BACKGROUNDER

ON

THE COMPANIES BILL, 2012

Part - II

Comparative Table showing the clauses of the Companies Bill, 2012
and the corresponding sections of the Companies Act, 1956
and brief comments thereon

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.

COMPARATIVE TABLE SHOWING THE CLAUSES OF THE COMPANIES BILL, 2012 AND THE CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956

CHAPTER I

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
1. Short title, extent, commencement and application. - (1) This Act may be called the Companies Act, 2013. (2) It extends to the whole of India. (3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.	1. Short title, commencement and extent.—(1) This Act may be called the Companies Act, 1956. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (3) It extends to the whole of India: [Provided that it shall apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification in the Official Gazette, specify.	The Bill empowers the Central Government to implement provisions of the Bill on different dates. The Bill once enacted shall replace the Companies Act, 1956.
2. Definitions. - In this Act, unless the context otherwise requires,—	2. Definitions.—In this Act, unless the context otherwise requires,—	No Change
(1)“abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;	(1) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;	For harmonization, the Bill empowers SEBI to specify salient features of abridged prospectus.
(3)“alter” or “alteration” includes the making of additions, omissions and substitutions;	(1A) "alter" and "alteration" shall include the making of additions and omissions;	‘Substitution’ is also included in the definition of ‘alteration’ under the

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		Companies Bill.
(10)“Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company;	(6) "Board of directors" or "Board", in relation to a company, means the Board of directors of the company;	The Board has been defined as collective body of directors
(11)“body corporate” or “corporation” includes a company incorporated outside India, but does not include— (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification specify in this behalf;	(7) "body corporate" or "corporation" includes a company incorporated outside India but [does not include— (*a*) a corporation sole; (*b*) a co-operative society registered under any law relating to co-operative societies; and (*c*) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;]	Since one person company forms part of the Bill, hence corporation sole is no more excluded from the definition of body corporate.
(12)“book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;	(8) "book and paper" and "book or paper" include accounts, deeds, [vouchers,] writings, and documents;	The new definition also covers Minutes and registers. Companies Bill has kept pace with the growth in information technology. It enables maintaining of books, deeds, documents, registers, minutes etc. in electronic form. These documents can be maintained either in physical or in electronic form. Section 135 of UK Companies Act, 2006, also permits companies to maintain documents electronically. In fact, the concept is recognized worldwide.
	(9) "branch office" in relation to a company	

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(14)"branch office", in relation to a company, means any establishment described as such by the company; No provision	means— (*a*) any establishment described as a branch by the company; or (*b*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or (a) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under section 8;]	The definition has been simplified. It is left to the discretion of the Company as to which is its branch office. The role of Central Government to specify the establishments not to be treated as Branch office, has also been done away with.
(20)"company" means a company incorporated under this Act or under any previous company law;	(10) "company" means a company as defined in section 3;	Clause (20) defines the term "Company' and clause (67) defines the term "previous company law". On reading both the clauses together, it is similar to section 3 of the Companies Act, 1956.
(29)"Court" means— (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);	(11) "the Court" means,— (*a*) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10; (*b*) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having	Since the term 'Court' has been used in the Bill in wide sense, it includes reference to High Court, District Court, Court of session, the Special Court, Metropolitan Magistrate.

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(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district; (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law; (iv) the Special Court established under section 435; (v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;	jurisdiction to try such offence; (14) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction;	The term 'District Court' is not separately defined. It is covered under the definition of 'Court' itself.
(30) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;	(12) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not	The words 'any other securities of a company' are substituted by 'any other instrument of a company evidencing a debt' to broaden the area of debentures and to avoid any dispute.
(36)"document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;	(15) "document" includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act or otherwise;	The definition is widened to include papers maintained in electronic form.

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(37)“employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or subscribe for, the shares of the company at a future date at a pre-determined price;	(15A) "employees stock option" means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price;	Under new definition employees stock option may be given to the directors, officers or employees of the subsidiary company also. Aligning with SEBI (Employee Stock Option Scheme) Guidelines the definition mentions ‘directors instead of ‘whole-time directors’ (WTD).
(41)“financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up: Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year: Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as	(17) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not: Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938);	With the intention to have a uniformity in financial year, the term ‘financial year’ is redefined. Financial year for all the companies now will begin on 1st April and end on 31st March. In cases where holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the approval of the tribunal is required. Tribunal may allow any period as its financial year.

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per the provisions of this clause;		
(21) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up; (22)"company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;	(23) "limited company" means a company limited by shares or by guarantee;	Since terms 'company limited by guarantee' and 'company limited by shares' have been defined independently, the definition of term 'limited company' is omitted.
(52) "listed company" means a company which has any of its securities listed on any recognised stock exchange;	(23A) "listed public companies" means a public company which has any of its securities listed in any recognized stock exchange;	The definition has been modified so as to remove the word "public", since only a public company can be a listed company.
(55) "member", in relation to a company, means— (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members; (ii) every other person who agrees in	(27) "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114; 41. Definition of "member".—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members. (2) Every other person who agrees in writing] to become a member of a company and whose name is entered in its register of	The term member has been defined and placed in definition clause. There is no change in definition.

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writing to become a member of the company and whose name is entered in the register of members of the company; (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;	members, shall be a member of the company. (3) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.	
(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;	(30) "officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act;	Now the definition is modified to include Key Managerial Personnel in the term ‘officer’.
(60) “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, 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	(31) "officer who is in default", in relation to any provision referred to in section 5, has the meaning specified in that section; 5. Meaning of "officer who is in default".—For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:— (*a*) the managing director or managing directors; (*b*) the whole-time director or whole-time directors;	The definition has been modified to include Key Managerial Personnel as officer in default;

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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;	(*c*) the manager; (*d*) the secretary; (*e*) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act; (*f*) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board; (*g*) where any company does not have any of the officers specified in clauses (*a*) to (*c*), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: Provided that where the Board exercises any power under clause (*f*) or clause (*g*), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.	Knowledge attributability/ consent would also be determining factor while determining whether a person is officer in default or not.
(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;		The share transfer agents, bankers, registrars and merchant bankers to the issue or transfer have also been made liable as officer in default, in respect of the issue or transfer of any shares of a company.

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(64)"paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued, and also includes any amount of money credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;	(32) "paid-up capital" or "capital paid-up" includes capital credited as paid-up;	Since, the term paid up share capital does not include any other amount received in respect of such shares, it has been specifically provided for in the definition. The term paid-up share capital also includes specifically any amount of money credited as paid-up in respect of shares of the company.
(66)"prescribed" means prescribed by rules made under this Act;	(33) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies except sub-section (5) of section 503, [sub-section (3) of section 550, section 552 and sub-section (3) of section 555], prescribed by rules made by the Supreme Court in consultation with [*the Tribunal*], and as respects the other provisions of this Act including sub-section (5) of section 503, [sub-section (3) of section 550, section 552 and sub-section (3) of section 555], prescribed by rules made by the Central Government;	The scheme of whole Bill is that the substantive law is proposed to be covered under the Bill and procedures to be prescribed through rules Hence wherever word "prescribed" is used, it refers to general power to make rules.
(68) "private company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,— (*i*) restricts the right to transfer its shares;	(35) "private company" means a private company as defined in section 3; **3. Definitions of "company", "existing company", "private company" and "public company** 1) In this Act, unless the context otherwise requires, the expressions "company",	The requirement of a private company having minimum paid-up capital of one lakh rupees has been retained in the Companies Bill, 2012. Number of members have been increased from 50 to 200 and restriction to invite public to subscribe shares or debentures has been

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(*ii*) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that— (*A*) persons who are in the employment of the company; and (*B*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and (*iii*) prohibits any invitation to the public to subscribe for any securities of the company;	"existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below:— (*iii*) "private company" means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles,— (*a*) restricts the right to transfer its shares, if any; (*b*) limits the number of its members to fifty not including— (*i*) persons who are in the employment of the company; and (*ii*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and (*c*) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; (*d*) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;	extended to include all type of securities.

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(70) "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;	(36) "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or] inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;	The definition of 'prospectus' now also includes red herring prospectus and shelf prospectus.
(71) "public company" means a company which— (*a*) is not a private company; (*b*) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed: Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;	(37) "public company" means a public company as defined in section 3; 3 Definitions of "company", "existing company", "private company" and "public company".—(1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below:— (*iv*) "public company" means a company which— (*a*) is not a private company; (*b*) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed; (*c*) is a private company which is a subsidiary of a company which is not a private company.	In the Companies Bill, 2012, the requirement of public company having minimum paid-up capital of five lakh rupees has been retained. It has been clearly provided that subsidiary of public company shall be deemed to be public company even if it continue to be private company in its Articles.
No Provision	(38) "public holiday" means a public	Concept of National Holiday is

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Explanation to 96(2).—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government	holiday within the meaning of the Negotiable Instruments Act, 1881 (26 of 1881): Provided that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting;	introduced under Clause 96 of the Bill, this would enable companies to hold Annual General Meeting even on Sunday.
(73)"recognised stock exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;	(39) "recognised stock exchange" means, in relation to any provision of this Act in which it occurs, a stock exchange, whether in or outside India, which is notified by the Central Government in the Official Gazette as a recognised stock exchange for the purposes of that provision;	The definition has been linked to Securities Contracts (Regulation) Act, 1956 which is the appropriate and relevant legislation for definition of this term.
(77)''relative'', with reference to any person, means any one who is a related to another, if— (*i*) they are members of a Hindu Undivided Family; (*ii*) they are husband and wife; or (*iii*) one person is related to the other in such manner as may be prescribed;	(41) "relative" means, with reference to any person, any one who is related to such person in any of the ways specified in section 6, and no others; **6 Meaning of "relative"**. A person shall be deemed to be a relative of another, if, and only if, — (*a*) they are members of a Hindu undivided family; or (*b*) they are husband and wife; or (*c*) the one is related to the other in the manner indicated in Schedule IA.	The clause provides for prescription power, this list of relatives may be expanded under the Rules. The detailed list of relatives as provided in schedule 1A of the Act would be provided in Rules under the Bill
(*79*) "Schedule" means a Schedule annexed to this Act;	(42) "Schedule" means a Schedule annexed to this Act;	No change. There are seven schedules to the Companies Bill, 2012.
(81)"securities" means the securities as	(45AA) "securities" means securities as	Reference to 'hybrids' omitted in the

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defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;	defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and includes hybrids;]	Companies Bill, 2012.
(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company— (*i*) controls the composition of the Board of Directors; or (*ii*) exercises or controls more than one-half of the total share capital 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. *Explanation.*—For the purposes of this clause,— (*a*) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (*i*) or sub-clause (*ii*) is of another subsidiary company of the holding company; (*b*) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company	(47) "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of section 4; **4. Meaning of "holding company" and "subsidiary".—(**1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if, — (*a*) that other controls the composition of its Board of directors; or (*b*) that other— (*i*) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company; (*ii*) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or (*c*) the first-mentioned company is a subsidiary of any company which is that other's subsidiary. *Illustration*	The Companies Bill, 2012 restricts end number of subsidiaries which a holding company can have. It provides that such class or classes of the holding companies as may be prescribed shall not have the layers of subsidiaries beyond the prescribed numbers. The term layer has also been defined.

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by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; (*c*) the expression "company" includes any body corporate; (*d*) "layer" in relation to a holding company means its subsidiary or subsidiaries;	Company *B* is a subsidiary of company *A*, and company *C* is a subsidiary of company *B*. Company *C* is a subsidiary of company *A*, by virtue of clause (*c*) above. If company *D* is a subsidiary of company *C*, company *D* will be a subsidiary of company *B* and consequently also of company *A*, by virtue of clause (*c*) above, and so on. (2) For the purposes of sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say— (*a*) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; (*b*) that a person's appointment thereto follows necessarily from his appointment as director, [* * *] or manager of, or to any other office or employment in, that other company; or (*c*) that the directorship is held by an	

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	individual nominated by that other company or a subsidiary thereof. (3) In determining whether one company is a subsidiary of another— (*a*) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it; (*b*) subject to the provisions of clauses (*c*) and (*d*), any shares held or power exercisable— (*i*) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or (*ii*) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity; shall be treated as held or exercisable by that other company; (*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; (*d*) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in	

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	clause (*c*)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business. (4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary. (5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 85. (6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not. (7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the	

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	purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.	
New Definitions under the Companies Bill: • "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. *Explanation.*—For the purposes of this clause, "significant influence" means control of at the least twenty per cent. of total share capital, or of business decisions under an agreement; • "auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143; • "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;		These are the **new definitions** provided under the new Bill, 2012.

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• “books of account” includes records maintained in respect of— (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section; • “called-up capital” means such part of the capital, which has been called for payment; • “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage; • “Chief Executive Officer” means an officer of a company, who has been designated as such by it;		

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• "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company; • "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by- (a) the Tribunal in case of winding up by the Tribunal; or (b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275; • "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner; • "expert" includes an engineer, a valuer, a chartered accountant, a		Company Secretary has been

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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; • "financial statement" in relation to a company, includes— (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) or sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not		recognised as an 'Expert'. Cash flow statement, statement of changes in equity are also considered as financial statement. One Person company, Small company and dormant company are exempted to prepare cash flow statement.

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include the cash flow statement; • "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts; • "independent director" means an independent director referred to in sub-section (5) of section 149; • "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts; • "issued capital" means such capital as the company issues from time to time for subscription; • "key managerial personnel", in relation to a company, means — (i) the Chief Executive Officer or the managing director, or the manager; (ii) the Company Secretary;		For removing any ambiguity the term Independent Director has been defined under the Bill. This is a new term. In the entire Bill, Key Managerial Personnel (KMP) have been made responsible for major decisions enlisted below: ‣ He is prohibited from insider trading/forward dealing in securities. ‣ He has been included in

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(iia) the whole-time director (iii) the Chief Financial Officer ; and (iv) such other officer as may be prescribed; • “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly; • “Official Liquidator” means an Official Liquidator appointed under sub-section (1) of section 359; • “One Person Company” means a company which has only one person as a member;		officer/officer in default/related party alongwith relatives. • He has been authorised to sign document/ proceedings/contract company’s behalf. • He has also been held responsible for disclosure in annual return. • Under the Bill he is required to disclose interest/concern & changes to company within 30 days of appointment/ relinquishment. • In case KMP gains undue benefit from disgorgement of company assets, he shall be held personally liable if the same is proved in inspection of company. The Bill permits registration of One Person Company. The proposed introduction of One Person Company into the legal system is a move that

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		would encourage entrepreneurship and corporatisation of business. At present, an entrepreneur in India has to find another person to implement his skills through incorporation of a company while in the UK, Australia, Singapore, Pakistan etc. a single person can form a company.
• "promoter" means a person— (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; 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 of the company is accustomed to act: Provided that nothing in sub-clause (b) and (c) shall apply to a person who is acting merely in a professional capacity;		Now, the person in accordance to whose advice, directions or instructions the Board of Directors of the company is accustomed to act are also covered under sub clause (c) of clause 69 as promoters.
• "register of companies" means the register of companies maintained by the		Not only company's but the Registrar of companies too can make use of

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Registrar on paper or in any electronic mode under this Act; • "related party", with reference to a company, means— (i) a director or his relative; (ii) Key managerial personnel or his relative; (iii) a firm, in which a director, manager or his relative is a partner; (iv) a private company in which a director or manager is a member or director; (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital; (vi) any body corporate whose Board of Directors, managing director, or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:		information technology and maintain their register of Companies electronically.

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Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity; (viii) any company which is— (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary: (ix) such other person as may be prescribed;		
• "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;		The definition of remuneration is aligned with definition under Income Tax 1961.
• "small company" means a company, other than a public company,— (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or		Small companies are exempted from complying with the requirements of some of the provisions under the Bill.

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(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to — (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act; • "voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot; • "whole-time director" includes a director in the whole-time employment of the company.		
2(95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of	**2A Interpretation of certain words and expressions.**—Words and expressions used and not defined in this Act but defined in the Depositories Act, 1996 (22 of 1996)	Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992have been added along with Depositories

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India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.	shall have the same meanings respectively assigned to them in that Act.	Act,1996 for words and expressions not included in this Bill.
2(72) "public financial institution" means— (*i*) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; (*ii*) the Infrastructure Development Finance Company Limited, referred to in clause (*vi*) of sub-section (*1*) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (*iii*) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (iv) institutions notified by the Central Government under sub-section (*2)* of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (*v*) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India: Provided that no institution shall be so notified unless— (*A*) it has been established or constituted by or under any Central or State Act; or (*B*) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the	**4A**. **Public financial institutions**.—(1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely:— (*i*) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913); (*ii*) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948); (*iii*) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964); (*iv*) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956); (*v*) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963); (*vi*) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act; (vii) *the securitisation company or*	The criteria for notification for public financial institutions has been widened. It now includes institutions established or constituted under State Act also along with Central Act. Another criteria is minimum of 51% of the paid-up share capital held by one or more State Governments as well besides Central Government. Existing public financial institutions would be continuing in view of transitional provisions provided in the bill.

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Central Government and partly by one or more State Governments;	*reconstruction company which has obtained a certificate of registration under sub-section* (*4*) *of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*. (2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution: Provided that no institution shall be so specified unless— (*i*) it has been established or constituted by or under any Central Act; or (*ii*) not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government.	
CHAPTER II		
3. Formation of company. **3.** (*1*) A company may be formed for any lawful purpose by— (*a*) seven or more persons, where the company to be formed is to be a public company; (*b*) two or more persons, where the company to be formed is to be a private company; or (*c*) one person, where the company to be	**12 Mode of forming incorporated company.**—(1) Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.	The concept of One person Company has been introduced. Under the Bill the memorandum of such company shall state the name of the company with the last words 'OPC Limited'. One Person Companies are a class of companies distinct from public and private companies. The one person company may not

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formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration: Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles: Provided further that such other person may withdraw his consent in such manner as may be prescribed: Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed: Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by		find it difficult to comply with the provisions of law as such a company can appoint more than one director to carry on the business of the company. It may also employ as many officers and employees as required to ensure various compliances including Company Secretaries, Chartered Accountants, Cost and Works Accountants etc. It is provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles. It further provides that any change in nomination shall also be intimated to the Registrar There are similar provisions in Pakistan. **Simpler Regime for One Person Company**

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indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed: Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum. (*2*) A company formed under sub-section (*1*) may be either— (*a*) a company limited by shares; or (*b*) a company limited by guarantee; or (*c*) an unlimited company.	(2) Such a company may be either—	Under the Bill OPC's are required to comply with a simpler legal regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters. For example under these clauses OPC's have been provided with simpler regimes/ exemptions: Clause 92 relating to Annual Return, Clause 2(40) defining the term Financial statement, Clause 96 relating to Annual General Meetings, Clause 193 relating to contracts by OPC's, Clause 122 relating to applicability of chapter VII (Management and Administration).
2(*22*) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;	(*a*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares");	The filing requirements for a one person company may be very simple and the OPCs may be required to file only minimum documents. OPCs are imperative because they would give entrepreneurial capabilities of people an outlet for participation in economic activity and such economic activity may take place through the creation of an economic person in the form of a company.
2(21) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;	(a) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being	There has been criticism in certain quarters against the formation of such a company as it may give room for

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2(92) "unlimited company" means a company not having any limit on the liability of its members;	wound up (in this Act termed "a company limited by guarantee"); or (*c*) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").	evasion of public funds and tax liability by an individual. The fears may be addressed through adequate precautions. Similar provisions pertaining to "One Person Company" exist in the UK Companies Act, 2006.
4. Memorandum. (*1*) The memorandum of a company shall state— (*a*) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company: Provided that nothing in this clause shall apply to a company registered under section 8; (*b*) the State in which the registered office of the company is to be situated; (*c*) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof; (*d*) the liability of members of the company, whether limited or unlimited, and also state,— (*i*) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and (*ii*) in the case of a company limited by	**13 Requirements with respect to memorandum**.—(1) The memorandum of every company shall state — (*a*) the name of the company with "Limited" as the last word of the name in the case of a public limited company, and with "Private Limited" as the last words of the name in the case of a private limited company; (*b*) the State in which the registered office of the company is to be situate; (*c*) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, (31 of 1965) the objects of the company; (*d*) in the case of a company formed after such commencement,— (*i*) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects; (*ii*) other objects of the company not included in sub-clause (*i*); and	The earlier provision in the Act provided for division of object clause into main object and other objects, however, the Bill has dropped such provision. Rest the language has been simplified.

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guarantee, the amount up to which each member undertakes to contribute— (*A*) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and (*B*) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves; (*e*) in the case of a company having a share capital,— (*i*) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and (*ii*) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name; (*f*) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company. (*2*) The name stated in the memorandum shall not— (*a*) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous	(*e*) in the case of companies (other than trading corporations), with objects not confined to one State, the States to whose territories the objects extend. (2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited. (3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount. (4) In the case of a company having a share capital— (*a*) unless the company is an unlimited company, the memorandum shall	

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company law; or (*b*) be such that its use by the company— (*i*) will constitute an offence under any law for the time being in force; or (*ii*) is undesirable in the opinion of the Central Government. (*3*) Without prejudice to the provisions of sub-section (*2*), a company shall not be registered with a name which contains— (*a*) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or (*b*) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression. (*4*) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as— (*a*) the name of the proposed company; or (*b*) the name to which the company proposes to change its name. (*5*) (*i*) Upon receipt of an application under sub-section (*4*), the Registrar may, on the basis of information and documents	also state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount; (*b*) no subscriber of the memorandum shall take less than one share; and (*c*) each subscriber of the memorandum shall write opposite to his name the number of shares he takes.	

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furnished along with the application, reserve the name for a period of sixty days from the date of the application. (*ii*) Where after reservation of name under clause (*i*), it is found that name was applied by furnishing wrong or incorrect information, then,— (*a*) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (*4*) shall be liable to a penalty which may extend to one lakh rupees; (*b*) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard— (*i*) either direct the company to change its name within a period of three months, after passing an ordinary resolution; (*ii*) take action for striking off the name of the company from the register of companies; or (*iii*) make a petition for winding up of the company.		
(*6*) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company. (*7*) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the	**14 Form of memorandum**.— The memorandum of association of a company shall be in such one of the Forms in Tables B, C, D and E in Schedule I as may be applicable to the case of the company, or in a Form as near thereto as circumstances admit.	Model forms are provided under schedule I.

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company otherwise than as a member, shall be void.		
8. Formation of companies with charitable objects, etc. **8.** (*1*) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company— (*a*) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object; (*b*) intends to apply its profits, if any, or other income in promoting its objects; and (*c*) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" , and thereupon the registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.	**25**. **Power to dispense with "Limited" in name of charitable or other company**.— (1) Where it is proved to the satisfaction of the Central Government that an association:— (*a*) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and (*b*) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited". (2) The association may thereupon be	The objects have been reviewed and more relevant objects have been included. Points of difference between Clause 8 of the Bill and section 25 of Companies Act 1956 are as under: Firstly, the objects with which a company with charitable objects etc. can be formed, also include the objects like, sports, education, research and social welfare. Secondly, such company can be an OPC also.

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(*2*) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies. (*3*) A firm may be a member of the company registered under this section. (*4*) (*i*) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. (*ii*) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed. (*5*) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (*a*) of sub-section (*1*) and with the restrictions and prohibitions as mentioned respectively in clauses (*b*) and (*c*) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting	registered accordingly; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies. (3) Where it is proved to the satisfaction of the Central Government— (*a*) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (*a*) of sub-section (1), and (*b*) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited"; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21. (4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease. (5) A licence may be granted by the	

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the word Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company. (*6*) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (*7*), on application, in the prescribed form, register the company accordingly: Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard: Provided further that a copy of every such order shall be given to the Registrar. (*7*) Where a licence is revoked under sub-	Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other. (6) It shall not be necessary for a body to which a licence is so granted to use the word "Limited" or the words "Private Limited" as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the directions, be exempt from such of the provisions of this Act as may be specified therein. (7) The licence may at any time be	Thirdly, if the Central Govt. while

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section (*6*), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section: Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard. (*8*) Where a licence is revoked under sub-section (*6*) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order. (*9*) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the	revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption granted by this section: Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation. (8)(*a*) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing. (*b*) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (*a*). (*c*) In according the approval referred to in clause (*a*), the Central Government may vary the licence by making it subject to such conditions and regulations [as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject. (*d*) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be	revoking the licence, is satisfied that it is essential in the public interest to do so, it may order the company to be wound up or amalgamated with another company having similar objects. Fourthly, in case of winding up or dissolution of such company, the proceeds on realization of the assets of such company after satisfying all debts and liabilities, shall be transferred to another company registered under this section and having similar objects or credited to

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Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269. (*10*) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.	required to enable it to do any of the things specified in clauses (*a*) to (*g*) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section. (9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and— (*a*) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and (*b*) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.	the Rehabilitation and Insolvency Fund proposed to be formed under clause 269. This is a welcome provision as a non profit company enjoys several exemptions and privileges under the Companies Act as well as several other laws. This provision has been inserted to prohibit the misuse of funds of charitable companies thereby preventing any financial advantage.
(*11*) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one	(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.	

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crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both: Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.		
11. Commencement of Business (*1*) A company having a share capital shall not commence any business or exercise any borrowing powers unless— (*a*) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and (*b*) the company has filed with the Registrar a verification of its registered office as provided in sub-section (*2*) of section 12. (*2*) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which	**149. Restrictions on commencement of business.** (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; (c) no money is, or may become, liable to be repaid to applicants for any shares or debentures which have been offered for	Under the Companies Act of 1956, it is required that the Certificate of commencement be obtained only by public companies, while in the Bill it is required that all the companies obtain the commencement Certificate from the Registrar. In tune with the recommendations of Irani Committee, the clause has been made simple. Any company after its incorporation can commence any business or exercise any borrowing powers only after filing two documents with the concerned ROC i.e., (i) a declaration by a director of the

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may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues. (*3*) Where no declaration has been filed with the Registrar under clause (*a*) of subsection (*1*) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (*2*), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.	public subscription by reason of any failure to apply for, or to obtain, permission for the shares or debentures to be dealt in on any recognized stock exchange; and (d) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole- time practice] in the prescribed form, that clauses (a), (b) and (c) of this sub- section, have been complied with. (2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless- (a) there has been filed with the Registrar a statement in lieu of prospectus; (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and (c) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole- time practice in the prescribed form, that clause (b) of this sub-section has been complied with. (2A) Without prejudice to the provisions of	company to the effect that every subscriber to the memorandum has paid the value for the shares agreed to be taken by him and paid-up share capital is not less than Rupees 5 lacs and Rupees 1 lakh in case of public and private company respectively. (ii) a verification of its registered office Verification of Registered office is a welcome provision to combat the menace of vanishing companies.

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	sub- section (1) and sub- section (2) a company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business- (a) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects stated in its memorandum in pursuance of clause (c) of sub- section (1) of section 13; (b) if such company is a company formed after such commencement, in relation to any of the objects stated in its memorandum in pursuance of sub- clause (ii) of clause (d) of sub- section (1) of the said section, unless- (i) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and (ii) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole- time practice, in the prescribed form, that clause (i) or as the case may be, sub- section (2B) has been complied with; and if the company commences any such business in contravention of this sub- section, every person who is responsible for the contra- vention shall, without prejudice to any other	

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	liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues. Explanation.- A company shall be deemed to commence any business within the meaning of clause (a) if and only if it commences any new business which is not germane to the business which it is carrying on at the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects referred to in the said clause. (2B) Notwithstanding anything contained in sub- section (2A) where no such special resolution as is referred to in that sub-section is passed but the votes cast (whether on a show of hands or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting, the Central Government may on an application made to it by the Board of directors in this behalf allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting. (3) The Registrar shall, on the filing of a duly	

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	verified declaration in accordance with the provisions of sub- section (1) or sub- section (2), as the case may be, and, in the case of a company which is required by sub- section (2) to file a statement in lieu of prospectus, also of' such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled. (4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding. (5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on applications for debentures. (6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues. (7) Nothing in this section shall apply to- (a) a private company; or (b) a company registered before the first day of April, 1914 , which has not issued a prospectus inviting the public to subscribe	

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	for its shares. Registers of members and debenture holders	
12. Registered office of company. (*5*) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,— (*a*) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and (*b*) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company: Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner. (*6*) The confirmation referred to in sub-section (*5*) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the	**17A. Change of registered office within a State**.—(1) No company shall change the place of its registered office from one place to another within a State unless such change is confirmed by the Regional Director. *(1)* The company shall make an application in the prescribed form to the Regional Director for confirmation under sub-section (1). (3) The confirmation referred to in sub-section (1), shall be communicated to the company within four weeks from the date of receipt of application for such change.	The requirement of getting confirmation by the Regional Director has been retained. Change in registered office outside the local limits of any city, town or village may be made with the authority of special resolution by the company. The company shall file the confirmation with the Registrar within sixty days from the date of confirmation as against two months

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company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation. (*7*) The certificate referred to in sub-section (*6*) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of subsection (*5*) have been complied with and the change shall take effect from the date of the certificate.	*Explanation*.—For the purposes of this section, it is hereby declared that the provisions of this section shall apply only to the companies which change the registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State. (4) The company shall file, with the Registrar a certified copy of the confirmation by the Regional Director for change of its registered office under this section, within two months from the date of confirmation, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such document. (5) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and confirmation have been complied with and henceforth the memorandum as altered shall be the memorandum of the company.	provided under the existing Act. That means there is no change in the period. The Companies Bill has made the process simpler, faster and easier, without reference to any Tribunal/Court, ensuring that the new registered office is accessible to stakeholders for legal recourse, where necessary.
13. Alteration of memorandum. (*1*) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. (*2*) Any change in the name of a company	**16**. **Alteration of memorandum**.—(1) A company shall not alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent, for which express provision is made in this Act. (2) Only those provisions which are required by section 13 or by any other specific provision contained in this Act, to be	The provisions for alteration of memorandum have been simplified.

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shall be subject to the provisions of subsections (*2*) and (*3*) of section 4 and shall not have effect except with the approval of the Central Government in writing: Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word “Private”, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act. (*3*) When any change in the name of a company is made under sub-section (*2*), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.	stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum. (3) Other provisions contained in the memorandum, including those relating to the appointment of a managing director, or manager, may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting of the alteration of such provisions in any other manner, they may also be altered in such other manner. (4) All references to the articles of a company in this Act shall be construed as including references to the other provisions aforesaid contained in its memorandum. ***17. Special resolution and confirmation by Central Government required for alteration of memorandum***.—	
(*4*) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.	(*1*) *A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it-* (a) *to carry on its business more economically or more efficiently; or*	The approval of the Central Government is necessary for shifting the registered office from one State to another.
(*5*) The Central Government shall dispose of the application under sub-section (*4*) within a period of sixty days and before passing its order may satisfy itself that the alteration has	(b) *to attain its main purpose by new or improved means; or* (c) *to enlarge or change the local area of its operations; or*	Under sub-section (5) of the Bill, the time period of sixty days is fixed for the Central Government to dispose of the application for shifting the registered office from one State to

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the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge. (*6*) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar— (*a*) the special resolution passed by the company under sub-section (*1*); (*b*) the approval of the Central Government under sub-section (*2*), if the alteration involves any change in the name of the company.	(d) *to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or* (e) *to restrict or abandon any of the objects specified in the memorandum; or* (f) *to sell or dispose of the whole or any part of the undertaking or of any of the undertakings, of the company; or* (g) *to amalgamate with any other company or body of persons.*	another. The specific provision for giving notice of the petition for confirmation of the alteration to Registrar to appear and state his objections and suggestions, if any, with respect to the confirmation of the alteration is dropped in the bill. This aspect may be covered by sub clause (5) which provides that the Central Government shall satisfy itself that consent of all concerned with the company is available.
(*7*) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration. (*8*) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus	(*2*) *The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on petition.* (*3*) *Before confirming the alteration, the Central Government must be satisfied—* (a) *that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Central Government, be affected by the alteration; and* (b) *that, with respect to every creditor who, in the opinion of the Central*	

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unless a special resolution is passed by the company and— (*i*) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change; (*ii*) 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. (*9*) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (*a*) of sub-section (*6*) of this section. (*10*) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section. (*11*) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.	*Government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central Government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured*: *Provided that the Central Government may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause* (a). (*4*) *The Central Government shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity of appearing before the Central Government and state his objections and suggestions, if any, with respect to the confirmation of the alteration*. (*5*) *The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and make such order as to costs as it thinks proper*. (*6*) *The Central Government shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every*	

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	class of them. (*7*) *The Central Government may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Central Government for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect, any such arrangement:* Provided that no part of the capital of the company may be expended for any such purchase. **18 Alteration to be registered within three months**.- **19 Effect of failure to register** **21 Change of name by company** — **23**. **Registration of change of name and effect thereof**.— **37**. **Provision as to companies limited by guarantee**.—	The Registrar of the State where the registered office is being shifted to shall issue a fresh Certificate of Incorporation indicating the alteration.

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14. Alteration of articles. (*1*) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its 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: Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company: Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.	**31**. **Alteration of articles by special resolution**.— (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may, by special resolution, alter its articles: Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government. *(2)* Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution. (2A) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.	Conversion of a public company into private company, as per provision of the Bill, requires approval of Tribunal. (The Act requires the approval of Central Government). The bill requires to file with the registrar every alteration of articles within a period of fifteen days instead of one month as per the existing law.

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(*2*) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (*1*) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same. (*3*) Any alteration of the articles registered under sub-section (*2*) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.	*(3)* The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them, extend to altering any provisions in Table B annexed to Act 19 of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.	
20. Service of documents (1) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed: Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode. (2) Save as provided in this Act or the rules	Service of documents **51**. **Service of documents on company**.—A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at its registered office: Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.	To enhance the speed of communication and to reduce the cost, the Bill recognizes that a document can be served **electronic**ally. A document can be served **electronic**ally, both on the company and its officers or by the company on the Registrar or its own members. This is also the internationally accepted mode of service of documents. Section 291 of UK Companies Act, 2006 permits a company to circulate written resolutions proposed by director to eligible members of the company in **electronic** form. Under Section 292 and 298, written

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made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed: Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. Explanation.—For the purposes of this section, the term ''courier'' means a person or agency which delivers the document and provides proof of its delivery.	**52**. **Service of documents on Registrar**.— A document may be served on a Registrar by sending it to him at his office by post under a certificate of posting or by registered post, or by delivering it to, or leaving it for, him at his office. **53**. **Service of documents on members by company**.—	resolutions of members may also be circulated in **electronic** form. Further a member may signify his agreement to written resolution in **electronic** form. Section 333 of the UK Act deals specifically with **Electronic** Communication. **Section 333 Sending documents relating to meetings etc in electronic form** (1) Where a company has given an **electronic** address in a notice calling a meeting, it is deemed to have agreed that any document or information relating to proceedings at the meeting may be sent by **electronic** means to that address (subject to any conditions or limitations specified in the notice). (2) Where a company has given an **electronic** address— (a) in an instrument of proxy sent out by the company in relation to the meeting, or (b) in an invitation to appoint a proxy issued by the company in relation to the meeting, it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by **electronic** means to that address (subject to any conditions or

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		limitations specified in the notice). (3) In subsection (2), documents relating to proxies include— (a) the appointment of a proxy in relation to a meeting, (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and (c) notice of the termination of the authority of a proxy. (4) In this section "**electronic** address" means any address or number used for the purposes of sending or receiving documents or information by **electronic** means. Further, the provision has been made for serving any document through a particular mode, if requested by any member on payment of certain fees.
21. Authentication of documents, proceedings and contracts. Save as otherwise provided in this Act,— (*a*) a document or proceeding requiring authentication by a company; or (*b*) contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this	***Contracts and deeds, investments, seal, etc.*** **46**. **Form of contracts**.—(1) Contracts on behalf of a company may be made as follows:— (*a*) a contract which, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the	Provisions have been simplified. Authority for authentication of documents/contracts is proposed to be given to Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf.

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behalf.	same manner be varied or discharged; (*b*) a contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged. (2) A contract made according to this section shall bind the company. *Authentication of documents and proceedings* **54**. **Authentication of documents and proceedings**.—Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, [* * *] the manager, the secretary or other authorised officer of the company, and need not be under its common seal.	

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	CHAPTER III	
23. Public offer and private placements (*1*) A public company may issue securities—	No provision	New clause introduced in the bill. For clarity, the entire chapter relating to

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(*a*) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or (*b*) through private placement by complying with the provisions of Part II of this Chapter; or (*c*) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed, also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder. (*2*) A private company may issue securities— (*a*) by way of rights issue or bonus issue in accordance with the provisions of this Act; or (*b*) through private placement by complying with the provisions of Part II of this Chapter. *Explanation.*—For the purposes of this Chapter, "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.		issue of securities has been divided into two parts. Part I relates to issue of public offer Part II relates to issue of securities through private placement.
26. Matters to be stated in prospectus (*1*) Every prospectus issued by or on behalf	PART III **PROSPECTUS AND ALLOTMENT, AND OTHER MATTERS RELATING TO ISSUE**	Reference to Schedule II has been omitted. Important contents of the

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of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall— (*a*) state the following information, namely:— (*i*) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed; (*ii*) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time; (*iii*) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner; (*iv*) details about underwriting of the issue; (*v*) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed; (*vi*) the authority for the issue and the details of the resolution passed therefor; (*vii*) procedure and time schedule for allotment and issue of securities;	**OF SHARES OR DEBENTURES** *Prospectus* **55**. **Dating of prospectus**.—A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus. **56**. **Matters to be stated and reports to be set out in prospectus**.— (1) Every prospectus issued— (*a*) by or on behalf of a company, or (*b*) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule. (2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.	prospectus have been provided in the clause itself. Procedural aspects would be prescribed through rules. The provisions have been simplified to make the prospectus more understandable. The new clause provides that the prospectus shall also include details of CFO. Among others the bill provides for following new particulars to be included in the prospectus: ▪ any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company; ▪ details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and ▪ disclosures in such manner as may be prescribed about sources of promoter's contribution;

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(*viii*) capital structure of the company in the prescribed manner; (*ix*) main objects of public offer, terms of the present issue and such other particulars as may be prescribed; (*x*) main objects and present business of the company and its location, schedule of implementation of the project; (*xi*) particulars relating to— (*A*) management perception of risk factors specific to the project; (*B*) gestation period of the project; (*C*) extent of progress made in the project; (*D*) deadlines for completion of the project; and (*E*) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company; (*xii*) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash; (*xiii*) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and (*xiv*) disclosures in such manner as may be prescribed about sources of promoter's contribution; (*b*) set out the following reports for the	(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed which complies with the requirements of this section: Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him: Provided further that this sub-section shall not apply if it is shown that the form of application was issued either— *(a)* in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (*b*) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees. (4) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if—	Rest of the provisions have been simplified.

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purposes of the financial information, namely:— (*i*) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed; (*ii*) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed: Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries; (*iii*) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus: Provided that in case of a company with respect to which a period of five years has	(*a*) as regards any matter not disclosed, he proves that he had no knowledge thereof; or (*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or (*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial], or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused: Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.	

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not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and (*iv*) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly; (*c*) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and (*d*) state such other matters and set out such other reports, as may be prescribed. (*2*) Nothing in sub-section (*1*) shall apply— (*a*) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (*ii*) of clause (*a*) of sub-section (*1*) of section 62 in favour of another person; or (*b*) to the issue of a prospectus or form of application relating to shares or debentures	(5) This section shall not apply— (*a*) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or (*b*) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange; but subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently. (6) Nothing in this section shall limit or diminish any liability which any person may	

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which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange. (*3*) Subject to sub-section (*2*), the provisions of sub-section (*1*) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently. *Explanation*.—The date indicated in the prospectus shall be deemed to be the date of its publication. (*4*) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney. (*5*) A prospectus issued under sub-section (*1*) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect	incur under the general law or under this Act apart from this section. **60**. **Registration of prospectus**.—	2(1) (38) “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;

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shall be included in the prospectus. (*6*) Every prospectus issued under sub-section (*1*) shall, on the face of it,— (*a*) state that a copy has been delivered for registration to the Registrar as required under sub-section (*4*); and (*b*) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents. (*7*) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus. (*8*) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub- section (*4*). (*9*) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term	**59**. **Penalty and interpretation**	Penalty provisions have been enhanced and minimum and maximum amount of fine has been provided in the Bill.

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which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.		
27. Variation in terms of contract or objects in prospectus. (*1*) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution: Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation: Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company. (*2*) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or	**61**. **Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied**.—A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of, or except an authority given by, the company in general meeting.	The provisions with respect to variation in terms of contracts or objects in prospectus have been made stringent under the Bill. Such variation can be done by passing a special resolution and by publishing the details thereof in newspapers where the registered office of the company is situated. Further, any company who makes such variation shall not use the amount raised by it through prospectus for buying/trading shares of other listed companies. Exit offer has been given to the dissenting shareholders as may be prescribed. The provision provides that the dissenting shareholders shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by

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objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.		making regulations in this behalf.
28. Offer of sale of shares by certain members of company. (*1*) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed. (*2*) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company. (*3*) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to	**No provision**	This is a new provision under the Bill. The clause provides that members whose shares are proposed to be offered to the public, shall collectively authorise the company, to take all actions in respect of offer of sale for and on their behalf

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take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.		
29. Public offer of securities to be in dematerialised form. (*1*) Notwithstanding anything contained in any other provisions of this Act,— (*a*) every company making public offer; and (*b*) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. (*2*) Any company, other than a company mentioned in sub-section (*1*), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.	**68B. Initial offer of securities to be in dematerialised form in certain cases**.—Notwithstanding anything contained in any other provisions of this Act, every listed public company, making initial public offer of any security for a sum of rupees ten crores or more, shall issue the same only in dematerialised form by complying with the requisite provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.	Under the Bill every company making public offer and other prescribed class of public companies will have to issue securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. Other companies may convert their securities in dematerialised form or issue its securities in physical form.
34. Criminal liability for misstatements in prospectus. Where a prospectus, issued, circulated or distributed under this Chapter, 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	**63**. **Criminal liability for mis-statements in prospectus**.— (1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with	Penalty provisions have been enhanced. In the event of mis-statement, term of imprisonment has been linked with

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matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447: Provided that nothing in this section shall apply to a person 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.	imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true. (2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given— (*a*) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or (*b*) the consent required by sub-section (3) of section 60. **65. Interpretation of provisions relating to prospectuses**.—(1) For the purposes of the foregoing provisions of this part— (*a*) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and (*b*) where the omission from a prospectus of any matter is calculated	punishment for fraud as stipulated under clause 447 reproduced herein below. **447.** Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, 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: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. *Explanation*.—For the purposes of this section— *(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

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	to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included. (2) For the purposes of sections 61, 62 and 63 and clause (*a*) of sub-section (1) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.	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.
36. Punishment for fraudulently inducing persons to invest money. 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,— (*a*) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or (*b*) any agreement, the purpose or the pretended 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	**68**. **Penalty for fraudulently inducing persons to invest money**.— Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts 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 shares or debentures; or (*b*) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or	Punishment for fraudulently misleading or inducing persons to invest in the company is similar to as stipulated under clause 447.

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(*c*) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution; shall be liable for action under section 447.	debentures; shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to one lakh rupees, or with both.	
37. Action by affected persons. A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.	No provision	This is a new provision in the Bill. This clause in the bill contains provision for class action suits affected by misleading statements
41. Global depository receipt A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.	No provision	This is a new provision in the Bill. This clause in the Bill provides for the issuance of GDR.
42. Offer or invitation for subscription of securities on private placement. (*1*) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issued of a private placement offer letter. (*2*) Subject to sub-section (*1*), the offer of securities or invitation to subscribe securities, shall be made to such number of	No provision	This new clause in the bill provides for a company to make private placement through issue of a private placement offer letter. - Such offer to be made to **maximum 50 persons** [excluding QIBs and

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persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (*b*) of sub-section (*1*) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed. *Explanation I*.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter. *Explanation II*.— For the purposes of this section, the expression— (*i*) "qualified institutional buyer'' means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirments) Regulations, 2009 as amended from time to time.		employees of the company being offered securities under a scheme of employees stock option], in a financial year and on the prescribed conditions. - The terms "private placement and "qualified institutional buyer" has been defined in the clause itself.

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(*ii*) "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. (*3*) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company. (*4*) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. (*5*) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash. (*6*) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities		▸ All monies payable towards subscription of these securities shall be paid through cheque or demand draft or other banking channels but not by cash

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and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day: Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than— (*a*) for adjustment against allotment of securities; or (*b*) for the repayment of monies where the company is unable to allot securities. (*7*) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement		▸ All such offers shall be made only to such persons whose **names are recorded by the company prior to the invitation** to subscribe, and that such persons shall receive the offer by name;

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offer letter. (*8*) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer. (*9*) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed. (*10*) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.		
	CHAPTER IV	
43. The share capital of a company limited by shares shall be of two kinds, namely:— (*a*) equity share capital—	(46A) "share with differential rights" means a share that is issued with differential rights in accordance with the provisions of	Inserted in the Companies Act vide the Companies (Amendment) Act, 2000.

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
(*i*) with voting rights; or (*ii*) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and	section 86;	Companies Bill, 2012 gives rule making power with respect to differential voting power.
53. Prohibition on issue of shares at discount. ((*1*) Except as provided in section 54, a company shall not issue shares at a discount. (*2*) Any share issued by a company at a discounted price shall be void.	**79. Power to issue shares at a discount**.— (1) A company shall not issue shares at a discount except as provided in this section. (2) A company may issue at a discount shares in the company of a class already issued, if the following conditions are fulfilled, namely:— (*i*) the issue of the shares at a discount is authorised by a resolution passed by the company in general meeting and sanctioned by the *Central Government*; (*ii*) the resolution specifies the maximum rate of discount [* * *] at which the shares are to be issued: Provided that no such resolution shall be sanctioned by the *Central Government* if the maximum rate of discount specified in the resolution exceeds ten per cent *unless the Central Government is of opinion*] that a higher percentage of discount may be allowed in the special circumstances of the case; (*iii*) not less than one year has at the date of the issue elapsed since the date on	The clause provides that a company cannot issue shares at discount other than as Sweat equity shares. Issuance of shares on discount with the approval of the central government has been omitted.

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(*3*) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.	which the company was entitled to commence business; and (*iv*) the shares to be issued at a discount are issued within two months after the date on which the issue is sanctioned by the *Central Government*, or within such extended time as the *Central Government* may allow. (3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the *Central Government* for an order sanctioning the issue; and on any such application, the *Central Government*, if having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit: *Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted*. (4) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this sub-section, the company and every officer of the company who is in default, shall be	The penalty provision has been enhanced. Minimum and maximum amount of fine has been provided in the Bill.

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
	punishable with fine which may extend to five hundred rupees.	
55. Issue and redemption of preference shares. (*1*) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable. (*2*) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed: Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders: Provided further that— (*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption; (*b*) no such shares shall be redeemed unless they are fully paid;	**80. Power to issue redeemable preference shares**.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed: Provided that— *(a)* no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; *(b)* no such shares shall be redeemed unless they are fully paid;	Under the Bill a company may issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue as per prescribed conditions for infrastructure projects, subject to the redemption of certain percentage on a annual basis at the option of such preferential shareholders.

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
(*c*) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and (*i*) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed: Provided also that premium, if any, payable	(*c*) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's [security] premium account, before the shares are redeemed; (*d*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the capital redemption reserve account], a sum equal to the nominal amount of the shares redeemed; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve account] were paid-up share capital of the company. (2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.	

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed. (*ii*) in a case not falling under sub-clause (*i*) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed. (*3*) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:	(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital. (4) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 611, be deemed to be increased by the issue of shares in pursuance of this sub-section: Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.	

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares. *Explanation.*—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company. (*4*) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.	(5) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares. (5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1996, issue any preference share which is irredeemable or is redeemable after the expiry of a period of twenty years from the date of its issue. (6) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten thousand rupees.	
61. Power of limited company to alter its share capital. (*1*) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—	**94. Power of limited company to alter its share capital.** (1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of is memorandum as follows, that is to say, it may—	Prior permission of the Tribunal is required under the bill, in case consolidation or division of the share capital results in changes in the voting percentage of shareholders

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
(*a*) increase its authorised share capital by such amount as it thinks expedient; (*b*) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares: Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner; *(c)* convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination; *(d)* sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub- division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; *(e)* cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.	(a) increase its share capital by such amount as it thinks expedient by issuing new shares; (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; (c) convert all or any of its fully paid up shares into stock, and reconvert that stock into fully paid up shares of any denomination; (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however. that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. (2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.	

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
(*2*) The cancellation of shares under sub-section (*1*) shall not be deemed to be a reduction of share capital	(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.	
62. Further issue of share capital. (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered — (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the share capital paid up on those shares by circulating an offer for sale subject to such terms and conditions relating to the time within which the offer has to be accepted, the renunciation of such offer and such other matters as may be prescribed; (b) to employees under a scheme of employees' stock option, subject to such conditions as may be prescribed; or (c) if it is authorised by a special resolution, to persons other than	**81. Further issue of capital**.— (1) Where at any time after the expiry of two years the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,— (*a*) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date; (*b*) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined; (*c*) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right	Applicability : all companies Under the Bill apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the issued further shares, such sharers may also be offered to employees by way of ESOP. Under the existing section a company may issue further capital any time after the expiry of two years. Under the Bill period of two years has been dispensed with.

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those mentioned in clause (a) or clause (b), either for cash or for a consideration, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.	exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (*b*) shall contain a statement of this right; (*d*) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company. *Explanation*.—In this sub-section, "equity share capital" and "equity shares" have the same meaning as in section 85. (1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons whether or not those persons include the persons referred to in clause (*a*) of sub-section (1) in any manner whatsoever— (*a*) if a special resolution to that effect is passed by the company in general meeting, or (*b*) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any of	

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(2) Nothing in this section shall apply to the increase of the subscribed capital of a public company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company: Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.	the Chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company. (2) Nothing in clause (*c*) of sub-section (1) shall be deemed— (*a*) to extend the time within which the offer should be accepted, or (*b*) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation. (3) Nothing in this section shall apply— (*a*) to a private company; or (*b*) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company— (*i*) to convert such debentures or loans into shares in the company, or (*ii*) to subscribe for shares in the company:	

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(3) Notwithstanding anything contained in sub-section (2), where any debentures have been issued, or loan has been obtained from any Government, by a company, and if that Government considers it necessary in the public interest so to do, it may, by order,	Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term— (*a*) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and (*b*) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans. (4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963 (53 of 1963), the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into	

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direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion: Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit. (4) In determining the terms and conditions of conversion under sub-section (3), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.	shares[123] in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion. (2) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company. (6) A copy of every order proposed to be issued by the Central Government under sub-section (4) shall be laid in draft before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.	

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(5) Where the Government has, by an order made under sub-section (3), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (3) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted in to.	(7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.	
63. Issue of bonus shares. (*1*) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of— (*i*) its free reserves; (*ii*) the securities premium account; or *(iii)* the capital redemption reserve account: Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.	No provision	New provision incorporated under the Bill.

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(*2*) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (*1*), unless— (*a*) it is authorised by its articles; (*b*) it has, on the recommendation of the Board, been authorised in the general meeting of the company; (*c*) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; (*d*) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus; (*e*) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up; (*f*) it complies with such conditions as may be prescribed. (*3*) The bonus shares shall not be issued in lieu of dividend.		
	CHAPTER V	
73. Prohibition on acceptance of deposits from public. (*1*) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter: Provided that nothing in this sub-section	**58A**. **Deposits not to be invited without issuing an advertisement**.— (1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its	The depositors being in the nature of unsecured creditors, had been subjected to a lot of hardship and in many cases lost their hard earned money, the Bill proposes to **prohibit companies from accepting deposits except from members**. Further even for accepting deposits from the members, stringent

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shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (*2*) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:— (*a*) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed; (*b*) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;	members. (2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless— (*a*) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), (*b*) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed , and *(c)* the company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit. (3)(*a*) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974 (14 of 1974) in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), shall, unless renewed in accordance with clause (*b*), be repaid in accordance with the terms and conditions of such deposit. (*b*) No deposit referred to in clause (*a*) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the	conditions have been stipulated which include : • Passing resolution in general meeting, • Compliance with rules to be made in consultation with the Reserve Bank of India • providing security for the repayment of deposits • issuance of circular to members including therein a statement showing - • the financial position of the company; • credit rating obtained; • total number of depositors and the amount due to these depositors in respect of previous deposits accepted by the company • other particulars in such form and in such manner as may be prescribed. • Filing copy of the circular along with the statement with the Registrar 30 days before the date of the issue of the circular. • Depositing a sum which shall not be less than 15% of the amount of its deposits maturing during the financial year and the financial year next following in a Deposit Repayment Reserve Account. • providing deposit insurance in such

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
(*c*) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account; (*d*) providing such deposit insurance in such manner and to such extent as may be prescribed; (*e*) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and (*f*) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company: Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ''unsecured deposits'' and shall be so quoted in every circular,	rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company. (*c*) Where, before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), repayment of such deposit shall be made in full on or before the 1st day of April,1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction. (3A) Every deposit accepted by a	manner and to such extent as may be prescribed. • certifying that the company has not defaulted in the repayment of deposit, accepted either before or after the commencement of the Act or in the payment of interest on such deposits. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. Some Observations : 1. While provision of security for the payment of sum and interest has been made, the manner in which the security would be created has not been specified and totally left to be decided as between the company and the members. 2. No specific penal provision has been made where the company makes a default in complying with the order of the Tribunal.

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form, advertisement or in any document related to invitation or acceptance of deposits. (*3*) Every deposit accepted by a company under sub-section (*2*) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section. (*4*) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (*3*), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. *(5*) The deposit repayment reserve account referred to in clause (*c*) of sub-section (*2*) shall not be used by the company for any purpose other than repayment of deposits.	company after the commencement of the Companies (Amendment) Act, 1988, shall, unless renewed in accordance with the rules made under sub-section (1), be repaid in accordance with the terms and conditions of such deposit. (4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow. (5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (*c*) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section, - (*a*) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to	A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to a stricter regime. Such company will have to comply with Chapter V of Companies Bill, 2012 and rules made by Central Government after consulting Reserve Bank of India. Further such company will also have to obtain credit rating from recognised agency and will also have to create a charge on its assets in case of secured deposits.

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	whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged; (*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of the manner of condition prescribed under that sub-section or in contravention of the provisions of sub-section (2), as the case may be,— (*a*) the company shall be punishable,— (*i*) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted; (*ii*) where such contravention relates to the invitation of any deposit, with fine which may extend to ten lakh rupees but shall not be less than fifty thousand rupees; (c) every officer of the company who	

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Corresponds to clause 73 (1) of the clause discussed earlier.	is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (7)(*a*) Nothing contained in this section shall apply to,— (*i*) a banking company, or (*ii*) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (*b*) Except the provisions relating to advertisement contained in clause (*b*) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. (8) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order:	

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76. Acceptance of deposits from public by certain companies (*1*) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (*2*) of section 73 and subject to such rules as the Central Government may, in consultation	Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India. (9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the *Tribunal* may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order: Provided that the *Tribunal* may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter. (10) Whoever fails to comply with any order made by the *Tribunal* under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees five hundred for every day during which such non-compliance continues. (11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-	A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to the prescribed compliance requirements and legal framework provided in the clause. Such company will also have to obtain credit rating from recognised agency and will also have to create a charge on its assets.

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with the Reserve Bank of India, prescribe: Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits: Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed. (*2*) The provisions of this Chapter shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.	section. *Explanation*.—For the purposes of this section, "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.	

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CHAPTER VI		
77. Duty to register Charges etc. (*1*) It shall be the duty of every company creating	**125**. **Certain charges to be void against liquidator or creditors unless registered**.	The Bill lays the duty of

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a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation: Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed: Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87: Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered. (*2*) Where a charge is registered with the	(1) Subject to the provisions of this part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within thirty days after the date of its creation: Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period. (2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge. (3) When a charge becomes void under this section, the money secured thereby shall immediately become payable. (4) This section applies to the following	creating charge on the company. The manner and forms etc for creation of charge (including for charges in respect of properties/ assets existing outside India) are proposed to be prescribed in the rules. The Bill specifically provides that any subsequent registration of a charge shall not prejudice any rights acquired in respect of any property before the charge is actually registered. The additional period for registration of charge has been increased from 30 to 300 days. Wherein the charge is not registered within extended days, then application will be required to be made to the Central Government for extension. The specific classification of charges specified in sub-section 4 has been omitted.

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Registrar under sub-section (*1*), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created. (*3*) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (*1*) and a certificate of registration of such charge is given by the Registrar under sub-section (*2*). (*4*) Nothing in sub-section (*3*) shall prejudice any contract or obligation for the repayment of the money secured by a charge.	charges:— (*a*) a charge for the purpose of securing any issue of debentures; (*b*) a charge on uncalled share capital of the company; (*c*) a charge on any immovable property, wherever situate, or any interest therein; (*d*) a charge on any book debts of the company; (*e*) a charge, not being a pledge, on any movable property of the company; (*f*) a floating charge on the undertaking or any property of the company including stock-in-trade; (*g*) a charge on calls made but not paid; (*h*) a charge on a ship or any share in a ship; (*i*) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright. (5) In the case of a charge created out of India and comprising solely property situate outside India, thirty days after the date on which the instrument creating or evidencing the charge or a copy thereof could, in due course of post and if despatched with due diligence, have been received in India, shall be substituted for thirty days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be filed with the Registrar.	In case the charge is created outside India and comprise solely of property outside India, then it shall be registered within 30 days of its creation and not from the date on which instrument creating charge is received in India, as earlier provided.

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	(6) Where a charge is created in India but comprises property outside India, the instrument creating or purporting to create the charge under this section or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate. (7) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts. (8) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property.	
78. Application for registration of charge. Where a company fails to register the charge within the period specified in section 77, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be	**129. Particulars in case of commission, etc., on debentures**.— **132. Certificate of registration** **133. Endorsement of certificate of registration on debenture or certificate of**	Under the Bill there is no separate provision for the registration of charges in respect of the issue of debentures. Reference to issue of certificate ‘under his hand’ have been omitted to allow issue of

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prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed: Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.	**debenture stock**. **134. Duty of company as regards registration and right of interested party**. **136. Copy of instrument creating charge to be kept by company at registered office**.—	certificate electronically. Form and manner of issuing certificate of registration is proposed to be prescribed through Rules. Further reference to such certificate of registration being conclusive evidence has been omitted. The detailed requirements in respect of manner in which endorsement of Registrar's certificate would be made on debenture certificate would be prescribed through rules. The provisions have been made clearer to indicate that registration of charge would also be allowed if filed by charge holder, in case debtor company fails to get the same registered.
Rectification by Central Government in register of charges. **87.** (1) The Central Government on being satisfied that—	***141. Rectification by Central Government of register of charges***.—(*1*) *The Central Government, on being satisfied—* (a) *that the omission to file with the Registrar the particulars of any charge created by a company or*	The requirement under section 136 of existing Act may be prescribed through rules to be prescribed under clause 77(1) of the Bill.

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(*i*) (*a*) the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or (*b*) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or (*c*) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or (*ii*) on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government_just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be	*of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or section 139, was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or* (b) *that on the grounds, it is just and equitable to grant relief*, *may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.* (*2*) *The Central Government may make such order as to the costs of an application under sub-*	

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extended or, as the case may require, that the omission or mis-statement shall be rectified. (*2*) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.	*section* (*1*) *as it thinks fit*. (*3*) *Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered*.	

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CHAPTER VII		
89. Declaration in respect of beneficial interest in any share.	**187C. Declaration by persons not holding beneficial interest in any share.**	
(*1*) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.	(1) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.	Under this clause, the Central Government may make rules to provide for the manner of holding and disclosing the beneficial interest and beneficial ownership. Penal provisions under the clause have been made stringent.
(*2*) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying	(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within	

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the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.	thirty days from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.	
(*3*) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (*1*) and the beneficial owner specified in sub-section (*2*) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.	(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.	No change
(*4*) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.	(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.	This is a new provision wherein the Central Government is empowered to make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership.
(*5*) If any person fails, to make a declaration as required under sub-section (*1*) or sub-section (*2*) or sub-section (*3*), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing	5 (a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.	Penalty is enhanced.

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one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. (*6*) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.	(a) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.	Penalty is enhanced
(*7*) If a company, required to file a return under sub-section (*6*), fails to do so before the expiry of the time specified under the first proviso to sub-section (*1*) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.	(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.	

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(*8*) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him. (*9*) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.	(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged. (8) The provisions of this section shall not apply to the trustee referred to in section 187B on and after the commencement of the Companies (Amendment) Act, 2000.	Companies (Amendment) Act, 2000 being redundant, hence no reference is there in the Bill.
92. Annual return. (*1*) 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— (*a*) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; (*b*) its shares, debentures and other securities and shareholding pattern; (*c*) its indebtedness;	**159. Annual return to be made by company having a share capital**.— (1) Every company having a share capital shall, within sixty]days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding— (*a*) its registered office, (*b*) the register of its members, (*c*) the register of its debenture holders, (*d*) its shares and debentures, (*e*) its indebtedness, (*f*) its members and debenture holders, past and present, and (*g*) its directors, managing directors, managers and secretaries, past and present:	Reference to Schedule V provided in the existing Act has been omitted since the form of annual return will be prescribed in the rules. All types of companies, whether having share capital or not have to comply with the requirement of filing of the Annual Return. Contents of Annual Return have been revamped in

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(*d*) its members and debenture-holders along with changes therein since the close of the previous financial year; (*e*) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; (*f*) meetings of members or a class thereof, Board and its various committees along with attendance details; (*g*) remuneration of directors and key managerial personnel; (*h*) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment; (*i*) matters relating to certification of compliances, disclosures as may be prescribed; (*j*) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and (*k*) such other matters as may be prescribed,	Provided that if any of the five immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number or shares held by a member. *Explanation*.—Any reference in this section or in section 160 or 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.	the Bill keeping in view the need of relevant disclosures required in present context. Some of the important additions include particulars about Promoters, directors, key managerial personnel; Remuneration of directors & KMP; Penalty or punishment imposed on company; details in respect of shares held by foreign Institutional Investors. Under the clause, Annual

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and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice: Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.	(2) The said return shall be in the form set out in Part II of Schedule V or as near thereto as circumstances admit and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, company shall file with the return a statement specifying the reasons for not holding the annual general meeting: Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.	return is to be signed by one director along with company secretary and where there is no company secretary, by company secretary in practice. In case of One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
(*2*) 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 in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.	**160. Annual return to be made by company not having a share capital.** **161. Further provisions regarding annual return and certificate to be annexed thereto**.—	For the listed companies or companies with prescribed paid- up capital and turnover, annual return shall also be certified by company secretary in practice.
(*3*) An extract of the annual return in such form as may be prescribed shall form part of the Board's report. (*4*) Every company shall file with the	(1) The copy of the annual return filed with the Registrar under section 159 or 160, as the case may be, shall be signed both by a director and by the manager or secretary of the company, or where there is no manager or secretary by two directors of the company, one of whom shall be the managing director	The extracts of the Annual Return is intended to form a part of the Board's report for shareholders information.

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Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403. (*5*) If a company fails to file its annual return under sub-section (*4*), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. (*6*) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	where there is one: Provided that where the annual return is filed by a company whose shares are listed on a recognised stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice. (2) There shall also be filed with the Registrar along with the return a certificate signed by [the signatories] of the return, stating— (*a*) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely; (*aa*) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and] (*b*) in the case of a private company also, (*i*) that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and (*ii*) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (*b*) of clause (*iii*) of sub-section (1) of section 3 are not to be included in reckoning the number of fifty.	Penal provisions have been made stringent. This penal provision imposes challenge to the professionals wherein they would be punished if they don't certify in conformity with requirements of the clause.

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93. Return to be filed with Registrar in case promoters' Stake changes. Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.	No Provision	New Clause introduced in the Bill. Under the clause, every listed company is required to file with the registrar any change with respect to change in number of shares held by the promoters and top ten shareholders of such company within fifteen days of such change.
94. Place of keeping and inspection of registers, returns, etc. (*1*) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company: Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:	**163. Place of keeping, and inspection of registers and returns**.— (1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders, and copies of all annual returns prepared under sections 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company: Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if— (*i*) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, and	Under the Bill, a company is required to keep Register of members at the registered office of the company. Other than this a company may also keep and maintain its register of members at a place in which more than one-tenth of the total number of members entered in the register of members reside after approval in a general meeting by special resolution.

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Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.	(*iii*) the Registrar has been given in advance a copy of the proposed special resolution. (1A) Notwithstanding anything contained in sub-section (1) the Central Government may make rules for the preservation and for the disposal whether by destruction or otherwise, of the registers, indexes, returns and copies of certificates and other documents referred to in sub-section (1).	
(*2*) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.	(2) The registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company may impose, so that not less than two hours in each day are allowed for inspection) to the inspection— (*a*) of any member or debenture holder, without fee; and (b) of any other person, on payment of such sum as may be prescribed for each inspection. (3) Any such member, debenture holder or other person may— *(a)* make extracts from any register, index, or copy referred to in sub-section (1) without fee or additional fee, as the case may be, or	
(*3*) Any such member, debenture-holder, other security holder or beneficial owner or any other person may— (*a*) take extracts from any register, or index or	*(b)* require a copy of any such register, index, or copy or of any part thereof, on payment of such sum as may be prescribed for every one	Under the Bill in addition to member, debenture-holder, other security holders have also been

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return without payment of any fee; or (*b*) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed. (*4*) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues. (*5*) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.	hundred words or fractional part thereof required to be copied. (1) The company shall cause any copy required by any person under clause (*b*) of sub-section (3) to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company. (2) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five hundred rupees for every day during which the refusal or default continues. (6) The *Tribunal* may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.	empowered to inspect, take extract from the register of members. Penal provisions have been made stringent.
96. Annual general meeting. (*1*) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify	**166. Annual general meeting**.— (1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than	One person company (OPC) is not required to hold AGM since it would have only one member.

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the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:	fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:	
Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:	Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year:	This proviso in the Bill provides that the first annual general meeting of a company shall be held within a period of nine months from the date of closing of the first financial year of the company.
Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:		
Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.	Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.	
(*2*) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:	(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate :	The Bill has clarified the time of business hours i.e. from 9. a.m. to 6 p.m. Also in place of the words "public holiday" the words national holiday have been substituted. This would allow companies to hold

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Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose. *Explanation*.—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.	Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose: Provided further that— (*a*) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and (*b*) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meeting.	AGMs even on Sundays or other Public Holidays. The term 'National Holiday' is defined.
101. Notice of Meeting (*1*) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:	171. **Length of notice for calling meeting**.— (1) A general meeting of a company may be called by giving not less than twenty-one days' notice in writing. (2) A general meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto— (*i*) in the case of an annual general meeting, by all the members entitled to vote thereat; and (*ii*) in the case of any other meeting, by members of the company (*a*) holding, if the company has a share capital, not less than 95 per cent of	Notice of the meeting under the Bill may also be sent through the electronic mode. Now notice of a meeting can also be served on the members and others **electronically**. Under the existing Act, Notice can be served only in writing. Serving of the Notice **electronically** would certainly save a lot of cost

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Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting.	such part of the paid-up share capital of the company as gives a right to vote at the meeting, or (*b*) having, if the company has no share capital, not less than 95 per cent of the total voting power exercisable at that meeting: Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.	of companies, which in turn would be of benefit to shareholders themselves. However, the manner of service of notice shall be prescribed through the Rules. Sections 308 and 309 of the UK Companies Act, 2006 enable a company to send notice of a general meeting in **electronic** form. In fact the aforesaid legal provisions go a step further as they provide that notice can even be given by means of publishing it on the web-site of the company provided the notice is available on the web-site throughout the period beginning the date of the Notification and ending with the conclusion of the meeting. The bill now requires that the notice must be sent 21 clear days before the meeting instead of just 21 days.

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(*2*) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. (*3*) The notice of every meeting of the company shall be given to— (*a*) every member of the company, legal representative of any deceased member or the assignee of an insolvent member; (*b*) the auditor or auditors of the company; and (*c*) every director of the company.	**172**. **Contents and manner of service of notice and persons on whom it is to be served**.— (1) Every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat. (2) Notice of every meeting of the company shall be given— (*i*) to every member of the company, in any manner authorised by sub-sections (1) to (4) of section 53; (*ii*) to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred; and (*iii*) to the auditor or auditors for the time being of the company, in any manner authorised by section 53 in the case of any member or members of the company: Provided that where the notice of a meeting is	Electronic Mode has also been recognised for consent of members for the purpose of shorter notice. Notice of every General Meeting is also required to be sent to the Directors of the Company. This requirement has not been specifically mentioned in the existing section.

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(*4*) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.	given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company. (3) The accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.	
103. Quorum for meetings. (*1*) Unless the articles of the company provide for a larger number,— (*a*) in case of a public company,— (*i*) five members personally present if the number of members as on the date of meeting is not more than one thousand; (*ii*) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand; (*iii*) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;	**174**. **Quorum for meeting**.— (1) Unless the articles of the company provide for a large number, five members personally present in the case of public company (other than a public company which has become such by virtue of section 43A), and two members personally present in the case of any other company, shall be the quorum for a meeting of the company. (2) Unless the articles of the company otherwise provide, the provisions of sub-sections (3), (4) and (5) shall apply with respect to the meetings of a public or private company. (3) If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting, if called upon the requisition of members, shall stand dissolved.	Under the bill quorum for a general meeting of a public company is based on the number of members as on the date of meeting and is as follows: *(i)* 5 members personally present if such number is not more than 1000; (*ii*) 15 members personally present if such number is more than 1000 but up to 5000; (*iii*) 30 members personally present if such number as

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(*b*) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company. (*2*) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company— (*a*) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or (*b*) the meeting, if called by requisitionists under section 100, shall stand cancelled: Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (*a*), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.	(4) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.	on the date of the meeting exceeds 5000; This proviso requires that in case of an adjournment or of a change of day, time or place of an adjourned meeting, the company shall give not less than three days' notice to the members either individually or by press announcement.
(*3*) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.	(5) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.	

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105. Proxies (*1*) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf: Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll: Provided further that, unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital: Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy: Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed. (*2*) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed,	**176**. **Proxies**.— (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the meeting: Provided that, unless the articles otherwise provide— (*a*) this sub-section shall not apply in the case of a company not having a share capital; (*b*) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and (*c*) a proxy shall not be entitled to vote except on a poll. (2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.	Under the Bill, the Central Government is vested with powers to prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy. Maximum number is fixed as fifty for a person to be appointed as proxy holder.

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one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. (*3*) If default is made in complying with sub-section (*2*), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.	If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.	Penal provisions have been made stringent.
(*4*) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.	(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.	
(*5*) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which	(4) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to ten thousand rupees:	

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may extend to one lakh rupees: Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy. (*6*) The instrument appointing a proxy shall— (*a*) be in writing; and (*b*) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. (*7*) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company. (*8*) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at	Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy. (5) The instrument appointing a proxy shall— (*a*) be in writing; and (*b*) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. (6) An instrument appointing a proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles. (7) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in	

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any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.	writing of the intention so to inspect is given to the company.	
108. Voting through electronic means. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.	**No Provision**	New clause introduced. Under the clause Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. This is a major step towards shareholder democracy. It is proposed to empower members of a company, spread across the length and breadth of the country, to exercise their vote on resolutions from any place they are. Under the proposed clause, shareholders would be able to vote using any **electronic** means like internet, **electronic** voting machines or SMS. The move would ensure greater participation of

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		shareholders. For example at present in the AGM of a Listed Company having more than 1,00,000 shareholders, not even 1% of members attend. Even in the case of postal ballot not more than 5% of members send their response. Permitting voting by **electronic** means, it is expected, would enhance the participation level manifold.
110. Postal ballot (*1*) Notwithstanding anything contained in this Act, a company— (*a*) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and (*b*) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.	**192A. Passing of resolutions by postal ballot**.— (1) Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company. (2) Where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor, and requesting them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of posting of the letter.	Under the Bill the provisions of the postal ballot have been extended to be applicable to all companies whether listed or unlisted. The Central Government may, by notification, declare transactions to be transacted only by means of postal ballot

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(*2*) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf. **2(65) "postal ballot" means** voting by post or through any electronic communication;	(3) The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf, and shall include with the notice, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period. (4) If a resolution is assented to by a requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf. (5) If a shareholder sends under sub-section (2) his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defaces or destroys the ballot paper or declaration of identity of the shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or with both. (6) If a default is made in complying with sub-sections (1) to (4), the company and every officer of the company, who is in default shall be punishable with fine which may extend to fifty thousand rupees in respect of each such default. *Explanation*.—For the purposes of this section, "postal ballot" includes voting by electronic mode.	A company may pass any resolution by way of postal ballot, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting
118. Minutes of proceedings of general	**193**. **Minutes of proceedings of general**	

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meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot. (*1*) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.	**meetings and of Board and other meetings**.— (1) Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every committee of the Board, to be kept by making within thirty days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered. (1A) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed— (*a*) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting; (*b*) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose. (1B) In no case the minutes of proceedings of a meeting shall be attached to any such book as aforesaid by pasting or otherwise.	The provisions of section 193, 194, 195 and 197 of the existing Act have been clubbed into clause 118 of the Companies Bill and the provisions have been simplified. Every company shall maintain the minutes of every meeting whether the meeting is of shareholders or creditors resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board **.** The manner of preparing and signing the minutes would be governed by Rules.
(*2*) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.	(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.	

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(*3*) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting. (*4*) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain— (*a*) the names of the directors present at the meeting; and (*b*) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution. (*5*) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,— (*a*) is or could reasonably be regarded as defamatory of any person; or (*b*) is irrelevant or immaterial to the proceedings; or (*c*) is detrimental to the interests of the company.	(3) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting. (4) In the case of a meeting of the Board of directors or of a committee of the Board, the minutes shall also contain— (*a*) the names of the directors present at the meeting; and (*b*) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring in, the resolution. (5) Nothing contained in sub-sections (1) to (4) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairman of the meeting— (*a*) is, or could reasonably be regarded as, defamatory of any person; (a) is irrelevant or immaterial to the proceedings; or (*c*) is detrimental to the interests of the company.	This is an important provision that the names of directors if any, dissenting from or not concurring with the resolution are required to be recorded in the minutes of relevant meeting. The provision was there in Companies Act, 1956 also.

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(*6*) The Chairman shall exercise absolute discretion in regard to the inclusion or non inclusion of any matter in the minutes on the grounds specified in sub-section (*5*).	*Explanation*.—The chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section.	Corresponds to section 194 of Companies Act 1956
(*7*) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.		
(*8*) Where the minutes have been kept in accordance with sub-section (*1*) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.		This is a new provision inserted in the Bill for better corporate compliance
(*9*) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.		
(*10*) Every company shall observe secretarial		Secretarial Standards with

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standards with respect to 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 as such by the Central Government.		respect to General and Board meetings specified by the Institute of Company Secretaries of India have been duly recognised.
(*11*) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.	(6) If default is made in complying with the foregoing provisions of this section in respect of any meeting, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.	
(*12*) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.		
	194. **Minutes to be evidence**.— Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein.	
	195. **Presumptions to be drawn where minutes duly drawn and signed**.— Where minutes of the proceedings of any general meeting of the company or of any meeting of its Board	The provisions have been retained in the Bill in a similar manner. The

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	of directors or of a committee of the Board have been kept in accordance with the provisions of section 193, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid. **197. Publication of reports of proceedings of general meetings**.— (1) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by section 193 to be contained in the minutes of the proceedings of such meeting. (2) If any report is circulated or advertised in contravention of sub-section (1), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five thousand rupees.	reference to "voting by postal ballot" and "appointment of KMP, auditors and company secretary in practice have been introduced in the provisions. No Change Penal provisions have been made stringent
120. Maintenance and inspection of documents in electronic form. Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc.,— (*a*) required to be kept by a company; or	No provision	New Clause Introduced Electronic format of maintenance and inspection of documents have been recognised under the Bill.

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(*b*) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.		Any documents, records, register or minutes etc., required to be kept by the company, may be kept in electronic form.
121. Report on annual general meeting. (*1*) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder. (*2*) The company shall file with the Registrar a copy of the report referred to in subsection (*1*) within thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403. (*3*) If the company fails to file the report under sub-section (*2*) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine	No Provision	New Clause Introduced Every listed company is required under the Bill to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened in accordance with the law. Such report is required to be filed within 30 days of the conclusion of Annual General Meeting.

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which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.		
122. Applicability of this Chapter to One Person Company. (*1*) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company. (*2*) The ordinary businesses as mentioned under clause (*a*) of sub-section (*2*) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (*3*). (*3*) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act. (*4*) Notwithstanding anything in this Act,	No Provision	**New Clause Introduced** This clause specifies applicable clauses to One Person Company under chapter VII of the Bill. Meaning thereby One Person Company is not required to comply with all the provisions of the chapter VII or certain provisions are applicable with modification as specified

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where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.		
CHAPTER VIII		
123. Declaration of dividend. (*1*) No dividend shall be declared or paid by a company for any financial year except— (*a*) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or (*b*) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that	**205. Dividend to be paid only out of profits**.— (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government: Provided that — (*a*) if the company has not provided for depreciation for any previous financial year or	**Electronic** Clearing Service (ECS) mode of payment of Dividend has already become quite popular. In fact SEBI has advised companies to mandatorily use ECS facility for Dividend payments wherever available. In the event of non-availability of ECS facility, companies may use warrants for distributing dividend. The provision in the Bill permitting payment of dividend in **electronic** mode is an

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Government: Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company: Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf: Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves. (*2*) For the purposes of clause (*a*) of sub-section (*1*), depreciation shall be provided in accordance with the provisions of Schedule II. (*3*) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:	years which falls or fall after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years; (*b*) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for deprecation in accordance with the provisions of sub-section (2) or against both; (*c*) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation: Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or	acknowledgement of this widely prevalent practice at making the dividend payment secure. Under the Bill no dividend shall be declared or paid by a company from its reserves other than free reserves.

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Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. (*4*) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend. (*5*) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash: Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company: Provided further that any dividend payable in cash may be paid by cheque or warrant or in	years which falls or fall before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960). (1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend. (1B) The amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend. (1C) The provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend. (2) For the purpose of sub-section (1), depreciation shall be provided either— (*a*) to the extent specified in section 350; or (*b*) in respect of each item of depreciable asset, for such an amount as is arrived at by dividing ninety-five per cent of the original cost thereof to the company by the specified period in respect of such asset; or	

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any electronic mode to the shareholder entitled to the payment of the dividend.	(*c*) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent of the original cost to the company of each such depreciable asset on the expiry of the specified period; or (*d*) as regards any other depreciable asset for which no rate of depreciation has been laid down by this Act or any rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case: Provided that where depreciation is provided for in the manner laid down in clause (*b*) or clause (*c*), then, in the event of the depreciable asset being sold, discarded, demolished or destroyed the written down value thereof at the end of the financial year in which the asset is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso to section 350.	
(*6*) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.	(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year,	Clause 73 relates to Prohibition on acceptance of deposits from public. Clause 74 relates to Repayment of deposits, etc, accepted before commencement of this Act.

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	not exceeding ten per cent, as may be prescribed: Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf. (2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares. (3) No dividend shall be payable except in cash: Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount, for the time being unpaid, on any shares held by the members of the company. (4) Nothing in this section shall be deemed to affect in any manner the operation of section 208. (5) For the purposes of this section— (*a*) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350;	
Corresponds to sub clause (5) above.	(*b*) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend, or in the case of joint	Under the Bill Dividend may be paid by the company to registered

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	shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct	shareholders or to his order or to his banker and shall not be payable except in cash.
124. Unpaid Dividend Account. (*1*) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account. (*2*) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (*1*) to the Unpaid Dividend Account, prepare a statement containing the names, their last known	**205A. Unpaid dividend to be transferred to special dividend account**.— (1) Where, after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), a dividend has been declared by a company but has not been paid, or claimed, within thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of [thirty days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of thirty days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of .... Company Limited/ Company (Private) Limited". *Explanation*.—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed. (2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), remains unpaid at such commencement, the company shall within a period of six months from such	Under the Bill it is required that the company within a period of 90 days of making any transfer of an amount to the Unpaid Dividend Account, prepare

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addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed. (*3*) If any default is made in transferring the total amount referred to in sub-section (*1*) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. (*4*) Any person claiming to be entitled to any money transferred under sub-section (*1*) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.	commencement, transfer such unpaid amount to the account referred to in sub-section (1). (3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government. (4) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the	a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government. This provision is for the benefit of the shareholders. The shareholders would be able to know their claims and may apply for their dividend. It is specifically clarified that any person claiming to be entitled to any money transferred to the Unpaid dividend account may now apply to company for payment of money claimed.

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(*5*) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under sub-section (*1*) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer. (*6*) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (*5*) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed: Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such	amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company, in proportion to the amount remaining unpaid to them. (5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C. (6) The company shall, when making any transfer under sub-section (5) to the Fund established under section 205C any unpaid or unclaimed dividend, furnish to such authority or committee as the Central Government may appoint] in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the persons entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto, and such other particulars as may be prescribed[1] (7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof.	This is a new provision. It requires that all **shares** in respect of which unpaid or unclaimed dividend has been transferred to IEPF shall be transferred by company in name of IEPF along with statement. Format of statement would be provided through Rules. The procedure for claiming shares transferred to IEPF would be provided through Rules.

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procedure and on submission of such documents as may be prescribed. (*7*) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company 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.	(8) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.	Penal provisions have been made stringent.
125. Investor Education and Protection Fund. (*1*) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund). (*2*) There shall be credited to the Fund— (*a*) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund; (*b*) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund; (*c*) the amount in the Unpaid Dividend	**205C. Establishment of Investor Education and Protection Fund.**— (1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the “Fund”). (2) There shall be credited to the Fund the following amounts, namely:— (*a*) amounts in the unpaid dividend accounts of companies; (b) the application moneys received by companies for allotment of any securities and due for refund; *(a)* matured deposits with companies; *(b)* matured debentures with companies; *(c)* the interest accrued on the amounts referred to in clauses (*a*) to (*d*);	Under the Bill, additional categories of amounts to be credited are given. In addition to this, additional purposes are also given for which IEPF may be utilized.

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Account of companies transferred to the Fund under sub-section (*5*) of section 124; (*d*) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (*5*) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act; (*e*) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956; (*f*) the interest or other income received out of investments made from the Fund; (*g*) the amount received under sub-section (*4*) of section 38; (*h*) the application money received by companies for allotment of any securities and due for refund; (*i*) matured deposits with companies other than banking companies; (*j*) matured debentures with companies; (*k*) interest accrued on the amounts referred	*(d)* grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and *(e)* the interest or other income received out of the investments made from the Fund: Provided that no such amounts referred to in clauses (*a*) to (*d*) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment. *Explanation*.—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.	

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to in clauses (*h*) to (*j*); (*l*) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years; (*m*) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and (*n*) such other amount as may be prescribed: Provided that no such amount referred to in clauses (*h*) to (*j*) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment. (*3*) The Fund shall be utilised for— (*a*) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon; (*b*) promotion of investors' education, awareness and protection; (*c*) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made	(3) The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed . (4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.	

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by the Court which had ordered disgorgement; (*d*) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and (*e*) any other purpose incidental thereto, in accordance with such rules as may be prescribed: Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section. *Explanation.*—The disgorged amount refers to the amount received through disgorgement or disposal of securities. (*4*) Any person claiming to be entitled to the amount referred in sub-section (*2*) may apply to the authority constituted under sub-section (*5*) for the payment of the money claimed. (*5*) The Central Government shall constitute,	(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.	Now any person claiming to be entitled to amount which has been transferred in IEPF can apply to authority for refund even after seven years.

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by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint. (*6*) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed. (*7*) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed. (*8*) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India. (*9*) It shall be competent for the authority constituted under sub-section (*5*) to spend money out of the Fund for carrying out the objects specified in sub-section (*3*). (*10*) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts		The Central Government is empowered to constitute an authority to administer the IEPF. It shall consist of maximum seven members and a chief executive officer. The constitution of the said authority is provided under the clause itself. Further, the manner of administration of the fund, appointment of chairperson, members and chief executive officer, holding of meetings etc., shall be governed by the Rules. The authority is required to maintain separate accounts and other relevant records of the fund in the prescribed manner. Accounts of the Fund shall be audited by Comptroller and Auditor- General of

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together with the audit report thereon shall be forwarded annually by the authority to the Central Government. (*11*) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.		India.

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CHAPTER IX		
	Accounts	
128. Books of account, etc., to be kept by company. (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:	**209. Books of account to be kept by company.**— (1) Every company shall keep at its registered office proper books of account with respect to— (*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place; (*b*) all sales and purchases of goods by the company; (*c*) the assets and liabilities of the company; and	Every company shall now be required to prepare and keep at its registered office, financial statements along with books of account and other relevant books and papers for every financial year including its branch offices if any and explain the transactions effected both at the registered office and its branches.

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[The term 'Books of account' is defined under clause 2(13) reproduced at the end of the column]	(*d*) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account:	
128 (1) proviso (1): Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:	Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.	The option has been given to the companies to maintain books of accounts in the electronic mode.
128(1) proviso (2): Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.		The summarised returns shall now be made periodically instead of at intervals of not more than three months. This would give flexibility to corporates in managing their branch offices.
128 (2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office or the other place referred to	(2) Where a company has a branch office, whether in or outside India, the company shall be	Financial information maintained outside India may

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in sub-section (1). Corresponds to Clause 128 (1) above. 128 (3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed: Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors. 128 (4) Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.	deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns, made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1). (3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein,— (*a*) if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and (*b*) If such books are not kept on accrual basis and according to the double entry system of accounting. (4) The books of account and other books and papers shall be open to inspection by any director during business hours.	be allowed for inspection to any director subject to the conditions as may be prescribed in the rules. The inspection of the books of account of a subsidiary company shall be done only by a person authorised by Board resolution. These are new provisions in the Bill which empower the Central Government to direct keeping of books of accounts for a period longer than 8 years if the company is under investigation under Chapter XIV. The penalty provisions have

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128 (5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:		been enhanced. The term of imprisonment has been enhanced. Minimum and maximum amount of fine has also been prescribed.
Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.	(4A) The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account] shall be preserved in good order: Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account shall be so preserved.	As per clause 2(13) "books of account" includes records maintained in respect of— (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
128 (6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.	(5) If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both: Provided that in any proceedings against a person	

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	in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence, unless it was committed wilfully. (6) The persons referred to in sub-section (5) are the following namely:— (*a*) where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company; and (*d*) where the company has neither a managing director nor manager, every director of the company. (7) If any person, not being a person referred to in sub-section (6), having been charged by the managing director, manager or Board of directors, as the case may be, with the duty of seeing that the requirements of this section are complied with, makes a default in doing so, he shall, in respect of	

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	each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.	
129. Financial statements (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III: Provided that the items contained in such financial statements shall be in accordance with the accounting standards: Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company: Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by	**211. Form and contents of balance sheet and profit and loss account.**— 211(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of that Part: Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company. 211(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto:	The balance sheet and Profit & Loss Account, has been defined collectively as financial statement. Further, cash flow statement and statement showing changes in equity if any of the company also forms part of the same. While the essential principles and broad parameters for financial statements have been provided in the Bill, the format of financial statement is provided in Schedule III. Cash Flow statement shall also be made part of mandatory financial statements. The wording of the section/clause has been simplified.

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reason of the fact that they do not disclose—- (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999; (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949; (c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003; (d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.	Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company.	
(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.	**210. Annual accounts and balance sheet.**— 210(1) At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company— (*a*) a balance sheet as at the end of the period specified in sub-section (3); and (*b*) a profit and loss account for that period. 210(4) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but it shall not exceed fifteen months:	Along with financial statements, consolidated financial statements of all subsidiaries and the company shall be prepared and laid before the Annual General Meeting.

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	Provided that it may extend to eighteen months where special permission has been granted in that behalf by the Registrar.	
(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2): Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:	**212. Balance sheet of holding company to include certain particulars as to its subsidiaries**.—212(1) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:— (*a*) a copy of the balance sheet of the subsidiary; (*b*) a copy of its profit and loss account; (*c*) a copy of the report of its Board of directors; (*d*) a copy of the report of its auditors; (*e*) a statement of the holding company's interest in the subsidiary as specified in sub-section (3); (*f*) the statement referred to in sub-section (5), if any; and (*g*) the report referred to in sub-section (6), if any.	The consolidation of financial statements has been made mandatory. The requirement of attaching financial statements of subsidiary company with the holding company has been done away with. Instead a company shall attach with its financial statements a separate statement containing salient features of its subsidiary.
Provided further that the Central Government may provide for the consolidation of accounts	211(3A) Every profit and loss account and	

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of companies in such manner as may be prescribed. Explanation.—For the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture. (*4*) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis,* apply to the consolidated financial statements referred to in sub-section (*3*). (*5*) Without prejudice to sub-section (*1*), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (*1*), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation. (*6*) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the	balance sheet of the company shall comply with the accounting standards. 211(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:— (*a*) the deviation from the accounting standards; (*b*) the reasons for such deviation; and (*c*) the financial effect, if any, arising due to such deviation. 211(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949) as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A: Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.	The term 'subsidiary' includes associate company and joint venture. Provisions of the Bill applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis,* apply to the consolidated financial statements also. Now the Central Government may, on its own or on an application by a class of companies exempt them from complying with any of the requirements of this clause or the rules made thereunder, if it

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notification. (*7*) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. *Explanation*.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.	211(3) The Central Government may, by notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the public interest. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification. 210(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied	is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification. The penalty provisions have been enhanced. The term of imprisonment has been enhanced. Minimum and maximum amount of fine has also been prescribed.

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	with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully. 210(6) If any person, not being a director of the company, having been charged by the Board of directors with the duty of seeing that the provisions of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both: Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.	
130. Re-opening of accounts on court's or Tribunal's orders. (1) A company shall not re-open its books of account and shall not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were	**No Provision**	**New Provision** The Bill provides for provisions relating to re-opening of books of account or re-casting of financial statements of the company.

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prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements: Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under his section. (2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.		
131. Voluntary revision of financial statements or Board's report. (1) If it appears to the directors of a company that— (a) the financial statement of the company; or (b) the report of the Board, do not comply with the provisions of section	**No Provision**	**New Provision** The Bill provides for provisions relating to financial statement by the Directors of the company. The directors of a company may prepare revised financial

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129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made. (*2*) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to— (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and (b) the making of any necessary consequential alternation.		statements or a revised report in respect of any of the 3 preceding financial years after obtaining approval of the Tribunal on an application made by the company, if it appears to them that (a) financial statements of the company; or (b) the report of the Board, do not comply with the provisions of clause 129 related to financial statements or clause 134 related to financial statements / Boards Report.

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(3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular— (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made; (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report; (c) require the directors to take such steps as may be prescribed.		
132. Constitution of National Financial Reporting Authority. (*1*) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act. (*2*) 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	**210A. Constitution of National Advisory Committee on Accounting Standards**.— (1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards (hereafter in this section referred to as the "Advisory Committee") to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.	The name of National Advisory Committee on Accounting Standards has been changed to National Financial Reporting Authority. The role of National Financial Reporting Authority has been prescribed. The role of the authority has

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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 service 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.		been extended to advise on matters related to Auditing Standards in addition to Accounting Standards.
(*3*) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:	(2) The Advisory Committee shall consist of the following members, namely:— (*a*) a Chairperson who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline; (*b*) one member each nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959) and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980); (*c*) one representative of the Central	The constitution of the National Financial Reporting Authority has also been changed. Now it will be headed by the Chairman, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding 15 as may be prescribed.

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Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed: Provided further that the chairperson and members shall make a declaration to the	Government to be nominated by it; (*d*) one representative of the Reserve Bank of India to be nominated by it; (*e*) one representative of the Comptroller and Auditor-General of India to be nominated by him; (*f*) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university; (*g*) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) or his nominee; (*h*) two members to represent the chambers of commerce and industry to be nominated by the Central Government; and (*i*) one representative of the Securities and Exchange Board of India to be nominated by it. (3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time. (4) The members of the Advisory Committee shall hold office for such term as may be determined by the Central Government at the time of their appointment and any vacancy in the membership	Chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firm) during the course of their appointment and two years after ceasing to hold such appointment.

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Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment: Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment. (*4*) 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 motu* 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	in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled. (5) The non-official member of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank.	The National Financial Reporting Authority will have the power to investigate, either suo motu 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.

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section; (*b*) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— (*i*) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority; (*ii*) summoning and enforcing the attendance of persons and examining them on oath; (*iii*) inspection of any books, registers and other documents of any person referred to in clause (*b*) at any place; (*iv*) issuing commissions for examination of witnesses or documents; (*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		

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fees received, in case of individuals; and (*II*) not less than ten lakh rupees, but which may 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 of Chartered Accountant of India refund to in clause (*e*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 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. *Explanation.*—For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949. (*5*) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (*c*) of sub-section (*4*), may prefer an appeal before the Appellate Authority constituted under sub-section (*6*) in such manner as may be prescribed. (*6*) The Central Government may, by		In the event of professional or other misconduct, the National Financial Reporting Authority has the power to impose penalty of not less than one lakh rupees in case of an Individual and ten lakh rupees in case of a firm and to debar the member/firm from professional practice for a minimum period of 6 months or such higher period not exceeding 10 years as it may decide.

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notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority. (*7*) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed. (*8*) The fee for filing the appeal shall be such as may be prescribed. (*9*) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament. (*10*) The National Financial Reporting		The Central Government, by notification, may constitute, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority

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Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed. (*11*) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed. (*12*) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit. (*13*) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe. (*14*) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and		

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such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority. (*15*) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.		
134. Financial Statement, Board's report, etc. (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director 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,	**215. Authentication of balance sheet and profit and loss account**.— (1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors— (*i*) in the case of a banking company, by the persons specified in clause (*a*) or clause (*b*), as the case may be, of sub-section (2) of section 29 of the Banking Companies Act, 1949 (10 of 1949). (*ii*) in the case of any other company, by its manager or secretary, if any, and by not	The provisions of Section 215, 216 and 217 of the existing Act have been clubbed under clause 134 of the Bill. It is intended that financial statements shall be approved by the Board of directors before they are signed by the Chairperson (authorised by the Board) or by two directors one of whom shall be MD and the CEO, if he is director, the CFO and the company secretary.

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or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.	less than two directors of the company one of whom shall be a managing director where there is one.	In case of one person company the financial statement shall be signed by one director.
	(2) In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of sub-section (1).	No distinction has been made between a company and banking company for purpose of signing of balance sheet in the Bill.
(2) The auditors' report shall be attached to every financial statement.	(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.	In the Bill, the term "financial statement includes balance sheet, profit and loss account and cash flow statement.
	216. Profit and loss account to be annexed and auditors' report to be attached to balance sheet.—The profit and loss account shall be annexed to the balance sheet and the auditors' report (including the auditors' separate, special or supplementary report, if any) shall be attached thereto.	The Bill requires the Board's Report to be attached to financial statement (in the Act, it was required to be attached with balance sheet).
(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include— (a) the extract of the annual return as provided under sub-section (3) of section 92;	**217. BOARD'S REPORT** (1) There shall be attached to every balance sheet laid before a company in general meeting, a report by its Board of directors, with respect to -	The directors are required to include certain additional information in the Board Report like extract of Annual Return, number of Board Meetings in a financial year,

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(b) number of meetings of the Board; (c) Directors' Responsibility Statement; (d) a statement on declaration given by independent directors under sub-section (6) of section 149; (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178; (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made— (i) by the auditor in his report; and (ii) by the company secretary in practice in his secretarial audit report;	(*a*) the state of the company's affairs ; (*b*) the amounts, if any, which it proposes to carry to any reserves in such balance sheet ; (*c*) the amount, if any, which it recommends should be paid by way of dividend ; (*d*) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report ; (*e*) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed. (2) The Board's report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year - (*a*) in the nature of the company's business ; (*b*) in the company's subsidiaries or in the nature of the business carried on by them ; and (*c*) generally in the classes of business in which the company has an interest. (2A) (*a*) The Board's report shall also include a statement showing the name of every employee of the company who - (*i*) if employed throughout the financial year,	declaration of independence by an Independent Director and company's policy on directors appointment and remuneration.

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(g) particulars of loans, guarantees or investments under section 186; (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form; (i) the state of the company's affairs; (j) the amounts, if any, which it proposes to carry to any reserves; (k) the amount, if any, which it recommends should be paid by way of dividend; (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report; (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; (*n*) a statement indicating development and implementation of a risk management	was in receipt of remuneration for that year which, in the aggregate, was not less than such sum as may be prescribed ; or (*ii*) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than such sum per month as may be prescribed ; or (*iii*) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent, of the equity shares of the company. (*b*) The statement referred to in clause (*a*) shall also indicate, - (*i*) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and (*ii*) such other particulars as may be prescribed. *Explanation.* - "Remuneration" has the meaning assigned to it in the *Explanation* to section 198.	The Board's report shall contain a statement indicating development and implementation of risk management policy and details about policy on CSR initiatives taken during the year. The Board's report of certain class of companies shall also contain a statement about formal annual evaluation made

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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; (*o*) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year; (*p*) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors; (*q*) such other matters as may be prescribed. (*4*) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report. (*5*) The Directors' Responsibility Statement		by Board of its own and Board committee's performance. In respect of one Person company, the Board of Director's Report shall contain explanations or comments by

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referred to in clause (*c*) of sub-section (*3*) shall state that— (*a*) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures; (*b*) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period; (*c*) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (*d*) the directors had prepared the annual accounts on a going concern basis; and (*e*) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company	(2AA) The Board's report shall also include a Directors' Responsibility Statement, indicating therein, - (*i*) that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures ; (*ii*) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period ; (*iii*) that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities ; (*iv*) that the directors had prepared the annual accounts on a going concern basis." (2B) The Board's report shall also specify the	the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his Report. The scope of Directors' Responsibility Statement has been widened to include the statement that in case of a listed company, the directors had laid down internal financial controls to be followed by the company and such internal financial controls have been complied with. The director's responsibility statement shall include a statement that directors had devised proper systems to ensure compliance with provisions of all applicable laws and such systems were adequate and operating effectively.

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and that such internal financial controls are adequate and were operating effectively. *Explanation.*—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; (*f*) 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.	reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A. (3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid, or, in cases falling under the proviso to section 222, in an addendum to that report, on every reservation, qualification or adverse remark contained in the auditors' report. (4) The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board ; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub-sections (1) and (2) of section 215. (5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4),	The penalty provisions have been enhanced. The term of imprisonment has been enhanced. Minimum and maximum amount of fine has also been prescribed.

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(*6*) The Board's report and any annexures thereto under sub-section (*3*) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, 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. (*7*) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of— (*a*) any notes annexed to or forming part of such financial statement; (*b*) the auditor's report; and (*c*) the Board's report referred to in sub-section (*3*). (*8*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to 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 or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.	he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to **7**[twenty] thousand rupees, or with both : ***Provided*** that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully : ***Provided further*** that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty. (6) If any person, not being a director, having been charged by the Board of directors with the duty of seeing that the provisions of sub-sections (1) to (3) are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [2][twenty] thousand rupees, or with both : ***Provided*** that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.	

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135. Corporate Social Responsibility (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five 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. (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee. (3) The Corporate Social Responsibility Committee shall,— (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII; (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social	**No Provision**	**New Provision** The provisions relating to Corporate Social Responsibility have been introduced under the Bill. Now, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee. The Corporate Social Responsibility Committee shall, formulate and recommend to the Board, a Corporate Social Responsibility Policy and the amount of expenditure to be incurred on the activities provided in the policy. The Board has to ensure that the company spends, in every financial year, at least 2% of

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Responsibility Policy of the company from time to time. (4) The Board of every company referred to in sub-section (1) shall,— (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company. (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy: Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility		average net profit of the company made during 3 immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy and in case of failure to do so, necessary reasons for not spending the amount, shall be disclosed in the Director's Report. The company shall while spending the amount earmarked for Corporate Social Responsibility activities give preference to the local area and areas around it where it operates.

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activities: Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount. Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.		
138. Internal audit (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. (2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.	**No provision**	**New provision** Certain class or classes of companies, as may be prescribed, shall be required to appoint a chartered accountant or a cost accountant, or such other professional as may be decided by the Board, to conduct internal audit of the functions and activities of the company.

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	CHAPTER X	
	Audit	
139. Appointment of auditors. (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed: Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting: Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor: Provided also that the certificate shall also	**224 Appointment and remuneration of auditors.**— (1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed : Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B).	Now every company shall, at its first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th Annual General Meeting and thereafter till the conclusion of every 6th meeting. However the company shall place the matter relating to such appointment for ratification by members at every annual general meeting. In the Bill, the written consent of auditor to such appointment is to be obtained before his appointment is made.

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indicate whether the auditor satisfies the criteria provided in section 141: Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed. Explanation.—For the purposes of this Chapter, "appointment" includes reappointment. (2) 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;	(1A) Every auditor appointed under sub-section (1), shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment. (1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or re-appoint any person [who is in full-time employment elsewhere] or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies: Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere:	The duty to inform the auditor of such appointment and to file a notice with the Registrar within fifteen days of the meeting in which the auditor is appointed will be that of company. The provisions for rotation of auditors in the listed company & certain other class of companies, as may be prescribed, have been provided. An individual auditor having completed his more than one term of five consecutive years shall not be eligible for re-appointment. Likewise an audit firm having completed its term as auditor for more than two terms of five consecutive years shall not be eligible for re-appointment as auditor in same company for next 5 years.

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(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: Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years: Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act: Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.	Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number, in the aggregate: Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate: Provided also that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company. (1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its	Now, no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year shall be appointed as auditor of the same company for a period of 5 years. A transition period of three years from the commencement of this Act has been provided for the companies in existence to comply with the provision of rotation of auditor.

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(3) Subject to the provisions of this Act, members of a company may resolve to	unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein. *Explanation* I.—For the purposes of sub-sections (1B) and (1C), "specified number" means,— (a)in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies; (*b*) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more. *Explanation* II.—In computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.	The Bill also provides for rotation of auditing partner and his team within

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provide that— (a) 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; or (b) the audit shall be conducted by more than one auditor. (4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2). Explanation.—For the purposes of this Chapter, the word "firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008. (5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the		an audit firm. In the case of Government companies, C&AG shall appoint an auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold office till the conclusion of the Annual General Meeting.

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financial year, who shall hold office till the conclusion of the annual general meeting.	(2) Subject to the provisions of sub-section (1B) and section 224A, at any annual general meeting], a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless— *(a)* he is not qualified for re-appointment; *(b)* he has given the company notice in writing of his unwillingness to be re-appointed; *(c)* a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or *(d)* where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with. (3) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy. (4) The company shall, within seven days of the Central Government's power under sub-section (3), becoming exercisable, give notice	

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	of that fact to that Government; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable, with fine which may extend to [five thousand rupees.	
(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.	(5) The first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting: Provided that— (*a*) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and (*b*) if the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.	Now the first auditor of a company other than a Government company shall be appointed by the Board of Directors within 30 days of its incorporation and if the Board fails to do so, the members shall appoint the same within 90 days at an extra ordinary general meeting, who shall hold office till the conclusion of first Annual General Meeting.
(7) Notwithstanding anything contained in		In case of Government companies, the First Auditor shall be appointed

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sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.		by the Comptroller and Auditor General (C&AG) within 60 days from the date of incorporation and if he fails to do so, the Board shall appoint auditor within next 30 days. In the case of Board's failure to do so, it has to inform the members of the company who will appoint the auditor within 60 days at an extra ordinary general meeting, who shall hold office till the conclusion of first Annual General Meeting.
(8) Any casual vacancy in the office of an auditor shall— (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor,	(6)(*a*) The Board may fill any casual vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act: Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting. (*b*) Any auditor appointed in a casual vacancy shall hold office until the conclusion	Any casual vacancy is to be filled by the Board of Directors within 30 days. However, if such casual vacancy is as a result of resignation of an auditor, such appointment is to be approved at the general meeting within a period of 3 months of such approval.

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such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting; (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days: Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days. (9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if— (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and (c) a special resolution has not been	of the next annual general meeting. (7) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.	

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passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed. (10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. (11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.		Where at any annual general meeting, no auditor is appointed or re-appointed, the present Act requires the vacancy to be filled by Central Government but the Bill proposes that the existing auditor shall continue to be the auditor of the company. The power of Central Government to appoint an auditor in such situation has been dispensed with. In case the company has an audit committee, then all appointments of auditors including filling of casual vacancy, shall be made after taking into account the recommendations of such committee.
140. Removal, resignation of auditor and giving of Special notice. (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:	**225. Provisions as to resolutions for appointing or removing auditors**.— (1) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed. (2) On receipt of notice of such a	Now along with the approval of Central Government, the permission of shareholders by way of a special resolution of the company is also required for removal of an auditor.

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Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.	resolution, the company shall forthwith send a copy thereof to the retiring auditor. (3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,— (*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and (*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company; and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting: Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims	A reasonable opportunity of being heard is to be given to the auditor.

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(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. (3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees. (4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years	to be aggrieved, the [*Central Government*] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the [*Central Government*] may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application. (4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (5) of section 224 or to the removal of any auditor or auditors under sub-section (7) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.	As per the Bill, when an auditor of a company resigns, he is required to file a statement in prescribed form within 30 days with the company and the Registrar. In case of Government company, such statement shall also be submitted to the Comptroller and Auditor General of India, giving the reasons and other relevant facts with regard to his resignation.

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or, as the case may be, ten years, as provided under sub-section (2) of section 139. (ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor. (iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,— (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the		

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meeting: Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar: Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting. (5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the 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: Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he		A new provisions has been introduced whereby the Tribunal *suo motu* or on an application from Central Government/ or by any person concerned, can direct the company to change the auditor if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers.

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shall not function as an auditor and the Central Government may appoint another auditor in his place: Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447. Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers. Explanation II.—For the purposes of this Chapter the word "auditor" includes a firm of auditors.		Now no auditor shall be eligible for appointment as an auditor of any company for a period of 5 years against whom final order for removal has been made by Tribunal and he shall also be liable for action under clause 447. It has been clarified that in the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers. It is also clarified that for this Chapter (Chapter X) the auditor includes auditor firm.
141. Eligibility, qualifications and disqualifications of auditors. (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant: Provided that a firm whereof majority of	**226. Qualifications and disqualifications of auditors**.— 226(1) A person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949):	

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partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company. (2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.	Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm. 226(2)(*a*) Notwithstanding anything contained in sub-section (1), but subject to the provisions of any rules made under clause (*b*), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951) [or of the Jammu and Kashmir (Extension of Laws) Act, 1956, (62 of 1956), as the case may be,] entitling him to act as an auditor of companies [in the territories which, immediately before the 1st November, 1956, were comprised in that State] or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in [India]. (*b*) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to	Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm. The power of Central Government prescribing conditions and restrictions for such grant, renewal, suspension or cancellation of auditors' certificates to persons in Part B states is omitted.

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(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:— (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; (b) an officer or employee of the company; (c) a person who is a partner, or who is in the employment, of an officer or employee of the company; (d) a person who, or his relative or partner— (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;	persons in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States] for the purposes of clause *(a)*, and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation. 226(3) None of the following persons shall be qualified for appointment as auditor of a company— (*a*) a body corporate; (*b*) an officer or employee of the company; (*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;	Other categories of persons have been inserted in the Bill who are not eligible to be appointed as an auditor of the company. The scope of disqualifications for their eligibility is widened to ensure independence of auditor. If a person or his relative or partner is indebted to the company or its subsidiary or holding/ associate company or is holding any security or interest in the company or its subsidiary or associate company or has given any guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its

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(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed; (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed; (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;	(*d*) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees; (*e*) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000. *Explanation*.—For the purposes of this section, "security" means an instrument which carries voting rights:] *Explanation*.—References in this sub-section to an officer or employee shall be construed as not including references to an auditor.	holding or associate company or a subsidiary of such holding company for a sum which may be prescribed in the rules, then such persons are also disqualified. Further, a person or a firm who has business relationship of such nature as may be prescribed with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company; a person whose relative is in the employment of the company as a director or key managerial personnel are also disqualified. As per the Bill, a person who is in full employment elsewhere or a person or a partner of a firm holding appointment as its auditor, shall be disqualified for appointment if at that date of appointment or reappointment he is holding appointment as auditor of more than twenty companies.

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(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;	224(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or re-appoint any person [who is in full-time employment elsewhere] or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies: Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere: Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number, in the aggregate: Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the	

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(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction; (i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144. (4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.	aggregate: Provided also that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company. 226(4) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company. 226(5) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) and (4), he shall be deemed to have vacated his office as such.	
142. Remuneration of auditors.	224(8) The remuneration of the auditors	

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(*1*) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein: Provided that the Board may fix remuneration of the first auditor appointed by it. (*2*) The remuneration under sub-section (*1*) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.	of a company— (*a*) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be; and- (*aa*) in the case of an auditor appointed under section 619 by the Comptroller and Auditor-General of India, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine; (*b*) subject to clause (*a*), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".	The provisions of the Bill provide that authority for fixation of remuneration for auditors will be with shareholders to be decided in a general meeting. The term 'remuneration' is elaborately redefined.
143. Powers and duties of auditors and Auditing Standards. (1) Every auditor of a company shall have a right of access at all times to the books of	**227. Powers and duties of auditors**.— 227(1) Every auditor of a company shall have a right of access at all times to the	

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account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:— (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members; (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company; (c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;	books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor. 227(1A) Without prejudice to the provisions of sub-section (1), the auditor shall inquire— (*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members; (*b*) where transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company; (*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;	

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(d) whether loans and advances made by the company have been shown as deposits; (e) whether personal expenses have been charged to revenue account; (f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading: Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.	(*d*) whether loans and advances made by the company have been shown as deposits; (*e*) whether personal expenses have been charged to revenue account; (*f*) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.	In the Bill, the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries. Now the auditor shall also comply with Auditing Standards.
(2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act,	227(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before	Auditor in his Report shall also report on the cash flow for the year and such other matters as may be prescribed.

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the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.	the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view— (*i*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and (*ii*) in the case of the profit and loss account, of the profit or loss for its financial year.	
(3) The auditor's report shall also state— (a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;	227(3) The auditor's report shall also state— (*a*) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;	
(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;	(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;	

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(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;	(*bb*) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause (*c*) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report;	
(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;	(*c*) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;	
(e) whether, in his opinion, the financial statements comply with the accounting standards;	(*d*) whether, in his opinion, the profit and loss account and balance sheet complied with the accounting standards referred to in sub-section (3C) of section 211;	
(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;	(*e*) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company;	
(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;	(*f*) whether any director is disqualified from being appointed as director under clause (*g*) of sub-section (1) of section 274;]	
(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other	(g) *whether the cess payable under section 441A has been paid and if not, the details of amount of cess not so*	

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matters connected therewith; (i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls; (j) such other matters as may be prescribed. (4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.	*paid*. 227(4) Where any of the matters referred to in clauses (*i*) and (*ii*) of sub-section (2) or in clauses (*a*), (*b*), (*bb*), (*c*) and (*d*) of sub-section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.	The auditor's report shall also state whether the company has adequate internal financial controls in place and its operating effectiveness. The other matters that may be included in the auditor report may be prescribed by rules. The auditor is required to provide reasons, where any of the matters required to be included in the Audit Report under this clause is answered in negative or with a qualification.
(5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of	**619. Application of Sections 224 To 233 to Government Companies** 619(1) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections 224 to 233. 619(2) The auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor-General of India : Provided that the limits specified in sub-sections (1B) and (1C) of section 224 shall	In the case of Government company, the Audit Report among other things, shall include directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereof and the impact on the Company's accounts and financial statement.

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India, the action taken thereon and its impact on the accounts and financial statement of the company.	apply in relation to the appointment or re-appointment of an auditor under this sub-section.	
(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—	619(3) The Comptroller and Auditor-General of India shall have power –	
	(a) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;	
(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and	(b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf ; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct.	
(b) comment upon or supplement such audit report:	619(4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think	

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Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report. (7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.	fit. 619(5) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.	
(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India,	**228. Audit of accounts of branch office of company**.— 228(1) Where a company has a branch office, the accounts of that office shall, [be audited by the company's auditor appointed under section 224 or] by a person qualified for appointment as auditor of the company under section 226, or where the branch office is	The duties and powers of the company's auditor with reference to the audit of the branch and of the branch auditor, if any, shall be prescribed by rules.

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the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed: Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.	situate in a country outside India, either [by the company's auditor or a person qualified as aforesaid] or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country. 228(2) Where the accounts of any branch office are [audited by a person other than the company's auditor] the company's auditor— (*a*) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor, and (*b*) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office: Provided that in the case of a banking company having a branch office outside India, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principle office of the company in India. 228(3) (*a*) Where a company in general meeting decides to have the accounts of a branch office audited	

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	otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in consultation with the company's auditor; (*b*) the person so appointed (hereafter in this section referred to as the branch auditor) shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same; (*c*) the branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary; (*d*) the branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors if so authorised by the	

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	company in general meeting.	
	228(4) Notwithstanding anything contained in the foregoing provisions of this section, the Central Government [may make rules providing for the exemption of] any branch office from the provisions of this section to the extent specified in the rules and in making such rules the Central Government shall have regard to all or any of the following matters, namely:— (*a*) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company; (*b*) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of this section; (*c*) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office; (*d*) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of this	The power of Central Government under this clause to issue Rules for providing exemption related to provisions of the branch audit, has been dispensed with.
(9) Every auditor shall comply with the auditing standards.		This is a new provision in the Bill to ensure compliance of auditing

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	section.	standards by every auditor.
(10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority: Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.		The Central Government has been given option to prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. Further, where no auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.
(11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.	227(4A) The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein: Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), in regard to the class or description of companies and	The Central Government may consult the National Financial Reporting Authority before it makes an order directing that the auditor's report shall also include a statement on such matters as may be specified therein. In the existing Act, such statement can be prescribed after consultation with ICAI.

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(12) Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, 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 within such time and in such manner as may be prescribed. (13) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith. (14) The provisions of this section shall mutatis mutandis apply to— (a) the cost accountant in practice	other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case. 227(5) The accounts of a company shall not be deemed as not having been, and the auditor's report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if— (*a*) Those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and (*b*) Those provisions are specified in the balance sheet and profit and loss account of the company.	Now a duty has been cast on auditor, to immediately report to the Central Government, any offence involving fraud, which during the performance of his duties he believes is being or has been committed against the company by officers or employees of the company. The duties and powers of an auditor under clause 143, shall apply *mutatis mutandis* to both Cost Accountants for Cost Audit and Company

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conducting cost audit under section 148; or (b) the company secretary in practice conducting secretarial audit under section 204. (15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.		Secretary in practice for Secretarial Audit.
144. Auditor not to render certain services. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:— (a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services;	**No Provision**	**New Provision** As per the Bill, an auditor may provide the company with such other services as are approved by the Board of Directors or the audit committee, but shall not provide the services mentioned here in below whether directly or indirectly to the company, its holding company and subsidiary company: (a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services;

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(f) investment banking services; (g) rendering of outsourced financial services; (h) management services; and (i) any other kind of services as may be prescribed: Provided that an auditor or audit firm who or which has been performing any non audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement. Explanation.—For the purposes of this sub-section, the term "directly or indirectly" shall include rendering of services by the auditor,— (i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual; (ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity,		(e) investment advisory services; (f) investment banking services; (g) rendering of outsourced financial services; (h) management services; A transition period has been provided to auditors to comply with the provisions of this clause before the closure of the first financial year after the date of commencement of the new law.

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whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.		
148. Central Government to specify audit of items of cost in respect of certain companies. (1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies: Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act. (2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net	**233B. Audit of cost accounts in certain cases**.— (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (*d*) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor [who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959)]:	The Central Government may by order direct maintenance of cost records for certain class of companies engaged in production of prescribed goods and providing prescribed services and may also specify audit of items of cost in respect of certain class of companies engaged in the production of such goods or providing such services as may be prescribed. Consultation with regulatory bodies has been made necessary before Central Government issues such order in case of any class of companies regulated under a special Act.

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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.	Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the said notification, such Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a Chartered Accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company.	The power of Central Government to provide that the audit under this clause may be conducted by Chartered Accountants in case sufficient numbers of Cost Accountants are not available has been dispensed with.
(3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:	(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government:	Under the Bill, no approval of Central Government is required for the appointment of Cost Auditor to conduct the Cost Audit.
Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of	Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board	

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cost records: Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards. Explanation.—For the purposes of this sub-section, the expression "cost auditing standards" mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government. (4) An audit conducted under this section shall be in addition to the audit conducted under section 143. (5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company: Provided that the report on the audit of cost records shall be submitted by the cost	from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224. (3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224. (4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the [Central Government] in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.] (5)(*a*) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.	The cost audit shall be conducted in accordance with cost accounting standards, which are issued by the Institute of Cost Accountants of India, with the approval of Central Government.

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accountant in practice to the Board of Directors of the company.	(*b*) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company. (*c*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of this sub-section, he shall on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company. (6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.	
(6) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein. (7) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it	(7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report. (8) If, after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary that Government may call for such further information and	Now the Cost Accountant in practice shall submit the copy of his audit report to the Board of Directors who shall forward the same to Central Government, instead of directly forwarding the Report by Auditor to the Central Government, as is provided under the Companies Act, 1956.

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may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.	explanation and thereupon the company shall furnish the same within such time as may be specified by that Government. (9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary. (10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.	
(8) If any default is made in complying with the provisions of this section,— (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147; (b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.	(11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to [fifty thousand rupees] and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to [fifty thousand rupees], or with both.]	There has been increase in the punishment in the Bill, if the company or its officer or cost auditor contravenes the provisions related to Cost Audit.