THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

BACKGROUNDER

ON

THE COMPANIES BILL, 2012

Part I

PREFACE

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

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

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

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

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

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

I wish to place on record my sincere thanks to the Chairman, Corporate Laws Committee, Mr. Sanjay Grover for reviewing and making value additions in the Backgrounder. I sincerely believe that the readers would find the contents of this Backgrounder useful in understanding the new Company Law.

Place: New Delhi
Date: 14th August, 2013

CS S N Ananthasubramanian
President

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Disclaimer:

This document has been prepared on the basis of Companies Bill, 2012 as passed by the Lok Sabha on 18th December, 2012 and as passed by the Rajya Sabha on 08 August, 2013. The Institute of Company Secretaries of India does not own the responsibility of any error or omission. The users and readers are advised to cross check with the original Bill before acting upon this document.

HIGHLIGHTS OF THE COMPANIES BILL, 2012

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

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

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

1. DEFINITIONS

- New definitions are introduced in the Bill, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc.
- Definition of private company changed - the limit on maximum number of members increased from 50 to 200.
- Private company which is a subsidiary of a public company shall be deemed to be a public company.
- Listed company - A company which has any of its securities listed on any recognised stock exchange.
- Associate Company - A company is considered to be an associate company of the other, if the other company has significant influence over such company (not being a subsidiary) or is a joint venture company. Significant influence means control of at least 20 per cent. of total share capital of a company or of business decisions under an agreement.
- Dormant Company - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.
- "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
- "foreign company" means any company or body corporate incorporated outside India which,-
  (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
  (b) conducts any business activity in India in any other manner.
- "Key Managerial Personnel (KMP), in relation to a company, means-

(i) the Chief Executive Officer or the Managing Director or the Manager,
(ii) the Company Secretary;
(iii) the whole-time director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed

- "officer who is in default", means any of the following officers of a company, namely:-
  (i) whole-time director;
  (ii) key managerial personnel;
  (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
  (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
  (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.
- Bill defines the term 'promoter' to mean a person -
  (a) who has been named as such in a prospectus or is identified by the company in the annual return, or

  (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

  (c) in accordance with whose advice, directions or instructions the Board of Directors is accustomed to act.
  Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.
- Subsidiary company in relation to any other company (that is holding company), means a company in which the holding company -
  - Controls the composition of the Board of Directors; or
  - Exercises or controls more than one half of the total share capital (instead of equity share capital as prescribed under the 1956 Act) either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

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

2. CLASSIFICATION & REGISTRATION

- Concept of One Person Company (OPC limited) introduced [Clause 2(62)].
- Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework [Clause 2(85)].
- Provision for Conversion of Companies already registered has been introduced [Clause 18].
- Registration process has been made faster and compatible with e-governance.
- For the first time, articles may contain provisions for entrenchment [clause 5(3)].
- A declaration, in the prescribed form, required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with, will be required to signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company. (clause 7)

Registered office

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

Commencement of business

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

- the company has filed with the Registrar the verification of its registered office.

3. PROSPECTUS AND ALLOTMENT OF SECURITIES

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

Punishment for fraudulently inducing persons to invest money (clause 36)

- Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for punishment for fraud. This provision is proposed to help in curbing a major source of corporate delinquency.

4. SHARE CAPITAL AND DEBENTURES

- If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or rupees 10 crores, whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company. [clause 46(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be liable under section 447 i.e. provisions for punishment for fraud.[clause56(7)] _ Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 52(2)(e)]
- Except as provided in section 54 (Issue of sweat equity shares), a company shall not issue shares at a discount [Clause(53)]
- A company limited by shares cannot issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.

- A company may issue preference shares for a period exceeding twenty years for infrastructural projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Clause 55].
- Every company shall deliver debenture certificate within six months of allotment. [Clause 56(4)(d)].
- Reduction of share capital to be made subject to confirmation by the Tribunal. The Tribunal on receiving an application for reduction of share capital, shall give notice to the Central Government, Registrar and to the SEBI and consider the representations received in this behalf. (Clause 66)

5. E-GOVERNANCE

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

6. BOARD AND GOVERNANCE

Number of directors

- Minimum : Public company -3 Private -2 , OPC-1.
- Maximum : limit increased to 15 from 12 .

  More directors can be added by passing of special resolution without getting the approval of Central Government as earlier required.

Woman director

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

Resident Director

Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [clause 149(2)].

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

- Every company belonging to such class or classes of companies as may be prescribed shall have the wholetime key managerial personnel.
- Unless the articles of a company provide otherwise or the company does not carry multiple businesses, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time [Proviso to Clause 203(1)]

  Provided that nothing contained above shall apply to such class of companies engaged in multiple businesses and which has appointed one or more chief executive officers for each such business as may be notified by the Central Government.

- Every Company Secretary being a whole-time KMP shall be appointed by a resolution of the Board which shall contain the terms and conditions of appointment including the remuneration.
- If the office of any whole-time KMP is vacated, the same shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy [Clause 203 (2) & (4)].
- If a company does not appoint a Key Managerial Personnel, the penalty proposed is :
  On company - one lakh rupees which may extend to five lakh rupees.
  On every director and KMP who is in default - 50,000 rupees and 1,000 rupees per day if contravention continues.

Independent Directors

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

Person other than retiring director

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

Resignation of director

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

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

Participation of directors through video-conferencing

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

Notice of Board Meeting

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

Duties of directors (clause 166)

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

- act in accordance with the articles of the company.
- act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- not assign his office and any assignment so made shall be void.

Penalty

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Board Committees

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

Managerial Remuneration [clause 197]

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

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

- The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, shall not be treated as part of the remuneration payable to any such personnel. [Clause 197 (13)]

7. DISCLOSURES

Annual return [clause 92]

- Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding;

1) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

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

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

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

- Annual Return is required to be signed by :
  (i) A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.
  It means that now in respect of all the companies (except one pferson companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.
  (ii) in addition to the above, the annual return, filed by a listed company or by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice that the annual return discloses the facts correctly and adequately and that the Company has complied with all the provisions of the Act.
  It means, in case of a listed company and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.
  (iii) In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

Penalty

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

Changes in shareholding of promoters and top ten shareholders

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

Board's report (Clause 134)

- Board's Report has been made more informative and includes extensive disclosures like -
  - (i) extract of annual return in the prescribed form;
  - (ii) company's policy on director's appointment and remuneration including the criteria for determining qualifications, positive attributes, independence of a director etc. ;
  - (iii) a statement of declaration by independent directors;
  - (iv) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report;
  - (v) particulars of loans, guarantees, or investments made;
  - (vi) particulars of contracts or arrangements entered into;
  - (vii) the conservation of energy, technology absorption, foreign exchange earnings and outgo in the prescribed manner;
  - (viii) statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
  - (ix) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year in case of listed companies and other prescribed class of companies, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of committees and individual directors.

- The Directors' Responsibility Statement shall also include the statement that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

- The Boards' Report is to be signed by the Chairperson of the company if he is authorized by the Board and where he is not so authorized, it shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director. (Clause 134).

Related Party Transactions

- Every contract or arrangement entered into with a related party shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement [Clause 188(2)].
- Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company [Clause 192].
- Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes (Clause 193).

8. CORPORATE SOCIAL RESPONSIBILITY (CLAUSE 135)

- Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.
- The Board of every company shall ensure that the company spends in every financial year atleast 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.
- Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to 'comply or explain'.
- The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

9. DEPOSITS (CLAUSE 173)

- A company may, subject to the passing of a resolution in general meeting and subject to the prescribed rules, accept deposits from its members subject to fulfillment of the following specified conditions:

i. passing of resolution in a general meeting.
ii. issue of circular to members including therein a statement showing the financial position of the company, the credit ratings obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
iii. filing a copy of the circular along with such statement with the registrar within 30 days before the date of issue of the circular.
iv. Providing deposit insurance.
v. Certification by the company that it has not defaulted in the repayment of deposits.
vi. Provision of security in respect of deposit and interest and creation of charge on company's properties and assets. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.

- A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to compliance of rules as may be prescribed by Central Government in consultation by Reserve Bank of India. (Clause 76).
- The penalty for failure to repay deposit has been made extremely stringent. Where a company fails to repay the deposit and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to liability under section 447 i.e. punishment for fraud), be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors (Clause 75).
  Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration. (Clause 127)

10. INVESTMENT COMPANIES (CLAUSE 186)

- A company can make investment through not more than two layers of investment companies, unless otherwise prescribed.
- This shall not affect
  - a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
  - a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
- The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.

11. COMPANY SECRETARY

Functions of Company Secretary (clause 205)

- The functions of the company secretary shall include -

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

Secretarial Audit (Clause 204)

- Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be prescribed.
- It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice, for auditing the secretarial and related records of the company.
- The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in his report.
- If a company or any officer of the company or the Company Secretary in Practice, contravenes the provisions of this section, the company, every officer of the company or the Company Secretary in Practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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

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

12. GENERAL MEETINGS

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

Report on annual general meeting [clause 121]

- Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under.
  The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.

13. AUDITORS

- A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of sixth annual general meeting.
- However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.
- No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint-
  (a) an individual as auditor for more than one term of five consecutive years; and
  (b) an audit firm as auditor for more than two terms of five consecutive years:

  Provided that-
  (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
  (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:
- Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.
- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (clause 141)
- Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:
- Accounting and book-keeping service
- Internal audit
- Design and implementation of any financial information system
- Actuarial services
- Investment advisory services
- Investment banking services

- Rendering of outsourced financial services
- Management services
- Other prescribed services

Internal Audit

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

Cost Audit (clause 148)

- The Central Government after consultation with regulatory body may direct class of companies engaged in production of such goods or providing such services as may be prescribed to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.
- If the Central Government is of the opinion, that it is necessary to do so, it may, direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
- 'cost auditing standards' have been mandated.

14. FINANCIAL STATEMENT (CLAUSE 2(40)]

- For the first time, the term 'financial statement' has been defined to include:-
  (i) a balance sheet as at the end of the financial year;
  (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
  (iii) cash flow statement for the financial year;
  (iv) a statement of changes in equity, if applicable; and
  (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to subclause (iv):
- the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Signing of financial statement (Clause 134)

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of directors before they are signed on behalf of the Board at least by the Chairperson of the company authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

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

- The Central Government may be notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
  (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
  (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
  (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and
  (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
  (a) have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:
  Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
  (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.
  (c) where professional or other misconduct is proved, have the power to make order for-
  (A) imposing penalty of -
    (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
    (II) not less than ten lakh rupees, but which my extend to ten times of the fees received, in case of firms;
  (B) debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.
- Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted by the Central Government.

16. INVESTOR PROTECTION MEASURES

- Issue and transfer of securities and non-payment of dividend by listed companies, shall be administered by SEBI by making regulations.(Clause24)

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

Class action

- For the first time, a provision has been made for class action. It is provided that specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.
- Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.
- The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. (clause 245)

Serious Fraud Investigation Office (clause 211)

Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill.

Stringent penalty provided for fraud related offences.
Fraud defined (Clause 447)

- The term "Fraud" has for the first time been defined in the Bill. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years

Prohibition of insider trading

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

Prohibition on Forward dealings

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

17. INSPECTION, ENQUIRY AND INVESTIGATION

- A new clause has been added to provide that where in connection with enquiry or investigation into the affairs of the company or reference by the Central Government, or on complaint by specified number of members or creditors or any other person having a reasonable any person that the transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of the company, then the Tribunal may order for the freezing of such transfer, removal or disposal of assets for a period of three years. [clause 221]
- Another new clause seeks to provide that the provisions of inspection or investigation applicable to Indian companies shall also apply mutatis-mutandis to inspection or investigation of foreign companies. (clause 228).

18. RESTRUCTURING AND LIQUIDATION

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

19. COMPANY LIQUIDATORS (CLAUSE 275)

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

On an appointment as provisional liquidator or Company Liquidator, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.
Professional assistance to Company Liquidator (CLAUSE 291)
The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act.

20. COMPOUNDING OF CERTAIN OFFENCES (CLAUSE 441)

This clause provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. It clause also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

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

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

22. SPECIAL COURTS

- For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. (clause 435).
- All offences under this Act shall be triable by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned. (clause 436)
- The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years, although it may order for the regular trial. (clause 436).

23. MEDIATION AND CONCILIATION PANEL (CLAUSE 442)

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

24. CROSS - BORDER MERGERS (CLAUSE 234)

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

25. REGISTERED VALUERS (CLAUSE 247)

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

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

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

27. ADJUDICATION OF PENALTY (CLAUSE 454)

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

Major Omissions /deletions

S. No.	Sections of Companies Act, 1956	Provisions of the Companies Act, 1956 which have been deleted in the Companies Bill, 2012
1.	43A	Private company to become public company in certain cases
2.	44	Filing of Prospectus or statement in lieu of prospectus by private company on ceasing to be private company
3.	58AA	The provisions of section 58AA relating to acceptance of deposits from small shareholders and intimation of default in repayment of deposits thereof has been dropped. Similarly section 58AAA making any offence connected with or arising out of acceptance u/s 58A or 58AA as cognizable has been done away with.
4.	117, 120, 121	Perpetual debentures, re-issue of the debentures
5.	153A	Appointment of public trustee
6.	165	Statutory meeting and statutory report of company
7.	188	Requirement of getting approval from Central Government in case of related party transactions exceeding the limits has been dispensed with.
8.	224A	Auditor not to be appointed except with the approval of the company by special resolution in certain cases
9.	233A	Power of Central Government to direct special audit in certain cases
10.	258	Right of company to increase or reduce the number of directors
11.	270	Time within which share qualification is to be obtained and maximum amount thereof
12.	294	Appointment of sole selling agents to require approval of company in general meeting
13.	294A	Prohibition of payment of compensation to sole selling agents for loss of office in certain cases
14.	294AA	Power of Central Government to prohibit the appointment of sole selling agents in certain cases

15.	417	Employees' securities to be deposited in post office savings bank or Scheduled Bank

New Insertions

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

11.	131	Voluntary Revision of financial statements or Board's Report with Tribunal's consent.
12.	132	Constitution of National Financial Reporting Authority.
13.	135	Requirement for specified companies to constitute a Corporate Social Responsibility Committee of the Board to formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.
14.	138	Requirement for specified companies to appoint an internal auditor.
15.	139	Mandatory rotation of auditors for listed companies and other prescribed classes of companies.
16.	141	LLPs may be appointed as auditors.
17.	143	Auditing Standards to be made mandatory.
18.	143	Duty to Report Fraud to Central Government. if an auditor of a company, in the course of the performance of his duties as auditor, or the cost accountant in practice conducting cost audit or the company secretary in practice conducting secretarial audit, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.
19.	144	Auditor not to render certain services.
20.	149	Mandatory for prescribed classes of companies to have at least one woman director.

21.	149	Every listed company and other prescribed classes of companies to have independent directors.
22.	150	Maintenance of databank of independent directors.
23.	166	Duties of directors.
24.	168	Resignation of director.
25.	177	Vigil Mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices.
26.	178	Following Committees of directors mandatory for listed companies and other classes of companies : (i) Audit Committee (ii) Nomination and Remuneration Committee (iii) Stakeholder's Relationship Committee
27.	154	Participation of directors in board meetings by video conferencing or by electronic means
28.	194	Prohibition on forward dealings in securities of company by director or key managerial personnel.
29.	195	Prohibition on Insider Trading of securities.
30.	203	Appointment of key managerial personnel compulsory in specified companies - (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer :

31.	204	Mandatory Secretarial audit for bigger companies (listed companies and such other classes of companies as may be prescribed) by a company secretary in practice
32.	205	Functions of company secretary.
33.	211	Investigation in to the affairs of companies by Serious Fraud Investigation Office (SFIO)
34.	233	A single forum for approval of mergers and acquisitions along with a simple and shorter merger process for holding and wholly owned subsidiary companies or between two or more small companies.
35.	234	Cross Border mergers.
36.	236	“Squeeze out provisions” – Purchase of minority shareholding by acquirer on becoming registered holder of 90% or more of issued share capital of company.
37.	245	Class action against oppression/mismanagement by member/members by creditor(s).
38.	247	Registered Valuers
39.	435	Special Courts to deal with offences
40.	455	Dormant Company
41.	442	Maintenance of Mediation and Conciliation Panel.
42.	447	Definition of “Fraud”
43.	Chapter	Time bound procedure for Revival and Rehabilitation of sick companies.

	XIX	

MATTERS REQUIRING SANCTION BY SPECIAL RESOLUTION

Clause 114 (2) provides that a resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

The following matters require sanction by special resolution :

S. No.	Clause	Item/Particulars
1.	5 (4)	To make entrenchment provisions in the articles of association of a public company.
2.	12(5)	To shift the registered office outside the local limits of any city, town or village where such office is situated.
3.	13 (1) & (8)	(1) To alter the provisions contained in Memorandum of the company (8) To Change the objects for which the money has been raised from public through prospectus and still has any unutilized amount out of the money so raised.
4.	14(1)	To alter the articles including alterations having the effect of conversion of— (*a*) a private company into a public company; or (*b*) a public company into a private company.
5.	27 (1)	To vary the terms of contract referred to in the prospectus or objects for which the prospectus was issued.
6.	41	To issue depository receipts in any foreign country. (Global depository receipts).
7.	48 (1)	To vary the rights attached to the shares of any class
8.	54	To issue sweat equity shares of a class of shares already issued.
9.	62(1)(b)	To increase subscribed capital by the issue of further shares to employees under a scheme of employees' stock option.
10.	62(1)(c)	To increase subscribed capital by the issue of further shares to any person whether or not those persons include the existing

		members or employees for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer.
11.	62(3) Proviso	To approve terms of issue of debentures or loan containing an option to convert such debentures or loans into shares.
12.	66	To reduce the share capital subject to the confirmation of the Tribunal.
13.	67(3)(*b*)	To approve any scheme for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company.
14.	68(2)	To authorise the company to purchase its own securities.
15.	71	To issue debentures with an option to convert whole or part of the debentures into Shares at the time of redemption.
16.	94	To keep and maintain the registers and the copies of annual return filed, at any other place than the registered office, where more than one-tenth of the total number of members reside.
17.	140	To Remove the auditor before the expiry of his term after obtaining the previous approval of the Central Government
18.	149(1) Proviso	To appoint more than fifteen directors by a company.
19.	149(10)	To re-appoint an independent director after expiry of a term of five consecutive years.
20.	165(2)	To specify any lesser number of companies in which director of the company may act as director. No person, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Further the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
21.	180	To exercise some of the powers as provided under section 180, by the Board of directors only with the consent of company.
22.	185	To approve a scheme pursuant to which any loan may be given to a managing or whole -time director.
23.	186	To approve giving of loan any loan or guarantee or providing any security or the acquisition exceeding limits of sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

24.	188	To approve entering into contract or arrangement with a related party, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed
25.	196	To appoint the person as a managing director, whole-time director or manager who has attained the age of 70 years.
26.	197(4)	To determine the remuneration payable to the directors of a company, including any managing or whole-time director or manager if Articles of the company, so require.
27.	210	To resolve that the affairs of the company ought to be investigated.
28.	212	To resolve that the affairs of the company are required to be investigated by the Serious Fraud Investigation Office.
29.	248	To file an application before the Registrar to remove the name of company from the register of companies.
30.	262	To approve the Scheme of amalgamation of the sick company with any other company by the shareholders of both companies.
31.	271	To resolve that the company be wound up by the Tribunal.
32.	304	To resolve that the company be wound up voluntarily.
33.	319(1)	To confer general authority or an authority in respect of any particular arrangement on the liquidator to (a) receive, by way of compensation wholly or in part for the transfer or sale of shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or (b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.
34.	321	To sanction any arrangement other than the arrangement referred to in section 319 entered into between the company which is about to be, or is in the course of being wound up and its creditors.
35.	343	To sanction exercise of certain powers to Company Liquidator.
36.	347	To direct the manner of disposing of company's books and papers when the affairs of a company have been completely wound up and it is about to be dissolved.
37.	371	To adopt Table F in Schedule I, if required.

POWERS OF NATIONAL COMPANY LAW TRIBUNAL (NCLT)

S. No.	Clause no.	Powers
1.	7(7)	To pass appropriate orders, in case a company got incorporated by furnishing any false or mis- leading information.
2.	55(3)	To give consent to issue of further redeemable preference shares in line of irredeemable preference shares
3.	58(3)	To refuse registration and appeal against refusal
4.	59(1)	To order rectification of register on transfer
5.	71(9)	To order redemption of debentures forthwith by payment of principal and interest
6.	73 (4)	To direct the company to make repayment of the matured deposits or for any loss or damage incurred by him as a result of non-payment
7.	98(1)	To call meetings, i.e.extra ordinary general meetings in case it is impracticable to call a meeting.
8.	99	To impose penalty for default in complying with section 96 (to conduct AGM) to 98
9.	210(2)	Investigation in to the affairs of the company
10.	213(b)	To order Investigation in to the affairs of the company in other cases on application
11.	214	To order to submit security for payment of cost and expenses of investigation before appointing a inspector
12.	221(1)	To order Freezing of assets of company on inquiry and investigation in case of complaint made by its members.
13.	222(1)	To provide for imposition of restrictions in connection with securities
14.	230(1)	To sanction the scheme of compromise or arrangement of the company with its creditors or members.

15.	231(1)	To enforce compromise and arrangement as sanctioned under section 230
16.	232(1)	To sanction the scheme of merger and amalgamation.
17.	235(2)	To entertain the application made by the dissenting shareholders of the scheme approved by the majority.
18.	241(1)	To grant relief in case of mismanagement, oppression, etc.on application by members.
19.	242(1)(a)	To look whether company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company.
20.	243(1)	To grant leave in case of termination or modification of certain agreements by the company with managing directors or other directors.
21.	245(1)	To pass specified order in receipt of application by members/depositories or any class of them in case if they are of the opinion that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.
22.	252(1)	To entertain the appeal of Any person aggrieved by an order of the Registrar, in case if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar under section 248.
23.	253(1)	To entertain the application made by the secured creditors of a company representing fifty per cent.or more of its outstanding amount of debt and the company has failed to pay the debt within a period of thirty days of the service of the notice of demand.
24.	260	To direct the functions and duties of the company administrator.
25.	262	To sanction the scheme of revival and rehabilitation of sick industrial companies as prepared in Section 261
26.	264	To implement the scheme of revival and rehabilitation of sick industrial companies.
27.	266	To assess damages against delinquent Directors in the course of the scrutiny or implementation of any scheme or proposal.
28.	267	To punish in case of making a false or incorrect evidence to the tribunal or the appellate tribunal
29.	270	To pass order of winding up of the company.
30.	273	To pass an order either by dismissing the petition for winding up or make an order for winding up
31.	275	To appoint official liquidator from the panel maintained under company liquidators

32.	276	To remove official liquidator in case of reasonable cause being shown and for reasons to be recorded in writing under specified grounds.
33.	277(4)	To constitute winding up committee on application of company liquidator.
34.	279(1)	To put stay on suits, legal proceedings etc. on winding up order.
35.	282(1)	To give directions on report of company liquidator.
36.	283(1)	To have the custody of companies property during liquidation.
37.	285(1)	To settle the list of contributories and application of assets in all cases where rectification is required.
38.	287(1)	To constitute an advisory committee to advise the Company Liquidator and to report to the Tribunal
39.	289(1)	To stay the proceedings of winding up on application of promoter, shareholders or creditors or any other interested person.
40.	291(1)	To sanction the appointment of processionals for assistance to Company Liquidator
41.	294(1)	To order the audit of Company Liquidator's account for better accountability in company's winding up.
42.	295(1)	*To* pass an order requiring any contributory for the time being on the list of contributories to pay any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call.
43.	296(1)	To make calls to the contributories on the list for payment of money to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
44.	297	To adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.
45.	298	To make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up.
46.	299	To summon persons suspected of having property of company in case the person is capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.
47.	300	To order examination of promoters, directors in case the Company Liquidator is of the opinion that a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation.
48.	301	To detain and Arrest of person trying to leave India or abscond. In case such person is having property, accounts or papers of the company in his possession.
49.	302	To order dissolution of the company on application by company liquidator.
50.	322(1)	To determine the questions arising out of winding up of the company in case of dispute.
51.	335(1)	To grant permission to enforce any attachment, distress or execution after the commencement of winding up.
52.	339(1)	To direct Liability for Fraudulent conduct of business to any person on application of Company Liquidator.
53.	340	To Assess damages against delinquent directors, manager, liquidator or officer of the company for misapplication, retainer, misfeasance or breach of trust.
54.	341	To extend the liability of partners or directors of the company under section 339 relating to fraudulent conduct of business or

		under section 340 relating to misfeasance or breach of trust.
55.	342	To prosecute the delinquent officers and members of the company for being guilty of offence in relation to the company.
56.	354	To ascertain the wishes of creditors or contributories by calling their meetings in all matters relating to winding up of the company.
57.	356	To declare dissolution of company void on an application made by the Company liquidator of the company or by any other person at any time within 2 years from the date of dissolution.
58.	420	To rectify any mistake within 2 years from the date of order.
59.	425	Shall have same powers of contempt as that of High Court under the provisions of the Contempt of Courts Act,1971
60.	426	To delegate his powers to any person to inquire in to the matter connected with any proceeding and report to it.
61.	441	To compound certain offences in certain cases before the investigation has been initiated or pending.
62.	459	To impose such conditions or restrictions as it thinks fit subject to the payment of fee, while according approval, sanction, consent, confirmation etc. giving directions or granting exemptions.

POWERS OF CENTRAL GOVERNMENT

. No.	Clause No.	Powers
1.	2(23)	To maintain a panel of professionals.
2.	8(1)	To register an association as limited company having charitable objects without adding to its name the words “limited”, “private limited”.
3.	8(6)	To revoke the licence granted to a company where affairs of the company are conducted fraudulently or violates the objects or prejudicial to the public interest.
4.	16(1)(a)	To direct the company to change its name which is identical with or too nearly resembles the name by which a company have been previously registered.
5.	16(1)(b)	To rectify the name of the company on an application by a registered proprietor of a trademark
6.	87(1)	To Rectify the register of charges on receipt of application of the company or any person interested in the affairs of the company.
7.	94(5)	To order immediate inspection of document of the company
8.	Proviso to 96(2)	To Exempt any class of company to hold Annual general Meeting

9.	111(3)	To restrict the circulation of statement with respect to any proposed resolution on an application by company or any person aggrieved to secure needless publicity.
10.	124	To approve declaration of dividend out of reserves not in accordance with provisions.
11.	129	To exempt class or classes of companies to furnish financial statement as per the accounting standards.
12.	148	To direct class of companies engaged in production of goods or providing services to include in the books of accounts particulars relating to utilisation of material or labour or to other item of cost and direct the audit of cost record of the company by cost accountant in practice
13.	proviso to 197(1)	To approve payment of remuneration to Directors including MD or WTD or manager when basic limit exceeds.
14.	200	To fix the limit with regard to remuneration
15.	206(4)	To direct the Registrar or an Inspector to carry out the inquiry.
16.	206(5) and (6)	To direct an Inspector to inspect books and papers of a company; To authorize any statutory authority to carry out inspection of books of accounts of a company or class of companies.
17.	210	To appoint Investigators where it is necessary to investigate into affairs of the company.
18.	213	To appoint one or more competent person as inspectors to investigate into the affairs of the company.
19.	214	To order to submit Security for payment of costs and expenses of investigation
20.	216	To Investigate into the ownership of the company.
21.	217(9)	To provide assistance to the Inspector.
22.	224	To prosecute persons for the offence and caste duty on officers, employees or the company or body corporate to provide necessary assistance in connection with the prosecution.

23.	237	To provide for amalgamation of two or more companies in public interest by passing an order to be notified in the official gazette.
24.	259	To maintain databank consisting of the names of professionals consisting company secretaries, chartered accountants, cost accountants and other professional as specified.
25.	332	To prescribe by rules regarding the rate of floating charge.
26.	347(3)	To prescribe rules, the period, form and manner of retention of books and papers of company which has been wound up.
27.	396(2)	To appoint Registrar, Additional, Joint, Deputy and Assistant Registrar for the registration of companies.
28.	396(4)	To direct the preparation of seal or seals for authentication of documents required in connection with the registration of companies.
29.	400	To provide in the rules that the electronic form shall be exclusive, or in the alternative or in addition to the physical form.
30.	405	To direct companies to furnish information or statistics.
31.	406	To modify act with regard to *nidhis*
32.	435 (1)	To Establish or designate Special Courts
33.	435(2)	To appoint the judge for special court with the concurrence of the Chief Justice of the High Court.
34.	441	To Appoint Regional Director
35.	442	To Constitute And maintain a panel of experts i.e. “Mediation Panel” for mediation between parties during the pendency of any proceedings
36.	443	To appoint company prosecutors.
37.	454	To appoint Adjudicating Officers
38.	458	To delegate its powers and functions.

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

PROVISIONS RELATING TO FRAUD

The Companies Bill, 2012, provides for specific provisions related to any act of fraud. Clause 447 deals with the punishment for fraud.
Explanation to clause 447 defines the term 'Fraud' as –
(i) "fraud" in relation to affairs of a company or any body-corporate, includes

any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

The punishment for fraud as specified under clause 447 is –

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

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

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

Serial No.	Clause No.	Item/Particulars
1.	7 (5) & (6)	Incorporation of company (*5*) Furnishing any false or incorrect particulars of any information or suppression any material information, in any of the documents filed with the Registrar in relation to registration of a company by any person, of which he is aware, the person shall be liable under clause 447. (*6*) After the incorporation of a company, if it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, promoters, first directors of the company and the persons making declaration for incorporation shall be liable for action under clause 447.
2.	8(11)	Formation of companies with charitable objects, etc When it is proved that the affairs of the companies formed with charitable objects, were conducted fraudulently, every officer in default shall be liable.
3.	34	Criminal liability for mis-statements in prospectus Where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under clause 447. *Shall not apply if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.*
4.	36	Punishment for fraudulently inducing persons to invest money The person shall be liable, who knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,— (*a*) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or (*b*) any agreement, the purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or (*c*) any agreement for, or with a view to obtaining credit facilities from bank or financial institution;
5.	38(1)	Punishment for personation for acquisition, etc., of securities The person shall be liable, if he (*a*) makes or abets the making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; (*b*) makes or abets the making of multiple applications to a company in different names or in different combinations of his name

		or surname for acquiring or subscribing for its securities; (*c*) induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name.
6.	46 (5)	Certificate of shares (*5*) If a company with intent to defraud issues a duplicate certificate of shares, every officer of the company who is in default shall be liable under clause 447.
7.	56 (7)	Transfer and transmission of securities (*7*) Where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under clause 447.
8.	66 (10)	Reduction of share capital (*10*) If any officer of the company— (*a*) knowingly conceals the name of any creditor entitled to object to the reduction; (*b*) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or (*c*) abets or is privy to any such concealment or misrepresentation as aforesaid. he shall be liable.
9.	75 (1)	Damages for fraud Where company fails to repay deposit or any interest thereon within the time specified & it is proved that the deposits had been accepted with intent to defraud depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the liability under clause 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
10.	140 (5)	Removal, resignation of auditor and giving of Special notice (*5*) Tribunal either *suo motu* or on an application made by Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors. If application is made by Central Government & Tribunal is satisfied that any change of auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor & Central Government may appoint another auditor in his place. Auditor against whom final order has been passed by Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of the order and auditor shall also be liable under clause 447.

11.	206 (4)	Power to call for information, inspect books and conduct inquiries (*4*) If ROC is satisfied on the basis of information available or furnished or on a representation made by any person that business of company is carried on for a fraudulent/unlawful purpose/not in compliance with the provisions of this Act/if grievances of investors are not being addressed, he may, call on the company to furnish in writing any information or explanation on matters specified within such time as he may specify & carry out such inquiry as he deems fit after providing a reasonable opportunity of being heard: Where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud as per clause 447.
12.	213 (proviso)	Investigation into company's affairs in other cases If after investigation it is proved that— (*i*) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or (*ii*) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer in default of company and persons concerned in the formation of company or the management of its affairs shall be punishable for fraud.
13.	229	Penalty for furnishing False statement, mutilation, destruction of documents Where a person who is required to provide an explanation or make a statement during inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,— (*a*) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company/body corporate; (*b*) makes, or is a party to the making of, a false entry in any document concerning the company/ body corporate; or (*c*) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud.
14.	251 (1)	Fraudulent application for removal of name Where it is found that an application by a company under sub-clause (*2*) of clause 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall — (*a*) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and (*b*) be punishable for fraud in the manner as provided in clause 447.

15.	266 (1)(proviso)	Power of Tribunal to Assess damages Against delinquent directors, etc Such direction by the Tribunal shall be without prejudice to any other legal action that may be taken against the person including any punishment for fraud in the manner as provided in clause 447.
16.	339 (3)	Liability for fraudulent conduct of business (*3*) Where any business of a company is carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under clause 447.
17.	448	Punishment for false statement If in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of this Act or rules thereunder, any person makes a statement,— (*a*) which is false in any material particulars, knowing it to be false; or (*b*) which omits any material fact, knowing it to be material, he shall be liable under clause 447.

MATTERS ON WHICH EXIT OPPORTUNITY IS GIVEN TO SHAREHOLDERS

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

Sub- clause (8) provides that a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company.

The procedure, amongst other things, provides that the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

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

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

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

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

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

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

OFFENCES – Compoundable / Non-compoundable

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

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

The offences which are punishable with Fine or Imprisonment; fine or Imprisonment or with both may be compoundable with the permission of Special Court.
Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

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

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

53(3)	Violation of provisions relating to issue of shares at discount	Fine not less than Rs. 1 Lakh but may be extended to Rs. 5 lakh on company
56(6)	Failure to comply with the provision relating transfer and transmission of securities under sub-section (1) to (5)	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company. Fine not less than Rs. 10,000 but may be extended to Rs. 1 lakh (for officer in default).
59(5)	Committing default in complying with the order of Tribunal relating to rectification of register of members	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company.
64(2)	Failure to file a notice related to alteration, increase or redemption of share capital along with the altered memorandum with the Registrar	Fine upto Rs. 1,000 for each day of default continues, or five lakh rupees, whichever is less.
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company. [If more than 5 lakh then compoundable by the Tribunal]
68(11)	If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board relating to buy back of securities	Fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh on company.
86	Contravention of any provision of Chapter VI relating to Registration of Charges	Fine not less than Rs. 1 lakh but may be extended to Rs. 10 lakh on company.
88(5)	Failure to maintain register of members or debenture-holders or other security holders as prescribed	Fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh and further fine up to Rs. 1,000/- for each day of default in case failure continues.
89(5)	Failure to file declaration not holding beneficial interest in any share	Fine upto Rs. 50,000 and further fine up to Rs. 1,000/- for each day of default in case failure continues.
89(7)	Failure to file return relating to beneficial interest in any share before the expiry of the time specified under the first proviso to sub-section (*1*) of section 403	Fine not less than Rs. 500 but may be extended to Rs. 1,000 on company & every officer who is in default and further fine up to Rs. 1,000/- for each day of default in case failure continues.
92(6)	If a company secretary in practice certifies the	Fine which shall not be less than Rs. 50,000 but may be extended to Rs. 5 lakh.

	annual return otherwise than in conformity with the requirements of this section or the rules made thereunder	
99	Default in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal	Fine upto Rs. 1 lakh on company & every officer who is in default and further fine up to Rs. 5,000/- for each day of default in case failure continues.
102(5)	Default in complying with the provisions of this section relating to statement to be annexed to notice	Fine upto Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.
105(3)	If default is made in complying with sub-section (*2*) relating to proxies	Fine upto Rs. 5,000 on every officer who is in default.
105(5)	If invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued	Every officer of the company who knowingly issue or willfully authorizes or permits their issue shall be punishable with Fine upto Rs. 1 lakh
121(3)	Failure to file Report on annual General meeting.	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company. Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh (for officer in default)
124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	Fine not be less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for every officer in default)
137(3)	Failure to file financial statements with the Registrar	Fine up to Rs. 1,000/- for each day of default, but maximum up to Rs. 10 lakh.
140(3)	Non-compliance by auditor of sub-section (2) relating to filing of resignation information	Fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh on auditor/audit firm.
147(1)	Failure of company to comply with the provisions of sections 139 to 146 with regard to auditors	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company
157(2)	Failure to furnish DIN to Registrar	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh on company and every officer in default.
165(6)	Acting as a director of more than 20 companies	Fine not less than Rs. 5,000 but may be extended to Rs. 25,000 for each day of default
166(7)	Default in complying with the provisions of this section relating to directors duties	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on directors

172	Contravention of the provisions of Chapter XI relating to appointment and qualifications of directors	Fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh
178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship Committee	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company
188(5)(ii)	Related party transaction in case of other company	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh
186(13)	Contravention of the provisions of this section relating to loans and investment	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company
187(4)	Contravention of the provisions of this section relating to investment of company held in its name	Fine not less than Rs. 25,000 but may be extended to Rs. 25 lakh on company.
191(5)	Contravention of the provisions of this section relating to payment to director for loss of office in connection with transfer of property	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh on such director
197(15)	Contravention of the provisions of this section relating to managerial remuneration in case of absence or inadequacy of profits.	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
203(5)	Contravention of the provisions of this section relating to appointment of Key Managerial personnel	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on company Fine up to Rs. 50,000 on Director or key managerial person who is in default and further fine up to Rs. 1000 for each day of default in case the contravention continues.
204(4)	Contravention of the provisions of this section relating to Secretarial Audit for bigger companies.	Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh on the company, every officer of the company and company secretary in practice.
206(7)	Failure to furnish any information during inspection or inquiry	Fine up to Rs. 1 lakh and further fine up to Rs. 500 for each day of default on the company and every officer of the company.
221(2)	Any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1)	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
222(2)	securities in any company are issued or	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company

	transferred or acted upon in contravention of an order of the Tribunal under sub-section (*1*)	
232(8)	Contravention of the provisions by the transfer and transferee company in case of merger or amalgamation	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
238(3)	Failure to register the offer of Schemes involving transfer of shares.	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on director who issue such circular
242(8)	Contravention of the order of Tribunal relating to alterations in memorandum or articles	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company
247(3) *Proviso*	Contravention of the provisions of this section by the valuer	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh
249(2)	Filing of application in restricted cases for removal of name	Fine upto Rs. 1 lakh
302(4)	Committing default by official liquidator in forwarding a copy of the order of dissolution of company by tribunal within the period specified in sub-section (*3*)	Fine upto Rs. 5,000 for each day of default (on company liquidator)
306(5)	Default in calling the meeting of the creditors; to prepare a statement of the position of the company's affairs alongwith a list of creditors, estimated amount of claim and filing the resolution with Registrar	Fine not less than Rs. 50,000 but may be extended to Rs. 2 lakh
307(2)	Default in publication of resolution to wind up voluntarily	Fine upto Rs. 5,000 for each day of default on company and every officer of the company
312(2)	Failure to give notice of appointment of Company Liquidator to Registrar	Fine upto Rs. 500 for each day of default on company and every officer who is in default
314(5)	Failure to prepare quarterly statement of accounts by company liquidator in voluntary winding up and file with Registrar under sub-section (5)	Fine upto Rs. 5,000 for each day of default (on Company liquidator)

318(8)	Failure to complying with the provisions of this section relating to final meeting and dissolution of company	Fine upto Rs. 1 lakh (on Company liquidator)
342(6)	Failure or neglect to give assistance required under sub-section (5)	Fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh
344(2)	Failure to give statement that the company is in liquidation	Fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh
348(6)	Contravention of the provisions of information as to pending liquidation	Fine upto Rs. 5,000 for each day of default (for Company liquidator)
356(2)	Failure to file certified copy of the order of Tribunal relating to dissolution of company void with the Registrar	Fine upto Rs. 10,000 for each day of default (for Company liquidator or the person on whose application the order was passed)
392	Contravention of the provisions of Chapter XXII by a foreign company	Fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh and further fine up to Rs. 50,000 for each day of default
405(4)	Failure to furnish information or statistics etc. by the companies required by the Central Government	Fine upto Rs. 25,000 on company
450	No specific penalty or punishment is provided in the Act	Fine up to Rs. 10,000 and further fine up to Rs. 1,000 for each day of default in case of contravention continues
451	Repeated default within 3 years	Twice the amount of fine for such offence in addition to any imprisonment provided for that offence
452(1)	Punishment for wrongful withholding of property	Fine not less than Rs. 1 lakh but may be extend to Rs. 5 Lakh on officer or employee of the company
453	Improper use of the words “limited” and “private limited”	Fine not less than Rs. 500 but may be extended to Rs. 2,000 for each day of default
454(8)	Failure to pay the penalty imposed by the adjudicating officer or Regional Director	Fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh on company
464(3)	Being a member of a company formed exceeding certain numbers	Fine upto Rs. 1 lakh and liabilities incurred in such business
469(3)	Contravention of the Rules framed by Central Government	Fine upto Rs. 5,000 and further fine up to Rs. 500 for each day of default in case of contravention continues

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

Section	Nature of offence	Fine
8(11)	Committing default in complying with the requirements relating to formation of companies with charitable objects etc.	Fine not less than Rs. 10 lakh but may be extended to Rs. 1 crore on company.
40(5)	Committing default in complying with the provisions of this section relation to securities to be dealt with in stock exchanges	Fine not less than Rs. 5 lakh but may be extended to Rs. 50 lakh on company.
46(5)	Fraudulently issuing of duplicate share certificates by a company	Fine not less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extended to 10 times or Rs. 10 crores whichever is higher on company.
66(11)	Failure to publish the order of confirmation of the reduction of share capital by the Tribunal	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company.
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh on company. [If less than 5 lakh then compoundable by the RD]
74(3)	If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal	Fine not less than Rs. 1 crore but may be extended to Rs. 10 crore on company.
117(2)	Failure to file with the Registrar the copy of notice or agreement within stipulated time	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company. Fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh (for officer in default including liquidator).
124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company.
143(15)	Failure of auditor to intimate to Central Government regarding fraud against the company by officers or employees	Fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh.
185(2)	Contravention of the provisions of sub-section 1	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company

	relating to loans, guarantee or security	
245(7)	Committing default in complying with the order of Tribunal under this section	Fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh on company
314(8)	Default in complying with the provisions of this section except sub-section (5)	Fine upto Rs. 10 lakh on company liquidator
316(2)	Failure to send quarterly report on winding up and call meeting by company liquidator	Fine upto Rs. 10 lakh on company liquidator

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

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

71(11)	Committing default in complying with the order of Tribunal relating to redemption of debentures	Imprisonment upto three years or fine not less than Rs. 2 lakh but may be extended to Rs. 5 lakh or with both (for officer in default).
74(3)	If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal	Imprisonment upto seven years or fine not less than Rs. 25 lakh but may be extended to Rs. 2 crore or with both (for officer in default).
86	Contravention of any provision of Chapter VI relating to Registration of Charges	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default).
92(5)	Failure to file annual return before the expiry of the period specified under section 403 with additional fee	Fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh on company. Imprisonment upto six months or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for officer in default).
128(6)	Failure to keep proper books of account	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for MD, WTD, CFO etc.)
129(7)	Failure to keep proper financial statement	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for every director)
134(8)	Default in complying with the provisions regarding financial statement and Board's report	Imprisonment upto three years or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for every director)
137(3)	Failure to file financial statements with the Registrar	Fine up to Rs. 1,000/- for each day of default, but maximum up to Rs. 10 lakh. Imprisonment upto six months or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for every director)
147(1)	Failure of company to comply with the provisions of sections 139 to 146 with regard to auditors	Imprisonment upto one year or fine not be less than Rs. 10,000 but may be extended to Rs. 1 lakh or with both (for officer in default)
159	Contravention of the provisions of section 152, 155 and 156	Imprisonment upto six months or fine up to Rs. 50,000 and further fine up to Rs. 500/- for each day of default in case of contravention continues
167(2)	Functioning as a director after vacation of office	Imprisonment upto one year or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both

178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship Committee	Imprisonment upto one year or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default)
184(4)	Failure to disclose of director's interest and Participation in Board meeting by interested director	Imprisonment upto one year or fine not less than Rs. 50,000 but may be extended to Rs. 1 lakh or with both
185(2)	Contravention of the provisions of sub-section 1 relating to loans, guarantee or security	Imprisonment upto six months or fine not less than Rs. 5 lakh but may be extended to Rs. 25 lakh or with both
187(4)	Contravention of the provisions of this section relating to investment of company held in its name	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both
188(5)(i)	Contravention of this section relating to Related party transaction in case of listed company	Imprisonment upto one year or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both
194(2)	Forward dealing in securities of the company by Key Managerial personnel or director	Imprisonment upto two years or fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh or with both (for every director or Key Managerial Personnel)
195(2)	Contravention of this section (195) relating to Insider trading of securities by Key Managerial personnel or director	Imprisonment upto five years or fine not less than Rs. 5 lakh but may be extended to Rs. 25 crore or three times the profit made on insider trading whichever is higher or with both
221(2)	Any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1)	Imprisonment upto three years or fine not less than Rs. 50,000 but may be extended to Rs. 5 lakh or with both (for officer in default)
222(2)	securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (*1*)	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both (for officer in default)
232(8)	Contravention of the provisions by the transfer and transferee company in case of merger or amalgamation	Imprisonment upto one year or fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh or with both (for officer in default)
242(8)	Contravention of the order of Tribunal relating to alterations in memorandum or articles	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default)

243(2)	Acting as managing or other director or manager, whose agreement has been terminated or set aside	Imprisonment upto six months or fine up to Rs. 5 lakh or with both
274(4)	Failure to file statement of affairs	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both
284(2)	Failure to extend full cooperation to the company liquidator	Imprisonment upto six months or fine up to Rs. 50,000 or with both
305(4)	Without reasonable grounds giving declaration of solvency in case of proposal to wind up voluntarily	Imprisonment not less than three years but may be extended to five years or fine not less than Rs. 50,000 but may be extended to Rs. 3 lakh or with both
306(5)	Default in calling the meeting of the creditors; to prepare a statement of the position of the company's affairs alongwith a list of creditors, estimated amount of claim and filing the resolution with Registrar	Imprisonment upto six months or fine not less than Rs. 50,000 but may be extended to Rs. 2 lakh or with both (for directors)
347(4)	contravention of any rule framed or an order made under sub-section (*3*)	Imprisonment upto six months or fine upto Rs. 50,000 or with both
348(7)	Wilful default by company liquidator	Imprisonment upto six months or fine upto Rs. 1 lakh or with both
392	Contravention of the provisions of Chapter XXII by a foreign company	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh or with both (for officer in default)
405(4)	Failure to furnish information or statistics etc. by the companies required by the Central Government	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 3 lakh or with both (for officer in default)
441(5)	Failure to comply with the order made by Tribunal or Regional Director in relation to Compounding of offences	Imprisonment upto six months or fine upto Rs. 1 lakh or with both
454(8)	Failure to pay the penalty imposed by the adjudicating officer or Regional Director	Imprisonment upto six months or fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh or with both (for officer in default)

List of offences non-compoundable in nature

Section	Nature of offence	Imprisonment and Fine
46(5)	Fraudulently issuing of duplicate share certificates by a company	Fine not less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extended to 10 times or Rs. 10 crores whichever is higher on company. Imprisonment not less than six months but may be extended to 10 years and fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud (for officer in default).
56(7)	If the depository or depository participant with an intention to defraud a person, has transferred the shares.	Imprisonment not less than six months but may extended to 10 years and fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud (for officer in default).
57	Deceitfully personating as an owner of any shares or interest in a company	Imprisonment minimum of one year but may be extended to three years and with fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
58(6)	Contravention of an order of the Tribunal regarding the refusal of registration and appeal against refusal.	Imprisonment not less than one year but may be extended to three years and with fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	Imprisonment upto three years and fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh (for officer in default).
118(12)	Tampering with the minutes of the proceedings of meeting	Imprisonment upto two years and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh.
127 Proviso	Failure to distribute dividend within thirty days	Imprisonment upto two years and fine not less than Rs. 1,000 for each day of failure (for every director) and 18% interest liability on company
140(5)	Final order of Tribunal in relation to fraudulent behavior of auditor	Barred to be appointed as auditor for 5 years and Imprisonment not less than six months but may extended to 10 years and fine not less than the amount involved in fraud but may be extended to 3 times the amount involved in fraud
147(2) *Proviso*	Failure of auditor to comply with the provisions of sections 139, 143, 144 and 145 If knowingly contravenes	Imprisonment upto 1 year and fine not less than Rs. 1 lakh but may be extended to Rs. 25 lakh
182(4)	Political contribution made in contravention of	.

	this section	Imprisonment upto six months and fine upto five times of the amount contributed (for officer in default)
186(13)	Contravention of the provisions of this section relating to loans and investment	Imprisonment upto two years and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh
207(4)	Disobeys the direction issued by the Registrar or inspector under this section	Imprisonment upto one year and fine not less than Rs. 25,000 but may be extended to Rs. 5 lakh and deemed to have vacate office and shall disqualified from holding any office in any company
217(6)	Disobeys the direction issued by the Registrar or inspector under this section in relation to investigation	Imprisonment upto one year and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh and deemed to have vacate office and shall disqualified from holding any office in any company
217(8)	Failure to provide information, books or papers etc. to inspector during investigation	Imprisonment upto six months and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh and further fine up to Rs. 2,000 for each day of default
245(7)	Committing default in complying with the order of Tribunal under this section	Imprisonment upto three years and fine not less than Rs. 25,000 but may be extended to Rs. 1 lakh (for officer in default)
247(3) *Proviso*	Contravention of the provisions of this section by the valuer If the contravention is with the intentions to fraud	Imprisonment upto one year and fine not less than Rs. 1 lakh but may be extended to Rs. 5 lakh
267	Contravention of the provisions of this chapter, Tribunal, Appellate Tribunal or temper the records	Imprisonment up to seven years and fine upto Rs. 10 lakh
336(1)	Offences by officers of companies in liquidation	Imprisonment not less than three years but may be extended to five years and fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh
336(2)	Offences by officers of companies in liquidation covered under sub-clause (*viii*) of clause (*d*) of sub-section (*1*)	Imprisonment not less than three years but may be extended to five years and fine not less than Rs. 3 lakh but may be extended to Rs. 5 lakh
337	Frauds by officers	Imprisonment not less than one year but may be extended to three years and fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh
338(1)	Failure to keep proper books of account before winding up	Imprisonment not less than one year but may be extended to three years and fine not less than Rs. 1 lakh but may be extended to Rs. 3 lakh
447 *Proviso*	Punishment for fraud	Imprisonment not less than six months but may be extended to 10 years and fine not less than the amount involved in fraud but may be extended to 3 times the

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

A BRIEF NOTE ON CLASS ACTION

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

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

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

Class action in other jurisdictions

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

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

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

Class action in India

In India, the members or depositors can claim the damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm and also each partner of the audit firm shall be held liable who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. If these members are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors then these members can file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

a. To restrain the company from committing an act which is *ultra vires* the Articles or Memorandum of the company;
b. To restrain the company from committing breach of any provision of the company's Memorandum or Articles;
c. To declare a resolution altering the Memorandum or Articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
d. To restrain the company and its directors from acting on such resolution;
e. To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
f. To restrain the company from taking action contrary to any resolution passed by the members;
g. To claim damages or compensation or demand any other suitable action from or against—
    (i) The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
    (ii) The auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
    (iii) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
h. To seek any other remedy as the Tribunal may deem fit.

Relevant provisions relating to Class Action under Bill, 2012

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

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

Application to Tribunal

The number of members who are eligible for the application to Tribunal in case of company having share capital shall be not less than 100 members of the company or shall not be less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed but subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

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

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

Functions of Tribunal

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

a. Whether the member or depositor is acting in good faith in making the application for seeking an order;

b. Any evidence before it as to the involvement of any person other than directors or officers of the company on the matters that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.

c. Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

d. Any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

e. Where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

    i. Authorised by the company before it occurs; or

    ii. Ratified by the company after it occurs;

f. Where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

Procedure

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

a. Public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

b. All similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side.

c. Two class action applications for the same cause of action shall not be allowed;

d. The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

Order to be binding

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

Punishment

The company which fails to comply with an order passed by the Tribunal shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Frivolous Applications

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

Non-applicability to Banking Company

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

A BRIEF NOTE ON MEDIATION AND CONCILIATION PANEL

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

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

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

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

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

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

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

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