promote growth with employment and harmonization with accounting standards and related statutes like SEBI Act and RBI Act, lack of distinction between shareholders and the management, sustainability of corporate enterprise as a distinct legal entity, including body corporate as part of holding company definition, remuneration to Directors, internal financial control for listed and unlisted companies, constitution of NFRA, Independent Directors, CSR and changes in the CSR Rules / Guidelines for removing difficulties in implementation of CSR, decline in the number of public limited companies etc. The Chairperson directed the representatives of FICCI to furnish written replies to the points raised by the Members and which could not be answered to / adequately responded to during the discussion within 10 days to the Committee Secretariat.

*(The witnesses then withdrew).*

The Committee then adjourned for tea break.

## **PART- II**

**(1230 hrs. to 1330 hrs.)**

### **WITNESSES**

#### **Confederation of Indian Industry (CII)**

1. Shri Rostow Ramanan, CEO & MD, Mindtree Ltd.
2. Shri Narayan Shankar, Senior VP & Company Secretary, Mahindra & Mahindra Ltd.



3. Shri J Sridhar, Company Secretary, Bajaj Auto Ltd.
4. Ms. Nilanjana Singh, Partner, AZB & Partners

**Associated Chambers of Commerce and Industry of India (ASSOCHAM)**

1. Shri N.K. Jain, Senior Member
2. Shri Sanjay Grover, Senior Member
3. Shri Devesh Vasisht, Member

3. The Chairperson welcomed the witnesses to the sitting of the Committee and heard the views of CII & ASSOCHAM together on the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included ambiguity in appointment of independent directors, rotation of auditors for unlisted companies, Secretarial standards for Companies, disqualification and Directors' liability, definition of 'control' for companies, difficulties being faced by listed and unlisted companies, NCLT, NCLAT, ease of doing business and simplification of procedures and regulations, convening of general meetings at shorter notice, harmonization of the principle of majority rule *while* protecting the minority shareholders, circulation of financial statements with a shorter period, Audit Committees, reservation of the name for the company, constitution of NFRA, Corporate Social Responsibility, harmony between the provisions of SEBI and Companies Act etc.

A verbatim record of the proceedings has been kept.

*The Committee then adjourned.*

**Minutes of the Eighteenth sitting of the Standing Committee on Finance**

**The Committee sat on Thursday, the 23 June, 2016 from 1100 hrs. to 1300 hrs. in  
Committee Room 'D', Parliament House Annexe, New Delhi.**

**PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

**LOK SABHA**

2. Shri S.S. Ahluwalia
3. Shri P.C. Gaddigoudar
4. Shri Shyama Charan Gupta
5. Shri Chandrakant B. Khaire
6. Shri Rattan Lal Kataria
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Prof. Saugata Roy
10. Shri Gajendra Singh Sekhawat
11. Shri Gopal Shetty
12. Shri Anil Shirole
13. Dr. Kirit Somaiya

**RAJYA SABHA**

14. Shri T.K. Rangarajan
15. Shri Satish Chandra Misra
16. Shri A. Navaneethakrishnan
17. Shri Ajay Sancheti
18. Dr. Manmohan Singh

**SECRETARIAT**

- |    |                              |   |                     |
|----|------------------------------|---|---------------------|
| 1. | Shri P.C. Tripathy           | - | Director            |
| 2. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 3. | Shri Kulmohan Singh Arora    | - | Deputy Secretary    |

**WITNESSES**

**Institute of Company Secretaries of India (ICSI)**

1. CS Mamta Binani, President, ICSI
2. CS Dr. Shyam Agrawal, Vice-President
3. CS Pavan Kumar Vijay, Past President, ICSI,

4. CS Gopalakrishna Hedge, Council Member, ICSI
5. CS Vineet K. Chaudhary, Council Member and Chairman, Corporate Law and Corporate Governance Committee, ICSI

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. The Committee, thereafter, heard the views of ICSI on the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included National policy on Corporate governance, Secretariat Standards for Companies, ease of doing business, NCLT, NCLAT, internal financial control reporting, statutory audit, Company Secretary as internal auditor, Key Managerial Personnel, Appointment and Removal of Secretarial Auditor, Signing of Annual Returns, e-voting, reservation of name, calling of extraordinary general meeting, eligibility, qualification and disqualification of auditors, appointment of Independent Directors, remuneration of Directors, punishment for frauds, CSR, National Financial Reporting Authority (NFRA). The Chairperson directed the representatives of ICSI to furnish written replies to the points raised by the Members and which could not be answered to / adequately responded to during the discussion within 10 days to the Committee Secretariat.

A verbatim record of the proceeding has been kept.

The Committee then adjourned.

## **Minutes of the Fifteenth sitting of the Standing Committee on Finance**

**The Committee sat on Wednesday, the 25 May, 2016 from 1100 hrs. to 1245 hrs. in  
Committee Room 'C', Parliament House Annexe, New Delhi.**

### **PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

#### **LOK SABHA**

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Dr. Gopalakrishnan C.
5. Shri Nishikant Dubey
6. Shri P.C. Gaddigoudar
7. Shri Chandrakant B. Khaire
8. Shri Rattan Lal Kataria
9. Shri Bhartruhari Mahtab
10. Shri Rayapati Sambasiva Rao
11. Shri Gajendra Singh Sekhawat
12. Dr. Kirit Somaiya
13. Shri Shivkumar Udasi

#### **RAJYA SABHA**

14. Shri Naresh Gujral
15. Shri C.M. Ramesh
16. Shri Ajay Sancheti
17. Shri Digvijaya Singh

#### **SECRETARIAT**

1. Shri Ramkumar Suryanarayanan - Additional Director
2. Shri Kulmohan Singh Arora - Deputy Secretary

## WITNESSES

### Ministry of Corporate Affairs

1. Shri Tapan Ray, Secretary
2. Shri Pritam Singh, Additional Secretary
3. Shri Amardeep S. Bhatia, Joint Secretary
4. Shri Alok Samantarai, Director (Inspection & Investigation)

2. At the outset, the Chairperson welcomed the Members and the Witnesses to the Sitting of the Committee. Thereafter the Secretary, Ministry of Corporate Affairs made a power point presentation highlighting key amendments to be made through the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included the factual position with regard to registration of Companies under the new Companies Act, decline in the number of Public Limited Companies as compared to private companies and Limited Liability Partnerships, the restriction on "the ease of doing business" in some manner by the present Act and the exhaustive Rules framed thereunder, measure taken to reduce the compliance or regulating burden of Companies, particularly the smaller ones, the operational experienced and the feedback received by the Ministry on important aspects in the statute relating to CSR, percentage of CSR as compared to the total Corporate Profits, dilution of the concept of CSR, guidelines of the Ministry of Corporate Affairs on CSR, appointments and shortage of Independent Directors, preparation of panel of independent Directors, Constitution of a panel to facilitate Companies to select women directors, appointment and role of auditors, role of NFRA, implementation of important recommendations made by various Committees like the Damodaran Committee, Adi Godrej Committee etc. to evolve Corporate Governance guidelines and whether the same has been addressed in the Company law provisions made reg. National Corporate Governance Policy, finalisation of National Competition Policy and its present states etc.

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*(The witnesses then withdrew).*

A verbatim record of the proceedings has been kept.

Thereafter the Committee decided to postpone their study visit to Guwahati, Shillong and Gangtok scheduled from 6 June to 11 June, 2016 and instead undertake a visit during the second / third week of July, 2016 to Mumbai, Bengaluru etc.

*The Committee then adjourned.*

**Minutes of the First sitting of the Standing Committee on Finance**  
**The Committee sat on Thursday, the 22 September, 2016-17 from 1100 hrs. to**  
**1220 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.**

**PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

**LOK SABHA**

2. Shri Venkatesh Babu T.G.
3. Shri Nishikant Dubey
4. Shri P.C. Gaddigoudar
5. Shri Shyama Charan Gupta
6. Prof. Sanwar Lal Jat
7. Shri Rattan Lal Kataria
8. Shri Chandrakant B. Khaire
9. Shri Bhartruhari Mahtab
10. Shri Rayapati Sambasiva Rao
11. Prof. Saugata Roy
12. Shri Gajendra Singh Sekhawat
13. Shri Gopal Chinayya Shetty
14. Dr. Kiritbhai Solanki
15. Shri Dinesh Trivedi

**RAJYA SABHA**

16. Shri A. Navaneethakrishnan
17. Dr. Mahendra Prasad
18. Shri C.M. Ramesh
19. Shri Digvijaya Singh
20. Dr. Manmohan Singh

**SECRETARIAT**

- |    |                              |   |                     |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi   | - | Joint Secretary     |
| 2. | Shri P.C. Tripathy           | - | Director            |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora    | - | Deputy Secretary    |

**Part I**  
**(1100 hrs - 1130 hrs)**

2. At the outset, the Chairperson welcomed the Members to the Sitting of the Committee, particularly the new Members, namely, Prof. Sanwar Lal Jat and Shri Dinesh Trivedi who have been nominated to the Committee for this term.

3. The Chairperson mentioned about the excellent work done by the previous Committee in presenting as many as 18 Reports to Parliament in a period of one year. The Chairman and the Members particularly complimented the Secretariat for their dedication and able assistance to the Committee.

4. The Committee then considered Memorandum No. 1 regarding selection of subjects for examination during 2016-17 and decided to examine the subjects as shown in the Annexure.

5. The Committee proposed to undertake a study tour to Gangtok and Darjeeling during the Third / Fourth week of October in connection with examination of subjects.

**Part II**  
**(1130 hrs - 1220 hrs)**

**WITNESSES**

**Ministry of Corporate Affairs**

1. Shri Tapan Ray, Secretary
2. Shri Pritam Singh, Additional Secretary
3. Dr. Navrang Saini, Director General
4. Shri Amardeep Singh Bhatia, Joint Secretary
5. Ms. Sibani Swain, Economic Adviser



6. Thereafter, the Chairperson welcomed the witnesses to the sitting of the Committee. The Committee then took the concluding evidence of the representatives of Ministry of Corporate Affairs on the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included 'ease of doing business', ease of compliance for start-ups, deletion of superfluous Sections of the Companies Act, 2013, role and relevance of National Financial Reporting Authority (NFRA), safeguard mechanism to protect the genuine promoters, liability of promoters, timeline for commencement of remaining 186 Sections of the Companies Act, 2013, exemptions to subsidiaries from disclosure requirements, remuneration of Directors and Key Managerial Personnel in the in the Annual Return of a Company, Internal Financial Control, removal of 'object clause' in the Bill, etc. The Chairperson directed the representatives of the Ministry of Corporate Affairs to furnish written replies to the points raised by the Members and which could not be answered / adequately responded to during the discussion within ten days to the Secretariat.

A verbatim record of the proceedings has been kept

The Committee then adjourned.

**Minutes of the Twenty First sitting of the Standing Committee on Finance**  
**The Committee sat on Tuesday, the 30 August, 2016 from 1100 hrs. to 1245 hrs. in**  
**Committee Room 'C', Parliament House Annexe, New Delhi.**

**PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

**LOK SABHA**

2. Shri Venkatesh Babu T.G.
3. Dr. Gopalakrishnan C.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Shyama Charan Gupta
7. Shri Chandrakant B. Khaire
8. Shri Rattan Lal Kataria
9. Shri Bhartruhari Mahtab
10. Prof. Saugata Roy
11. Shri Gajendra Singh Sekhawat
12. Shri Gopal Shetty
13. Shri Anil Shirole
14. Dr. Kirit Somaiya
15. Shri Shivkumar Udasi

**RAJYA SABHA**

16. Shri Naresh Gujral
17. Shri T.K. Rangarajan
18. Shri Satish Chandra Mishra
19. Shri C.M. Ramesh
20. Shri Ajay Sancheti
21. Shri Digvijaya Singh
22. Dr. Manmohan Singh

**SECRETARIAT**

- |    |                              |   |                     |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi   | - | Joint Secretary     |
| 2. | Shri P.C. Tripathy           | - | Director            |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora    | - | Deputy Secretary    |

## WITNESSES

### The Institute of Chartered Accountants of India (ICAI)

1. C.A. M. Devaraja Reddy, President
2. C.A. Nilesh S. Vikamsey, Vice-President
3. C.A. G. Ramaswamy, Past President
4. C.A. Dhinal Shah, Chairman, Corporate Laws and Corporate Governance Committee
5. C.A. K. Sripriya, Vice-Chairperson, Corporate Laws and Corporate Governance Committee
6. C.A. Sarika Singhal, Secretary, Corporate Laws and Corporate Governance Committee

2. At the outset, Chairperson welcomed the Members and the witnesses to the sitting of the Committee. Thereafter, the President, Institute of Chartered Accountants of India (ICAI) made a power point presentation highlighting finer aspects of key amendments to be made through the Companies (Amendment) Bill, 2016. The major issues discussed during the sitting included role and relevance of National Financial Reporting Authority (NFRA), quantum of penalties for the auditors, prospect and utility of National Advisory Committee on Accounting Standards (NACAS), issue of multiplicity of regulatory bodies etc. Recognising the role of ICAI, the Chairperson and other Members of the Committee solicited more decisive, long-term and reformative suggestions to strengthen the overall accounting mechanism and thereby fortifying the overall corporate environment to facilitate better 'ease of doing business' scenario in our country. The Chairperson directed the representatives of ICAI to furnish written replies to the points raised by the Members and which could not be answered to / adequately responded to during the discussion within a week to this Secretariat.

A verbatim record of the proceedings has been kept

The Committee then adjourned.

**Minutes of the Seventh sitting of the Standing Committee on Finance**  
**The Committee sat on Wednesday, the 30 November, 2016 from 1500 hrs. to 1615**  
**hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.**

**PRESENT**

**Dr. M. Veerappa Moily - Chairperson**

**LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Shri Gopalakrishnan Chinnaraj
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Prof. Sanwar Lal Jat
7. Shri Chandrakant B. Khaire
8. Shri Bhartruhari Mahtab
9. Shri Prem Das Rai
10. Shri Rayapati Sambasiva Rao
11. Shri Gajendra Singh Sekhawat
12. Shri Gopal Chinayya Shetty
13. Shri Anil Shirole
14. Dr. Kiritbhai Solanki
15. Dr. Kirit Somaiya
16. Shri Dinesh Trivedi
17. Shri Shivkumar Udasi

**RAJYA SABHA**

18. Shri Naresh Gujral
19. Shri A. Navaneethakrishnan
20. Dr. Mahendra Prasad
21. Shri T.K. Rangarajan
22. Shri Ajay Sancheti
23. Shri Digvijaya Singh

**SECRETARIAT**

- |    |                              |   |                     |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi   | - | Joint Secretary     |
| 2. | Shri P.C. Tripathy           | - | Director            |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora    | - | Deputy Secretary    |

**WITNESSES**

XX            XX            XX            XX            XX            XX

2.    XX            XX            XX            XX            XX            XX.

3.    Thereafter, the Committee took up the following draft reports for consideration and adoption:

- (i)    Draft Report on 'The Companies (Amendment) Bill, 2016
- (ii)    Draft Report on Action Taken by the Government on the Recommendations contained in the 20<sup>th</sup> Report (16<sup>th</sup> Lok Sabha) on "Planning Process - A Review "
- (iii)    Draft Report on Action Taken by the Government on the Recommendations contained in the 27<sup>th</sup> Report (16<sup>th</sup> Lok Sabha) on "Non - Performing Assets Of Financial Institutions "
- (iv)    Draft Report on Action Taken by the Government on the Recommendations contained in the 29<sup>th</sup> Report on Demands For Grants (2016-17) of the Ministry of Finance (Departments of Economics Affairs, Expenditure, Financial Services and Disinvestment.
- (v)    Draft Report on Action Taken by the Government on the Recommendations contained in the 30<sup>th</sup> Report on Demands For Grants (2016-17) of the Ministry of Finance (Department of Revenue).
- (vi)    Draft Report on Action Taken by the Government on the Recommendations contained in the 31<sup>st</sup> Report on Demands For Grants (2016-17) of the Ministry of Planning.
- (vii)    Draft Report on Action Taken by the Government on the Recommendations contained in the 33<sup>rd</sup> Report on Demands For Grants (2016-17) of the Ministry of Statistics and Programme Implementation.

After some deliberations, the Committee adopted the above draft Reports with minor modifications and authorised the Chairperson to finalise them and present these Reports to Parliament.

4. XX XX XX XX XX XX.

The Committee then adjourned.