SUGGESTIONS
ON
THE COMPANIES BILL
2009

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Clause No.	*Suggestions*	*Justification*	*Suggested clause*
Clause 2(1)(k) – Definition – 'Body Corporate' or 'Corporation'	The definition of 'Body corporate' or 'corporation' should include 'Limited Liability Partnership' also.	As per the Limited Liability Partnership Act, 2008 LLP is a body corporate.	(k) "body corporate" or "corporation" includes a company incorporated outside India, a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 and a limited liability partnership incorporated outside India, but does not include— i. a corporation sole; ii. a co-operative society registered under any law relating to co-operative societies; and iii. any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification specify in this behalf;
Clause 2(1)(y) – Company Secretary in practice	Company Secretary in practice has been defined to mean a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980. It is suggested that the term may be defined on the lines of the definition of Chartered Accountant in clause 2(1) (q) and Cost Accountant in clause 2(1)(zb).		**2(1)(y)** "Company Secretary in practice" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who holds a valid certificate of practice under sub-section (1) of section 6 of the Company Secretaries Act, 1980".
Clause 2 (1) (zq) – Financial year	1. There is no transitional provision in the Bill to enable an existing company to fall in line		

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	with this new requirement if it has a financial year not ending on March 31. Therefore, a transitional provision may be made for such companies. 2. The power to allow any period as financial year whether that period is a year or not may be given to the Central Government.	Being an administrative matter the power to allow any company to have any period as its financial year whether that period is a year or not may be given to the Central Government instead of the Tribunal.	Proviso to 2(1)(zq) – Provided that on an application made by a company or body corporate, **the Central Government** may, if it is satisfied that the circumstances so warrant, allow any period as its financial year, whether that period is a year or not.
2(1)(zs) Free Reserves	**'Free Reserves' should be redefined to include securities premium account.**	'Free Reserves' as per the clause 2 (1) (zs) means such reserves which as per the latest audited balance sheet of a company are available for distribution as dividend. In other words, securities premium account will not form part of free reserves. Section 372A of the extant Companies Act provide that 'free reserves' include 'securities premium'. The 'securities premium account' represents the amount received on securities issued by a company. Share premium is construed as if it were the paid up share capital of the company which can be utilized amongst others for the purchase of company's own shares. Regulation 94(1) of SEBI (Issue of	2(1)(zs). "Free reserves" means those reserves which, as per the latest audited balance sheet of the company, are free for distribution as dividend **and shall include balance to the credit of the securities premium account.**

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		Capital and Disclosure Requirements) Regulations also provides that bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only.	
2.(1)(zu) – Government Company	**The Bill defines a government company to mean any company in which the government holding is not less than 51% of the paid-up capital.** **1. It is suggested that the clause may be redrafted to provide the criterion of "more than 50%" instead of "not less than 51%"** 2. At the end, after the word, "Subsidiary Company", the words "of such a Government Company" may be inserted.	Holding of more than 50% paid-up share capital will give the Government control over the company. For clarity	(zu) 'Government company' means any company in which **more than fifty per cent of the paid-up share capital** is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company ***of such a Government company*****.**
Clause 2(1) (zz) **Definition of 'Issued Capital'**	The definition should cover all kinds of subscriptions whether by the public or not. Therefore, the words "by the public" at the end may be deleted.	Restricting the meaning of the term to capital subscribed by public appears to be erroneous.	2(1)(zz). 'Issued capital' means such capital as the company issues from time to time for subscription.

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Clause 2(1)(zzd) - Managing Director	The expression 'managing director' has been defined to mean a director who is entrusted with the management of **the whole or substantially the whole** of the affairs of the company. This implies that a company can have only one managing director. This definition would cause hardship to number of companies (including large companies) which have more than one managing director, as permitted under the existing Companies Act.	The way this Clause is drafted, a company will not be able to appoint more than one managing director. The existing Section of the Companies Act, 1956 may be retained which will allow a company to appoint more than one managing director.	**"managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.** **Provided that the power to do administrative acts of a routine nature when so authorised by the Board such as power to affix the common seal of the company to any document or to draw or endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management:** **Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of Directors.**
Clause 2(1)(zzs) Public company	It is suggested that a private company which is a subsidiary of a one person company should be excluded from the ambit of 'public company'.	The Bill defines the term 'public company' as including such private company which is a subsidiary of a company other than a private company. This would mean that a private company that is subsidiary of 'One Person Company' would be treated as a public company. This does not seem to be the intent of the Bill. This anamoly may be corrected.	(zzs) "public company" means a company which is not a private company or such private company which is a subsidiary of a company which is not a private company **or a one person company**;
Clause 2(1)(zzy)- Related Party	In the definition of Related Party, director and Key Managerial Personnel may	This is to include directors and key managerial personnel within the ambit of this clause.	2(1)(zzy) **(1)(i) A director or Key Managerial Personnel**

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	be added as sub-clause (1)(i) and consequently exiting sub-clauses (i) to (vii) be renumbered.		
Clause 2(1)(zzz) Relative	It is suggested that some other relations like brother's wife, sister's husband, son's wife, son's son's wife, daughter's husband etc. should also be covered in the definition of 'relative'.		
Clause 2(1) (zzzg) – Small Company	Sub-clause (i) and (ii) of clause 2(1)(zzg) may be connected, with the word 'AND' instead of the word 'OR'	If word 'or' will be used between these two para(s) then meeting any of the criteria would entitle the Company to be classified as small Company even if it's paid up capital or turnover is more than the specified limit(s). For example, a company having turnover, say of Rs. 100 crore but paid-up share capital of Rs. 1 crore cannot be called a small company. Similarly, a company having paid-up share capital of Rs. 100 crore but having turnover of Rs. 10 crore cannot be called a small company. **Therefore, sub-clauses (i) and (ii) of clause 2 (1)(zzzg) should be connected with the word 'AND' instead of the word 'OR' so as to cover only really small companies both in terms of paid capital as well as turnover**	"small company" means a company, other than a public company,— (i) whose paid-up share capital does not exceed such amount as may be prescribed and the prescribed amount shall not be more than five crore rupees; **AND** (ii) whose turnover as per its last profit and loss account does not exceed such amount as may be prescribed and the prescribed amount shall not be more than twenty crore rupees:

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Clause 2(1)(zzzi) **Subsidiary Company**	1. It is suggested that the circumstances wherein a company shall be deemed to control the composition of the Board of Directors of another company as specified in sub-clause (i) of clause 2(1)(zzzi) may be specified in the Bill. 2. The definition of subsidiary may be modified to include a company in which the holding company holds voting power with / through one or more subsidiary company(ies)	This is an important requirement to specify the circumstances in which a company shall be deemed to control the composition of the Board of Directors of another company to determine the relationship of holding and subsidiary company. The definition of "subsidiary" in the Bill does not cover a company in which voting power is held by a (holding) company and / or two or more of its subsidiaries taken together. This provision exists under the Act under Section 4(3)(b)(ii). This is an important provision and should be included in the Bill.	The clause may accordingly be redrafted.
New Definition **Secretarial Standards**	The term 'Secretarial Standards' should be defined.	The term 'Secretarial Standards' may be defined as it is appearing in Clause 107 (10) of the Bill.	"Secretarial standards" means such secretarial standards recommended by The ICSI as the Central Govt. may notify in consultation with the National Advisory Committee on Secretarial Standards.
3 (1) - first proviso – Formation of Company	**Written consent** should be taken from the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company. Therefore, the words, 'with his prior written consent' be added	To avoid any ambiguity or conflict in the event of death, disability or otherwise of the subscriber to the memorandum of One Person Company	Provided that the memorandum of a One Person Company shall indicate the name of the person ***with his prior written consent*** who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company:

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	after the words, 'the name of the person'.		
4 (1) (a) – Formation of Companies with Charitable Objects, etc.	**The word "environment protection "may be inserted after the word 'charity'.**	A number of NGOs are working for environment protection, hence the object of environment protection be added for formation of those type of NGOs as companies under this clause.	4(1)(a) has for its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, ***environment protection*** or any such other object ;
4(1) - Formation of Companies with Charitable Objects, etc.	The word **"as may be prescribed"** may be added after the word 'the Registrar shall on application'.	It is desirable to have prescribed format of application to be submitted to ROC for registration of a company with charitable objects.	4(1)(c) The Central Government may, by licence issued in the manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" or the letters and word "OPC Limited", and thereupon the Registrar shall, on application ***as may be prescribed*** register such person or association of persons as a company under this section.
4(5) - Formation of Companies with Charitable Objects, etc.	The word, **"In the prescribed form"** may be added after the word 'the Registrar shall, on application'	It is desirable to have prescribed format of application to be submitted to ROC for registration of a company with charitable objective.	(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private limited" or the letters and word "OPC Limited" from its name and thereupon the Registrar shall, on application, ***in***

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			the prescribed form ,register such company under this section and all the provisions of this section shall apply to that company.
4(6) - Formation of Companies with Charitable Objects, etc.	The word, **"In the prescribed form"** may be added after the word, 'under sub-section (7) on application'	It is desirable to have prescribed format of application to be submitted to ROC for revocation of a license granted to a company formed with charitable objects etc.	(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited" or the letters and word "OPC Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, ***in the prescribed form,*** register the company accordingly.
4(7) - Formation of Companies with Charitable Objects, etc.	First proviso to sub-clause (6) may also be provided as proviso to sub-clause (7).	It is desirable to abide by the principle of natural justice before an order under sub section (7).	(7) Where a licence is revoked under sub-section (6), the Central Government may, if it is satisfied that it is essential in the public interest, order that the company be wound up under this Act or amalgamated with another company registered under this section ***Provided that no such order shall be made under this sub-section unless the company is given a reasonable opportunity of being heard***
4(11) - Formation of Companies with Charitable Objects, etc.	In case of companies, the penalty may be restated in the range of five lakh rupees to twenty five lakh rupees. Also, for directors penalty may be restated as	The minimum and maximum penalty to be imposed on company in the event of any default whether procedural or substantive is stringent. It may discourage formation of small companies with charitable objectives.	(11) Where a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ***five*** lakh rupees but which may extend to

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	Rs. twenty five thousand to Rs. five lakh.		***twenty lakh*** rupees and the directors of the company and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than **twenty-five thousand** rupees but which may extend to ***five lakh*** rupees, or with both.
5(1)(d)(i) - Memorandum	The words **'face value of the'** should be deleted.	The word "face value" is not appropriate in this context.	(i) In the case of a company limited by shares, the liability of its members is limited to the amount unpaid, if any, ***on*** the shares held by them ; and
5(5) - Memorandum	The period of Sixty Days should be replaced with Ninety days with an extension for a further period of Ninety Days	The proposed period of Sixty days is too short to complete the process of incorporation in the cases where subscribers/directors are residing outside India, directors not having DIN No. etc.	(5) Upon receipt of an application under sub-section (4), the Registrar may, if he is satisfied that the name to be reserved is not the one which may be rejected on any ground referred to in sub-section (2), reserve the name for a period of ***ninety*** days from the date of the application, and on payment of such additional fee as may be prescribed, for a further period of ***ninety*** days.
5(6) **Memorandum**	Format of the Memorandum of Association for different types of companies may be provided in the Act .	Memorandum is an important document for the incorporation of the company, therefore, its model format may be provided in the Act itself as part of the Schedules with the power to the Central Government to alter the schedules.	
6(5) - Articles	After the words, 'of such provisions' the words, 'in such form as may be prescribed' may added.	It is desirable to have prescribed format of notice for entrenchment to be submitted to ROC for amendment in the Articles.	Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions ***in such form as may be prescribed***.

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7(1)(b) – Incorporation of Companies	After the words 'of the company' and before 'by a person', the word, 'or' may be replaced with 'and'. After the word 'company secretary' and before the word ' who is engaged' the word 'in practice' may be inserted.	This is an important declaration to be made at the time of incorporation of a company. **It is, therefore, suggested that both the person named in the articles as director, manager or secretary of the company as well as the independent professional who is engaged in the formation of the company (i.e. Company Secretary, Chartered Accountant or Cost Accountant) should make declaration in respect of compliance of the requirements of the Act and the rules made thereunder with respect to registration and matters precedent or incidental thereto. Such a requirement has also been prescribed in section 11(1) (c) of the Limited Liability Partnership Act, 2008.**	(b) A declaration in the prescribed form by an advocate, a Chartered Accountant, Cost Accountant or Company Secretary ***in practice***, who is engaged in the formation of the company, ***and*** by a person named in the articles as a director, manager or Secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
7(1)(d) – Incorporation of Companies	**Clause 7(1)(d)** seeks filing of information with the Registrar about the name of the state where the registered office of the company is proposed to be situated on incorporation and the address for correspondence till its registered office is established. It is suggested that the words "the name of the state where the registered office of the company is	This is because the name of the state is already mentioned in the Memorandum of Association under clause 5(1)(b).	(d) the address for correspondence till its registered office is established;

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	proposed to be situated on incorporation and" appearing in the beginning of the sub-clause may be deleted		
7(1)(f) – Incorporation of Companies	The words, **'including proof of identity' may be deleted.**	DIN itself provides proof of identity.	(f) the particulars of the persons mentioned in the articles as first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars as may be prescribed; and
11(1) - Registered office of Company	The proposed company may be allowed to have registered office from the fifteenth day of incorporation.	A new company has to complete the legal processes for hiring or purchasing space for its registered office therefore, at least 15 days time should be allowed to a new company to have its registered office. This will also make the provisions of Clause 11 (1) and clause 7(1) (d) harmonious to each other.	*A company shall,* ***on and from the fifteenth day*** *from the date of its incorporation and at all the time thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.*
11(2) - Registered office of Company	The provisions for verification of registered office may be extended from fifteen days to thirty days of its incorporation.	As a consequence of proposed amendment in Clause 11 (1), a new company may be given 30 days time from the date of incorporation, to submit verification of its registered office to registrar.	(2) The company shall furnish to the Registrar verification of its registered office within ***thirty*** days of its incorporation in such manner as may be prescribed
11(3)(c) - Registered office of Company	The word 'if any' may be added after the word 'fax number' and 'website address' respectively.	The requirement of giving fax no. and website address should be applicable only if the company is having a fax no. and website address.	(c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number***, if any***, e-mail and website ***address***, **if any,** printed in all its business letters, billheads, letter paper and in all its notices and other official publications; and

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12 – Alteration of Memorandum	1. It is suggested that the "Capital clause" in the Memorandum may be allowed to be altered by an ordinary resolution. 2. The proposed clause 12 is not dealing with the situation of shifting of registered office within the state but outside the jurisdiction of one Registrar to another Registrar as contemplated in existing section 17A	Clause 12(1) provides that a company may alter the provisions of its Memorandum by passing a special resolution. This implies that the capital clause can only be altered by special resolution, which may not be the intent. Clause 55(1) also does not contemplate alteration of capital clause by way of a special resolution. Suitable provisions may be made in the proposed bill to deal with the situation.	Clause 12(1) may suitable be redrafted.
12(4) – Alteration of Memorandum	The word "as may be prescribed" may be added after the word "on an application" and the word 'made' be deleted.	It is desirable to have a prescribed format of application to be submitted to the Central Government for shifting of registered office from one state to another.	(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application, ***as may be prescribe*****d,** in this behalf.
13 (1) – Alteration of Articles	A proviso should be added after the second proviso to Clause 13 (1) for regulating the conversion of a private company into a One Person Company.	As conversion of a public company into a private company or One Person Company is regulated, the same should be applicable for conversion of a private company into a OPC for protection of creditors and other stakeholders.	***Provided further that any alteration having the effect of conversion of a private company into a One Person Company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.***
15(1)(b) – Rectification of Name of Company	After the words, "within three years of incorporation or registration, the words, "or	This may clarify the situation of three years from the date of incorporation or change of name.	(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles a registered trade mark of such proprietor under the Trade Marks Act, 1999, made

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	change of name" may be added.		to the Central Government within three years of incorporation or registration **or change of name** of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.
Clause 19(2) – Service of documents	The communication to shareholders may be allowed to be sent under the Certificate of Posting also.	This will reduce the cost to the companies.	
Clause 23(1)(b)(ii) and (iii) – Matters to be stated in prospectus	1. There is a need for adding a second proviso to Clause 23A to enable the companies which are in existence for less than five years to raise money from the capital market. 2. Presently, provisions of Sec. 56 of the Companies Act, 1956 are not applicable if Company's existing shares which are dealt in or quoted in a recognized stock	It will enable a newly formed company or a company which has not completed five years since its incorporation to raise finance from the public.	**23.** *The following may be added as second proviso to Clause 23(1):* **Provided further that a company which has carried on business, for less than five financial years, the reports shall be made under sub-clauses (b)(ii) & (iii) only for such period for which the company has carried on the business.**

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	exchange are offered for subscription by public. Similar provision may be made in the Bill.		
Clause 24(3) – Offer or invitation for subscription of securities	The provision for interest payment may be made if the company fails to repay the application money within 8 days.	This will prevent the companies from making delay in refund of application money.	
Clause 34 – Allotment of Securities by Company	Sub-section (4) of section 34 relating to filing of return of allotment should be applicable to public as well as private companies. Therefore, sub-section 5 should be suitably amended.	Allotment of shares is very important matter for each type of company. In order to avoid the future disputes between shareholders or management of private company, the filing of return should continue for all types of companies, as it is in the existing Act.	(5) Nothing in this section shall apply to a private company, except filing of return of allotment as specified in sub-section (4) of this section.
Clause 37 – Kinds of share capital	Amendment to this section is necessary to enable companies which have already issued shares with differential voting rights to comply with the provisions based on extant Section 86 and the rules framed there under. Accordingly a saving clause is suggested.	The Clause is silent with regard to treatment of equity share capital with differential rights as to dividend or voting already issued by a company, pursuant to the provisions contained in the existing Companies Act.	Nothing in section 37 shall in the case of any shares issued by a company before the commencement of this Act, affect any differential rights attached to the shares as to dividend, voting or otherwise.

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Clause 42(2) – Variation of Shareholders' rights	Time limit may be specified within which the dissenting shareholders' may apply to the Tribunal for cancellation of proposed variation.		
Clause 49 – Issue and redemption of preference shares	Utilisation of the amounts credited to Capital Redemption Reserve Fund needs to be elaborated.	This Clause provides for transfer of funds from profits, of a sum equal to the nominal amount of the preference shares to be redeemed to a Capital Redemption Reserve Fund. However, the clause does not provide for the utilization of the amounts credited to the fund.	**Accordingly, a sub-clause (e) be added in clause 49(2):-** **(e) the capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.**
Clause 53 – Rectification of Register of members	A specific provision as to voting rights on the lines of the existing Section 111A (5) may be made.	There is no provision as to the status of the voting rights of the registered shareholders during the pendency of the appeal proceedings.	**Sub- clause (4) may be added under clause 53:-** **(4) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.**
Clause 56 (1)(c) **Further issue of share capital**	A revised clause 1(c) is suggested.	Clause 56 (1) (c) of the Bill provides that if it is authorised by a special resolution, the further shares can be issued to persons other than the existing shareholders. The said provision thus, excludes the existing shareholders from the purview of the preferential allotment which may not be the intention.	56 (1)(c) if it is authorised by a special resolution, to any persons whether or not those persons incude the persons mentioned in clause (a) or clause (b), either for cash or for a consideration, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

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Clause 61 – Power of company to purchase its own securities	(i) In sub-clause (5) (c) of clause 61, reference to marketable lots should be deleted.	With the advent of dematerialisation of shares the concept of marketable lot is no longer relevant.	61(5) The buy-back under sub-section (1) may be— a) from the existing shareholders or security holders on a proportionate basis; b) from the open market; c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.
Clause 63(c) – Prohibition for buyback in certain circumstances	It is suggested that if the default is remedied, the company may be permitted to buy-back its securities.	The Bill provides that a mere default made by the company in meeting its financial obligations such as repayment of deposits, interests payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon would disqualify the company from purchasing its securities. The prohibition is permanent and would be in effect even if the default is remedied. Existing provision under Section 77B only prohibits a company to purchase its own shares or other specified securities if there was a default in meeting any financial obligations, mentioned above, and if they subsist.	63. No company shall directly or indirectly purchase its own shares or other specified securities— (a) through any subsidiary company including its own subsidiary companies; **or** (b) through any investment company or group of investment companies; or (c) if a default is made by the company in the repayment of deposit accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company and the default **is subsisting**.
Clause 64(3) - Debentures	All companies may be permitted to issue secured debentures subject to such terms and conditions as may be prescribed.	There should not be any restriction for issuing secured debentures by any company, if the prescribed terms and conditions are complied with.	(3) Secured debentures may be issued by a company subject to such terms and conditions as may be specified.

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Clause 66 - Prohibition on acceptance of deposits from public	The amount allocated for Deposit Repayment should be in a separate account with a bank.	**Clause 66.**(2)(c) provides for depositing such sum which shall not be less than fifteen per cent, of the amount of its deposits maturing during a financial year and the financial year next following, in Deposit Repayment reserve Account.	66(2)(c) depositing in **a separate account with a Scheduled Bank** such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, in a Deposit Repayment Reserve Account.
Clause 66(2) – Prohibition of acceptance of deposits from the public	It is suggested that the restriction imposed on the company to accept deposits from the members only should be removed. The company should be allowed to accept deposits from the public subject to the fulfillment of the conditions prescribed in the clause including provision of security, credit rating, deposit insurance, etc.	The company should be free to accept deposits from the public with the safeguards provided in the section.	A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, **accept deposits from the public** on such terms and conditions, including the provision of security for the repayment of such deposits with interest, and subject to the fulfilment of the following conditions, namely:— issuance of a circular including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
Clause 74(2) – Company to report satisfaction of charge	It is suggested that the requirement of sending a notice to the charge holder by the Registrar should be dispensed with where the intimation to the Registrar in the prescribed form has been signed by the charge holder.	With the advent of e-filing under MCA-21 the intimation of satisfaction of charge in e-form 17 is being digitally signed by the charge holder and since he is aware of the satisfaction of charge, intimation by the ROC and giving of 14 days notice is not required.	Proviso to Clause 74(2) Provided that notice to the charge holder shall not be required where the intimation to the Registrar in the prescribed form given by a company under sub-section (1) has been duly signed by the holder of the charge.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
Clause 76 – Company's register of charges	It is suggested that a copy of the instrument creating charges should be kept at the Registered Office of the company and the same should be open for inspection	The instrument creating the charge is an important document therefore, a copy of the same should be kept at the Registered Office of the copy for inspection	
Clause 82 (1)(i) – Annual Return	In sub-clause (1)(i), the words "as may be prescribed" may be added.	This will bring about clarity in the provision.	Clause 82(1)(i) matters related to certification of compliances and disclosures as may be prescribed
82(1) 1st proviso – Annual Return	As per the first proviso to sub-clause (1), the annual return filed by a company having such paid-up capital and turnover as may be prescribed, or a company whose shares are listed on a recognized stock exchange, shall also be signed by a Company Secretary in whole-time practice certifying that the annual return states the facts correctly and adequately and that the company has complied with all the provisions of this Act, in the prescribed form. 1. It is suggested that this clause should be made applicable to every listed	1. It is necessary to cover all large companies whether in terms of paid-up share capital or turnover.	Provided that the annual return, filed by a company having such paid-up capital **or** turnover as may be prescribed, or **a listed company**, shall also be signed by a Company Secretary in whole-time practice certifying that the annual return states the facts correctly and adequately and that the company has complied with all the provisions of this Act, in the prescribed form and **that the provisions contained in Chapter X in respect of appointment, duties and powers of an auditor shall, so far as may be applicable, apply to a Company Secretary in whole-time practice.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	company and a company having such paid-up capital **or** turnover instead of such paid-up capital and turnover so as to cover all large companies in terms of paid-up capital or turnover.		
	2. For the words "a company whose shares are listed on a recognized stock exchange", the words "listed company" may be substituted.	2. The words "listed company" have been defined in the definitions clause.	
	3. Also with a view to ensure independence of Company Secretary in whole-time practice, the provisions contained in Chapter X in respect of appointment, duties and powers of an	3. The appointment, duties and powers of Company Secretary in whole time practice should be made at par with auditors to enable the Company Secretary in whole-time practice to disclose the non-compliances and report on the compliances made by the Company in an independent manner.	

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	auditor should *mutatis mutandis* be made applicable to the Company Secretary in whole-time practice for compliance with this section.		
82(1) 2nd proviso – Annual Return	Small companies may be removed from the 2nd proviso to sub-section (1) of section 82.	The small Companies do not employ whole-time qualified professionals and in these Companies, non-compliances are very high. In order to make such Companies Compliance conscious, signing of annual return by a professional either in employment or in practice should be mandated by the Bill, otherwise these Companies will generally be deficient in compliances. Secondly, Small Companies fall prey to unintentional violation of the provisions of the Act. They need professional assistance to overcome this undesired situation. Thirdly, a desired level of corporate governance and compliances is essential even in small companies. There have also been instances where small companies have been used for diversion of funds, data manipulation and inter party transactions etc. Finally, this will substantially improve the compliance rate which is the cherished objective of the Government and simultaneously reduce the work	Provided further that in relation to a One Person Company, the Annual Return shall be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
		at the ROC office enabling him to concentrate on the big companies.	
82(2) – Annual Return	Sub-section (2) of section 82 requires that an extract of the annual return in such form as may be prescribed shall form part of the Board's Report. The Company Secretary in whole-time practice may while certifying annual return of listed companies or other companies having such paid-up capital or turnover as may be prescribed under first proviso to sub-section (1), may make qualifications or adverse remarks. In such a case it should be necessary for the Board to give its explanation or comments on such remarks in the Board's Report.		(2) An extract of the annual return in such form as may be prescribed shall form part of the Board's Report along with **explanations or comments by the Board on every qualification, reservation or adverse remark made by the Company Secretary in whole time practice in his certificate given under first proviso to sub-clause (1) of clause 82.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
Clause 85 - Annual general meeting	1. Annual General Meeting may also be held at a place where the maximum number of shareholders of the company reside provided such number being not less than 10% of the total number of members. 2. 2. The term 'National Holiday' may be defined in the Bill.	A large number of companies have their registered offices in remote places resulting in inconvenience and very poor attendance of members at AGM. Dr. J J Irani Committee also recommended similarly.	85 (2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company **or at a place in India other than the place of its Registered Office, where the maximum number of members reside provided such number is not less than 10% of the total number of members.**
Clause 91(4) – Explanatory statement to be annexed with notice	The relatives of the director and manager may also be included.	Drafting error	(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1), being made by a director, manager, if any, or other key managerial personnel or **their** relatives, either directly or indirectly, the director, manager or other key managerial personnel **or their relatives**, as the case may be …
Clause 94 **Proviso - Proxies**	Proviso to section 94 provides that proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This proviso should be deleted	With a view to strengthen shareholders rights right to speak at AGM as well as vote on show of hands should be given to proxy as well. This is also practiced in countries like UK.	Proviso to section 94 may be deleted.
Clause 99 - Postal	It may be clarified that		The following be added as explanation to clause 99:-

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
ballot	postal ballot includes voting by electronic mode		***Explanation.*—For the purposes of this section, "postal ballot" includes voting by electronic mode.**
Clause 107(3) – Minutes of Proceedings …	The expression 'officer' may be defined in the Bill		
Clause 109 – Report on General Meeting	Sub-section (1) of section 109 provides that every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder. It is suggested that the report on general meeting should be applicable to all general meetings. It is suggested that the said report should be certified by the Company Secretary in whole time practice. Also this report should be placed on the website of the company.	This is a laudable provision and will go a long way in preventing sham annual general meetings happening only on paper. With a view to ensuring that the reporting is correct, independent certification by a Company Secretary in whole-time practice should be provided. Placing a copy of the report on website of the company will lead to transparency.	**1)** Every listed public company shall prepare in the prescribed manner a report on each general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder **and the said report shall be certified by the Company Secretary in whole-time practice.** 2) A copy of the report shall be placed on the website of the company.
New Clause – Constitution of	A National Advisory Committee be constituted	• Companies today follow diverse secretarial practices.	**1. The Central Government may, by notification, constitute an advisory committee to be called**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
National Advisory Committee on Secretarial Standards	to advise the Central Government on formulation and laying down of Secretarial Standards.	• The Institute of Company Secretaries of India has taken the initiative of formulates Secretarial Standards to integrate, consolidate, harmonise and standardize these secretarial practices. • Secretarial Standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities. • Secretarial Standards Board (SSB), constituted in the year 2000 comprises of eminent members of the profession as well as representatives of regulatory authorities such as MCA, SEBI, ICAI, ICWAI. • The Institute has so far released nine Secretarial Standards viz. on Meetings of the Board of Directors, General Meetings, Dividend, Registers and Records, Minutes, Transmission of Shares and Debentures, Passing of Resolutions by Circulation, Affixing of Common Seal, Forfeiture of Shares. Several Companies are voluntarily adopting the Secretarial Standards in their functioning. Some of these are :	**the National Advisory Committee on Secretarial Standards (hereinafter referred to as the Secretarial Standards Advisory Committee) to advise the Central Government on the formulation and laying down of Secretarial Standards for adoption by companies or class of companies or their secretarial auditor, as the case may be.** **2. The Secretarial Standards Advisory Committee shall consist of the following members, namely:—** **(a) a Chairperson who shall be a person of eminence and well versed in corporate laws, corporate governance, finance, business administration, business law, economics or similar disciplines, to be nominated by the Central Government;** **(b) one representative of the Central Government to be nominated by it;** **(c) one representative of the Securities and Exchange Board to be nominated by it;** **(d) one member each to be nominated by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980, the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 and the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959;** **(e) a person who is or has been a professor in**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
		Reliance Industries Ltd., Mcmillan India Ltd., Ashok Leyland Ltd., Reliance Energy Ltd., Ponni Sugars (Erode) Ltd., Nagarjuna Fertilizers And Chemicals Ltd., The Indian Hotels Company Ltd., Tata Metaliks Ltd., CMC Ltd., Foseco India Ltd., The Madras Aluminium Co. Ltd., Infotech Enterprises Ltd. The process for formulation and laying down of Secretarial Standards should be on lines similar to the laying down of accounting standards.	**Corporate Laws, Corporate Governance, finance or business management in any University or deemed University to be nominated by the Central Government; and** **(f) two representatives of the Chambers of Commerce and Industry, to be nominated by the Central Government.** **3. The members of the Secretarial Standards Advisory Committee nominated by the Central Government shall hold office for such term as may be determined by it at the time of their appointment and any vacancy in the membership of the Committee shall be filled by the Central Government in the same manner as that for the member in whose vacancy it is proposed to be filled.** **4. The members of the Secretarial Standards Advisory Committee shall be entitled to such fees, traveling, conveyance and other allowances as may be prescribed.** **5. The Secretarial Standards Advisory Committee shall, after consulting the Institute of Company Secretaries of India, submit its recommendations to the Central Government on matters relating to Secretarial Standards for adoption by companies or class of companies or their secretarial auditor, as the case may be.**
New Clause – Central Government to notify Secretarial Standards	Secretarial Standards be notified by Central Government after consultation with Secretarial Standards Advisory Committee.		**The Central Government may, after consultation with the Secretarial Standards Advisory Committee, by notification, lay down Secretarial Standards for adoption by companies or class of companies.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
New Clause – Observance of Secretarial Standards	It is suggested to provide for a clause for observance of Secretarial Standards by Companies.		**The company shall observe Secretarial Standards notified under section……**
Clause 110 – Declaration of Dividend	It is should be mandatory for every company to observe Secretarial Standards prescribed with respect to dividend.	Different companies follow different practices with respect to declaration and payment of dividend. Secretarial Standard would bring uniformity.	(7) Every company shall observe such secretarial standards as may be prescribed with respect to dividend.
110(1) 2nd proviso - Declaration of Dividend	1. The requirement of the consent of all the directors for declaring dividend out of accumulated profits earned by the company in the previous year or years should be dropped. 2. Further, the approval of the shareholders may be taken by ordinary resolution instead of special resolution.	It is a common practice for companies to declare dividend out of past profits transferred to reserves. The requirement of consent of all the directors and approval of shareholders by a special resolution would pose an impediment and appears to be inappropriate.	Provided further that if owing to inadequacy or absence of profits in any financial year, the company proposes to declare dividend out of the accumulated profits earned by it in the previous financial year or years and transferred by it to the reserves, such declaration shall be made by a resolution passed at a meeting of the Board and the approval of the financial institutions whose term loans are subsisting, and thereafter in accordance with the approval of shareholders at an annual general meeting.
110(3) – Declaration of Dividend	The interim dividend may be allowed to be declared out of the accumulated profits also. Accordingly, the words "out of the profits of the company for part of the year" may be deleted.	Dividend includes interim dividend also therefore, it should be permitted for the companies to declare interim dividend out of accumulated profits.	(3) The Board of Directors of a company may declare interim dividend during any financial year.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
111(1) - Unpaid Dividend Account	Minor Redrafting	Fine Tuning	Where a dividend has been declared by a company but has not paid **to, or claimed by, any shareholder** entitled to the payment of the dividend, within thirty days from the date of the declaration of dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called Unpaid Dividend Account.
112(2) – Investor Education and Protection Fund	The following items which are presently required to be transferred to Investor Education and Protection Fund under section 205 (c) of the Companies Act, 1956 may also be included under clause 112(2) : (a) unclaimed matured debentures (b) unclaimed application money received on any securities (c) unclaimed interest on debentures or deposits (d) unclaimed matured deposits	These items appear to have been left out inadvertently	(ca) amounts which have remained unclaimed or unpaid for a period of seven years from the date they became due for payment: (i) the application monies received by companies for allotment of any securities and due for refund; (ii) matured deposits with companies (iii) matured debentures with companies (iv) unclaimed interest on debentures or deposits (v) the interest accrued on the amounts referred to in clauses (i) to (iv)
112(3) – Investor Education and Protection Fund	To provide for the reimbursement of legal expenses incurred in	Class Action Suits are pursued for general Investor Protection. Hence, the Investor Education and Protection	The Fund shall be utilized for the refund in respect of unclaimed dividends, unclaimed the application monies due for refund and interest thereon,

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	pursuing class action suits under Clauses 32 and 216 by members, debenture-holders or depositors as may be sanctioned by the Court or the Tribunal.	Fund may be used to meet the legal expenses which may be sanctioned by the Court or the Tribunal.	unclaimed matured deposits and interest thereon, unclaimed matured debentures and interest thereon, unclaimed interest on debentures or deposits, **the reimbursement of legal expenses incurred in a suit filed or any other action taken by affected persons pursuant to Clause 32 or in class action under section Clause 216 by members, debenture-holders or depositors as may be sanctioned by the Court or the Tribunal and promotion of Investors Education, awareness and protection** in accordance with such rules as may be prescribed.
113 – Amount lying in previous fund to become part of fund under this Act	Clause 113 may be deleted	Clause 113 appears to be redundant in view of clause (e) of sub-clause (2) of clause 112.	
114 - Right to Dividend, Rights Shares and Bonus Shares to be held in abeyance pending Registration of Transfer of Shares	Transfer this clause as clause 50A in Chapter IV	Relevant in that Chapter	
115(b) - Punishment for Failure to distribute Dividend in thirty days	Add the word "and the same has been communicated" in the end.	The exception should apply only to inability due to legal constraint which has been intimated to the shareholder.	Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with **and the same has been communicated to him.**
117(1) – Financial Statements	Redrafted	Financial Statement includes a Balance Sheet(which shows the state of affairs on the Balance Sheet date) a Profit and Loss Account that shows the profit or loss for the year) and a cash flow	The Financial Statement shall give the information required by this Act in the manner so required and shall give a true and fair view in the case of the balance sheet, of the state of the company's affairs as at the end of the financial year, in the case of the

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
		statement (that shows the cash-flows during the year). The expression "the state of affairs of the company…as at the end of the financial year" cannot, therefore, be used for all of them in sub-clause(1).	profit and loss account, of the profit or loss for the financial year and in the case of the Cash Flow Statement, of the cash-flows during the financial year and the Statement shall comply with the relevant accounting standards notified under section 119 and shall be in such form as may be prescribed.
117(3) - Financial Statements	Add "Own" before financial statement under sub section(2)	The alteration suggested is to make the expression to be in conformity with similar expression mentioned earlier in the sub-clause	Where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its **own** financial statement under sub-section(2)
120(1) – Financial Statement, Board Report, etc.	The Chief Executive Officer may be authorized to sign the financial statement on behalf of the Board only if he is a member of the Board of the Company.	Seems to be a drafting error.	(1) The financial statement, … by two directors out of which one shall be Managing Director or Chief Executive Officer **if he is a member of the Board** …
120(3) (f) – Financial Statement, Board Report, etc.	Add "or disclaimer" after adverse remark	Disclaimer is a material fact which needs to be specifically mentioned.	Explanations or comments by the Board on every qualification, reservation, adverse remark **or disclaimer** made by the auditor in his report.
120(4) **(e) – Financial Statement, Board Report, etc.**	120 (4) (e) For the words "……. and that such internal financial controls have been complied with " , the words "…… such internal financial controls were	Better drafting for clear meaning	e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls were adequate and operating effectively.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	adequate and operating effectively" may be substituted.		
120(4) – New Sub-clause (f)	To add a clause in Directors' Responsibility Statement	The Directors' Responsibility Statement should contain disclosure as to observance of applicable secretarial standards by the company along with proper explanation relating to material departures	The Directors' Responsibility Statement referred to in sub-section (3) shall state that (a) …. (b) …. (c) … (d) … (e) … (f) The applicable secretarial standards had been observed along with proper explanation relating to material departures
120(4) – Financial Statement, Board Report, etc.	The scope of the Directors' Responsibility Statement may be extended so as to include due compliance with the various laws applicable to the company.	While the Directors' Responsibility Statement rightly emphasizes on the accountability of directors on accounts, the facet of due compliances of various laws applicable to the company is equally important	The following clause (g) to sub-section (4) may be added : "(g) The directors had devised proper systems to ensure compliance of all laws applicable to the company and that such systems were adequate and operating effectively."
121(1) – Right of member to copies of Audited Balance Sheet	Redrafted	Better construction	A copy of the financial statement and every other document required by law to be annexed or attached to the financial statement **including** auditor's report, which are to be laid before a company in its **Annual** general meeting, shall be sent …
123(2) – Appointment of Auditors	The term "or any other company owned and controlled, directly or indirectly, by the Central	It is necessary to define the company which would fall in this category	A company shall be deemed to be owned and controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments" may be defined. The definition can be derived from the existing section 619B of the Companies Act, 1956.		and partly by one or more State Governments if more than 50 per cent of its paid up share capital is held by one or more of the following or any combination thereof: (a) the Central Government and one or more Government companies; (b) any State Government or Governments and one or more Government companies (c) the Central Government, one or more State Governments and one or more Government companies; (d) the Central Government and one or more corporations owned or controlled by the Central Government; (e) the Central Government, one or more State Governemnts and one or more corporations owned or controlled by the Central Government; (f) one or more corporations owned or controlled by the Central Government or the State Government; (g) more than one Government company.
123(3) – Appointment of Auditors	Add "within 90 days" after appointment of such auditor	Time limit to be fixed	Notwithstanding anything contained in sub-section(1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall at an extraordinary general meeting appoint such auditor **with in 90 days from the date of such intimation.** The said auditor shall hold office till the conclusion of the First Annual General Meeting.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
123 (4) – Appointment of Auditors	1) After the words, " in the case of a Government Company ", the words, "or any other company owned and controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Government", should be inserted. 2) Add " within 120 days " after shall appoint such auditor. 3) The term "the Central Government or the State Government concerned" needs to be clarified.	1. Sub-section (4) of the said bill provides appointment of First Auditor only incase of Government Companies. However, it does not deal with any other company owned and controlled by the Central Government or State Government. Therefore, there should not be any contradiction relating to the appointment of the First Auditors in case of such Companies. 2. Time limit of 120 days may be fixed for the Central or the State Government concerned to appoint the auditor.	Notwithstanding anything contained in sub-section (1) or sub-section (2), in the case of a Government Company ***or any other company owned and controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments or partly by the Central Government and partly by one or more State Governments***, the first auditor shall be appointed by the Comptroller and Auditor-General of India within thirty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within next thirty days. In the case of failure of the Board to appoint such auditor within next thirty days, it shall inform the Central Government or the State Government concerned and the Central Government or the State Government concerned, as the case may be, shall appoint such auditor **within next one hundered and twenty days days** who shall hold office till appointment of an auditor under sub-section (2) **.**
124(2) – Eligibility, qualifications and disqualification of Auditors	Add "including a LLP" after "where a firm"	In line with LLP Act	Where a firm or **a limited liability partnership** is appointed as an auditor of a company, only the partners who are Chartered Accountants in Practice shall be authorized by the act and sign on behalf of the firm or the Limited Liability Partnership.
124(3) (a) – Eligibility, qualifications and disqualification of Auditors	Add "other than LLP" after a body corporate.	In line with LLP Act	A body corporate **other than limited liability partnership**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
124 (3) (d)(ii) – Eligibility, qualifications and disqualification of Auditors	(d) (ii) Add in such amount as may be prescribed at the end of the sentence.	Amount to be prescribed from time to time.	Is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, **for such amount as may be prescribed.**
125(1) – Remuneration of Auditors	Add "or by the Board as the case may be" after its general meeting	This will clarify the position where the Auditor is appointed by the Board.	The remuneration of the auditor of a company shall be fixed in its general meeting **or by the Board as the case may be** or in such manner as may be determined therein.
125(2) – Remuneration of Auditors	Add 'Shall' before include the expenses.	Grammatical correction	The remuneration " under sub section(1) in addition to the fee payable to an auditor, **shall** include the expenses, if any, incurred by the auditor in connection with the audit of the company and anything given to him otherwise than in cash, but does not include any remuneration paid to him for any other service rendered by him at the request of the company.
126(3)(e) – Powers and Duties of Auditors and Auditing Standard	In sub-clause (3)(e),the words "and the auditing standards" may be deleted and the same may be covered under a new sub-clause (f) and the subsequent sub-clauses may be renumbered accordingly.	The financial statements cannot comply with the auditing standards.	3(e) whether, in his opinion, the financial statements comply with the accounting standards. (f) that whether the auditing standards have been followed while conducting the audit.
126(3)(i) – Powers and Duties of Auditors and Auditing Standard	In sub-clause (3)(i), the statement that "the company has complied with the internal financial controls and directions issued by the Board" does	Better construction	3(i) In the case of a listed company, whether the Board has laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and operating effectively

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	not appear to be correct. What may be provided is that the company has internal control system in place and the auditor reports on the adequacy thereof and the operating effectiveness of such controls.		
126(6) - Powers and Duties of Auditors and Auditing Standard	Clause (6) may be redrafted for clarity	Better construction	"The Comptroller and Auditor General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to – (a) comment upon or supplement such audit report, and (b) conduct any supplementary audit of the Company's accounts by himself or by such person or persons as he may authorize in this behalf and such person or persons shall have the same rights and obligations as the auditor who has submitted the report: Provided that any comments given by the Comptroller and Auditor-General **upon, or supplement to, the audit report or, the report of the supplementary audit conducted by him** shall be sent by the company to every person entitled to copies of audited balance sheet under sub-section (1) of section 121 and also placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
Clauses 123 to 130 – Audit and Auditors	In clauses 123 to 130, for the word "auditor", the words "financial auditor" may be substituted.	The term "financial auditor" conveys the right meaning and distinguishes the financial auditor from other auditors e.g. cost auditor, secretarial auditor	

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
132 (1)(b) – Company to have Board of Directors	1. Maximum number of Directors should not be specified in the Act. It should be left to the company to provide maximum number of directors in its Articles. 2. If the limit on maximum number of directors is retained, then, the Bill should contain transitory provision to enable companies to comply with the new requirement.	Since it is related directly to size, area of operations and diversified business activities of companies, flexibility should be given to company to decide the maximum number of directors.	**A maximum of such number of directors as may be prescribed in the Articles.**
132(2) Explanation – Company to have Board of Directors	The term "calendar year" should be replaced with "previous" calendar year	It is necessary for clarity.	For the purposes of this sub-section, "ordinarily resident in India" means a person who stays in India for a total period of not less than one hundred and eighty-two days in a **previous** calendar year.
133(5) Proviso – Appointment of Directors	Since every special business of a general meeting requires explanatory statement for understanding of members. Instead of placing report in general meeting, such explanatory statement may contain this provision. Notice shall state "that in its opinion he fulfils the conditions specified in this	To provide for appropriate secretarial procedure.	Provided that in the case of appointment of an independent director **in the general meeting, the explanatory statement attached to the notice of the meeting shall include a statement that in the opinion of the Board,** he fulfils the conditions specified in this Act for such an appointment.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	Act for such appointment".		
133(6) – Appointment of Directors	Needs proper drafting to provide that not exceeding one-thirds of total number shall not be liable to retire and out of remaining two-thirds, 1/3rd shall retire compulsorily.	Drafting error. It is suggested that the extant provision of Companies Act, 1956 be retained.	**133. (6)(a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—** **(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and** **(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.** **(b) The remaining directors in the case of any such company shall, in default of and subject to any regulations in the articles of the company, also be appointed by the company in general meeting** **(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with sub-clause (a) of this clause and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one-third, shall retire from office.** **(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.** **(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
143(2) – Appointment of Director to be voted individually	A motion is moved to pass a resolution.Accordingly, theclause may be redrafted	Drafting error.	A resolution **passed** in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved.
145(2) – Disqualification for appointment of Directors	The word "public" may be deleted.	To make the disqualification applicable to all types of companies	…..shall be eligible to be re-appointed as a director of that company or appointed in **any other company** for a period of five years from the date on which the said company fails to do so.
146 – Number of Directorships	1. For reckoning the limit of fifteen directorships, directorship in private companies that are either holding or subsidiary company of a public company should be included 2. The maximum number of listed companies, in which a person can be a director, be restricted to seven. 3. If an individual is a Managing or Whole Time Director in a listed company, he should not hold office as Non-executive Director in more than	Effective Board Room performance of directors is directly related to the time that the directors can devote. A person who is too stretched, may not be able to concentrate on promoting company's interest. A director needs to spend enough time understanding the company in which he is a director. The proposed restriction in number of directorships would therefore ensure better governance. Further, since there is a greater public interest in listed companies and as they are also required to comply with a number of additional laws, rules, regulations, codes, etc. the directors need to devote substantial time to the companies.	(1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than fifteen public limited companies **or private companies that are either holding or subsidiary company of a public company, at the same time.** **Provided that the maximum number of listed companies in which an individual can serve as a director shall be restricted to seven.** **(2) In case an individual is a managing or whole-time director in a listed company, the number of public companies at which such an individual can serve as non-executive director, shall be restricted to 10 and the number of listed companies at which such an individual can serve as a non-executive director, shall be restricted to 2,** **(3) Any person holding office as director or non-executive director as the case may be in companies more than the limits as specified in sub-section (1) and (2) of this section immediately before the commencement of this Act shall, within six**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	10 public companies and further, he should not hold office as Non-executive Director in more than 2 listed companies. 4. The section should specify a time limit from the commencement of this Act by which time a person who hold office as a director in more than the prescribed number of companies , should conform to this new requirement.		**months from such commencement,—** **(*a*) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director or non-executive director;** **(*b*) resign his office as director or non-executive director in the other companies; and** **(*c*) intimate the choice made by him under clause (*a*) to each of the companies in which he was holding the office of director or non-executive director before such commencement, to the Registrar having jurisdiction in respect of each such company.** **(4) Any resignation made in pursuance of clause (*b*) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.** **(5) No such person shall act as director in more than the specified number of companies,:** **(a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (*b*) of sub-section (1).or** **(b) after the expiry of six months from the commencement of this Act**; whichever is earlier; (6) Where a person accepts an appointment as a director or non-executive director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day during which the contravention continues.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
147(1) – Duties of Directors	Section should provide specific reference of certain regulations, to be made by company in general meeting, in accordance with which a director should act.	A director should act in accordance with the **Memorandum of Association and Articles of Association** and regulations which are to be made by the company in its General Meeting.	(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the company's **Memorandum & Articles of Association and regulations made by the company in general meeting**
147(2) – Duties of Directors	Specific reference for duty of directors towards shareholders, employees, environment and community should be given.	The duty should include duty towards shareholders, employees, environment, community while ensuring the long term sustainability of the company.	**147(2) -** **A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company so as to achieve continuing survival and prosperity for the company and while doing so shall have regard to the interests of the employees, the impact of company's operations on community and environment.**
148(1)(c) – Vacation of office of Directors	specific reference of the contravening section under the Act to be given		(c) he acts in contravention **of sub-sections (2) of section 162** relating to entering into contracts or arrangements in which he is directly or indirectly interested;
148(1)(d) – Vacation of office of Directors	specific reference of the contravening section under the Act to be given		(d) he fails to disclose his interest in any contract or arrangement **pursuant to sub-section (1) of section 162.**
149(1) – Resignation of Director	(a) This clause provides for filing intimation of resignation of director to Registrar, it is suggested that the power to specify the	To bring clarity and transparency in the process.	(1) A director may resign from his office writing to the company and the Board shall on receipt of such notice take note of the same and intimate the Registrar within such time and in such manner and in such form as may be prescribed and shall also place the fact of such resignation **in the**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	time within which intimation is to be filed with the Registrar should be included in the section. (b) Instead of the word "subsequent"- "immediately following" should be used. (c) The fact of resignation should be mentioned in the Directors Report		**immediately following** general meeting held by the company and **the fact of resignation shall also be mentioned in the Directors' Report** Provided that a director may also forward a copy of his resignation to the Registrar in the manner as may be prescribed.
149(3) – Resignation of Director	This sub-clause may be shifted to clause 155 as clause 155(2) which deals with quorum for board meetings and a proviso may also be added. Accordingly clause 4 may be renumbered as clause 3. There is a possibility that because of resignation or death, the number of continuing directors could be reduced to one or zero. For a board meeting there should always be more than one director. Under this circumstance, it is suggested to provide that		**If the number of director is reduced below the quorum, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum or for summoning the general meeting of the company but for no other purpose.** **If the number of directors is reduced to zero then any member may convene a general meeting in which directors could be appointed to meet the quorum.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	the remaining director or any member, if there is no director, may convene a general meeting in which other directors could be appointed first to meet the quorum.		
151 (1) – Register of Directors and Key Managerial Personnel and their shareholding	Every company is required to keep a register containing particulars of its directors and key managerial personnel. It shall also include details of securities held by each of them in the company, its holding company or subsidiary company or associate companies. It is suggested that the holdings of such persons in subsidiary of company's holding company should also be included. This requirement is in line with existing provisions of section 307 of the Companies Act, 1956.	The holding of securities by the directors and Key Managerial Personnel in subsidiary of the company's holding company is equally important, therefore, should be included in the register.	**Every company shall keep a register showing, as respects each director and key managerial personnel of the company, the number, description and amount of any shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him or in trust for him, or of which he has any right to become the holder whether on payment or not.**
154(1) – Meeting of Board	A meeting of the board must be held atleast once in every three months.	It is necessary that the board meets regularly.	(1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every **calendar** year in such a manner that **a meeting shall be held at least once in every three months and** not more than 120 days shall intervene between two consecutive meetings of the Board.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
154(2) proviso– Meeting of Board	The proviso to Clause 154(2) be deleted. In case proviso not deleted, the following may be added to the existing proviso. 'Further, even in respect of these matters, director should be allowed to participate through video conferencing or other electronic mode but their participation through video conferencing or other electronic mode should not be counted for the purposes of quorum for the board meeting.	(1) Due to advancement of technology, it is now possible to authenticate the meeting held through video conferencing or other electronic mode and the same is also recognised in Information Technology Act, 2000. Accordingly, physical participation as well as participation through video conferencing mode may be recognised equally. (2) In case proviso, is not deleted, then the substantive law should provide for the matters which cannot be dealt with in a meeting through video conferencing or other electronic means.	**It may be specifically provided that matters listed out in sub-section (3) of section 159 shall not be dealt with in a meeting through video conferencing or other electronic means with power to the Central Government to specify by notification further matters which shall not be dealt with in a meeting through video conferencing or other electronic means.** **Further even in respect of these matters, director should be allowed to participate through video conferencing or other electronic mode but their participation through video conferencing or other electronic mode should not be counted for the purposes of quorum for the board meeting.**
155(3) – Quorum for Meetings of Board	Reference to public holiday in clause 155(3) should be suitably corrected or substituted by national holiday.	Clause 155(3) provides that where a meeting of the Board could not be held for want of quorum, then the meeting shall stand adjourned and the adjourned meeting shall not be held on a public holiday. Since Annual General Meeting can be held even on a public holiday (and not on a national holiday) reference to public holiday in Clause 155(3) should be suitably substituted by national holiday.	155(3) Where a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a **national** holiday, till the next succeeding day, which is not a **national** holiday, at the same time and place.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
156(1) – Passing of resolution by circulation	There should be a power to the prescribed number of directors to require that any resolution under circulation should be decided at a meeting and in that event the resolution should be withdrawn from circulation. Therefore, a proviso to this effect may be added to clause 156(1)	While passing resolution by circulation, the directors do not get an opportunity to deliberate the matter and can only accept or reject the resolution. Therefore, if one third of the directors feel that the matter needs deliberation and therefore should be dealt at a meeting of the board, they should have the power to request for withdrawal of the resolution from the circulation.	**Provided that, where not less than one third of total strength of the board require that any resolution under circulation should be decided at the meeting, the resolution shall be withdrawn from circulation and the question shall be decided at the meeting of the board.**
159(2) – Power of Board	With a view to provide harmonious reading of sub-clause (2) with first proviso to sub-clause (1), the word 'resolution' may be replaced with 'regulations' and the clause may be redrafted.	For harmonious reading of sub-clause (2) with first proviso to sub-clause (1)	No **regulation made** by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that **regulation** had not been **made.**
163(1) – Loan to Director	The clause may be redrafted	It is necessary that relatives or other entities where the directors are interested should be specifically mentioned in the clause itself.	**"No company shall, directly or indirectly, advance any loan to any of its directors or their relatives or other persons where he is interested or give any guarantee or provide any security in connection with a loan taken by him or such other person or entity".**
164 (10) – Loan and Investment by Director	1. The words "or of" may be inserted in sub-clause (a)(i) in between the words 'companies' and 'providing'.	Drafting error	(a)(i) a banking company … … engaged in the business of financing of companies **or** of providing infrastructure facilities (b)(i) made by a company whose principal business is the acquisition of securities.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	2. Sub-clause (10)(b)(i) may be redrafted as suggested.	Better drafting.	
165 – Investments of Company to be held in its own name	The extant provisions of section 49 inter alia provide exemption from the application of the section to investments made by a company whose principal business consists of the buying and selling of shares or securities. This exemption is not provided in Clause 165.		
167 (1) – Register of contracts or arrangements in which Directors are interested	The provisions of Clause 167 do not specify whether the register is required to be placed at the meeting of the Board of directors held after the contract is entered and whether the register should be signed by all the directors, as is provided under section 301 of the Companies Act, 1956.	To bring transparency.	Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 162 applies, including such particulars and in such **manner as may be prescribed and register shall be placed before the next meeting of the Board and shall then be signed by Chairman of the meeting on behalf of all the directors present at the meeting.**
174(3) – Appointment of Managing Directors, Whole Time Director and Manager	174(3) be deleted	The definition of manager specifically states that a manager means an individual	

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
174(4) – Appointment of Managing Directors, Whole Time Director and Manager	Sub-section (4) should be shifted to Section 178	As this clause relates to all key managerial personnel, it should find place in section 178	
174(5) – Appointment of Managing Directors, Whole Time Director and Manager	It is suggested that the requirement of unanimous consent of the directors may be altered to majority consent and the approval of shareholders may be allowed by means of an ordinary resolution instead of special resolution.	The requirement of unanimous consent of directors and special resolution may act as an impediment the process of appointment, therefore, majority approval of the board and ordinary resolution by the members may be provided in the Bill.	(5) A managing director, whole-time director or manager shall be appointed by the Board of Directors at the meeting of the Board which shall be subject to approval at the next general meeting of the company.
175(1) – Remuneration of Managerial Personnel	In sub-section (1), for the word "monthly", the word "periodical" may be substituted.	Company should have the option to pay the incumbent for any period rather than strictly on monthly basis.	A managing or whole-time director or a manager of a company may be paid remuneration either by way of a periodical payment or at a specified percentage of the net profits of the company, computed in the manner prescribed or partly by periodical payment and partly by the percentage of net profits.
175(1) – Remuneration of Managerial Personnel	It has been proposed that the net profits of the company for the purposes of remuneration of managerial personnel shall be computed in the manner prescribed. It is suggested that the manner of computing net profits should form part of substantive law.		

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
176(1)(b) – Remuneration payable to Director	One of the form of remuneration to non-executive Directors could be payment in form of 'stock option'. Accordingly, the provision should be made in the section.	'Stock option' is not there for the purpose of payment as remuneration in the Bill. Hence proposed.	(b) profit related commission or **stock options** with the prior approval of members in general meeting by a special resolution.
Clause 178 (1) – Appointment of Key Managerial Personnel	The Bill may be specific in respect of the class or description of companies which shall be required to have whole time key managerial personnel. It is suggested that every listed company and every other company having paid-up share capital of Rupees Five crores or more should mandatorily be required to employ whole-time key managerial personnel.	There should be clarity in the substantive law itself in respect of the companies which are required to have whole-time Key Managerial Personnel so that the prospective promoters, whether foreigner or Indian, can make informed decision regarding the kind of company they should incorporate. The existing Companies Act provides for compulsory appointment of managing director or whole-time director and company secretary in companies having paid-up share capital of rupees five crores or more. Clause 2(zzzg) of the Bill defines small companies as companies having paid-up capital not exceeding rupees five crores. In order to ensure better governance of companies which are not small companies, appointment of key managerial personnel may be made compulsory. Once a company is formed under the Companies Act, it is bound to be governed by all the applicable laws, rules and regulations viz. company law, competition law,	Every listed company and every other company having paid-up share capital of five crore rupees or more shall employ whole-time key managerial personnel

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
		economic laws, securities and capital market laws, consumer protection law, industrial and labour laws, pollution control laws, foreign exchange legislations etc. A need is therefore, felt to ensure compliance of all the laws which are attracted to a company, in letter and spirit. Appointment of a company secretary and other Key Managerial Personnel in companies having paid-up share capital of rupees five crores or more would lead to a system which would ensure compliances through better responsibility.	
Clause 178 (3) Proviso– Appointment of Key Managerial Personnel	1. The requirement to obtain permission of the 'company' under this clause may be replaced with permission of the 'Board' 2. A transitional provision may also be provided in the Bill		Proviso to sub-clause (3) Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the **Board.**
Clause 178 (5) – Appointment of Key Managerial Personnel	There should be a minimum compulsory fine as provided in the scheme of the Act. Further, it is a continuing default, and therefore, the penalty should be on a daily basis also.		(5) If a company fails to comply with any of the provisions of this section, the company and every officer of the company who is in default shall be punishable with fine **which shall not be less than five hundred rupees but which may extend to one thousand rupees for every day during which the default continues.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
194 – No suit or proceeding till submission of final report	Section 194 seeks to provide that no suit or proceedings shall lie in any court or tribunal or other authority in respect of any action initiated by the Central Government for making an investigation or for appointment of any inspector in this regard and no proceedings of an inspection shall be called in question or stayed by any Court or Tribunal or any authority till such investigation report is submitted. This section may be reconsidered as it may not be legally tenable particularly when the Central Government has ordered an investigation into the affairs of the company pursuant to its power under sub-section (1) of section 183.	The existing provision in the Bill denies constitutional rights, hence may be reviewed.	
201(4) – Power to Compromise or make arrangements with creditors and members	As per sub-clause (4) of clause 201, the notice of meeting shall indicate that the persons to whom the notice is sent shall intimate in writing their consent to the adoption of the		

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	compromise or arrangement within one month from the date of receipt of such notice. The significance of this provision is not clear, as the section requires that a meeting be held to seek approval of the members or creditors. Perhaps, the section needs to be redrafted to mean that if written consent is received from the requisite number of members or creditors, the requirement to hold a meeting could be dispensed with.		
201(5) – Power to Compromise or make arrangements with creditors and members	1. In Section 201(5) the words "and such other authorities" may be substituted by the words "such Sectoral regulators". 2. As per the Competition Act, 2002 a period of sixty days is allowed to the Competition Commission of India to respond, therefore, a period of one month allowed for representation does	The reference to such other authorities appears to be vague. The company may find it difficult to identify such authorities. With a view to ensure clarity it is felt that the notice should be sent to concerned sectoral regulators.	

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	not match with the Competition Act, 2002. The mis-match may accordingly be rectified.		
213(2)(d) – Powers of Tribunal	The word "allotment of shares" be also included here.	Restrictions as mentioned in the clause must be for both transfer of shares and allotment of further shares.	2(d) Restriction on transfer of shares or **allotment of further shares** of the Company
213(2)(f) Proviso – Powers of Tribunal	The consent required under the proviso to sub-clause (2)(f) should be related to agreements referred to in sub-clause (f) only, not to the agreements referred to in sub-clause (e)	Consent of Managing Director, any other director or manager is obviously not required.	2(f) Provided that no such agreement referred to in clause (f) shall be terminated, set aside or notified except after due notice and after obtaining the consent of the party concerned.
218 – Valuation by Registered Valuers	1. The word "or any other assets" be added after the word "goodwill". 2. The word "liabilities" should be included after the word "net worth of the Company".	In case of business valuation, all the assets & liabilities, are required to be valued.	Where under any provision of this Act, valuation is required to be made in respect of any property, stocks, shares, debentures, securities, goodwill **or any other assets** (hereinafter in this Chapter referred to as assets) or net worth and **liabilities of the company** or its assets, it shall be valued by a person registered as valuer under this Chapter and appointed by the audit committee or in its absence by the Board of Directors of that Company.
219(1)	The professional details of the person to be appointed as Registered Valuer must be included in the Register to be maintained by the Central Government and	By virtue of this, the Professional Institution, will be able to clarify about any disciplinary action or any other action taken and/or continuing on the concerned professional.	The Central Government shall maintain a Register to be called as Register of Valuers in which the names and addresses of the persons registered under sub-section (2) as valuer **after verifying the same from the Council of the governing Institute or such authority as may be nominated by the**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	his professional credential must be approved by the concerned Professional Institution.		**Central Government, in this behalf.**
220(1)	The composition of the expert committee may be specified in the Bill with nominee of each of the governing Institutes		
224(1)(c) – Power of Registrar to remove name of a company from register	Reference should be made to **section 414** in place of section 413.	To remove clerical error.	(c) a company is not carrying on any business or operation for a period of one year and has not made any application within such period for obtaining the status of a dormant company under section *414*.
224(1) – Power of Registrar to remove name of a company from register	The word ' **of a period not less than 30 days**' may be added after the words, 'he shall send a notice'.	It is desirable to have a specific time period allowing the company to file its reply to the ROC.	(1) he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period ***of 30 days from the date of*** the notice.
224 (1) (C) – Power of Registrar to remove name of a company from register	The words 'one year' after the words 'for a period' may be replace by 'two financial years'.	One year is too a short period to decided about the removal of name by the Registrar therefore it should be increased to two financial years. This will remove the inconsistency also with the Clause 414 (1) which states that application for dormant company may be made by an inactive company only after 2 years of inactivity.	224(1) (c) a company not carrying on any business or operation for a period of **two financial years** and has not made any application for obtaining the status of a dormant company under section 414.
224(2) – Power of Registrar to remove name of a company from register	The words, 'paid-up' may be added after the words, 'in terms of'.	To remove confusion and bring clarity.	(2) Without prejudice to the provisions of sub-section (1), a company by a special resolution or consent of seventy-five per cent. members in terms of ***paid-up*** share capital may also file an application in the prescribed manner to the Registrar for

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			removing the name of the company from the register on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:
225(1)(a) – No application under Section 224 in certain circumstances	After the words, 'has changed its name', the words "or shifted its registered office from one state to another", may be added.	This may be done to protect the interest of stakeholders.	(a) has changed its name **or *shifted its registered office form one state to another.***
240(1) – Winding up of Company on report of company administrator	After the words, 'report to the Tribunal', the words, "within 15 days" may be added.	There should be a time limit within which the company administrator shall submit his report to the tribunal.	If the scheme is not approved by the creditors in the manner specified in sub-section (2) of section 237, the company administrator shall submit a report to the Tribunal **within 15 days** and the Tribunal shall order for the winding up of the sick company.
246 2(a) – Circumstances in which a company may be wound up by Tribunal	The clause may be suitably redrafted	Drafting suggestion	A company shall be deemed to be unable to pay its debts,— (a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has **for twenty one days failed to pay or neglected to pay** the sum after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;
246(2) –	After the clause (c), the	The company should be considered as	(d) if the company fails or neglects to pay debenture

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
Circumstances in which a company may be wound up by Tribunal	following clause (d) be added: (d) if the company fails or neglects to pay debenture holders the interest or redemption money for consecutive **four installments** or for a period of two years.	unable to pay debts if debenture holders are not paid.	holders the redemption money or interest for consecutive **four installments** or for a period of two years.
246 (2)(c) – Circumstances in which a company may be wound up by Tribunal	After the word, 'prospective liabilities' the words, **'and assets'**, be added.	The Court/Tribunal to look into both liabilities and assets.	(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities **and assets** of the company.
247(1)(b) – Petition for winding up	The words, 'contingent or prospective' be deleted.	How can contingent and prospective creditor can file winding up petition. Since such creditors have no financial exposure as per record.	**(b) any creditor or creditors,**
247(1)(g) – Petition for winding up	The clause needs correction as the words 'clause (d)' appearing between 'under' and 'of' should be substituted with the words 'clause (c)'	It will make this clause compatible with clause 246(1).	(g) in a case falling under **clause (c)** of sub-section (1) of section 246, by the Central Government or a State Government.
247(4) – Petition for winding up	The power under sub-section (4) be confined to 246(1) (a) (c), (e), (f) only.	(b) and (g) fall within the prerogative of the company and the tribunal respectively, there is no reason as to why ROC should file petitions on these grounds.	(4) The Registrar shall be entitled to present a petition for winding up under sub-section (1) on any of the grounds specified in sub-section (1) of section 246, except on the ground specified in clause (b), (d) and (g) of that sub-section.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
247(4) third proviso – Petition for winding up	In third proviso, after the word, 'making representations' the word, 'and personal hearing' be added.	The opportunity of giving personal hearing should also be given to the company.	Provided also that the Central Government shall not accord its sanction under the preceding proviso, unless the company concerned has been given a reasonable opportunity of making representations **and personal hearing**.
247(5) – Petition for winding up	The clause may be suitably re-drafted	Drafting suggestion	(5) A petition filed by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.
247(6) – Petition for winding up	This sub-clause may be deleted in view of deletion of the words "including contingent or prospective creditor or creditors" from the clause 247(1)(b).		
248(1)(b) – Power of Tribunal	The clause may be redrafted to make the powers of the Tribunal explicit.	Drafting suggestion.	(b) make any interim order as it thinks fit **including in respect of –** **(i) preservation or custody of any goods, assets or property of the company;** **(ii) securing the amount'** **(iii) preservation or inspection of any property or thing which is the subject matter of winding up petition.** **(iv) injunction or appointment of receiver or local commissioner;** **(v) directing the company or its promoter**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			or managing director to furnish bank guarantee, corporate guarantee, security or indemnity and (vi) **such other interim measures as may appear to the Tribunal to be just and appropriate.**
248(2) – Power of Tribunal	The clause may be suitably redrafted.	Drafting suggestion	(2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some **alternative** remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the alternative remedy.
249(1) – Directions for filing Statement of Affairs	The clause may be suitably redrafted.	Drafting suggestion	249. (1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs **within thirty days of the order** in such form and in such manner as may be prescribed.
249(1) – Directions for filing Statement of Affairs	The second proviso may be provided for giving extension of time upto a further period of not exceeding 30 days in special circumstances.	Extension be granted in case the company may not be able to file within 30 days because the consequences are serious and therefore the additional time be allowed.	Provided further that Tribunal may **in special circumstances** extend the aforesaid period of time for period not exceeding 30 days.
250(2) – Company	The clause may be suitably	Drafting suggestion	(2) The provisional liquidator or the Company

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
Liquidator and their appointment	redrafted.		Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost and works accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost and works accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals and having at least ten years' experience in company matters and such other qualifications as may be prescribed.
250(3) proviso– Company Liquidator and their appointment	The word `the' may be added between the words `from' and 'panel'.	Drafting suggestion	Provided that the Central Government before removing him or it from **the** panel shall give him or it a reasonable opportunity of being heard.
250(4) – Company Liquidator and their appointment	The clause may be redrafted to provide clarity.	Drafting suggestion.	(4) The terms and conditions of appointment of a liquidator and the fee payable to him shall be specified by the Tribunal on the basis of task required to be performed, experience **and** qualification **of the liquidator** and size of the company.
250(5) – Company Liquidator and their appointment	The liquidator may be required to file the declaration within 15 days from the date of appointment.	It is necessary to provide a time limit. .	(5) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration **within 15 days from the date of appointment** in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
254(1) – Stay of suits,	After the word 'legal	To cover proceeding initiated by	254. (1) When a winding up order has been passed

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
etc. on winding up order	proceeding', the word 'no suit, adjudication proceeding or execution proceeding against the company or its directors or officers' be added.	revenue authorities.	or a provisional liquidator has been appointed, no suit or other legal proceeding **or adjudication proceeding or execution proceeding, against the company, its directors or officers** shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:
255(a) – Jurisdiction of Tribunal	Clause (a) should be reworded as: (a) any suit or proceeding or action by or against company.	To enlarge the scope of power of tribunal to avoid harassment and inconvenience to liquidator in pursuing the matter at different forum.	(a) any suit or proceeding **or action** by or against the company;
255(e) – Jurisdiction of Tribunal	Clause (e) should be reworded as: (e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company.	To enlarge the scope of power of tribunal to avoid harassment and inconvenience to liquidator in pursuing the matter at different forum.	(e) any question of priorities or any other question whatsoever, whether of law or fact **including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to**, winding up of the company,
256(1)(a) – Submission of Report by Company Liquidator	After the word, 'assets', the word, 'tangible, intangible, moveable or immoveable', be added.	To define inclusively the term assets	(a) the nature and details of the assets **tangible, intangible, moveable or immoveable** of the company including their location and value, stating separately the cash balance in hand and in the bank,

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			if any, and the negotiable securities, if any, held by the company.
256(1)(c) – Submission of Report by Company Liquidator	After the word, 'contingent liabilities', the word 'including statutory liabilities' be added.	To make it more clear.	(c) the existing **liabilities inclusive of statutory and contingent liabilities** of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given.
256 (3) – Submission of Report by Company Liquidator	**The following proviso may be added to this sub-clause:** **Provided that the Company Liquidator may with the sanction of the Tribunal appoint one or more practicing Chartered Accountants, practicing Company Secretaries or practicing Cost and Works Accountants or Advocates or such other professionals from a panel maintained by the Central Government as he may consider necessary to assist him in the preparation of the report.**		**Provided that the Company Liquidator may with the sanction of the Tribunal appoint one or more practicing Chartered Accountants, practicing Company Secretaries or practicing Cost and Works Accountants or Advocates or such other professionals from a panel maintained by the Central Government as he may consider necessary to assist him in the preparation of the report.**
257(1) – Directions of Tribunal on Report of Company Liquidator	In Proviso to 257(1), after the word, 'contributories', the words, 'or any other interested person', be added.	To protect the interests of any other interested person.	Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors, or contributories or

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.
257(2) – Directions of Tribunal on Report of Company Liquidator	The words 'or any other interested person' be added after the word 'contributories'.	To protect the interests of any other interested person.	(2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors**,** or contributories or **any other interested person**, order sale of the company as a going concern or its assets or part thereof.
257(3) – Directions of Tribunal on Report of Company Liquidator	The words, 'or direct the Company Liquidator to file a criminal complaint against person who were involved in the commission of fraud' may be added after the word, 'under section 314 to 317'.		(3) Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 183, and on consideration of the report of such investigation it may pass order and give directions under sections 314 to 317 **or direct the Company Liquidator to file a complaint against person who were involved in the commission of fraud.**
257(5) – Directions of Tribunal on Report of Company Liquidator	The clause be reworded as under: The Tribunal may pass such order or give such other directions or appoint any professionals, agency or entity, on payment of such remuneration or fees and confer such powers or authorizations, as the Tribunal may deem fit and	To enlarge the scope.	**(5) The Tribunal may pass such order or give such other directions or appoint any professionals, agency or entity, on payment of such remuneration or fees and confer such powers or authorizations, as the Tribunal may deem fit and proper, in connection with or in relation to the work of winding up or revival of the company.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	proper, in connection with or in relation to the work of winding up or revival of the company.		
262(1) – Committee of Inspection	• Heading for the clause may be reworded as 'Advisory Committee' instead of 'Committee of Inspection'. • In sub-clause (1) of clause 262, the words 'of inspection' may be deleted. • In sub-clauses (2), (3), (4) and (6) **'a committee of inspection'** may be replaced by 'an Advisory Committee'.	Since the function assigned to the Committee is to advise the company liquidator, therefore to reflect the function, the heading should be reworded.	**Advisory Committee** 262. (1) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, a committee for the company to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct. (2) A **Advisory** committee appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct. (3) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the **Advisory** committee. (4) The **Advisory** committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time. (6) the meeting of the Advisory Committee shall be chaired by the company liquidator.
264(1) – Power of Tribunal on	A coma may be added after the words 'winding	Promoter shareholder may also make application for revival of Company, he	(1) The Tribunal may, at any time after making a winding up order**,** on an application of **promoter**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
application for Stay of winding up	up order' The words, 'promoter shareholders' be added after the words, 'on an application of'.	may also be included in the parties making application to Tribunal.	**shareholders,** creditors or any other person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided by staying the proceedings for such time but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit.
Proviso to sub-clause (1) of clause 264– Power of Tribunal on application for Stay of winding up	In proviso to 264(1), all the words, appearing after the words, 'a scheme for rehabilitation' may be deleted.	Approval from creditors should not be taken at the time of filing the revival application. Taking approval from 3/4th creditors may be practically difficult (there may be many creditors scattered of different places, mind set of creditors is different, difficult to convince etc.) They have the opportunity to put their point at the time of proceedings.	**Provided that an order under this sub-section shall be made by the Tribunal only on an application made to it enclosing a scheme for rehabilitation.**
265(1)(a) – Power and Duties of Company Liquidator	The words, 'either through himself or through agents' may be added after the words, 'business of the company'.	Since the Company Liquidator may do the business of company through duly appointed agents also, the suitable provision is required in the clause.	(a) to carry on the business of the company, **either through himself or through agents** so far as may be necessary for the beneficial winding up of the company;
265(1) (e) – Power and Duties of Company Liquidator	The words, 'any money required' should be moved between the words 'to raise' and 'on the security of the assets'.	Drafting suggestion.	e) to raise **any money required** on the security of the assets of the company.
265(1) (g) – Power and Duties of Company Liquidator	The clause may be reworded as, 'to invited and settle various claims of creditors, employees or	Employees and other claimants may be added in the parties whose claims should be settled.	(g) to invite and settle **various** claim**s** of creditors**, employees or any other claimant** and distribute sale proceeds in accordance with priorities established by this Act.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	any other claimant and distribute sale proceeds in accordance with priorities established by this Act.		
265(1) (j) – Power and Duties of Company Liquidator	The words, 'Negotiable instruments including cheque' may be added after the words, 'and endorse any'. The words, 'the bill, hundi or note' may be replaced by 'such documents'.	Negotiable Instruments may be added along with bill of exchange, promissory note in the clause.	(j) to draw, accept, make and endorse any **negotiable instruments including cheque,** bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if **such documents** had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
265(1)(l) – Power and Duties of Company Liquidator	The words, 'from any person or appoint any professional, in discharge of his duties, obligations and responsibilities' may be added after the words, 'to obtain any professional assistance'.	To bring clarity, it is suggested that professional assistance may be obtained from any professional. Also any person may be appointed for discharging the functions by Company Liquidator.	(l) to obtain any professional assistance **from any person or appoint any professional, in discharge of his duties, obligations and responsibilities** and for protection of the assets of the company appoint an agent to do any business which the Company Liquidator is unable to do himself.
265(1)(m) – Power and Duties of Company Liquidator	The sub-clause (m) may be reworded as, '(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary :- (i) for winding up of the company, (ii) distribution of assets; and (iii) in discharge of his	The words suitable and covering each aspect is suggested.	**(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary :-** **(i) for winding up of the company,** **(ii) distribution of assets; and** **(iii) in discharge of his duties and obligations and functions as Company Liquidator.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	duties and obligations and functions as Company Liquidator.'		
265(3) – Power and Duties of Company Liquidator	The word, 'other' may be added between the word, 'such' and 'duties'.	To bring more clarity and to widen the scope.	(3) Notwithstanding the provisions of sub-section (1), the Company Liquidator shall perform such **other** duties as the Tribunal may specify in this behalf.
266(1) – Provision for professional assistance to company liquidator	The words, 'on such terms and conditions' may be added after the words, 'or such other professionals'.	The terms and conditions should be clear at time of appointment of professional by the Company Liquidator.	266. (1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals, **on such terms and conditions,** as may be necessary to assist him in the performance of his duties and functions under the Act.
274(2) – Power to summon persons suspected of having property of company, etc.	The words, 'or on affidavit' may be added after the words, 'on written interrogatories'.	It is felt that 'affidavit' be made lawful for examining any officer.	(2) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, **or on affidavit** and in case of examination by word of mouth may, reduce his answers to writing and require him to sign them.
274(5)(b) – Power to summon persons suspected of having property of company, etc.	'a person is possessing' may be replaced with 'a person is in possession of'.	Suitable wording are suggested.	(b) a person is **in possession of** any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Tribunal may consider just.
275(1) – Power to order examination to promoters, directors, etc.	The words, 'in the promotion or formation of the company', or by any officer of the company in	Fraud may be committed after formation of the company, during its management. Hence, it is suggested to include management also. Further,	275. (1) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	relation to', be replaced with, 'in the promotion, formation, business or conduct of affairs of the company in relation to'.	there is no need to give 'by any officer of company' when already 'any person' is mentioned which is very wide.	fraud has been committed by any person in the **promotion, formation**, **business or conduct of affairs** of the company in relation to the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.
275(7) – Power to order examination to promoters, directors, etc.	The words, 'a copy be supplied to him' may be added after the words, 'the person examined'.	To make the provision for supplying the copy of examination to the person examined, it is suggested to include these words in the clause itself.	(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, **a copy be supplied to him** and may thereafter be used in evidence against him, and shall be open to the inspection by any creditor or contributory at all reasonable times.
276(a) – Arrest of persons trying to quit India or abscond	The words, 'to be arrested and kept in custody' may be deleted and in its place the words, 'may be detained' should be added.	It is very harsh on the contributory to be arrested without any proof of default. So, it is suggested instead of arresting the person, he may be detained.	(a) the contributory **may be detained** until such time as the Tribunal may order; and
279(b) – Circumstances in which Company may be wound up voluntarily	The clause 279(a) may be deleted and clause 279(b) may be redrafted.	Sub-clause (b) is adequate enough to take care of all the relevant situations. This sub-clause has been enlarged to cover the genuine circumstances, as an independent clause.	**A company may pass a Special Resolution for voluntary winding up provided that it proposes to close down its business, for whatever reasons, but not with any fraudulent intentions, if it has –** **(a) no debts ; or** **(b) debts, but adequate assets to pay in full; or** **(c) inadequate assets to pay the debts in full.**
280 – Declaration of Solvency in case of	This clause may be	Importantly, a declaration of solvency has been done away with; it is, indeed,	(1) Where it is proposed to wind up a company voluntarily in any of the circumstances stated in

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
proposal to windup voluntarily	redrafted.	not appropriate to seek a declaration of solvency from a company which is facing a prospect of winding up. Moreover, this approach shall be appropriate in the wake of clubbing the existing two types of voluntary winding up i.e., members and creditors and introducing only 'voluntary winding up'. In the event of partial payment to the creditors, it has been suggested to get a draft of a scheme of compromise with the creditors attached to the declaration. This will ensure commercial harmony between the company and its creditors who are financial backbones of the company in the present economic scenario. The entire clause may be re-drafted, keeping in mind simplification, using the understandable language and prioritising the creditors' interest over the members' interests.	section 279, the Board shall make a declaration to that effect, in the prescribed form, supported by : (a) a report of the valuation of assets duly certified by a registered valuer; (b) a statement of financial position of the company and the list of creditors containing their addresses, outstanding amount payable, description of the outstanding with an explanatory statement as to why it has remained unpaid. (both secured and unsecured); (c) a draft scheme of the compromise with the creditors in the cases of partial payment to them; **(d)** A balance sheet and profit and loss account commencing from the next date of the last audited balance sheet and profit and loss account, ending to the practicable date immediately before the Board meeting **accompanied by a copy of the report of the auditors of the company that the same has been prepared in accordance with the provisions of this Act; and** (e) a declaration that the company is not being wound up to defraud **minority shareholders, creditors or any other person concerned or interested in the affairs of the company.** (2) The director or directors, who attended the Board meeting for consideration of the proposal of the voluntary winding up, shall sign the declaration. (3) The declaration signed together with all the enclosures mentioned in sub-clause (1), shall be filed with registrar for registration, with an affidavit in

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			the prescribed form, within 10 days of the Board meeting. (4) The declaration so filed with the registrar shall have validity for thirty days from the date of filing with the registrar for the purpose of passing special resolution. (5) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full or in part from the proceeds of assets sold in the voluntary winding up shall be punishable with a imprisonment for a term which shall not be less than three years but which may extend to five years or with a fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.
281 – Meeting of Creditors	When a company is facing a voluntary winding up, it is desirable that the member and the creditors should sit together face to face in order to thrash out issues affecting their interests. Nothing wrong in holding a joint meeting of members and creditors. This process will not only create an atmosphere of harmony between the members and the creditors but would also save considerable time and cost.	The secured creditors may be invited to participate in the joint general meeting for a healthy interaction with the members and unsecured creditors relating to voluntary winding up and draft scheme of compromise with the creditors, if any.	**Clause 281** **Joint meeting of the members and the creditors**. (1) Where a company has the creditors, either they may be paid in full or part, the company shall convene a joint general meeting of its members and creditors, by serving on them a notice by any one of the following modes - (a) registered post, (b) electronic mode, (c) hand delivery. (2) The proposed joint general meeting shall be given a wide publicity by the way of advertisement at least in one Vernacular or English daily newspaper published or

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	In this light, the clause need to be redrafted		circulated in a district where the registered office is situated. (3) The special resolution for voluntary winding up and the scheme of compromise with the creditors in the case of partial payment to them, shall be passed by (a) the members holding not less than seventy-five percent of the voting rights and (b) the creditors, not less than two-thirds in value, present at the meeting. Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and any director or directors who are in default shall be punishable with imprisonment for a term may which extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both.
Two New Sub-clauses 281(6) & 281(7)	**In order to revive companies in voluntary winding up, two new clauses have been suggested. These clauses have been segregated into pre-revival and post revival provisions.**	**A company has always a sentimental value to the promoters. To enable them (promoters) to change their outlook, it is suggested to have a provision for revival of a company in voluntary liquidation. This kind of provision shall soften their sentiments for perpetuity of the company. If there is a provision enabling them to revive the company even after process of voluntary winding up has been initiated at any point of time, if the situation improves, it shall definitely**	**281 (6)** **(a) Where a company has been wound up voluntarily and a company liquidator has been appointed, the members or creditors of the company or both, may, revive the company in the manner provided herein.** **(b) The members or creditors or both as the case may be shall prepare a scheme of revival in the format to be prescribed and deliver it to the company liquidator along with a deposit of one-third of the total value of the revival scheme by a demand draft.** **(c) Within thirty days of the receipt of scheme**

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		encourage them to review it. At present there is a provision for revival of a company under section 494. This requires Court's intervention for any company either being wound up by Court or by members/creditors. **Since an attempt has been made to popularise the concept of voluntary winding up, it can be still made more attractive by incorporating relevant provisions of revival of a company without intervention of the Court. Only the confirmation of the scheme has been suggested in order to ensure that the provisions have not been misused.**	**of revival of the company, the company liquidator shall have the scheme passed at a general meeting by not less than seventy five percent of the members and the creditors in two-thirds value present at the meeting.** **(d) If the scheme of revival has been approved by the requisite number of members and creditors, the liquidator shall, within a week, apply to the tribunal for confirmation of the scheme of revival.** **(e) The Tribunal shall, within thirty days, confirm or reject the scheme stating the reasons for such rejection and the company liquidator shall be at a liberty to appeal to the High Court against the order of the tribunal within sixty days.** **(f) If the scheme is not approved by the members as well as creditors in the manner provided in the sub-clause (3) hereof, or is not confirmed by the Tribunal as required, and the company liquidator does not desire to appeal, the company liquidator shall refund the deposit after deducting the expenses involved in the process of revival to the members or creditors, as the case may be.** **281(6)** **(a) Consequent upon confirmation of the scheme of revival by the Tribunal, the company liquidator shall be required -** **(i) to file order passed by the Tribunal confirming the scheme of revival with the registrar of companies within fifteen days of receipt of such order,**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			(ii) to advertise within fifteen days in the official gazette, one Vernacular and one English news paper, published or circulated in the district, where the registered office of the company was situated at the time of winding up, **(iii) to call a general meeting of the members, within a 30 days to elect Board of directors to whom the company liquidator shall handover the company with the assets and records,** **(iv) to present a statement on the winding up of the company in the prescribed form, from the date of receipt of the scheme of revival to the date of issuing notice of the general meeting of the members, duly certified by a Company Secretary in practice or by a Chartered Accountant in practice or by a Cost Accountant in practice.** **(b) Upon conclusion of the general meeting called by the company liquidator it shall be deemed that-** **(i) the company has been revived;** **(ii) the company liquidator has relinquished his office by the operation of law; and** **(iii) the bank account/s, if any, stand transferred to the name of the company and the operation of such accounts shall be continued by the directors in a manner as resolved at the Board meeting and the Company Liquidator shall file a certificate to that effect before the Registrar of Companies in the prescribed form.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
284 – Effect of voluntary winding up	Following proviso may be added 'Provided that the corporate state and corporate powers of the company shall continue until it is dissolved'.	Proviso in section 487 of the Companies Act, 1956 appears to be relevant, and therefore suggested to be added in Clause 284.	**Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.**
285(4) – Appointment of company liquidator	The words, 'within one week of appointment' may be added 'after the words, a declaration in the prescribed form'.	Time frame for disclosing conflict of interest by the Company Liquidator be provided. It is suggested that one week's time be provided for such disclosure.	(4) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form **within one week of appointment** disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.
337(1) – Sale of Assets and Recovery of Debts due to company	The words 'whether movable or immovable' should be added after the words 'all the assets'	It will provide more clarity	337(1) The Official Liquidator shall expeditiously dispose of all the assets **'whether movable or immovable'** within sixty days of his appointment
338(1) – Settlement of claims of creditors by official liquidator	The words, 'of his appointment' should be added after the words 'within thirty days'.	In this clause, the official liquidator within thirty days shall call upon the creditors. Now, within thirty days of what, is not stated.	338. (1) The Official Liquidator within thirty days **of his appointment** shall call upon the creditors of the company to prove their claims in the manner prescribed within thirty days of the receipt of such call.
342(1) - Document, etc. to be delivered to Registrar by foreign company	Instead of thirty days, a period of ninety days shall be provided.	Sufficient time should be given to the foreign company for delivering documents to the Registrar.	(1) Every foreign company shall, within **ninety** days of the establishment of its place of business in India, deliver to the Registrar for registration—
347 - Fee for registration of document	After the words, 'such fee', the words, "**and with additional fee, if any**" may be deleted.	To remove any confusion and bring clarity.	There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
349(1) (iii) – Dating of Prospectus and particulars to be contained therein	After the words, 'English language', the words " can be inspected " may be added.	To make the sentence complete	Address in India where the said instruments, enactments or provision, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language ***can be inspected*** ;
366 (3) – Power of Central Government to direct company to furnish information or statistics	The word 'that' should be replaced by "the" in the last line.	Correction of clerical mistake	For the purpose of ……..such further information as ***the*** Government may consider necessary.
367 (1) – Power to modify Act in application to Nidhis	Nidhis need to have same recognition and status like other separate identifiable companies viz., producer company, companies with charitable objects and there is no need for the Central Government to notify Nidhi Company separately. Further, such a Nidhi Company should be regulated by rules as may be prescribed by the Central Government.	1. In order to avoid the existence of potentially Nidhi companies and Mutual benefit company enjoying the same benefits as Nidhi companies at the same time escaping the monitoring of Central Government since not being covered by notification. 2. To avoid mushroom growth of unregulated sector as benefit fund neither as NBFC nor as Nidhi and to curb and regulate such companies' *abinitio* at the time of incorporation itself. 3. Instead of notification, prudential norms like regulating acceptance of deposits, loan structure, rate of interest, Net owned funds, ceiling of loans etc., should form part of the rules as may be prescribed by the Central Government with a view to effectively monitor this sector.	**"**Nidhi means a company incorporated with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit and containing such regulations in its articles as may be prescribed.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
367(2) – Power to modify Act in application to Nidhis	The words " to any Nidhi" at the end may be replaced by " to any Nidhi or Nidhis of any class or description as may be specified in that notification".	In view of the proposed changes in Clause 367 (1), this is a consequential amendment proposed in Clause 367 (2).	Save as otherwise expressly provided, the Central Government may, by notification , direct that any of the provisions of this Act shall not apply, or shall apply with such exception, modification and adaptation as may be specified in that notification, to any Nidhi **or Nidhis of any class or description as may be specified in that notification.**
367(3) – Power to modify Act in application to Nidhis	This clause may be deleted	Since no separate notification is required under clause 367 (1), therefore this clause is not required and hence may be deleted.	
367(4) – Power to modify Act in application to Nidhis	This clause may be renumbered as 367 (3)	Since clause 367(3) is proposed to be deleted , hence clause 367 (4) may be renumbered as 367 (3).	
370(3)(c)(d)(e) & (f) – Qualifications of President and members of Tribunal	(i) The clause 370 (3) (c) (d) (e) & (f) be amended to reduce the number of years of experience from twenty to fifteen years. (ii) In sub-clause (f), the words "Corporate Affairs" may be added.	Fifteen years experience should be considered adequate for appointment of a person as technical member of NCLT. The Competition Act, 2002 also required fifteen years of experience for a person to be appointed as Chairperson or member of Competition Commission of India. Experience in 'Corporate Affairs' is directly relevant and suitable for the position of technical member.	Clause 370 (3) (c) (d) (e) & (f) should be redrafted as under : (c) is or has been in practice as Chartered Accountant for atleast **fifteen** years ; or (d) is or has been in practice as a Cost Accountant for atleast **fifteen** years; or (e) is or has been in practice as a Company Secretary for atleast **fifteen** years; or (f) is a person of ability, integrity and standing having special knowledge and experience, for not less than fifteen years, in law, finance, **corporate affairs**, banking management, industrial administration, economics, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
372 (3) – Qualifications of Chairperson and members of Appellate Tribunal	The word "Corporate Affairs" may be added.	Experience in 'Corporate Affairs' is directly relevant and suitable for the position of technical member.	Clause 37(2)(3) should be redrafted as under : (f) is a person of ability, integrity and standing having special knowledge and experience, for not less than twenty five years, in law, finance, **corporate affairs**, banking management, industrial administration, economics, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.
397(1)(b) – Offence Triable by special courts	Clause 397(1)(b) may be deleted.	The Bill aims to foster positive environment for investment and growth and to help sustain the growth of corporate sector. With such laudable objectives the provision for detention under Clause 397(1)(b) appears to be too harsh for corporate executives and employees. It is also felt that this provision is also amenable to misuse. It is therefore felt that clause 397(1)(b) may be deleted.	
402 – Composition of certain offences	To retain substantive provisions of Section 621A of the present Act. The power to compound any offence punishable under this Act , not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may be vested with the NCLT.	The Companies Law is a commercial legislation and therefore it has to have practical orientation. It should be entrepreneur friendly and encourage them to comply with law with convenience and cost effectiveness. The existing provisions contained in Section 621A of the Companies Act, 1956 are entrepreneur friendly and have been used frequently in practice to avoid lengthy and costly legal proceedings.	***(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the National Company Law Tribunal on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that the Tribunal may prescribe:*** ***Provided that the sum prescribed shall not, in any***

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
		Therefore, the substantive provisions of Section 621A should be retained in place of Clause 402 to ensure the effective administration of the Company Law.	***case, exceed the maximum amount of the fine which may be imposed for the offence so compounded*:** ***Provided further that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under clause 364 shall be taken into account.*** **(2)** ***Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.*** **Explanation.—***For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.*** **(3) (a)** ***Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon to the Tribunal.*** **(b)** ***Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.*** **(c)** ***Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by person authorised by the Central Government against the offender in relation to whom the offence***

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			is so compounded.
			(d) ***Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.***
			(4) ***The Tribunal while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under clause 364, such return, account or other document within such time as may be specified in the order.***
			(5) ***Any officer or other employee of the company who fails to comply with any order made by the Tribunal under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding fifty thousand rupees or with both.***
			(6) ***Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—***
			(a) ***any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;***

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
			(b) ***any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.*** **(7)** ***No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.***
409 – Punishment where no specific penalty or punishment is provided	The word continuing offence should be defined	An Explanation in the Law as to what constitutes a Continuing Offence and what does not constitute a continuing offence can limit the number of litigation for both Industry and the Government. The Supreme Court in *State of Bihar* v. *Deokaran Nenshi,* AIR 1973 (SC) 908, defined the term continuing offence.	**Following explanation may be added in Clause 409:** **Explanation:** **It is clarified that a continuing offence shall be one which involves a penalty and is susceptible of continuance and distinguishable from the one which is committed once and for all.**
410 – Punishment in case of repeated default	The punishment in respect of repeated default should be imposed if the same is repeated within a particular time period, which can be limited to a period of 3 years. Commission of the default after a period of 3 years should be treated a first time offence. It is suggested that this clause may be redrafted accordingly.	In the Companies Act, 1956, under the provisions of Section 621A, the company or any officer cannot compound an offence if similar offence is committed within a period of 3 years.	**"410.** In case a company or any officer who in default repeats the default **within a period of three years, from the date of first imposition of fine**, he shall be punishable imprisonment as provided, but in case of defaults for which fine is provided either alongwith or exclusive of imprisonment, with fine which shall be twice the amount of fine for such default. Provided that in respect of an officer who is in default, and in determining as to whether the offence is a repetition or not, the act or omission constituting the offence shall be construed in relation to the company wherein it is committed."
411 – Punishment for wrongful withholding of property	The power to complain should also vest with a Member of a Company and who has information	The suggested inclusion will act as a deterrent to persons from mis-appropriating property of the Company and also ensure that the	**"(1)** If any officer or employee of a company— (a) wrongfully obtains possession of any property, including cash of the company; or

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
	regarding wrongful withholding of property and/or cash. The refund of property cash should not only be restricted only to the property amount that has been wrongfully obtained / withheld / misapplied but should also include the benefits that have been derived from such property / cash that has been wrongfully obtained/ withheld / misapplied.	Company does not suffer due to wrongful acts. The Clause in its present form does not envisage refund of benefits derived from such wrongful withholding of property / cash and this may encourage persons to knowingly mis-appropriate cash and derive benefits there from and pay back only the principal.	(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or **of any member** or of any creditor or contributory thereof, be punishable with fine which shall be not less than one lakh rupees but which may extend to five lakh rupees. **(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund including the monetary value of the benefits derived from such property/cash wrongfully obtained or wrongfully withheld or knowingly misapplied, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default to undergo imprisonment for a term which may extend to two years."**
412 – Punishment for improper use of limited, private limited or OPC limited	This clause should provide for fine for the period to which the use of name or title continues.	The one time imposition of fine may not act as deterrent for preventing the unauthorised use of the word, Ltd., Pvt. Ltd., OPC Ltd. or any contraction/imitation thereof. It is a continuing offence.	If any person or persons trade or carry on business under any name or title of which the word "Limited" or the words "Private Limited" or the letters and word "OPC Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, be punishable for using that name or title with fine **which may extend to Rs. 5,000 for every day upon which that name or title has been used.**

Clause No.	*Suggestions*	*Justification*	*Suggested clause*
421 – Power to modify certain provisions of the Act in their application to private company, one person company and small company	The dormant companies should also be included in Clause 421.	Since a Company would be considered Dormant for certain specific purposes specified in the Clause it would be appropriate to include the dormant companies.	**Power to modify certain provisions of Act in their application to private company, Dormant Company, One Person Company and small company.** **(1)** Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of Chapters III, IV, VII and IX to XIII of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to private company, **Dormant Company**, One Person Company and small company or any of them.

CHAPTER
ON
CORPORATE GOVERNANCE

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Need for a Chapter on Corporate Governance

There is now a wider consensus that the companies with significant public interest should be more publicly responsible and be subjected to enhanced accountability and transparency. The trends in Company Law reforms in other parts of the world, exhibit this consensus amongst the law makers for example, The U.K. Companies Act, 2006 which came into force in 2007-08 lays down basic procedures and systems for the operation of a company in terms of social accountability. Unlike any previous law, the U.K. Companies Act, 2006 states that companies must now consider their impact on the community, employees and the environment. Publicly listed companies in UK are now required to report to their shareholders on their social and environmental risks and opportunities, as well as on employee matters and risks down the supply chains.

Similarly the Companies Act, 2008 of South Africa contains a separate chapter titled "Enhanced Accountability & Transparency" which is applicable to certain types of companies.

The complex environment in which companies operate and function today and the paradigm shift from shareholder theory to stakeholder theory has shaken the fundamental premise on which company legislations have been administered. This has paved the way for a wider and inclusive approach in formulation of company legislations.

In the light of this new thought process in formulation of company legislations, it felt that a separate chapter on Corporate Governance be incorporated in the principal legislation viz. Companies Bill, 2009 and be applicable to –

(a) Every listed company;

(b) Every Government Company; and

(c) Every other public limited company having such paid-up share capital as may be prescribed

It is suggested, that the Chapter should include the areas such as independent directors, Committees of the Board, Chairman and Managing Director to be different persons, Directors Remuneration Report, performance evaluation of directors, Development of Directors, Report on Impact Analysis of Related Party Transactions on Shareholders, Sustainability Report, Secretarial Audit, Report on Corporate Governance to ensure transparency Statements and documents to be placed on the website of the company etc.

CHAPTER ON CORPORATE GOVERNANCE

COVERAGE

- Independent Directors
- Chairman and managing Director to be different persons
- Committees of Board:
  - Audit Committee
  - Nomination and Remuneration Committee
  - Corporate Compliance Committee
  - Stakeholders Relationship Committee
- Directors' Remuneration Report
- Boards' Report to contain a statement on performance evaluation of directors
- Advance Directors' Development
- Report on Impact Analysis on Shareholders
- Sustainability Report
- Secretarial Audit
- Report on Corporate Governance
- Statements and documents to be placed on the website of the company

Sl.No.	Topic	Suggested Draft	Justification
1.	**Applicability of this Chapter**	**The provisions contained in this Chapter shall apply to :** (a) Every listed company; (b) Every Government Company; and (c) Every other public limited company having such paid-up share capital as may be prescribed.	Clearly, there is significant public interest in listed companies and government companies.
2.	**Independent Directors**	(1) Every company, to which this Chapter applies shall have at the least one-third of the total number of directors as independent directors.	

Sl.No.	Topic	Suggested Draft	Justification
		Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one. (2) Every company existing on or before the commencement of this Act shall comply with the requirements of the provisions of sub-section (1) within one year from the date of commencement of this Act. (3) "Independent director", in relation to a company, means a non-executive director of the company, other than a nominee director,— (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) who, neither himself nor any of his relatives— (i) has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or its promoters, or directors, amounting to *ten per cent or more of his consolidated gross revenue or receipts, excluding sitting fee*, during the two immediately preceding financial years or during the current financial year; (ii) holds or has held any senior management position, position of a key managerial personnel or is or had been employee of the company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (iii) is or has been an employee or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in	Clarity is required as to the materiality and it is relevant from the point of view of the recipient, and not from the point of view of the company. This was the suggestion of Dr. J.J. Irani Committee.

Sl.No.	Topic	Suggested Draft	Justification
		practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iv) holds together with his relatives two per cent. or more of the total voting power of the company; or (v) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent or more of its income from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; and (c) who possesses such other qualifications as may be prescribed. *Provided that every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstance, give a declaration that he meets the criteria of independence as provided above.* Provided further that in the case of appointment of an independent director in the general meeting, the explanatory statement attached to the notice of the meeting shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment	A self-declaration by the independent director as regards his independence would make him more accountable and would result in better compliance.

Sl.No.	Topic	Suggested Draft	Justification
		Explanation I.—For the purposes of this section, "nominee director" means a director nominated by any institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, to represent its shareholding. *Explanation II* - "Senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including all functional heads.	The term senior management needs to be explained. This explanation is similar to that suggested in the Dr. J J Irani Committee Report.
		(4) Independent Director shall have a tenure not exceeding, in the aggregate, a period of six consecutive years on the Board of a company.	Excessively long tenure for independent directors can lead to closeness of the relationship between the independent directors and the management. This can be prejudicial to the independence of the director.
		(5) At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material subsidiary company which is not a listed company. *Explanation 1: The term "material subsidiary" shall mean a subsidiary whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding financial year.*	Having an Independent director on a material subsidiary which is not listed would ensure that interests of the holding company are safeguarded and that there is no diversion of business opportunity to its subsidiary. Clause 49 of the Listing Agreement requires that an independent director of the holding company should be on the Board of a material non-listed Indian subsidiary.
		(6) An independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit-related commission and stock options as may be approved by the members.	

Sl.No.	Topic	Suggested Draft	Justification
		(7) An independent director shall be held liable, only in respect of such acts of omission or commission by the company or any officer of the company which constitutes a breach or violation of any provisions of Act, which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance and where he had not acted diligently. *(8) Independent Directors shall meet separately at least once every year to assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and responsibly perform their duties.*	To determine the liability of independent directors, knowledge test should be applied. The application of knowledge test was recommended by the J J Irani Committee.
3.	**Lead independent Director**	The Independent Directors together shall designate one of the independent directors to be the lead independent director. The lead independent director shall be available to stakeholders if they have concerns which have remained unresolved through the normal channels of Chairman and Key Managerial Personnel or where the concerns are such that normal channels are inappropriate. The lead independent director shall act as a guide to other independent directors in fulfillment of their duties and responsibilities as directors.	Designating one Independent Director as a Lead Independent Director is considered a good practice. This is recommended in terms of OECD Principles and U K Combined Code. New York Stock Exchange Listing Rules also require that there should be a lead independent director. Some of the good governed companies in India, that have lead Independent Director include Infosys Technologies Ltd. and Wipro Technologies Ltd.
4.	**Chairman and Managing Director to be different persons**	In every company to which this Chapter applies, the position of Chairman and Managing Director shall be held by different persons.	The role of Chairman and Managing *Director* should be separated to promote balance of power and to ensure good governance. It is the board's and chairman's job to monitor and evaluate a company's performance. An MD, on the other hand, represents the management team. If the two roles are performed by the same person, then it would amount to an individual evaluating himself.

Sl.No.	Topic	Suggested Draft	Justification
			When the roles are separate, an MD is far more accountable. This will also strengthen provisions of KMPs as provided under Clause 178.
5.	**Committees of Board.**	(1) Every company to which this Chapter applies shall constitute Audit Committee, Nominations and Remuneration Committee, a Corporate Compliance Committee and Stakeholders Relationship Committee (2) The key managerial Persons shall have the right to attend the meetings of all the Committees constituted in terms of this clause but shall not have a right to vote. (3) The Company Secretary shall be the secretary of all the committees required to be constituted in terms of this Clause. (4) The Board's Report under sub-section (3) of section 120 shall disclose the composition of all the Committees required to be constituted in terms of this clause. (5) The Chairman of each of the committees constituted under this section or, in his absence, any other member of the Committee authorised by him shall attend the general meetings of the company. (6) In case of any contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.	All KMPs should have a right to attend meetings of various Committees as these personnel have to carry forward the decisions taken by the Committees. They shall however, not have a right to vote.

Sl.No.	Topic	Suggested Draft	Justification
6.	**Audit Committee**	(1) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and at least one director having knowledge of financial management, audit or accounts. (2) The Chairman of an Audit Committee shall be an independent director. (3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-sections (1) and (2). (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include, among other things, the recommendation for appointment of auditors of the company, examination of the financial statements and the auditors' report thereon, transactions of the company with related parties, valuation of undertakings or assets of the company, wherever it is necessary, evaluation of internal financial controls and related matters. (5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review financial statements before their submission to the Board. (6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.	

Sl.No.	Topic	Suggested Draft	Justification
		(7) The auditors of a company along with the key managerial personnel shall have a right to attend the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote. (8) Where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in Board's report along with the reasons therefor.	
7.	**Nomination and Remuneration Committee**	(1) The Nomination and Remuneration Committee shall consist of non-executive directors as may be appointed by the Board out of which at least one director shall be an independent director. (2) The Nomination and Remuneration Committee shall identify individuals qualified to become board members consistent with the criteria laid down in the act and also as determined by the Board, recommend to the board the appointment and removal of directors and shall carry out evaluation of individual director's performance. (3) The Nomination and Remuneration Committee shall also recommend to the Board the company's policies relating to the remuneration of the directors, including the remuneration and other perquisites of the directors, key managerial personnel and such other employees as may be decided by the Board.	To bring in more objectivity and to put in place a robust and efficient mechanism for selection of directors, there should be a Committee. The Nomination Committee can, through a selection criteria and process, identify and recommend to the Board both appointment and removal of directors. As a corollary it shall also deal with the director's remuneration.
8.	**Corporate Compliance Committee**	(1) The Corporate Compliance Committee shall consist of non-executive directors as may be appointed by the Board out of which at least one shall be an independent director. (2) The Corporate Compliance Committee shall review, oversee and monitor the compliance by the company of applicable laws and regulations, standards, company's	Today there is a need for a well structured system in place to ensure compliance and their reporting to the Board. One of the major risk the Board and management face today is the risk of non-compliance. To enhance the confidence and the comfort of the Board, this Committee is proposed.

Sl.No.	Topic	Suggested Draft	Justification
		policies and company's Code of Conduct and monitor the implementation of legal obligations arising from agreements and other similar documents; (3) The Corporate Compliance Committee shall review regularly the Company's compliance risk assessment plan and shall investigate or cause to be investigated any significant instances of non compliance, or potential compliance violations that are reported to the Committee	Corporation Act, 2001 of Australia *inter alia* provides for constitution of Compliance Committee, its functions and duties of members for the companies having a registered managed investment scheme under their compliance plan.
9.	**Stakeholders Relationship Committee**	(1) The Stakeholders Relationship Committee shall consist of a chairman who shall be a non-executive director and such other members of the Board as may be decided by the Board. (2) Stakeholders Relationship Committee shall consider and resolve the grievances of stakeholders.	Dr. J.J. Irani Committee had recommended this committee for the benefit of stakeholders. Chairman of Stakeholders Relationship Committee can address the concerns of stakeholders and is an effective mechanism for whistle-blower.
10.	**Directors' Remuneration Report**	(1) Every Company to which this Chapter applies shall prepare a director's remuneration report containing therein such matters as may be prescribed including a statement of the company's policy on Directors' Remuneration, (2) The Directors' remuneration report shall be approved by the Board of Directors and shall form part of the Corporate Governance Report.	In terms of the UK Companies Act, a Directors Remuneration Report is mandatory for listed companies. The report is to be laid before the members in general meeting, approved by the members and is to be delivered to the registrar. Similarly International Corporate Governance Network (ICGN) Guidelines recommend disclosures regarding directors' remuneration. Corporation Act, 2001 of Australia provides for adoption of Remuneration Report as one of the business item of Annual General Meeting of listed companies which must be put to the vote. The detailed disclosures regarding director's remuneration through a Report is very vital, as under the proposed scheme of the Act, the ceiling on the quantum of remuneration has been removed.

Sl.No.	Topic	Suggested Draft	Justification
11.	**Statement on performance evaluation of directors.**	The Board of Directors of every company to which this Chapter applies shall undertake a formal annual evaluation of its own performance and that of its committees and individual directors. There shall be a statement in the Corporate Governance Report stating therein how performance evaluation of the board, its committees and its individual directors has had been conducted.	Board Evaluation, if conducted properly, is an effective governance tool and can contribute significantly to performance improvements on three levels—the organizational, board and individual director level. Boards who commit to a regular evaluation process find benefits across these levels in terms of improved leadership, greater clarity of roles and responsibilities, improved teamwork, greater accountability, better decision making, improved communication and more efficient board operations. Corporate Governance Codes of Australia, USA, UK all recommend a formal annual evaluation process of Government Board's Committees and individual directors' performance.
12.	**Directors' Development**	(1) Every company to which this Chapter applies shall establish a formal director orientation programme to familiarize incoming directors with the company's operations, senior management and its business environment, and to introduce them to their fiduciary duties and responsibilities. (2) The Board shall ensure that systems are in place for ongoing director development.	In order to improve board practices and the effectiveness of its members, an increasing number of jurisdictions are now encouraging companies to engage in board training that meets the needs of the individual company. This includes both, induction training at the time of appointment of director as well as continuing updation with various laws, regulations, technical developments etc.
13.	**Report on Impact Analysis on Shareholders**	Every company to which this Chapter applies shall prepare an Impact Analysis of material Related Party Transactions, not in the normal course of business or not at arms length, on shareholders in such manner as may be prescribed and such report shall form part of the Corporate Governance Report.	Related Party Transactions gives rise to concerns of conflict of interest. A disclosure in the form of an impact analysis will address this concern effectively.

Sl.No.	Topic	Suggested Draft	Justification
14.	**Sustainability Report**	(1) Every company to which this Chapter applies shall prepare a Sustainability Report indicating the company's economic, environmental and social impacts in accordance with such principles or standards as may be prescribed which shall include standards relating to human rights, labour, environment and anti-corruption and such Report shall form part of the Corporate Governance Report.	Governance, strategy and sustainability are inseparable and good practice requires that economic, social and environmental issues be included in corporate strategy, management and reporting in the same way as financial matters are dealt with. Several Indian companies including government companies have introduced sustainability reporting. Some of these are : Mahindra & Mahindra Limited ITC Limited Multi Commodity Exchange of India Ltd. Balmer Lawrie Group of companies Bharat Heavy Electricals Limited Chennai Petroleum Corpn. Ltd., ACC Limited Infosys Technologies Ltd.
15.	**Secretarial Audit**	(1) Every company to which this Chapter applies shall annex with its Board's Report made in terms of section 120(3) of the Act, a Secretarial Audit Report given by a secretarial auditor. (2) A person shall be eligible for appointment as a secretarial auditor of a company only if he is a Company Secretary in practice. Where a firm or limited liability partnership of Company Secretaries is appointed as a secretarial auditor of a company, only the partners who are Company Secretary in practice shall be authorised to act and sign on behalf of the firm or the LLP.	The corporate sector in India is governed by a complex web of laws, rules and regulations viz. Companies Law, Competition Law, Economic Laws, Securities and Capital Market Laws, Consumer Protection Laws, Industrial and Labour Laws, Pollution Control Laws, Foreign Exchange Legislation, etc. Enactment of various laws is not enough and the desired results cannot be achieved unless their implementation is geared up. In fact, lack of implementation of laws with no mechanism of audit to check their compliances have resulted in various frauds/scams.

Sl.No.	Topic	Suggested Draft	Justification
		(3) The secretarial auditor shall be appointed by the company in a general meeting on such remuneration as may be determined by the members. (4) An audit conducted under this section shall be in addition to the audit conducted under section 126 or section 131. (5) The qualifications, disqualifications, rights, duties and obligations applicable to financial auditors under Chapter X on Audit and Auditors shall, so far as may be applicable, apply to a secretarial auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the secretarial auditor appointed under this section for auditing the secretarial and other records of the company: (6) The report on the audit of secretarial records shall be submitted by the secretarial auditor to the Corporate Compliance Committee of the Board of Directors of the company. (7) The Board of Directors, in their Report made in terms of section 120(3) of this act, shall explain in full any qualification or observation or other remark made by secretarial auditor in the secretarial audit report. (8) Where any default is made in complying with the provisions of this section,— (a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees; (b) The secretarial auditor who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	There have been a large number of cases of mis-management and misuse of public funds by several listed companies. It is on record that several companies that have fallen sick had committed violations of various legal provisions and shown utter disregard for the various statutory compliances. This is so, because there is no mechanism in place to verify compliance of provisions of various laws applicable to a company. Secretarial Audit of company conducted by a Practising Company Secretary on the same lines as financial audit, conducted by Chartered Accountants, seems to be the inevitable answer to ensure that the legislations, the immaculate framing of which is such a Herculean task, are duly respected and obeyed. Secretarial Audit comprises of verification of compliance of provisions of various laws and rules/procedures, maintenance of books, records etc. by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. The independent professional carrying out secretarial audit, not only ensures that the company has complied with the provisions of various laws but also extends professional help to the company in carrying out effective compliance and establishment of proper systems with proper checks and balances. The scope of Secretarial Audit extends to the Companies Act, 1956 and the Rules made

Sl.No.	Topic	Suggested Draft	Justification
			under that Act; the Depositories Act, 1996 and the Regulations and the Byelaws framed under the Act; the Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'); the Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made under that Act; and the Listing Agreements with various Stock Exchanges. Advantages of Secretarial Audit: • Better compliance of laws leading to reduction in number of frauds and consequent prosecutions. • Protecting the interest of stakeholders and strengthening their faith in the corporates. • Protecting the company/directors from the consequences of unintended non-compliance of laws. • Independent assurance and comfort to independent/non-executive/nominee directors that the affairs of the company have been conducted as per law. • Instilling professional discipline and self-regulation. • Reducing workload of regulators due to better and timely compliances. • Enhancing quality of services to investors. • Any qualification in the Report will immediately alert the investor. Many forward looking companies have already introduced Secretarial Audit in their companies and are attaching the Secretarial Audit Report to their Board's Report. To name a few, these companies are – Reliance Industries Ltd., CMC Ltd., ONGC Ltd., HDFC

Sl.No.	Topic	Suggested Draft	Justification
			Ltd., Sonata Software Ltd., Persistant Systems Ltd., Nagarjuna Fertilizers and Chemicals Ltd. etc. Also many financial/ investment/ industrial development corporations have already prescribed annual Secretarial Audit of companies assisted by them. These institutions to name a few are Manipur Industrial Development Corpn. Ltd., Imphal, Assam Indl. Dev. Corpn. Ltd., Guwahati, Gujarat Industrial Investment Corporation Ltd., Ahmedabad, Arunachal Pradesh Industrial Development & Financial Corpn. Ltd., Naharlagun, Gujarat State Financial Corpn. These financial institutions find it imperative to know that the assisted company has complied with the core legislations.
16.	**Report on Corporate Governance**	(1) Every company to which this Chapter applies shall prepare a Corporate Governance Report containing therein such matters as may be prescribed which shall include: – Composition of the Board – Composition of various Committees – The terms of reference of various Committees – The criteria for determining the independence of director – Directors Remuneration Report – Statement on performance evaluation of directors – Report on Impact Analysis on shareholders – Sustainability Report and such Report shall form part of the Board's Report Under Clause 120(3).	
17.	**Statements and documents to be placed on the website of the company**	Every company to which this Chapter applies shall place on its website all the statements and documents specified in Section 121(1) and all other reports and documents required to form part or be annexed thereto and such other documents as may be prescribed, at the same time as they are sent to such persons as mentioned in the said Section.	

SUGGESTIONS RELATING TO THE PROFESSION OF COMPANY SECRETARIES

1. COMPULSORY APPOINTMENT OF A COMPANY SECRETARY

The world over, the appointment of a Company Secretary is being made mandatory in respect of companies. **Singapore, Malaysia, Maldives, South Africa are some of the countries which have made the appointment of a Company Secretary mandatory for all companies. In South Africa and U.K. it is mandatory for every public company to have a Company Secretary. In Australia, a company other than a proprietary company must have a Company Secretary. In Mauritius, every company other than a small company or a company holding Category 2 Global Business Licence should have a Company Secretary.**

In India, the appointment of Company Secretary has been made mandatory by virtue of Section 383A of the Companies Act, 1956, in respect of companies having a paid-up capital of Rs.5 crore or more.

Position of Company Secretaries in other Countries

Countries across the globe are consolidating their company laws making appointment of Company Secretary compulsory. Position as prevailing in some of the countries is stated below:

Malaysia – Companies Act, 1965

'Section 139. Secretary

(1) Every company shall have one or more secretaries each of whom shall be a natural person of full age who has his principal or only place of residence in Malaysia.

(1A) The first secretary of a company shall be named in the memorandum or articles of the company.

The office of Secretary shall not be left open vacant for more than one month at any one time.'

Mauritius – Companies Act, 2001

'163. Secretary

(1) Every company, other than a small private company or a company holding a Category 2 Global Business Licence, shall have one or more secretaries each of whom shall, subject to section 164 be a natural person of full age and capacity who shall ordinarily be resident in Mauritius.'

Singapore – Companies Act

'Secretary
171. —(1) Every company shall have one or more secretaries each of whom shall be a natural person who has his principal or only place of residence in Singapore.'

Maldives – Companies Act, 1996

Company secretary -

46. (a) Every company shall have a company secretary. It is the duty of the Board of Directors to see that the person appointed as the company secretary is competent to discharge the functions of the secretary of the company.

South Africa – Companies Act, 1973

'268A Mandatory appointment of secretary

The directors of any public company having a share capital, excluding a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980), shall appoint a secretary who is permanently resident in the Republic and who, in the opinion of the directors, has the requisite knowledge and experience to carry out the duties of a secretary of a public company.'

UK – Companies Act, 2006

Public companies

271 Public company required to have secretary

A public company must have a secretary.

Australia – Corporations Act, 2001

'S. 204A Minimum number of secretaries

Proprietary companies

(1) A proprietary company is not required to have a secretary but, if it does have 1 or more secretaries, at least 1 of them must ordinarily reside in Australia.

Public companies

(2) A public company must have at least 1 secretary. At least 1 of them must ordinarily reside in Australia.

Strict liability offences

(3) An offence based on subsection (1) or (2) is an offence of strict liability.'

Company Secretary – Recommendations of Committees on Corporate Governance

Various Committees on Corporate Governance constituted at international and national levels have recommended larger role for Company Secretaries in corporate governance.

Cadbury Committee Report (UK)

- The Company Secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed.

- The Chairman and the Board will look to the Company Secretary for guidance on what their responsibilities are, under which rules and regulations they are subject and how those responsibilities should be discharged.
- All directors should have access to the advice and services of the Company Secretary.
- It should be recognized that Chairman is entitled to the strong and positive support of the Company Secretary in ensuring the effective functioning of the Board.
- It should be a standard practice for the Company Secretary to administer, attend and prepare minutes of Board proceedings.
- The directors have a duty to appoint a Company Secretary, but any question of the Secretary's removal, should be a matter for the board as a whole.
- The Committee expects that the Company Secretary will be a source of advice to the Chairman and to the Board on the implementation of the Code of Best Practices.

Organisation for Economic Co-operation and Development (OECD) Principles Of Corporate Governance

- The Chairman may be supported by the Company Secretary.
- The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, the Company Secretary.

Commonwealth Association of Corporate Governance (CACG) Principles of Corporate Governance

- CACG Principles of Corporate Governance recognize the role of professionals as an important aspect of Corporate Governance.
- Principles recognize that the reinforcement of Corporate Governance practices often rests with the professionals in the form of regulatory reporting and the basis of professional advice rendered to corporations.

Combined Code on Corporate Governance (U K)

- The Company Secretary is responsible for advising the Board through the Chairman on all governance matters.
- All directors should have access to the advice and services of the Company Secretary who is responsible to the Board for ensuring that board procedures are complied with.

Hampel Committee on Corporate Governance

- All directors should have access to the advice and services of the company secretary who is responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with.

King Committee III (South Africa)

The appointment of a company secretary in public companies with share capital is mandatory under the Act.

The chairman and board will look to the company secretary for guidance on their responsibilities and their duties and how such responsibilities and duties should be properly discharged in the best interests of the company.

The company secretary should ensure that the board and board committee charters are kept up to date.

The company secretary should have a direct channel of communication to the chairman and should be available to provide comprehensive practical support and guidance to directors, with particular emphasis on supporting the non-executive directors and the chairman.

The company secretary should provide a central source of guidance and advice to the board, and within the company, on matters of ethics and good governance, as well as providing administrative support to the board and board committees.

The company secretary is responsible to ensure the proper compilation of board papers.

The company secretary should be tasked with the obligation of eliciting appropriate responses, feedback and input to specific agenda items in board and board committee deliberations. The company secretary's role should also be to raise matters that may warrant the attention of the board.

The company secretary must ensure that the minutes of board and board committee meetings are circulated to the directors in a timely manner, after the approval of the chairman of the relevant board committee.

The board should be cognisant of the duties imposed upon the company secretary and should empower the individual accordingly to enable him to properly fulfil those duties.

The company secretary should ensure that the procedure for the appointment of directors is properly carried out and he should assist in the proper induction, orientation and development of directors, including assessing the specific training needs of directors and executive management in their fiduciary and other responsibilities.

India

Government's efforts towards professionalization of management

In 1956, when the Companies Bill was laid before the Parliament, the then Finance Minister, Late Dr. C D Deshmukh had assured the Parliament that the Companies Act would be amended in due course **so as to ensure that every company should have a qualified company secretary analogous to the provisions of the UK Companies Act.** In 1970 when the system of managing agents and secretaries and treasurers was abolished, the government of India envisioned that the company secretaries would fill the void.

Indeed, company secretaries have been functioning in the corporate sector long before the statutory requirement of compulsory appointment of company secretary was introduced in the year 1975. In 1970, recognizing the important role which the company secretaries play for the proper working of the company, the Department of Company Affairs had instructed all public sector undertakings to appoint qualified secretaries. Following the communication issued by the Government of India, the Government of Kerala instructed Government owned companies in which Government of Kerala had majority shareholding to include Government Diploma in Company Secretaryship GDCS awarded by the Government of India and/or Associate Membership of the Institute of Company Secretaries of India as a 'preferential' qualification for filling up posts in the

secretarial departments of such companies. Similar letters were issued by Government of Mysore, Government of Andhra Pradesh, Government of Orissa and Government of Tamil Nadu.

The Administrative Reforms Commission had also examined the desirability of encouraging the growth of the profession of company secretaries as a necessary adjunct for a more efficient working of the corporate sector and had recommended that companies with a certain paid-up capital should compulsorily appoint qualified secretaries and that suitable qualifications should be prescribed by the Government (Recommendation no. 10 Chapter VI paragraph 12).

In the year 1978, the **Sachar Committee had observed** as under:

"There is growing evidence that, in order to cope with the complexities of modern business, more and more professional people are taking up positions in companies previously held by owner-managers. One important step which the Government had taken right in 1956 was to conceive of the profession of company secretaries. Finally, **the Amendment Act of 1974 provided for compulsory appointment of whole-time secretaries in companies of certain size, namely, companies having a paid-up capital of Rs. 25 lakhs or more. This process of professionalisation of management needs to be carried forward."** (para 5.5.).

In 1980, while piloting the Company Secretaries Bill in the Parliament, **Shri P Shivshankar, the then Union Minister for Law, Justice & Company Affairs** had assured the Parliament that depending on the growth of the corporate sector, **the paid-up capital limit of Rs. 25 lakhs for the appointment of company secretary would be reduced further**, while reiterating the government's commitment to **professionalise management** of the corporate sector through the medium of company secretaries.

In the year **1996, the Working Group on Company Law observed in its report that 'Company Secretaries have played a key role in ensuring that the working of companies is in accordance with the legal provisions of the Act and other corporate laws'**.

Companies Bill, 1997 had provided for mandatory appointment of a company secretary as below :

Companies Bill, 1997

> "Secretary
>
> 256. (1) Every listed public company, and every unlisted public company having a paid up share capital of one crore rupees or more, shall employ a whole-time secretary, who shall be a Company Secretary within the meaning of the Company Secretaries Act, 1980."

Companies (Amendment) Bill, 2003

> "156. Substitution of new section 383A
>
> For section 383A of the principal Act, the following section shall be substituted, namely,-
>
> Certain companies to have a company secretary
>
> 383A. (1) Every company having such paid up share capital, as may be prescribed, shall employ a whole time secretary, who shall be a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980)"

Concept Paper containing Draft Companies Bill

87(1) Every company having such paid-up share capital, as may be prescribed, shall employ a whole-time secretary, who shall be a Company Secretary within the meaning of the Company Secretaries act, 1980.

A company secretary deals with a wide spectrum of legislations, finance and management far transcending the provisions of the Companies Act and most importantly acts as an agent on behalf of the Board. Raising of finance in India and abroad, dealing with deposits, inter-corporate loans and investment, raising of funds from financial institutions, joint ventures and foreign collaborations, corporate governance, corporate restructuring, vetting of contracts, arbitration and other legal matters with which every company has per force to contend with, are being handled by the professionally qualified company secretary. In short, a company secretary is a multi faceted professional who ensures corporate compliance management and carries out day to day activities encompassing all areas of Corporate Governance, all the way to corporate growth through foresight and professional dexterity.

In the age of professionalization with increased emphasis on good Corporate Governance, when every aspect of management is sought to be specialized, the services of an integrated manager backed by professional expertise, cannot be over-emphasised.

In fact, there would be a large number of companies which would not statutorily be required to appoint managing director or manager or other key managerial personnel. In respect of such companies, it becomes all the more necessary to have a whole-time qualified Company Secretary, who can co-ordinate the activities of the Board and translate them into action.

The contribution of company secretaries in employment in promoting good corporate governance and ensuring compliances with relevant laws has been well recognized and appreciated by managements.

It is matter of record which is verifiable from the records of the Ministry of Corporate Affairs that companies which had appointed company secretary have shown a marked improvement in their compliance rate.

SUGGESTION

The Companies Bill, 2009 may be specific in respect of the class or description of companies which shall be required to have whole time key managerial personnel. There should be clarity in the substantive law itself in respect of the companies which are required to have whole-time Key Managerial Personnel so that the prospective promoters, whether foreigner or Indian, can make informed decision regarding the kind of company they should incorporate.

The existing Companies Act provides for compulsory appointment of managing director or whole-time director and company secretary in companies having paid-up share capital of rupees five crores or more.

Clause 2(zzzg) of the Bill defines small companies as companies having paid-up capital not exceeding rupees five crores. In order to ensure better governance of companies which are not small companies, appointment of key managerial personnel may be made compulsory. Once a company is formed under the Companies Act, it is bound to be governed by all the applicable laws, rules and regulations viz. company law, competition law, economic laws, securities and capital market laws, consumer protection law, industrial and labour laws, pollution control laws, foreign exchange legislations etc. A need is therefore, felt to ensure compliance of all the laws which are attracted to a company, in letter and spirit. Appointment of a company secretary and other Key Managerial Personnel in companies having paid-up share capital of rupees five crores or more would lead to a system which would ensure compliances through better responsibility.

Accordingly, it is suggested that Company Secretary, along with other whole-time Key Managerial Personnel, should be appointed in the following companies:

1. Listed Companies
2. Every other company having a paid-up share capital of Rs.5 crores or more.

SUGGESTED CLAUSE

Section 178(1) of the Companies Bill, 2009 should read as:

Every listed company, and every other company having paid-up share capital of rupees five crores or more shall employ whole-time key managerial personnel

2. SECRETARIAL AUDIT

Protection of interests of Investors and other stakeholders is the recognised principle of good corporate governance the world over.

Today, in India, the corporate sector is governed by a complex web of laws, rules and regulations viz. Company Law, Competition Law, Economic Laws, Securities and Capital Market Laws, Consumer Protection Laws, Industrial and Labour Laws, Pollution Control Laws, Foreign Exchange Legislation, etc.

However, the experience so far shows that enactment of various laws is not enough and the desired results cannot be achieved unless their implementation is geared up. In fact, lack of implementation of laws with no mechanism of audit to check their compliances have resulted in various frauds/scams. **There have also been a large number of cases of mis-management and misuse of public funds by several listed companies.** Governments, multilateral institutions, banks and companies all have realized that the eye of the storm lies not in the inadequacy of legislation but in its implementation and compliance.

At present, the audit of financial aspects of a business enterprise are conducted by statutory auditors who are independent professionals governed by a code of conduct. The frauds and scams, which have been detrimental not only to capital market but have been a set back to the economy as a whole, have occurred despite and inspite of financial audit. The law enforcement agencies have not been able to tackle these problems and ensure effective enforcement of laws. **It is also on record that several companies that have fallen sick had committed violations of various legal provisions and shown utter disregard for the various statutory compliances. This is so, because there is no mechanism in place to verify compliance of provisions of various laws applicable to a company.**

A need is, therefore, felt to ensure compliance of laws in letter and spirit on continuous basis by an independent professional.

Secretarial Audit of company conducted by a Practising Company Secretary on the same lines as financial audit conducted by Chartered Accountants, seems to be the only answer to ensure that the legislations, the immaculate framing of which is such a herculean task, are duly respected and obeyed.

Concept of Secretarial Audit

Secretarial Audit comprises of verification of compliance of provisions of various laws and rules/procedures, maintenance of books, records etc. by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. It is essentially a pre-emptive check to monitor compliance with the requirements of stated laws.

The scope of Secretarial Audit extends to –

- The Companies Act, 1956 and the Rules made under the Act;
- The Depositories Act, 1996 and the Regulations and the Byelaws framed under the Act;
- The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') –
    - The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
    - The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
    - The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; and

- The Securities and Exchange Board of India (Employees Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999;

- The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made under the Act; and
- The Listing Agreements with various Stock Exchanges.

Just as statutory audit deals with financial audit of companies and cost audit with audit of costing and pricing systems and records, **secretarial audit deals with legal and procedural compliances that are expected from a company.** It is conducted annually. While conducting Secretarial Audit, the secretarial auditor carries out an elaborate checking mechanism to verify from all the records and books maintained by the company as well as from the information provided to him and the information gathered by him that the company is complying with the various requirements of different legislations.

The independent professional carrying out secretarial audit, not only ensures that the company has complied with the provisions of various laws but also extends professional help to the company in carrying out effective compliance and establishment of proper systems with proper checks and balances.

The concept of Secretarial Audit is not to burden the corporate sector with another audit but to ensure due compliance of legislations other than financial or costing aspects. It is an assurance to the board of directors that the company is compliant with various laws. The recent Satyam scam saw an exodus of independent directors from the Boards of various companies. A Secretarial Audit will serve as an assurance to the prospective directors to render their expertise to the companies that there as a mechanism in place to check legal and procedural compliances

A Company Secretary in practice can act independently and fearlessly in giving his compliance report, which would give comfort and satisfaction to directors especially independent directors, the banks, financial institutions, creditors, suppliers and other stakeholders.

How the Secretarial Audit will Help

Secretarial Audit can be an effective multi-pronged weapon to assure the regulator, generate confidence amongst the shareholders, the creditors and other stakeholders in companies, assure FIIs/FIs/SFCs/SIDCs/Banks and instill self regulation and professional discipline in companies. It is a tool of risk mitigation and will allow companies to effectively address compliance risk issues.

Once the Secretarial Audit Report is submitted by the Secretarial Auditor, the Government as well as other stakeholders can gauge in first instance the level of compliances or non compliances by the company concerned. It can then immediately take suitable corrective measures under the specific applicable legislations. The measure would act as a check on frauds as well as reduce the number of prosecutions by Government and consequent litigation on account of non-compliance with the provisions of corporate and securities laws, thereby resulting in healthy and orderly development of the corporate sector. This would in turn lead to reduction of investor grievances and enhance various stakeholders confidence.

In addition to Government and shareholders, introduction of Secretarial Audit would be in the interest of companies themselves.

Secretarial Audit besides ensuring due compliance of the statute, will **act as an aid to the management by proving to be a strong internal control device. It can relieve the company and their directors from consequences of unintended non-compliance of law.** Independent Directors and Nominee Directors can be assured that the affairs of the company are being conducted as per law. Besides the Secretarial Auditor can act as a fearless adviser to the company so that the mistakes and lapses if any could be rectified well in time and management is reassured that internal systems are guarded.

The inclusion of Secretarial Audit Report in the Directors' Report would go a long way in reassuring public, financial institutions and all others dealing with the company about the quality of corporate governance in the concerned corporate entity.

Companies entering into joint ventures and foreign collaborations will need such an audit at least to assure foreign partners that the laws of the land are duly complied with. A Secretarial Audit will serve as a first line due diligence. **The secretarial audit will provide an in-built mechanism for enhancing corporate compliances generally and help restore the confidence of investors in the capital market through greater transparency in corporate functioning.**

Who can conduct Secretarial Audit

A Company Secretary in Practice, conducts Secretarial Audit, corporate laws being his core area of specialization, just as a Chartered Accountant conducts financial audit and a cost accountant conducts cost audit.

In fact, **there are clearly demarcated areas for the three professions i.e. CA, CS and CWA. While financial audit is the forte of a CA and Cost Audit of a CWA, the legal compliance Management of corporate laws and in particular, Company Law is the core strength of a Company Secretary**.

A Company Secretary as competent professional comes in existence after exhaustive exposure provided by the Institute through **compulsory coaching, examinations, rigorous training and continuing education programmes.** The members of the Institute are not only conversant with the technicalities and provisions of the corporate legal areas but are highly specialized professionals in the matters of procedural and practical aspects involved in the compliances enjoined under various statutes and the rules, regulations bye-laws and guidelines made thereunder. The detailed syllabus for Company Secretaryship synthesizes corporate, taxation, economic, financial, commercial, industrial and allied laws in addition to the management, administration, finance and accounts. It is well recognized that **corporate laws is the core area of specialization of company secretaries. In fact, a Company Secretary he is essentially a governance professional with compliance bent of mind.**

Raising of finance in India and abroad, dealing with deposits, inter-corporate loans and investments, raising of funds from financial institutions, joint ventures and foreign collaborations, corporate restructuring, vetting of contracts, arbitration and other legal matters which every company has to address, are being handled by the professionally qualified company secretaries.

Appointment of Secretarial Auditor

For effective functioning, secretarial auditor should be appointed by the members in general meeting from among the Secretaries in Whole-time Practice and all the provisions relating to appointment, remuneration and removal of auditors contained in Chapter X of the Companies Bill, 2009 (sections 224 to 226 of the Companies Act, 1956) should apply to appointment, remuneration and removal of secretarial auditor *mutatis mutandis*.

Reporting by Secretarial Auditor

Secretarial Auditor shall make a report to the members of the company on the statutory compliances examined by him and shall state whether in his opinion the company is carrying out/not carrying out due compliances of the provisions of various corporate laws. The first line reporting of the secretarial auditor could be the Corporate Compliance Committee.

The report of the Secretarial Auditor should be attached to the Board's Report along with the Auditors' Report. The Board of directors should be bound to give in their report, full information and explanations on every reservation, qualification or adverse remark contained in the compliance audit report.

Accountability of Secretarial Auditor

On the question of accountability for Secretarial Audit by the Company Secretary in Practice, it may be stated that a **Company Secretary in Practice is subject to the Code of Conduct prescribed under the Company Secretaries Act, 1980 and runs the risk of cancellation of certificate of practice and even the basic membership, if found guilty of dereliction of duties, besides attracting punishment for false statements under section 407 of the Companies Bill, 2009.**

Secretarial Audit already being conducted

It is heartening to note that many forward looking companies have already introduced Secretarial Audit in their companies and are attaching the Secretarial Audit Report to their Board's Report. To name a few, these companies are **– Reliance Industries Ltd., Infosys Technologies Ltd., Indian Petrochemicals Corporation Ltd., CMC Ltd., ICICI Bank Ltd., ONGC Ltd., CLC Global Ltd., Mastek Ltd., Clariant (India) Ltd., etc.**

It is also heartening to note that **many financial/investment/industrial development corporations have already prescribed annual Secretarial Audit of companies assisted by them.** These institutions to name a few are Manipur Industrial Development Corpn. Ltd., Imphal, Assam Indl. Dev. Corpn. Ltd., Guwahati, Gujarat Industrial Investment Corporation Ltd., Ahmedabad, Arunachal Pradesh Industrial Development & Financial Corpn. Ltd., Naharlagun, Gujarat State Financial Corpn. These financial institutions find it imperative to know that the assisted company has complied with the core legislations. They also find it necessary to ascertain that the company is following the conditions/stipulations in the form of covenants in the loan agreement. The Secretarial Audit Report provides them with the desired information and the comfort level.

Advantages of Secretarial Audit :

- **Better compliance of laws leading to reduction in number of frauds and consequent prosecutions.**
- **Protecting the interest of stakeholders and strengthening their faith in the corporates.**
- **Protecting the company/directors from the consequences of unintended non-compliance of laws.**
- **Independent assurance and comfort to independent/non-executive/nominee directors that the affairs of the company have been conducted as per law.**
- **Instilling professional discipline and self-regulation.**
- **Reducing workload of regulators due to better and timely compliances.**
- **Enhancing quality of services to investors.**
- **Any qualification in the Report will immediately alert the investor.**

Secretarial Audit is salutary as it instills professional discipline and signifies law abiding nature of the promoters. It gives a necessary confidence to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also relieves the independent directors from the consequences of non compliance of the provisions of the Companies Act and other important corporate laws. The inclusion of Secretarial Audit as a part of Director's Report will go a long way in re-assuring the investors about the quality of corporate governance in the company.

SUGGESTED CLAUSE

Secretarial Audit in respect of listed companies and certain other companies

(1) Every listed company, every government company and every other public limited company having such paid-up share capital as may be prescribed shall annex with its Board's report made in terms of section 120 of the Act, a secretarial audit report given by a secretarial auditor.

(2) A person shall be eligible for appointment as a secretarial auditor of a company only if he is a Company Secretary in practice. Where a firm or limited liability partnership of Company Secretaries is appointed as a secretarial auditor of a company, only the partners who are Company Secretary in practice shall be authorised to act and sign on behalf of the firm or the LLP.

(3) The secretarial auditor shall be appointed by the company in a general meeting on such remuneration as may be determined by the members.

(4) An audit conducted under this section shall be in addition to the audit conducted under section 126 or section 131.

(5) The qualifications, disqualifications, rights, duties and obligations applicable to financial auditors under this Chapter shall, so far as may be applicable, apply to a secretarial auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the secretarial auditor appointed under this section for auditing the secretarial and other records of the company:

(6) The report on the audit of secretarial records shall be submitted by the secretarial auditor to the Corporate Compliance Committee of the Board of Directors of the company.

(7) The Board of Directors, in their report made in terms of section 120 of this act, shall explain in full any qualification or observation or other remark made by secretarial auditor in the secretarial audit report.

(8) Where any default is made in complying with the provisions of this section,—

(a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;

(b) the secretarial auditor who is in default shall be punishable with fine which shall not be less than one lakh rupee s but which may extend to five lakh rupees.

3. SECRETARIAL STANDARDS

Companies today follow diverse secretarial practices. These practices have evolved over a period of time through varied usages and as a response to differing business cultures. These divergent practices need to be harmonised by laying down the best practices in this regard. To integrate, consolidate, harmonise and standardise all the prevalent diverse secretarial practices, so as to ensure that uniform practices are followed by the companies throughout the country, **the Institute of Company Secretaries of India has taken the initiative of formulating Secretarial Standards. Such uniformity of practices, consistently applied, would result in the establishment of sound corporate governance principles.**

Secretarial Standards are the policy documents relating to various aspects of secretarial practices in the corporate sector. These Standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

Secretarial Standards Board (SSB) was constituted by the Institute of Company Secretaries of India in the year 2000. The SSB comprises of eminent members of the profession holding responsible positions in well-known companies and as senior members in practice, as well as representatives of regulatory authorities such as the Ministry of Corporate Affairs, the Securities and Exchange Board of India and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost and Works Accountants of India. The ICSI-CCGRT (Centre for Corporate Governance, Research and Training) provides technical support to SSB.

The Secretarial Standards Board formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent. Secretarial Standards are developed:

- in a transparent manner;
- after extensive deliberations, analysis, research; and
- after taking views of corporates, regulators and the public at large.

SSB, in consultation with the Council, determines the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof. Preliminary drafts of the proposed Standards are formulated by the working group constituted by SSB. The preliminary draft is circulated amongst the members of SSB for discussion and modified appropriately, if so required. The preliminary draft is then circulated to the members of the Central Council as well as to Chairmen of Regional Councils / Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Ministry of Corporate Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies / organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received. On the basis of the preliminary draft and the discussion with the bodies / organisations, an Exposure Draft is prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large. After taking into consideration the comments received, the draft of the proposed Secretarial Standard is finalised by SSB and submitted to the Council of ICSI for finalisation. The Council considers the final draft of the proposed Secretarial Standard and finalises the same in consultation with SSB. The Secretarial Standard on the relevant subject is then issued under the authority of the Council.

The formulation of Secretarial Standards by the 'Secretarial Standards Board' (SSB) of the Institute of Company Secretaries of India (ICSI) is a unique and pioneering step towards standardisation of diverse secretarial practices prevalent in the corporate sector. There is perhaps no similar Board or authority in existence anywhere in the world for the purpose of formulating Secretarial Standards.

The Institute has so far released nine Secretarial Standards viz.:

1. **Secretarial Standard on Meetings of the Board of Directors (SS-1).**
2. **Secretarial Standard on General Meetings (SS-2).**
3. **Secretarial Standard on Dividend (SS-3).**
4. **Secretarial Standard on Registers and Records (SS-4).**
5. **Secretarial Standard on Minutes (SS-5).**
6. **Secretarial Standard on Transmission of Shares and Debentures (SS-6).**
7. **Secretarial Standard on Passing of Resolutions by Circulation (SS-7).**
8. **Secretarial Standard on Affixing of Common Seal (SS-8).**
9. **Secretarial Standard on Forfeiture of Shares (SS-9).**

The adoption of the Secretarial Standards by the corporate sector would have a substantial impact on the quality of secretarial practices being followed by companies, making them comparable with the best practices in the world.

Many companies today are voluntarily adopting the Secretarial Standards in their functioning. The annual reports of several companies viz. Reliance Industries Ltd., Mcmillan India Ltd., Ashok Leyland Ltd., Reliance Energy Ltd., Ponni Sugars (Erode) Ltd., Nagarjuna Fertilizers And Chemicals Ltd., The Indian Hotels Company Ltd., Tata Metaliks Ltd., CMC Ltd., Foseco India Ltd., The Madras Aluminium Co. Ltd., Infotech Enterprises Ltd., released during the last few years include a disclosure with regard to the compliance of the Secretarial Standards.

SUGGESTED CLAUSES

- **Clause No.....Constitution of National Advisory Committee on Secretarial Standards**

  (1) The Central Government may, by notification, constitute an advisory committee to be called the National Advisory Committee on Secretarial Standards (hereinafter referred to as the Secretarial Standards Advisory Committee) to advise the Central Government on the formulation and laying down of Secretarial Standards for adoption by companies or class of companies or their secretarial auditor, as the case may be.

  (2) The Secretarial Standards Advisory Committee shall consist of the following members, namely:—

  (a) a Chairperson who shall be a person of eminence and well versed in corporate laws, corporate governance, finance, business administration, business law, economics or similar disciplines, to be nominated by the Central Government;

  (b) one representative of the Central Government to be nominated by it;

  (c) one representative of the Securities and Exchange Board to be nominated by it;

  (d) one member each to be nominated by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980, the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 and the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959;

(e) a person who is or has been a professor in Corporate Laws, Corporate Governance, finance or business management in any University or deemed University to be nominated by the Central Government; and

(f) two representatives of the Chambers of Commerce and Industry, to be nominated by the Central Government.

(3) The members of the Secretarial Standards Advisory Committee nominated by the Central Government shall hold office for such term as may be determined by it at the time of their appointment and any vacancy in the membership of the Committee shall be filled by the Central Government in the same manner as that for the member in whose vacancy it is proposed to be filled.

(4) The members of the Secretarial Standards Advisory Committee shall be entitled to such fees, traveling, conveyance and other allowances as may be prescribed.

(5) The Secretarial Standards Advisory Committee shall, after consulting the Institute of Company Secretaries of India, submit its recommendations to the Central Government on matters relating to Secretarial Standards for adoption by companies or class of companies or their secretarial auditor, as the case may be.

- **Clause No. …. Central Government to notify Secretarial Standards.**

  The Central Government may, after consultation with the Secretarial Standards Advisory Committee, by notification, lay down Secretarial Standards for adoption by companies or class of companies.

  Provided that Secretarial Standards specified by the Institute of Company Secretaries of India shall be deemed to be the Secretarial Standards until Secretarial Standards are notified by the Central Government.

- **Clause No. ... Secretarial Practices**

  The company shall observe Secretarial Standards notified under clause____.

- **To Add a clause in Directors' Responsibility Statement under clause 120(4)**

  The Directors' Responsibility Statement referred to in sub-section (3) shall state that

  (a) …..

  (b) …..

  (_) The applicable secretarial standards had been observed along with proper explanation relating to material departures.

- **To add under definitions clause No. 2**

"Secretarial Standards" means such Secretarial Standards recommended by the Institute of Company Secretaries of India as the Central Government may notify under section____, in consultation with the National Advisory Committee on Secretarial Standards constituted under section____.

4. PRE-CERTIFICATION OF FORMS BY COMPANY SECRETARY

1. What is pre-certification?

Pre-certification means certification of correctness of the contents of any document by an independent professional before the same is filed with the Registrar along with the prescribed fee. The independent professional thoroughly checks the correctness of the particulars stated in the form after due consideration of the provisions of the Companies Act and rules and regulations made thereunder. He also ensures that the particulars stated in the form are in agreement with the books and records of the company. If he notices any defect or finds that the information provided in the form is incomplete, he takes steps for rectification of the defect and gets the document completed before filing the same with the Registrar. This would mean that the Registrar can rely on the certification and take the document on record without any further examination.

2. Recommendations of various Committees/Proposed legislations

Pre-certification of documents has been recommended by various Committees / proposed legislations as below:

Department Related Parliamentary Standing Committee on Home Affairs in its 64th Report on Companies (Second Amendment) Bill, 1999 issued in the **month of July, 2000** endorsed the Government's view that pre-certification of forms is required and **observed that a Company Secretary in practice is specially trained in corporate laws and his practical training includes study of compliance of corporate laws by studying records in the office of Registrar of Companies. The requirement of carrying on check of compliance of Companies Act, 1956 by a qualified Company Secretary in whole-time practice alone, is fully justified.**

Naresh Chandra Committee on Corporate Audit and Governance in its report issued on 16.12. 2002 observed that there is a wide gap between prescription and practice. The Committee pointed out lack of basic statutory compliances and recommended for **the system of pre-certification of forms and documents by Company Secretaries.**

"Recommendation 5.5

DCA should consider reducing workload at offices of ROCs by providing for a system of "'pre-certification'" by company secretaries; the system should provide for strict monetary and other penalties on company secretaries who certify incorrectly, even through error or oversight.

5.38 It was argued before the Committee that the Government is partly to blame for not ensuring these compliances so basic to good corporate governance. One answer in increasing the strength and facilities of ROC offices, in normative fashion, in proportion to the increase in the number of companies, as discussed in paragraph 5.09 above. The Committee, however, feels that the Government should explore two other avenues. First, since a large number of documents are not taken on record because they are defective, a **system of "'pre-certification'", by company secretaries, can be introduced.** "

Companies (Amendment) Bill, 2003

The Companies (Amendment) Bill, 2003 had contained a provision for pre-certification of all documents, forms, returns required to be filed with Registrar or any statutory authority to be done only by Practising Company Secretaries (PCS).

"Pre certification by company secretary

383C. All documents, returns, forms required to be filed with the Registrar or any statutory authority **shall be pre-certified by a company secretary in whole-time** practice in such form and manner, as may be prescribed, by the Central Government.

Explanation. – For the purposes of this section, "certification by a company secretary in whole-time practice means and includes a pre-certification of any of the documents required to be filed with the Registrar or any statutory authority under this Act and all certificates issued by the company secretary in whole-time practice in evidence of compliance with the provisions of this Act.".

Concept Paper

Concept Paper published by MCA on 4.8.2004 contemplating to enact a new Company Law, also contained a clause for pre-certification of forms and stated that the statutory work of pre-certification shall be the exclusive domain of the Company Secretaries.

"87. Appointment of Company Secretary

(11) The **documents, returns, forms as** prescribed and required to be filed with the Registrar or any statutory authority **shall be pre-certified by a company secretary in whole-time practice in such** form and manner, as may be prescribed, by the Central Government.

Explanation: For the purposes of this section, "certification by a company secretary in whole-time practice" means and includes a pre-certification of any of the documents required to be filed with the Registrar or any statutory authority under this Act and all certificates issued by the company secretary in whole-time practice in evidence of compliance with the provisions of this Act."

3. Core Competence of Professionals

There are clearly demarcated areas for the three professions i.e. CA, CS and CWA. While financial audit is the forte of a CA and Cost Audit of a CWA, the **compliance of company law is the core strength of a Company Secretary**. The Supreme Court in **T D Venkata Rao v. Union of India** (1999), 237 ITR 315 also recognized this criteria and held that Audit of accounts should be done by CA only and not by income tax practitioner since CAs by reason of their training have special aptitude in the matter of audits and form a class by themselves for audit purposes whereas an income tax practitioner does not have the same expertise as a CA in the matter of accounts.

In a similar manner CS are specially skilled and trained professionals in the matters arising out of practice of the Companies Act and therefore CA & CWA cannot be treated at par with Company Secretaries in the matter of such compliances.

In this **era of professionalism**, where every aspect of management is sought to be specialized, **the core strength of the three professions should be maintained so that efficient and expert services are available to companies.** The functions of three Institutes viz. The Institute of Chartered Accountants of India, the Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India is administered by the Ministry of Company Affairs. Each of the above professional Institute is governed by the respective acts of Parliament and hence **there is need for defining and demarcating the Core Competence of the respective professions for assigning the statutory responsibilities.**

PCS BE EXCLUSIVELY RECOGNIZED TO PRE-CERTIFY E-FORMS

Training, education and course coverage

Company Secretaries are specially skilled and trained professionals in the matters connected with ensuring the compliance of the Companies Act.

A Company Secretary as competent professional comes in existence after exhaustive exposure provided by the Institute through compulsory coaching, examinations, rigorous training and continuing education programmes.

Corporate law and practice form a major part of the syllabus and training curriculum of Company Secretaryship course. **A look at the course contents of Company Secretaryship reveals that more than 51% of the syllabus comprises of Corporate Laws of which 27% is Company Law.** Further, the training requirements of the CS Course, emphasise on building skills of due diligence and compliance. **A part of the training is also carried out at the office of ROC where a first hand exposure of the functioning of ROC office and matters related thereto is given to the students.**

As is evident from the above, the very purpose of establishment of ICSI by an Act of Parliament was to develop the profession of Company Secretaries independently. It may be noted that under sub-clause (i) of clause (c) of section 2(2), a member of the ICSI in practice is authorized to perform the services of a company with respect to filing, registering, presenting, attesting or verifying any documents including forms, applications and returns by or on behalf of the company. Further, in terms of sub-clause (v) of clause (c) of sub-section (2) of Section 2, a Company Secretary in practice has been specifically authorized to perform the services of a Secretarial Auditor or Consultant.

Company Secretaries have been rendering yeomen services to the corporate sector starting from incorporation of a company, maintaining all registers and records of the company, filing of various documents, forms and records at ROC offices, seeking Government approval on behalf of the company wherever required etc.

Since the task of pre-certification involves checking of compliance of the provisions of Companies Act and rules framed thereunder, Company Secretary in Practice is the appropriate professional and the only choice. **With his vast exposure in Corporate Laws and specialization in Company Law, a Company Secretary is the only suitably qualified professional to ensure compliance with corporate laws and pre-certification.**

SUGGESTED CLAUSE

Clause No…….. Pre-certification of documents, returns and forms

The documents, returns, forms as prescribed and required to be filed with the Registrar or any statutory authority shall be pre-certified by a company secretary in whole-time practice in such form and manner, as may be prescribed, by the Central Government.

ICSI's DEFINITION OF CORPORATE GOVERNANCE

"Corporate Governance is the application of best management practices, compliances of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders".