Proposals of the Companies (Amendment) Bill 2016 as introduced in the Lok Sabha on 16th March, 2016

The Companies Act 2013 was enacted to improve corporate governance and to further strengthen regulations for the companies, keeping in view the changing economic environment as well as the growth of our economy. The Ministry of Corporate Affairs has notified 284 Sections of the Act. However, there were difficulties in smooth implementation of the Companies Act 2013. The Ministry of Corporate Affairs has issued various notifications, circulars, Removal of difficulty orders and amendment in Rules for resolving the issues and to help in smooth implementation. Further, certain amendments were also brought through the Companies (Amendment) Act 2015.

While presenting the Companies (Amendment) Act 2015 to the Rajya Sabha, the Finance Minister mentioned that various queries were received that are being addressed through issuance of Notifications/ Amendment in Rules and some of them have been addressed through these amendments. However, these 16 amendments are not enough to cover everything. The Finance Minister stated that "a broad-based committee will continue to go into this question for the next few months as to where the shoe pinches, and this may not be the last amendments which we are bringing in."

Consequently, the Government of India constituted The Companies Law Committee in June 2015 for making recommendations on the issues arising out of implementation of the Companies Act 2013. The Committee submitted its Report to the Government on 1st February 2016.

Based on the report of the Companies Law Committee and comments received from the stakeholders and Ministries/ Departments, it has been decided by the Government to amend the Companies Act, 2013 and to bring out another Amendment Bill, 2016.

Through the Companies (Amendment) Bill 2016 which was introduced in the Lok Sabha on 16th March, 2016, around 100 amendments have been proposed. The proposed changes are broadly aimed at addressing difficulties in implementation owing to stringency of compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the Act.

S. No	Section	Proposal in the Companies Law Committee Report	Provision in the Companies (Amendment) Bill 2016	Remarks
1.	Section 2 (6)- Definition of Associate	The Committee recommended that the Explanation to Section 2(6) should read as "For the	(i) in clause (6), for the Explanation, the following Explanation shall be substituted, namely:—	An explanation has been added for significant influence to mean control of

	company	purposes of this clause, 'significant influence' means control of at least twenty per cent of the total voting power, or control of or participation in taking business decisions under an agreement." The Committee recommended that the term "joint venture" may be assigned the same meaning as under Indian Accounting Standard (Ind AS) 28 as part of the Explanation to Section 2(6) itself.	'Explanation.—For the purpose of this clause— (*a*) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement; (*b*) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;'	at least twenty per cent of total voting power instead of total share capital. Further the definition of Joint Venture is also proposed now.
2.	Section 2 (30)-Definition of Debenture	The Committee felt that an exception be made for instruments covered under Chapter III D of the RBI Act, 1934 in the term 'debenture' as defined in Section 2 (30) of the Companies Act, 2013. In addition, an exception may also be made for deposits accepted by banking companies, and flexibility be given to the Central Government, in consultation with RBI and SEBI, as applicable, to carve out other instruments from the definition, as may be required.	(*iii*) in clause (*30*), the following proviso shall be inserted, namely:— "Provided that— (*a*) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and (*b*) such other instrument, as may be prescribed by the Central Government in consultation with Reserve Bank of India, issued by a company, shall not be treated as debenture;";	The amendment has been proposed as phrase "any other instrument of a company evidencing a debt" appearing in the definition made it very broad and included, by implication, instruments like commercial papers and other money market instruments, which were often used as an important short-term fund raising source by eligible companies; and were well regulated under RBI regulations.
3.	Section 2 (41)-Definition of	The Committee recommended that the first proviso to Section	(iv) in clause (41), in the first proviso, after the word "subsidiary", the words "or	The amendment has been proposed as the NCLT should

	financial year	2(41) be expanded to also allow associates and joint ventures of a company incorporated outside India to apply for a different financial year to the NCLT.	associate company" shall be inserted;	have similar powers (to allow a different financial year) for associates and joint ventures of a company incorporated outside India, since the financial statements of associates and joint ventures were also taken into consideration in the preparation of 'consolidated financial statements' (CFS), if required.
4.	Section 2 (46)- Definition of Holding Company	The Committee recommended that an Explanation (on the lines of Explanation (c) to Section 2(87) to mean that expression "company" includes any body corporate) be included in Section 2 (46).	(*v*) in clause (*46*), the following *Explanation* shall be inserted, namely:— *'Explanation.*—For the purposes of this clause, the expression "company" includes any body corporate;';	The amendment has been proposed to remove an anomaly which could lead to uncertainties in ascertaining the status of a company, in case of a foreign holding company; and also in determining the applicability of the Act to such a company.
5.	Section 2 (49)- Definition of Interested Director	The Committee felt that in view of the redundancy, the definition of 'interested director' may be omitted	clause (*49*) shall be omitted;	The amendment has been proposed as the definition was redundant
6.	Section 2 (51)- Definition of Key Managerial Personnel	The Committee recommended to allow the Boards of relevant companies to appoint any other person as KMP/ Whole time KMP	in clause (*51*),— (*a*) in sub-clause (*iv*), the word "and" shall be omitted; (*b*) for sub-clause (*v*), the following sub-clauses shall be substituted, namely:— "(*v*) such other officer, not more than one	The amendment has been proposed to remove practical difficulty

			level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (*vi*) such other officer as may be prescribed;";	
7.	Section 2 (57)-Definition of Net Worth	The Committee recommended for the phrase 'debit or credit balance of the profit and loss account' to be included in the definition.	(viii) in clause (57), for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted;	The amendment has been proposed as the net worth of a company reflects its intrinsic value and it does not include the 'debit or credit balance of the profit and loss account'
8.	Section 2 (71)-Definition of Public Company		in clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted;	The amendment has been proposed to remove ambiguity
9.	Section 2 (76)-Definition of Related Party	The Committee, therefore, recommended that Section 2 (76) (viii) be amended to substitute 'company' with 'body corporate' and should also include investing company or the venturer of a company in sub-clause (viii) (A) thereof. In addition, the Committee also felt that the fifth and sixth Removal of Difficulty Orders of 2014, issued to plug unintentional loopholes be brought into the Act through an amendment.	(x) in clause (76), for sub-clause (viii), the following sub-clause shall be substituted, namely:— "(viii) any body corporate which is— (A) a holding, subsidiary or an associate company of such company; (B) a subsidiary of a holding company to which it is also a subsidiary; or (C) an investing company or the venturer of a company;";	The amendment has been proposed as the term related party", as currently defined, used the word "company" meaning thereby that those entities that were incorporated in India would come in the purview of the definition. This resulted in the impression that companies incorporated outside India (such as holding/ subsidiary/ associate / fellow subsidiary of an Indian company) were excluded from the purview of

				related party of an Indian company.
10.	Section 2 (85)- Definition of Small Company	The Committee recommended the replacement of the words “last profit and loss account” with the words “last audited profit and loss account”, to take care of what seemed to be an inadvertent drafting error. It also recommended the Removal of Difficulty Order to be given effect to through an amendment to the Act itself. Further, it was noted that a review of the thresholds for small companies would be done by MCA, at an appropriate time.	(*xi*) in clause (*85*),— (*a*) in sub-clause (*I*), for the words "five crore rupees", the words "ten crore rupees" shall be substituted; (*b*) in sub-clause (*ii*),— (*A*) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted; (*B*) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;	The amendment has been proposed to remove inadvertent drafting error. Also, the thresholds have been revised. The maximum paid up capital has now been increased from Rs 5 crore to Rs 10 crore. The maximum turnover requirement has now been increased from Rs 20 crore to Rs 100 crore.
11.	Section 2 (87)- Definition of Subsidiary Company	The Committee recommended that the term “total share capital” be replaced with the term ‘total voting power’, as equity share capital should be the basis for determining holding/subsidiary status. Consequential changes in the Rules may also be required.	(*xii*) in clause (*87*),— (*a*) in sub-clause (*ii*), for the words "total share capital", the words "total voting power" shall be substituted;	The amendment has been proposed in order to address the practical problems
12.	Proviso to Section 2 (87)	The Committee felt that while the proviso to Section 2(87) has not yet been notified, it was likely to have a substantial bearing on the functioning, structuring and the ability of companies to raise funds	(xii) in clause (87),— (b) the proviso shall be omitted; (c) in the Explanation, item (d) shall be omitted;	The amendment has been proposed as imposing restrictions on layers could be construed as restrictive for conduct of businesses.

		when so notified and hence recommended that the proviso be omitted.		
13.	Section 2 (91)- Definition of turnover	The Committee recommended that the definition of the term 'turnover' be revised to read '"turnover" means the gross amount of revenue recognized in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year'.	(*xiii*) for clause (*91*), the following clause shall be substituted, namely:— '(*91*) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'.	The Institute of Chartered Accountants of India (*ICAI*) suggested that the definition of turnover should mean the amount of revenue recognised as per the applicable Accounting Standards followed by the company.
14.	Section 3- Formation of company		After section 3 of the principal Act, the following section shall be inserted, namely:— "3A. If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.".	The amendment has been proposed to be made the members liable in case the company has lesser number of members than as prescribed.

15.	Section 4- Memorandum	The Committee recommended for a more liberal operational regime for companies. To provide for this, the Committee recommended that Section 4(1)(c) should be amended appropriately, to allow companies the additional option to have a generic object clause, i.e., "to engage in any lawful act or activity or business as per the law for the time being in force" in the MOA. The Committee also recommended that the period of name reservation should be reduced from 60 days to 20 days from the date of approval, and simultaneously, the fees for such reservation be reduced to Rupees Five Hundred.	In section 4 of the principal Act,— (i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:— "(c) that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force: Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum;"; (ii) in sub-section (5), in clause (i), for the words "sixty days from the date of the application", the words "twenty days from the date of approval or such other period as may be prescribed" shall be substituted; (iii) after sub-section (6), the following sub-sections shall be inserted, namely:— "(6A) A company may adopt the model memorandum applicable to such a company.	The amendment has been proposed for smooth implementation.

			(6B) In case of any company, which is registered after the commencement of the Companies (Amendment) Act, 2016, in so far as the registered memorandum of such company does not exclude or modify the contents in the model memorandum applicable to such company, those contents shall, so far as applicable, be the contents of the Memorandum of that company in the same manner and to the extent as if that was contents of the duly registered memorandum of the company.".	
16.	Section 7- Incorporation of company	The Committee recommended that the requirements with respect to affidavits under Section 7(1)(c) could be replaced with self-declarations, as a wrong declaration carries a stiff punishment under the Act. Regarding certification under Section 7(1)(b), the Committee further recommended that a certificate by both the parties stated therein ought to be retained as an additional check at the stage of incorporation of the company.	In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.	The amendment has been proposed for removing additional documentary burden,
17.	Section 12- Registered office of the company	The Committee recommended that this sub-section may be amended to provide for a company to have its registered	In section 12 of the principal Act,— (i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words " within thirty days of its	The amendment has been proposed as the time was insufficient

		office within thirty days of its incorporation. The Committee further recommended that the time limit for registering change in registered office be increased to thirty days.	incorporation" shall be substituted; (ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.	
18.	Section 21- Authentication of documents, proceedings and contracts	The Committee recommended an amendment to Section 21, to allow authorizations, on the signature of 'any employee of the company duly authorised by the Board'	In section 21 of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted.	The amendment has been proposed as practically it is very difficult for only such top level persons to sign the documents, without providing for any other employee to sign, even with a board resolution.
19.	Section 26- Matters to be stated in the prospectus	The Committee recommended that Section 26(1) of the Companies Act, 2013 may be modified to empower SEBI to prescribe the contents in consultation with MCA. Further, MCA and SEBI may workout the minimum disclosures to be included in the prospectus so that the regulatory objectives of both the regulators are achieved while achieving the end purpose of reduction in the size of the prospectus.	In section 26 of the principal Act, in sub-section (1),— (i) after the words "signed and shall", the following shall be inserted, namely:— "state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government: Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India	The amendment has been proposed as with the detailed information, the offer documents are becoming too long, too detailed, and repetitive as also too difficult to understand.

			Act, 1992, in respect of such financial information or reports on financial information shall apply."; (ii) the clauses (a) and (b) shall be omitted.	
20.	Section 35- Civil liability for mis-statement in prospectus	The Committee recommended that it would be appropriate to hold experts liable for statements prepared by them, and which the directors relied upon (as long as such experts were identified in the prospectus).	In section 35 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:— "(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation ; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.".	The amendment has been proposed as directors could not rely on the statements made by experts in a prospectus, as a defence for civil liability, although such defence was available to them under Section 62(2)(d)(ii) of the Companies Act, 1956.
21.	Section 42- Private Placement	Section 42 of the Act, in conjunction with Section 62, lays down the framework for private placement of securities. Further, while Section 62 governs	Section amended	The amendments have been proposed for simplification of the private placement process by doing away with separate offer letter, by

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

		retained.		
22.	Section 47- Voting Rights		In section 47, in sub-section (1), for the words, figures and brackets "provisions of section 43 and sub-section (2) of section 50", the words, figures and brackets "provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188" shall be substituted	The amendment has been proposed to include provisions of Related Party transactions
23.	Section 53- Prohibition on issue of shares at a discount	The Committee recommended that the word 'discount', may replace the words "discounted price" in the provision. The Committee further recommended that to enable restructuring of a distressed company, when the debt of such a company is converted into shares in accordance with any debt restructuring guidelines specified by Reserve Bank of India (Strategic Debt Restructuring Scheme issued by RBI vide Circular dated 8.06.2015), a company may issue shares at a discount to a creditor referred to in, and as per the guidelines.	In section 53 of the principal Act,— (i) in sub-section (2), for the words "discounted price", the word "discount" shall be substituted; (ii) after sub-section (2), the following sub-section shall be inserted, namely:— "(2A) Notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949."	The amendments have been proposed to remove the ambiguity and also the Companies Act 1956 allowed companies to issue shares at a discount with the prior approval of the Company Law Board (CLB) though this facility was hardly used.

24.	Section 54- Issue of sweat equity shares	The Committee recommended that the facility to issue ESOPs may be given to start ups	In section 54, in sub-section (*1*), clause (*c*) shall be omitted.	The amendment has been proposed to facilitate start ups
25.	Section 62- Further issue of share capital	The Committee recommended that any mode of delivery that would provide irrefutable/ certain proof of delivery, be allowed.	In section 62 of the principal Act,— (i) in sub-section (1), in clause (c), for the words "of a registered valuer subject to such conditions as may be prescribed", the words and figures "of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed" shall be substituted; (ii) for sub-section (2), the following sub-section shall be substituted, namely:— "(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue."	The amendment has been proposed as Section 42 and 62 are interlinked.
26.	Section 73- Prohibition on acceptance of deposits from public	Keeping an amount not less than fifteen percent of the amount of its deposits maturing during a financial year and the next financial year, deposited and kept in a scheduled bank in a separate bank account to be called as the deposit repayment reserve account. The Committee recommended	In section 73 of the principal Act, in sub-section (2),— (i) for clause (c), the following clause shall be substituted, namely:— "(c) depositing, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;";	The amendment has been proposed as it would increase the cost of borrowing for the company as well as lock-up a high percentage of the borrowed sums.

		that the requirement for the amount to be deposited and kept in a scheduled bank in a financial year should be changed to not less than twenty percent of the amount of deposits maturing during that financial year, which would mitigate the difficulties of companies, while continuing with reasonable safeguards for the depositors who have to receive money on maturity of their deposits.		
27.	Section 73- Prohibition on acceptance of deposits from public- Requirement of Deposit insurance omitted	The Committee felt that the provisions of Section 73(2)(d) with regard to providing deposit insurance along with relevant Rules be omitted.	In section 73 of the principal Act, in sub-section (2),— (ii) clause (d) shall be omitted;	The amendment has been proposed taking into account the fact that at as on date none of the insurance companies is offering such insurance products.
28.	Section 73- Prohibition on acceptance of deposits from public- Deposit can be accepted after 5 years of making the default good	The Committee recommended that the prohibition on accepting further deposits should apply indefinitely only to a company that had not rectified/made good earlier defaults. However, in case a company had made good an earlier default in the repayment of deposits and the payment of interest due thereon, then it	In section 73 of the principal Act, in sub-section (2),— (iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:— "such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;".	The amendment has been proposed as imposing a lifelong ban for a default anytime in the past would be harsh.

		should be allowed to accept further deposits after a period of five years from the date it repaid the earlier defaulting amounts with full disclosures.		
29.	Section 76A- Punishment for contravention of Section 73 to 76	The Committee recommended that `minimum fine to be modified to Rs 1 crore or twice the amount of deposit accepted, whichever is lower, and the maximum amount to be as already provided	In section 76A of the principal Act, in clause (a), for the words "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted.	The amendment has been proposed as Penalty prescribed was very high
30.	Section 77- Duty to register charges, etc	The Committee recommended that prescriptive powers may be provided to allow certain liens or securities or pledges to be exempted from filing.	In section 77 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:— "Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."	The amendment has been proposed to address the practical problems in case of transactions by NBFCs engaged in financing of assets, and for members/agents of the Clearing Corporation, etc.
31.	Section 78- Application for registration of charge	The Committee recommended that that similar time limits, as provided for under Section 77 for registration of charge, may be allowed	In section 78 of the principal Act, for the words "register the charge within the period specified in section 77", the words "register the charge within the period of thirty days referred to in sub-section (1) of section 77" shall be substituted.	Consequential amendment
32.	Section 82- Company to report satisfaction of charge	The Committee recommended that it would be in a company's interest to report satisfaction of charges, there should not be any regulatory concern in allowing similar timelines as allowed for	In section 82 of the principal Act, in sub-section (1),— (i) the words "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted;	The amendment has been proposed as it would be in a company's interest.

		registering a charge	(ii) the following proviso shall be inserted, namely:— "Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."	
33.	Section 89- Declaration in respect of beneficial interest in any share	The Committee recommended to amend the Act to provide a definition of beneficial interest in a share, and beneficial ownership in a company. The existing definition under SEBI Circular/Guidelines and the Prevention of Money Laundering Act may be used as a basis for the definition in the Companies Act, 2013.	In section 89 of the principal Act, after sub-section (9), the following sub-section shall be inserted, namely:— "(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to— (i) exercise or cause to be exercised any or all of the rights attached to such share; or (ii)receive or participate in any dividend or other distribution in respect of such share.	The amendment has been proposed as the existing provisions are considered inadequate
34.	Section 90- Investigation of beneficial ownership of shares in certain cases	The Committee recommended the following points: a. Companies and individuals may be obligated to obtain information on beneficial ownership. In this regard, companies may be empowered to seek information from members and in case of failure to supply	Section amended	The amendment has been proposed as the existing provisions are considered inadequate for the purpose of mandating a register of beneficial owners of the company.

		the required information, apply sanctions in the form of suspension of rights against the beneficial interests subject to adequate safeguards. b. Companies would also be mandated to maintain registers of beneficial owners and provide the information to the registry (MCA21). Periodic updating may also be mandated. Data privacy concerns may be addressed by making only part of the filed information available to the public. **c.** Companies not complying with the requirements may be liable to fine and criminal prosecution.		
35.	Section 92- Annual Return	The Committee recommended that the requirement for filing extract of annual return may be omitted, and instead the web address/link of the Annual Return filed by the company and hosted on its website, if any, should be provided in the Board's Report and information with regard to shareholding pattern be provided as part of section 134 requirements.	(i) in sub-section (1),— (a) clause (c) shall be omitted; (b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted; (c) after the proviso, the following proviso shall be inserted, namely:— "Provided further that the Central Government may prescribe abridged form of annual return for One Person Company and	The amendment has been proposed as this requirement was leading to duplication of information being reported to the shareholders under other provisions of the Act or mandated to be made available on the website of the companies.

			small company."; (ii) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."	
36.	Section 93- Return to be filed with Registrar in case promoters' stake changes	The Committee recommended that the requirement be omitted altogether.	Section 93 of the principal Act shall be omitted.	The amendment has been proposed as this requirement led to an increase in the amount of filings being made under the Act.
37.	Section 94- Place of keeping and inspection of registers, returns etc.	The Committee recommended that the requirement of providing the Registrar with an advance copy of a proposed special resolution as required under Section 94(1) be done away with, since it did not serve any purpose, particularly because the special resolution was in any case to be filed as per the requirements of Section 117(3)(a). The Committee suggested that such personal information, as may be prescribed in the Rules, may not be made available publicly.	In section 94 of the principal Act,— (*i*) in sub-section (*1*), in the first proviso, the words "and the Registrar has been given a copy of the proposed special resolution in advance" shall be omitted; (*ii*) in sub-section (*3*), the following proviso shall be inserted, namely:— "Provided that particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (*2*) or for taking extracts or copies under this sub-section.".	The amendments have been proposed to provide flexibility.

38.	Section 96- Annual General meeting	The Committee recommended to allow private limited companies and wholly owned subsidiaries of unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance with a view to ease doing business. This would require amendment to Section 96(2) so that exemption can be provided to such class of companies.	In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:— "Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:	The amendment has been proposed with a view to ease doing business.
39.	Section 100- Calling of Extraordinary general meeting	The Committee recommended that the explanation to Rule 18(3) be deleted and an explanation be incorporated at the end of Section 100 mandating that EGM shall be held only in India, as well as provide for exemptions to wholly owned subsidiaries of companies incorporated outside India.	In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India."	The amendment has been proposed to provide relaxation for wholly owned subsidiaries of companies incorporated outside India and certain other cases.
40.	Section 101- Notice of meeting		In section 101 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted namely:— "Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto— (i) in the case of an annual general meeting, by not less than ninty-five per	

			cent. of the members entitled to vote thereat; and (ii) in the case of any other general meeting, by members of the company— (a) holding, if the company has a share capital, not less than ninty-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or (b) having, if the company has no share capital, not less than ninty-five per cent. of the total voting power exercisable at that meeting: Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter."	
41.	Section 110- Postal ballot	The Committee decided to amend Section 110 of the Act, such that Rule 22(16) of the Companies (Management and Administration) Rules, 2014 would provide that if a company is required to provide for electronic voting, then the same items could be covered in its General Meetings too.	In section 110 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section."	The amendments have been proposed to remove repetition.

42.	Section 117- Resolutions and agreements to be filed	The Committee recommended that while the filing requirement ought to continue, MCA may address the concerns of companies by adequately publicising the provisions in the MCA21 system to ensure confidentiality of such filed information. The Committee, recommended that since Section 180 (1) required the passing of a special resolution, and that the filing requirements were triggered under Section 117(3)(a) itself. Since clause (e) of Section 117(3) appeared to be repetitive, it was recommended for deletion. The Committee recommended that providing such information by banks may violate their confidentiality obligations towards their customers, and recommended that an exemption be considered for banks.	In section 117 of the principal Act,— (i) in sub-section (2),— (a) for the words "not be less than five lakh rupees", the words "not be less than one lakh rupees" shall be substituted; (b) for the words "one lakh rupees", the words "fifty thousand rupees" shall be substituted; (ii) in sub-section (3),— (a) clause (e) shall be omitted; (b) in clause (g), in the proviso, the word “and” shall be omitted and the following proviso shall be inserted, namely:— "Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and."	The amendments have been proposed as the penalty was harsh and to maintain confidentiality.
43.	Section 123- Declaration of Dividend	The Committee recommended that the provisions of section 123(3) be amended in such a way as to allow declaration of interim dividend from out of the profits of the current financial year,	In section 123 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— "(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the	The amendment has been proposed as a measure of good corporate governance, a company should not declare interim dividend out of the projected profits for

		generated till the date of declaration, including brought forward surplus in the Profit & Loss Account, and the same could be declared anytime up to convening of AGM for the said financial year.	period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend: Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.".	the full year.
44.	129 (3)- Consolidation to be in accordance with applicable accounting standards	The Committee recommended that that to ensure the same treatment for the consolidation of accounts under the Accounting Standards and the Act, the reference to 'associates' and 'joint ventures' under Section 129 ought to be amplified/clarified, to be in accordance with the applicable Accounting Standards.	Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*):	It has been proposed that Consolidated Financial Statements shall be prepared as the Standalone Financial Statements are prepared and in accordance with applicable accounting standards

			Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."	
45.	Section 130- Opportunity of being heard not available with the auditor in case Reopening of accounts on Court's/ tribunal's Order	The Committee proposed that that it would be appropriate if a provision was specifically made in the section enabling the Court/ Tribunal to give notice to any other party/ person concerned.	After the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted;	Enabling provisions have been provided for opportunity of being heard in Section 130 for auditor/ Chartered Accountant of the Company.
46.	Section 130- Books could be reopened for any number of years	The Committee recommended that the applicability of provisions of Section 130 for the re-opening of accounts could be restricted to eight years, unless a longer period is required through a specific direction issued by Central Government, under Section 128(5).	No order shall be made under sub-section (*1*) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (*5*) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."	Applicability of provisions of Section 130 for the re-opening of accounts restricted to eight years unless an order has been given by the Central Government for longer period

47.	Section 134- Financial Statement, Board's report, etc.	The Committee recommended that in case of company does not have managing director, the CEO to be mandated to sign the financial statements. The Committee also recommended that the web address/ link of the Annual Return filed by the company and hosted on its website, if any to be provided in the Board's Report Repetition of disclosures in Board Report may be avoided where disclosure have been made in the Financial Statements. For small companies, separate format of Board Report to be prescribed.	(a) for sub-section (1), the following sub-section shall be substituted, namely:— "(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."; (b) in sub-section (3),— (i) for clause (a), the following clause shall be substituted, namely:— "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"; (ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted; (iii) after clause (q), the following provisos shall be inserted, namely:—	The amendments have been proposed to avoid practical difficulty and to repetition in disclosure of information. Also clarity in language has been proposed.

			"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report: Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available."; (c) after sub-section (3), the following sub-section shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company."	
48.	Section 135- Corporate Social Responsibility	The Committee recommended the following: 1. The words “any financial year” be replaced by the words ‘preceding financial year’ 2. Composition of CSR Committee for companies not required to appoint Independent Directors be prescribed as ‘having two or	(*i*) in sub-section (*1*),— (*a*) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (*b*) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (*4*) of section 149, it shall have in its Corporate Social Responsibility	The amendments have been proposed to incorporate suggestions of High Level Committee of CSR

		more Directors'. 3. The Committee felt that it would be appropriate for the said clause to be modified to refer to subjects in Schedule VII within which CSR activities could be taken up by an eligible company. 4. The High Level CSR Committee has recommended in para 4.16 of the report for the term *"average net profit"* to be replaced with the words *"net profit",* to remove any ambiguity. The Committee also agreed with the recommendation. Further, prescriptive powers were also recommended to be introduced for specifying the manner of calculation of 'net profits' of a foreign company, through Rules, while referring to Section 381.	Committee two or more directors."; (*ii*) in sub-section (*3*), in clause (*a*), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted; (*iii*) in sub-section (*5*), for the *Explanation*, the following *Explanation* shall be substituted, namely:— '*Explanation*.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'.	
49.	Section 136- Right of member to copies of audited financial statements	The Committee felt that it would be appropriate that clarity allowing financial statements to be circulated at a shorter period in accordance with the provision for shorter notice meeting under Section 101 be provided in Section 136.	"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by ninety-five per cent. of the members entitled to vote at the meeting:	It has been proposed that the Financial Statements can be circulated at a shorter period, if it is agreed by ninety-five per cent. of the members entitled to vote at the meeting.

50.	Section 136- Placing the Financial Statements of Foreign Subsidiary	The Committee recommended that requirement should be limited to listed companies in view of their dispersed shareholding and the need for greater regulatory oversight as compared to unlisted companies. However, the Committee did not agree to the suggestion that for listed companies, item (a) would apply only in respect of its Indian subsidiaries. Further, the Committee felt that the requirements under item (b) of the 4th proviso to Section 136 ought to continue to be applicable to all companies, including unlisted companies.	Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")— (*a*) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company; (*b*) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.'';	It has been proposed that where foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website.
51.	136 (2)- Providing copies of financial statements to members		Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.	It has been proposed that that the accounts of subsidiaries companies may be provided to the member who asks for it.
52.	Section 137-	Corresponding to proposal in 4th	Provided also that in the case of a	A foreign subsidiary company

	Copy of Financial Statements to be filed with ROC	proviso to Section 136	subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'	whose accounts are not required to be audited under the country of incorporation, it has been proposed that the holding company can even file unaudited statements to ROC with declaration.
53.	1st proviso to Section 139 (1) with regard to ratification of appointment of auditor in every AGM by the shareholders	The Companies Law Committee felt that it would be advisable to omit the provisions with respect to ratification, as it defeats the objective of giving five year term to the auditors. So the Committee proposes that the provisions with respect to ratification of appointment of auditor to be omitted.	1st proviso to Section 139 (1) shall be omitted	The proposal here is that auditor's appointment need not be ratified by the shareholders at every AGM
54.	Section 140(3)- Minimum Penalty for non filing of Resignation by auditor linked to audit fees	The Committee recommended that minimum fine may be reduced to Rupees fifty thousand or the audit fees, whichever is less.	In sub section 140 (3), the words fifty thousand shall be replaced with fifty thousand rupees or the remuneration of the auditor, whichever is less,	It has been proposed that fines for auditor default linked with audit fees with minimum amount. As per the provision now, if the auditor does not file resignation within a period of

				thirty days from the date of resignation, he shall be punishable with fine; minimum- Rupees fifty thousand and maximum Rupees five lakhs.
55.	Definition of relative w.r.t disqualification of auditors as per Section 141(3)(d)	The Committee proposed that for the purpose of section 141(3) (d), the term relative should be suitably modified.	An Explanation has been added to Section 141 (3) (d) *Explanation*.—For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments	Definition of relative w.r.t disqualification of auditors as per Section 141(3) (d) is being relaxed.
56.	Section 141 (3) (i)- Clarity with regard to language of the section which was very wide and enhancing the disqualification of auditors to even totally unconnected entities	The Committee noted that any relaxation to section 141(3) (i) read with Section 144 would compromise independence of auditors. However, clarity needs to be provided by suitably amending the clause.	Section 141 (3) (i) provides that a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company. *Explanation.*—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the *Explanation* to section 144.	The amendment has been proposed to provide clarification.

57.	1st Proviso to Section 143 (1)- Right of access by the auditor of a holding company to the accounts and records of the associate company, whose accounts are required to be consolidated	The Committee recommends that this provision may be extended even to associate company, whose accounts are required to be consolidated.	The words subsidiaries shall be substituted with its subsidiaries and associates.	As of now the auditor of a holding company has a right to access the books of accounts of subsidiary companies in connection to the consolidation of accounts. This right has been extended to associates also by this proposal
58.	Section 143 (3) (i) Reporting on Internal Financial Control Framework by the auditors limited to financial statements	The Committee recommended that the reporting obligations of auditors on internal financial controls to be with reference to the financial statement	The words "internal financial controls system", the words "internal financial controls with reference to financial statements"	It has been proposed that reporting on Internal Financial Control Framework limited to reporting on Internal Financial Control with reference to financial statements.
59.	Section 147 (2)- Punishment for contravention by auditors	The Committee recommended that under sub-section (2), minimum fine as specified may be retained and maximum fine may extend to rupees five lakh or four times the audit fees, whichever is less	after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted	It has been proposed that maximum fine for contravention of section 139, 143, 144 or 145 to be linked to audit fees or Rs 5 lakhs whichever is less.

60.	Section 147 (2)- Punishment for contravention by auditors knowingly or willingly	The Committee recommended that under the proviso to sub-section (2), the minimum fine should be rupees fifty thousand and which may extend to rupees twenty-five lakh or eight times the audit fees, whichever is less.	For the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;	It has been proposed that minimum fine for contravention by the auditor knowingly or wilfully to be reduced from Rs 1 lakhs to Rs 50000 and maximum fine to be linked to audit fess
61.	Section 147 (3)- in case of conviction the auditor was liable to any other person	The Committee proposes that the term 'any other persons' in Section 147(3) to be replaced with the phrase 'shareholder or creditor'	for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;	In case of conviction, liability of an auditor has been proposed to be limited to shareholder or creditor'
62.	Section 147 (5)- Joint and severally liability of audit firm	The Committee recommended that the Provisions with regard to liability of a partner not to be extended to the firm shall be brought in the Act.	Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable	Provisions of Rule brought to Act
63.	Section 149- Company to have Board of Directors	The Committee recommended that it would be more appropriate that the residence requirement is for the current financial year. The Committee further recommended that, in view of the difficulties being faced, the test of materiality for the purpose of determining whether pecuniary relationships could impact the independence of an individual to	In section 149 of the principal Act,— (i) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial	It has been proposed to remove difficulties.

		be an independent director may be introduced. In this regard, the Committee felt that the scope of the restriction on “pecuniary relationship or transaction” entered into by a relative be made more specific by clearly categorising the types of transactions as provided under Section 141(3)(d).	year in which it is incorporated."; (ii) in sub-section (6),— (a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted; (b) for clause (d), the following clause shall be substituted, namely:— "(d) none of whose relatives— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its	

			holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);"; (c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.".	
64.	Section 152- Appointment of directors		In section 152 of the principal Act,— (a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted; (b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.	Consequential proposals due to amendment proposed in Section 153

65.	Section 153- Application for allotment of Director Identification Number	The Committee considered and recommended that necessary flexibility may be provided in the Act to do away with the requirement of DIN or provide an option to shift to AADHAAR or any other universally accepted identification number at a future date.	In section 153 of the principal Act, the following proviso shall be inserted, namely:— "Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."	Central Government may prescribe any identification number which shall be treated as Director Identification Number
66.	Section 160- Right of persons other than retiring directors to stand for directorship	The Committee recommended that in case of appointment of Independent Directors and Directors recommended by the Nomination and Remuneration Committee, the requirements of Section 160 ought to be dispensed with.	In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178."	To remove unreasonable requirement as the recommendations has been made by Nomination and Remuneration Committee
67.	Section 161- Appointment of additional director, alternate director and nominee director	The Committee recommended that there should be a prohibition in the Act for appointing a director of a company as an alternate director in the same company. The Committee was of the view that this right should be available to the Boards of private companies as well.	In section 161 of the principal Act,— (*i*) in sub-section (*2*), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted; (*ii*) in sub-section (*4*),— (*a*) the words "In the case of a public company," shall be omitted; (*b*) after the words "meeting of the Board", the words "which shall be subsequently	To remove conflict of interest and also ambiguity in the calculation of quorum. To give right to the private company

			approved by members in the immediate next general meeting" shall be inserted.	
68.	Section 164- Disqualifications for appointment of director	The Committee also recommended that a disqualification under Section 164(2) be only applicable to a person who was a director at the time of the non-compliance, and in case of a continuing non-compliance, there should be a period of six months' time allowed for a new Director to make the company compliant. The Committee also recommended that such inconsistency be corrected and in case of requirement for vacation of office of a Director, it should not take effect until the appeals are disposed off, while in case of disqualification, it is not required to provide for period of pendency of appeal.	In section 164 of the principal Act,— (*i*) in sub-section (*2*), the following proviso shall be inserted, namely:— "Provided that where a person is appointed as a director of a company which is in default of clause (*a*) or clause (*b*), he shall not incur the disqualification for a period of six months from the date of his appointment."; (*ii*) in sub-section (*3*), for the proviso, the following proviso shall be substituted, namely:— "Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."	Consequential amendment

69.	Section 165- Number of directorships	The Committee recommended for excluding the directorship in a dormant company for reckoning the limit.	In section 165 of the principal Act, in sub-section (*1*), the *Explanation* shall be renumbered as *Explanation* I and after *Explanation* I as so numbered, the following *Explanation* shall be inserted, namely:— "*Explanation* II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."	The amendment has been proposed as such companies are inactive and having insignificant transactions and therefore not impacting on the temporal resources of the Director
70.	Section 167- Vacation of office of director	The Committee recommended that the vacancy of an office should be triggered only where a disqualification is incurred in a personal capacity and therefore, the scope of Section 167(1)(a) should be limited to only disqualifications under Section 164(1).	In section 167 of the principal Act, in sub-section (*1*),— (*i*) in clause (*a*), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (*2*) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; (*ii*) in clause (*f*), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (*e*) and (*f*)— (*i*) for thirty days from the date of conviction or order of disqualification; (*ii*) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such	The amendment has been proposed to remove paradoxical situation, as the office of all the directors in a Board would become vacant where they are disqualified under Section 164(2), and a new person could not be appointed as a director as they would also attract such a disqualification.

			appeal or petition is disposed of; or (*iii*) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."	
71.	Section 168- Resignation of director	The Committee felt that it would be appropriate if an option of intimating such resignation to the Registrar was given to the Director instead of making it mandatory. The requirement of mandatory filing by the company in the prescribed Form should continue. This would also facilitate foreign Directors.	In section 168 of the principal Act, in sub-section (*1*), in the proviso, for the words, "director shall also forward", the words, "director may also forward" shall be substituted.	Flexibility has been provided by the proposal.
72.	Section 173- Meetings of Board	The Committee recommended that flexibility be provided to allow participation of Directors through video conferencing, subject to such participation not being counted for the purpose of quorum. However, such Directors, though not counted for the purposes of quorum, may be entitled to sitting fees.	In section 173 of the principal Act, in sub-section (*2*), after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."	The amendment has been proposed as the requirement completely bars participation in these specified matters of the Board meetings through video conferencing, which unnecessarily restricts wider participation even if the necessary quorum as specified in Section 174 is physically present.
73.	Section 177- Audit Committee	The Committee recommended that the existing requirement for the Audit Committee to pre approve all related party transactions, subject to approval	In section 177 of the principal Act,— (*i*) in sub-section (*1*), for the words "every listed company", the words "every listed public company" shall be substituted; (*ii*) in sub-section (*4*), in clause (*iv*), after	The requirement for constituting Audit Committee is of listed public company and not all listed companies.

		by Board or shareholders as required under Section 188 should continue. For transactions not covered under Section 188, the Audit Committee may give its recommendation to the Board in case it is not approving a particular transaction. The Committee observed that subject to safeguards, it would be similar to the flexibility provided under Section 188 to the Board and the shareholders. However, concerns of possible misuse of this flexibility would need to be suitably addressed by prescribing an upper threshold of Rupees One Crore on such transactions. In addition, the Committee recommended that, as provided in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 related party transactions between a holding company and its wholly owned subsidiaries need not require the approval of the Audit Committee for transactions not requiring	the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board: Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."	Provisions with regard to approval of Related Party Transactions by Audit Committee have been incorporated

		Board approval under section 188, and Section 177 be amended accordingly.		
74.	Section 178- Nomination and remuneration committee and stakholders relationship committee	The Committee recommended that the NRC should instead 'prescribe a methodology to carry out evaluation of performance of individual Directors, Committee(s) of the Board and the Board as a whole', and the Board should carry out the performance evaluation as per the methodology either by itself, by the NRC or by an external party as laid down in the methodology. The performance review by the Independent Directors, as presently required in Schedule IV, may also form part of the methodology. Schedule IV may be amended accordingly. The provision may be reviewed after three years. The Committee felt that it would be sufficient for the company to place the remuneration policy on the website of the company, if any, and to disclose only the salient features of the policy in the Board's report along with the	In section 178 of the principal Act,— (*i*) in sub-section (*1*), for the words "every listed company", the words "every listed public company" shall be substituted; (*ii*) in sub-section (*2*), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted; (*iii*) in sub-section (*4*), in clause (*c*), for the proviso, the following proviso shall be substituted , namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report."; (*iv*) in sub-section (*8*), in the proviso, for the words "non-consideration of resolution of any grievance", the words inability to resolve or consider any grievance" shall be substituted.	The requirement for constituting Nomination and remuneration committee and stakholders relationship committee is of listed public company and not all listed companies. Disclosures can be made on the website.

		web link/address.		
75.	Section 180- Restrictions on powers of Board	The Committee recommended that 'securities premium' be also included for the purpose of recognising the borrowing limits, along with the company's paid-up share capital and free reserves, since it was a part of the capital of a company.	In section 180 of the principal Act, in sub-section (*1*), in item (*c*), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.	The amendment has been proposed since securities premium was a part of the capital of a company.
76.	Section 184- Disclosure of interest by director	The Committee further recommended that 'body corporates' be included under the ambit of the provision of 184(5), to align it to Section 184(2), where the words 'body corporate' have been used to evaluate the interest of a Director.	In section 184 of the principal Act,— (*i*) in sub-section (*4*), the words "shall not be less than fifty thousand rupees but which" shall be omitted; (*ii*) in sub-section (*5*), for clause (*b*), the following clause shall be substituted, namely:— "(*b*) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."	The amendment has been proposed to remove implementation difficulty
77.	Section 185- Loan to directors, etc	The Committee recommended, that it may be considered to allow companies to advance a loan to any other person in whom director is interested subject to prior approval of the company by	For section 185 of the principal Act, the following section shall be substituted, namely:— '185. (*1*) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give	The amendment has been proposed to remove difficulty in genuine transactions

		a special resolution. Further, loans extended to persons, including subsidiaries, falling within the restrictive purview of Section 185 should be used by the subsidiary for its principal business activity only, and not for further investment or grant of loan.	any guarantee or provide any security in connection with any loan taken by,— (*a*) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (*b*) any firm in which any such director or relative is a partner. (*2*) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (*a*) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and (*b*) the loans are utilised by the borrowing company for its principal business activities. *Explanation.*—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—	

			(*a*) any private company of which any such director is a director or member; (*b*) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (*c*) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (*3*) Nothing contained in sub-sections (*1*) and (*2*) shall apply to— (*a*) the giving of any loan to a managing or whole-time director— (*i*) as a part of the conditions of service extended by the company to all its employees; or (*ii*) pursuant to any scheme approved by the members by a special resolution; or (*b*) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or	

			(*c*) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (*d*) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (*c*) and (*d*) are utilised by the subsidiary company for its principal business activities. (*4*) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'.	
78.	Section 186- Loan and investment by	The Committee felt that sufficient safeguards have been built into the oversight	In section 186 of the principal Act,— (*i*) sub- section (*1*) shall be omitted; (*ii*) in sub-section (*2*), the following	The amendment has been proposed to address the core issue that there may be

	company	mechanism of SEBI and Stock Exchanges, and the recommendations on Beneficial Ownership register requirements should dispel the regulatory concerns. Keeping this in mind, the Committee recommended that the restrictions on layering as contained in the section be omitted. Further, 'principal business' of an investment company may be clarified in the Explanation below sub-section (13) of Section 186 on the lines of RBI's stipulations. The Committee recommended for the insertion of an 'explanation' to clarify the exclusion of employees from the requirement of the sub-section/clause. The Committee also recommended that the Removal of Difficulty Order for Section 186(11) with regard to Insurance and Housing finance Companies, etc. issued in January 2015, subject to legal clarification, may be included in the sub-section itself through an amendment. Language of Section 372A(8) of	*Explanation* shall be inserted, namely:— '*Explanation*.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.'; (*iii*) for sub-section (*3*), the following sub-section shall be substituted, namely:— '(*3*) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (*2*), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the	several legitimate business justifications for use of a multi layered structure, and such restriction hampers the ability of a company to structure its business. To align the exemption provision with Section 372A(8) of the Companies Act, 1956 in this regard.

		the Companies Act, 1956 may be used.	financial statement as provided under sub-section (*4*). (*iv*) for sub-section (*11*), the following sub-section shall be substituted, namely:— "(*11*) Nothing contained in this section shall apply— (*a*) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (*b*) to any investment— (*i*) made by an investment company; (*ii*) made in shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (*iii*) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities."; (*v*) in the *Explanation*, in clause (*a*), after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of	

			acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."	
79.	Section 188- Related Party Transactions	The Committee noted that the circular no. 30/2014 issued by the MCA, clarifying requirements of second proviso to Section 188(1) had been misinterpreted, and hence, should be withdrawn. Further, as all parties in case of joint ventures and closely held public companies may be related parties, not allowing them to vote may be impractical and such cases may be specifically excluded from the requirements of the second proviso.	In section 188 of the principal Act,— (*i*) in sub-section (*1*), after second proviso, the following proviso shall be inserted, namely:— "Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:"; (*ii*) in sub-section (*3*), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.	The amendment has been proposed with a view to ease of doing business
80.	Section 194-	The Committee deliberated on the issues involved and noted that SEBI regulations are comprehensive in the matter (and also apply to companies intending to get listed), and in view of the practical difficulties expressed by stakeholders, sections 194 and 195 may be omitted from the Act.	Section 194 of the principal Act shall be omitted.	The amendment has been proposed in view of the practical difficulties

81.	Section 195-	The Committee deliberated on the issues involved and noted that SEBI regulations are comprehensive in the matter (and also apply to companies intending to get listed), and in view of the practical difficulties expressed by stakeholders, sections 194 and 195 may be omitted from the Act.	Section 195 of the principal Act shall be omitted.	The amendment has been proposed in view of the practical difficulties
82.	Section 196- Appointment of managing director, whole-time director or manager		In section 196, in sub-section (*4*), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.	For clarity
83.	Section 197- Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.	The Committee, recommended that the Schedule may be amended to substitute the requirement to pass a special resolution by shareholders with an ordinary resolution, in cases where the managerial person was not a promoter, and a professional with domain knowledge / relevant experience; and was not related to any director or promoter of the company and did not hold more than two per cent of the paid-up equity share capital of the company or its holding company. In other cases, however, the	In section 197 of the principal Act,— (*a*) in sub-section (*1*),— (*i*) in the first proviso, the words "with the approval of the Central Government," shall be omitted; (*ii*) in the second proviso, after the words "general meeting,", the words "by a special resolution," shall be inserted; (*iii*) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the	The amendment has been proposed to remove a restrictive regime

		requirement for special resolution of the shareholders should be retained. The Committee further	non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; (*b*) in sub-section (*3*), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted; (*c*) for sub-section (*9*), the following sub-section shall be substituted, namely:— "(*9*) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years of such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."; (*d*) in sub-section (*10*),— (*i*) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (*ii*) the following proviso shall be inserted, namely:— "Provided that where any term loan of any bank or public financial institution is subsisting or the company has defaulted in	

			payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver."; (*e*) in sub-section (*11*), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted; (*f*) after sub-section (*15*), the following sub-sections shall be inserted, namely:— "(*16*) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (*17*) On and from the commencement of the Companies (Amendment) Act, 2016, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in	

			accordance with the provisions of this section, as so amended.".	
84.	Section 198- Calculation of Net Profit	The Committee recommended, that specific provisions for such companies be incorporated in the Act.	In section 198 of the principal Act,— (*i*) in sub-section (*3*), in clause (*a*), after the words "sold by the company", the words "unless the company is an investment company as referred to in the *Explanation* to section 186" shall be inserted; (*ii*) in sub-section (*4*), in clause (*l*), the words "which begins at or after the commencement of this Act" shall be omitted.	Alignment with Section 186
85.	Section 200- Central Government or company to fix limit with regard to remuneration		In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.	The amendment has been proposed to remove a restrictive regime
86.	Section 201- Forms of, and procedure in relation to, certain applications.		In section 201 of the principal Act,— (*a*) in sub-section (*1*), for the words "this Chapter", the word and figures "section 196" shall be substituted; (*b*) in sub-section (*2*), in clause (*a*), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.	To remove ambiguity

87.	Section 216- Investigation of ownership of company		In section 216 of the principal Act, in sub-section (*1*),— (*i*) in clause (*b*), for the word "company", the words "company; or" shall be substituted; (*ii*) after clause (*b*), the following clause shall be inserted, namely:— "(*c*) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company."	To align with the proposed provisions in earlier section
88.	Section 223- Inspector's report.		In section 223 of the principal Act, in sub-section (*3*), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.	The scope of providing Inspector's Report has been restricted to members, creditors or any other person whose interest is likely to be affected
89.	Section 236- Voluntary winding up of company, etc., not to stop investigation proceedings.	The Committee recommended that the references to the phrase 'transferor company' in Section 236, may be modified to a 'company whose shares are being transferred' or alternatively, an explanation be provided in the provision clarifying that Section 236 only applies to the acquisition of shares.	In section 236 of the principal Act, in sub-sections (*4*), (*5*) and (*6*), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.	To clearly bring out the intention for not including amalgamations and mergers within the ambit of this provision

90.	Section 247- Valuation by registered valuers	The Committee deliberated on the matter and felt that a valuer ought to be disqualified for valuing any asset, if he had any interest in such an asset, at any time during three years prior to his appointment, and three years after his cessation as a valuer.	In section 247 of the principal Act, in sub-section (*2*), in clause (*d*), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.	The amendment has been proposed as it was felt that it was not fair to presume that the valuer would be interested for an indefinite period after the completion of the valuation of the assets.
91.	Section 366- Companies capable of being registered	The Committee recommended for amending Section 366(2) of the Act, to allow for such conversions to companies from partnership firms, etc. with 'two or more members', provided that in case of less than seven members, the conversion would be to a private company.	In section 366 of the principal Act, in sub-section (*2*),— (*i*) for the words "seven or more members", the words "two or more members" shall be substituted; (*ii*) in the proviso, after clause (*vi*), the following clause shall be inserted, namely:— "(*vii*) a company with less than seven members shall register as a private company."	The amendment has been proposed to allow registration of such entities, consisting of two or more members
92.	Section 379- Application of Act to foreign companies	The Committee felt that as was clearly provided under Section 591(1) of the Companies Act, 1956, it may be specifically provided that the remaining body corporates as covered within the definition of foreign company, would need to comply with the provisions of Chapter XXII, as applicable. In this regard, necessary amendment in Section	Section 379 of the principal Act shall be renumbered as sub-section (*2*) thereof and before sub-section (*2*) as so renumbered, the following sub-section shall be inserted, namely:— "(*1*) Sections 380 to 386 (both inclusive)and sections 392 and 393 shall apply to all foreign companies: Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies,	The amendment has been proposed to clarify the position on the applicability of the provisions of Chapter XXII, to those body corporates that were covered within the definition of Section 2(42), but did not fall within the category indicated in Section 379 of the Act.

		379 was also recommended with respect to the threshold on transactions, etc. conducted by such companies, to be prescribed in the relevant Rules	specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament."	
93.	Section 384- Debentures, annual return, registration of charges, books of account and their inspection		In section 384 of the principal Act, in sub-section (*2*), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.	Consequential amendment
94.	Section 403- Fee for filing, etc	The Committee recommended for necessary changes to be made in the Act to bring clarity that the requirement of filing with additional fee for 270 days under first proviso to section 403 is applicable only to the six sections. Further, additional fees should be enhanced substantially (by up to 10 times of current prescribed amount) to deter non-compliance, and if a company files a document within the original period, not including the period allowed with additional fees, should be reduced to zero. A separate requirement for additional fees for the sections	In section 403 of the principal Act,— (*I*) in sub-section (*1*),for the first and second provisos, the following provisos shall be substituted, namely:— "Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89, 92, 117, 121, 137 or 157 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, it may be submitted, filed, registered or recorded, as the case may be, within a period of two hundred and seventy days from the expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed: Provided further that where the document,	To provide a liberal regime for fees/ additional fees

		other than six sections may also be prescribed. The Committee also felt that it may be clarified (in the Rules) that, irrespective of the delay, obtaining condonation of delay is not a pre-requisite to filing a document. It is a separate process under section 460 in respect of all belated filings.	fact or information, is not submitted, filed, registered or recorded, as the case may be,— (*a*) in case of document, fact or information referred to in section 89, 92, 117, 121, 137 or 157, within the period of two hundred and seventy days as provided in the first proviso; or (*b*) in any other case within the period in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee or additional fee, as may be prescribed: Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information under section 89, 92, 117, 121, 137 or 157, the provisions of the first and second provisos shall not apply, until the document, fact or information is submitted, filed, registered or recorded, as the case may be, with additional fee, without prejudice to any legal action or liability under this Act."; (*ii*) in sub-section (*2*), for the words "first proviso to that sub-section", the words "relevant section" shall be substituted.	

95.	Section- 406- Power to modify Act in its application to *Nidhis*	The Committee was of the view that since the nature of business of Nidhis were similar to those of NBFCs, it was more appropriate to regulate them at a central level in the Ministry, or through one or more Regional Directors.	For section 406 of the principal Act, the following section shall be substituted, namely:— '406. (*1*) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be. (*2*) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification— (*a*) shall not apply to any *Nidhi* or Mutual Benefit Society; or (*b*) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification. (*3*) A copy of every notification proposed to be issued under sub-section (*2*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses. (*4*) In reckoning any such period of thirty	To relax the restrictive regime

			days as is referred to in sub-section (*3*), no account shall be taken of any period during which the House referred to in subsection (*3*) is prorogued or adjourned for more than four consecutive days. (*5*) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.'.	
96.	Section 409- Qualification of President and Members of Tribunal	The Committee felt that changes in the Companies Act, 2013, in Sections 409(3)(a) & (e), 411(3) and 412(2), as directed by the Honourable Supreme Court, should be included in the Act.	In section 409 of the principal Act, in sub-section (*3*),— (*i*) in clause (*a*), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted; (*ii*) for clause (*e*) the following clause shall be substituted namely:— "(*e*) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.".	

97.	Section 411- Qualifications of Chairperson and members of Appellate Tribunal	The Committee felt that changes in the Companies Act, 2013, in Sections 409(3)(a) & (e), 411(3) and 412(2), as directed by the Honourable Supreme Court, should be included in the Act.	section 411 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:— "(*3*) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."	
98.	Section 412- Selection of Members of Tribunal and Appellate Tribunal	The Committee felt that changes in the Companies Act, 2013, in Sections 409(3)(a) & (e), 411(3) and 412(2), as directed by the Honourable Supreme Court, should be included in the Act.	In section 412 of the principal Act, for sub-section (*2*), the following sub-sections shall be substituted, namely:— "(*2*) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of— (*a*) Chief Justice of India or his nominee - Chairperson; (*b*) a senior Judge of the Supreme Court or Chief Justice of High Court - Member; (*c*) Secretary in the Ministry of Corporate Affairs - Member; and (*d*) Secretary in the Ministry of Law and Justice - Member. (2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."	

99.	Section 435- Establishment of Special Courts	The Committee recommended the early establishment/ designation of the Special Courts. It may also be considered whether Special Courts at the subordinate level may also be established, in addition to the Sessions Judge or Additional Sessions Judge.	For section 435 of the principal Act, the following shall be substituted, namely:— "435.(*1*) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (*2*) A Special Court shall consist of— (*a*) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (*b*) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."	
100	Section 438- Application of Code to proceedings before Special Court	The Committee recommended the early establishment/ designation of the Special Courts. It may also be considered whether Special Courts at the subordinate level may also be established, in addition to the Sessions Judge or Additional Sessions Judge.	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.	

101	Section 439- Offences to be non-cognizable	The Committee observed that sub-section (2) does not have a provision for complaints to be filed by a person who is a member of a company without any share capital. Therefore, to include such persons within the ambit of Section 439, the words 'or member' should be inserted after the term 'shareholder' in sub-section 2.	In section 439 of the principal Act, in sub-section (*2*), after the words "a shareholder", the words "or a member" shall be inserted.	For bringing clarity
102	Section 440- Transitional provisions		In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.	
103	Section 441- Compounding of certain offences	The Committee observed that as per the scheme of the Act, most of the offences which are punishable with fine or imprisonment or both are technical / procedural in nature, and thus, for the leniency and ease in administration of the Act, the old provisions relating to compounding may be re-instated. Therefore, under sub-section (1), the Tribunal should have the power to compound offences punishable with fine as well as offences punishable with	In section 441 of the principal Act, in sub-section (*1*),for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted.	Consequential change

		imprisonment or fine or both. The Committee recommended, that a consequential change in Section 441(6) ought to be made to refer to Special Courts, as well as other courts with whose permission the compounding may be allowed.		
104	Section 446- Application of fines	The Committee observed that small businesses need to be encouraged by laying down a more liberal regime and wherever disproportionate punishments are proposed these need to be reduced. Further, the Committee felt that the procedural and technical non-compliances should attract less stringent punishments as compared with violations for substantive requirements. The Committee noted that the Act provides a duration of up to 300 days for companies to comply without the fear of prosecution in as many as six major compliance requirements. The Committee has given its recommendations on the suggestions received keeping these principles in mind but also keeping in mind the requirement for improving the low compliance levels, especially amongst private	After section 446 of the principal Act, the following sections shall be inserted, namely:— "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:— (*a*) size of the company; (*b*) nature of business carried on by the company; (*c*) injury to public interest; (*d*) nature of the default; and (*e*) repetition of the default. 446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (*5*) of section 92, clause (*c*) of sub-section (*2*) of section 117, sub-section (*3*) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or	To provide a liberal regime for small businesses

		companies.	fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."	
105	Section 447- Punishment for fraud	The Committee observed that the provision has a potential of being misused and may also have a negative impact on attracting professionals in the post of directors etc. and, therefore, recommends that only frauds, which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 (and non-compoundable). Frauds below the limits, which do not involve public interest, may be given a differential treatment and compoundable since the cost of prosecution may exceed the quantum involved.	(*i*) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower" shall be inserted; (*ii*) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.".	It has been proposed that punishment u/s 447 would be attracted if any person is guilty of fraud involving an amount of at least ten lakh rupees or one percent of the turnover of the company, whichever is lower. If the fraud involves an amount less than that and does not involve public interest, then there is no minimum penalty prescribed. Any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both