BACKGROUNDER

ON

THE COMPANIES BILL, 2012

Part – III

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

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Disclaimer:

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CHAPTER XI

CLAUSES OF THE COMPANIES BILL, 2012	CORRESPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
149. Company to have Board of Directors. (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have— (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors: Provided that a company may appoint more than fifteen directors after passing a special resolution: Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.	**252. Minimum number of directors.**— (1) Every public company (other than a public company which has become such by virtue of section 43A) shall have at least three directors:	In case of one person company, a company is required to have minimum one director. Minimum number of directors in case of private and public companies is same as in 1956 Act i.e. two and three respectively. Maximum number of directors is increased from twelve to fifteen. For appointing more than fifteen directors, passing of special resolution is required. Under the 1956 Act, approval from Central Government was required for appointing beyond twelve. Under the Bill, the prescribed class of companies are required to have atleast one woman director.

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[Corresponds to Clause 151 - Appointment of director elected by small shareholders 151. A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. Explanation.—For the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.]	Provided that a public company having,— (*a*) a paid-up capital of five crore rupees or more; (*b*) one thousand or more small shareholders, may have a director elected by such small shareholders in the manner as may be prescribed. *Explanation*.—For the purposes of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.]	In the Bill, every listed company has the option of appointing one small shareholder director.
	(2) Every other company shall have at least two directors.	
[Corresponds to clause 2(10) (*10*) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;	(3) The directors of a company collectively are referred to in this Act as the "Board of directors" or "Board".	There is no change in the definition of Board.
	Only individuals to be directors.—	
[corresponds to 149(1) above].	No body corporate, association or firm shall be appointed director of a company, and only an individual shall be so appointed.	

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[Corresponds to clause 152(*3*) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154]	Provided that no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B	No change.
[Corresponds to proviso to clause 149(1) above]	**259. Increase in number of directors to require Government sanction**.—In the case of a public company or a private company which is a subsidiary of a public company, any increase in the number of its directors, except— (*a*) in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the permissible maximum under its articles as in force on that date, and	

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149 (3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. 149 (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one. 149 (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (3). 149 (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—	(*b*) in the case of a company which came or may come into existence after that date, an increase which is within the permissible maximum under its articles as first registered, shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as, it is disapproved by that Government: [Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.]	Under the Bill, at least one director in each company, should have stayed in India for alteast 182 days. Every listed public company is required to have 1/3 of total directors to be independent director. Board independence is being accepted the world over as a vital norm for effective functioning of the company and to the benefit of shareholders in the long run. It is widely accepted today that independent directors bring an element of objectivity to Board processes. Studies on the working of independent directors suggest that they have been most effective in development of sound business strategies and performance monitoring. They also provide assurance to all those dealing with the company that Board's decisions will not be based on narrow vision. A transition period of one year is provided for compliance of this provision. 'Independent Director' is defined in the Bill clearly.

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(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year; (e) who, neither himself nor any of his relatives— (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial		It is well established that existence of any significant pecuniary relationship between the company and an individual acts against the person's capacity to act independently of promoter's/management is interests. This aspect has been well taken care of in defining independent director.

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year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses such other qualifications as may be prescribed.		
149(7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).		A declaration as to meeting the criteria of independence by independent director is required at the first meeting in which he participates and at first meeting in every financial year.

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Explanation.—For the purposes of this section, "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.		
(8) The company and independent directors shall abide by the provisions specified in Schedule IV.		Schedule IV to the Bill is code of conduct for Independent directors. It provides for Role and functions, duties, manner of appointment, resignation and evaluation etc.
(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.		IDs are not entitled to stock option. They are entitled for profit related commission and sitting fees for attending the meetings. It is important to note that remuneration of independent directors is also linked to profit related commissions. There has to be a clear relationship between responsibility and performance vis-à-vis remuneration.
(10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.		
(11) Notwithstanding anything contained in		An independent director shall hold office for a term upto 5 years.

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sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director: Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly. Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.		Maximum two consecutive terms are permissible. After cooling period of three years, independent director shall again be eligible for appointment in that company as Independent director.
(12) Notwithstanding anything contained in this Act,— (i) an independent director; (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.		Independent Director and Non-executive Director (not being Promoter or KMP) shall be held liable, only in respect of such acts of omission or commission by a Company which had occurred **with his knowledge, attributable through Board processes, and with his consent or connivance** or where he had not acted diligently.

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Manner of selection of independent directors and maintenance of databank of independent directors. 150. (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may by notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors: Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment. (2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director. (3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.	**No Provision**	New provision. Selection of Independent Director may be made out of **data bank** (containing the names, addresses and qualifications of persons who are eligible and, willing to act as independent directors) maintained by a body, association, Institute as may by notified by the Central Government.

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(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.		

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166. Duties of directors. *(1)* Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company. *(2)* A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment. *(3)* A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. *(4)* A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. *(5)* A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.		New provision. Duties of directors are specifically provided under the Bill. They have been made responsible to work in the best interests of company, its **employees, shareholders, the community and for the protection of environment**.

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(6) A director of a company shall not assign his office and any assignment so made shall be void. *(7)* If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	**312. Prohibition of assignment of office by director**.—Any assignment of his office made after the commencement of this Act by any director of a company shall be void.	
Appointment of key managerial personnel. **203.** (*1*) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,— (*i*) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (*ii*) company secretary; and (*iii*) Chief Financial Officer : Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,— (*a*) the articles of such a company provide otherwise; or (*b*) the company does not carry multiple businesses:	**383A. Certain companies to have secretaries**.—(1) Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company: Provided that every company not required to employ a whole-time secretary under sub-section (1) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such	Every prescribed class of companies shall have a whole-time key managerial personnel. Under the new law, in case some companies are engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business, they may have chairperson of the company as well as the managing director or CEO at the same time. This is subject to notification of such class of companies by the Central Government.

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Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government. (*2*) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. **196. Appointment of managing director, whole-time director or manager.** (*4*) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule: Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:	certificate shall be attached with Board's report referred to in section 217.] (1A) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees] for every day during which the default continues: Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.] (2) Where, at the commencement of the Companies (Amendment) Act, 1974 (41 of 1974),— (a) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company; (b) any individual is holding office as the secretary of more than one company having a paid-up share capital of	New Law requires the appointment of every KMP by means of Board resolution containing terms, conditions and remuneration. In case the appointment of MD, WTD or manager is at variance with schedule V, the approval of Central Government is required.

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Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.	rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies]. **269. Appointment of managing or whole-time director or manager to require Government approval only in certain cases**.— **268. Amendment of provision relating to managing, whole-time or non-rotational directors to require Government approval**.—	
196. Appointment of managing director, whole-time director or manager. (2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time: Provided that no re-appointment shall be made earlier than one year before the expiry of his term.	**317. Managing director not to be appointed for more than five years at a time**.— (1) No company shall, after the commencement of this Act, appoint or employ any individual as its managing director for a term exceeding five years at a time. (2) Any individual holding at the commencement of this Act the office of managing director in a company shall unless his term expires earlier, be deemed to have vacated his office immediately on the expiry of five years from the commencement of this Act.	The provision requires a company not to appoint or re-appoint any person as its managing director(MD), whole-time director(WTD) or manager for a term exceeding five years at a time. This provision is applicable to every company.

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	(3) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion: Provided that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force. [(4) This section shall not apply to a private company unless it is a subsidiary of a public company.]	
(*3*) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who — *(a)* is below the age of twenty-one years or has attained the age of seventy years: Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person; *(b)* is an undischarged insolvent or has at any time been adjudged as an insolvent; *(c)* has at any time suspended payment	**267. Certain persons not to be appointed managing directors**.— No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its managing or whole-time director who— (*a*) is an undischarged insolvent, or has at any time been adjudged an insolvent; (*b*) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or (*c*) is, or has at any time been, convicted by a Court of an offence involving moral turpitude. **384. Firm or body corporate not to be**	The minimum age for the managing or whole-time director is reduced from twenty five to twenty-one years. Maximum age for them is seventy years. Upper age limit can be relaxed by the company if shareholders by special resolution approve it.

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to his creditors or makes, or has at any time made, a composition with them; or *(d)* has at any time been convicted by a court of an offence and sentenced for a period of more than six months.	**appointed manager**.— No company shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any firm, body corporate or association as its manager. **385. Certain persons not to be appointed managers**.— (1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who— (a) is an undischarged insolvent, or has at any time within the preceding five years been adjudged an insolvent; or (b) suspends, or has at any time within the preceding five years suspended, payment to his creditors; or makes, or has at any time within the preceding five years made, a composition with them; or (c) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude. (2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (a), (b) or (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.	

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164. Disqualifications for appointment of director. (*1*) A person shall not be eligible for appointment as a director of a company, if —	**274. Disqualifications of directors**.— (1) A person shall not be capable of being appointed director of a company, if—	The following new disqualifications are added:
(*a*) he is of unsound mind and stands so declared by a competent court;	(*a*) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;	(g) he has been convicted of an offence dealing with related party transactions at any time during the last preceding five years; or
(*b*) he is an undischarged insolvent;	(*b*) he is an undischarged insolvent;	
(*c*) he has applied to be adjudicated as an insolvent and his application is pending;	(*c*) he has applied to be adjudicated as an insolvent and his application is pending;	(h) he has not obtained Director Identification Number;
(*d*) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;	(*d*) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;	
(*e*) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;		
(*f*) he has not paid any calls in respect of any	(*e*) he has not paid any call in respect of	

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shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;	shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or	
(*g*) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or (*h*) he has not complied with sub-section (*3*) of section 152.	(*f*) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section;	
(*2*) No person who is or has been a director of a company which— (*a*) has not filed financial statements or annual returns for any continuous period of three financial years; or (*b*) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,	(*g*) such person is already a director of a public company which,— (A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or (B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:	Director of a company which has not filed financial statements or annual return for any continuous period of three years or has failed to repay the deposits accepted, shall not be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.
shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.	Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company in which he is a director failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay	

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	its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B). (2) The Central Government may, by notification in the Official Gazette, remove— (*a*) the disqualification incurred by any person in virtue of clause (*d*) of sub-section (1), either generally or in relation to any company or companies specified in the notification; or (*b*) the disqualification incurred by any person in virtue of clause (*e*) of sub-section (1).	
(*3*) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (*1*) and (*2*): Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall not take effect— (*i*) for thirty days from the date of conviction or order of disqualification; (*ii*) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or (*iii*) where any further appeal or petition is preferred against order or sentence within seven days until such further appeal or petition is disposed off.	(3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).	A private company may provide for additional disqualifications.

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165. Number of directorship **165.** (*1*) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time**:** Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. *Explanation*.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included. (*2*) Subject to the provisions of sub-section (*1*), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors. (*3*) Any person holding office as director in companies more than the limits as specified in sub-section (*1*), immediately before the commencement of this Act shall, within a period of one year from such commencement,—	**275. No person to be a director of more than fifteen companies**.— After the commencement of this Act, no person shall, save as otherwise provided in section 276, hold office at the same time as director in more than fifteen companies. **276. Choice to be made by director of more than [fifteen] companies at commencement of Act**.— (1) Any person holding office as director in more than [fifteen] companies immediately	Number of directorships is increased from fifteen to twenty companies. Members may reduce the limit of twenty companies by passing special resolution.

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(*a*) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director; (*b*) resign his office as director in the other remaining companies; and (*c*) intimate the choice made by him under clause (*a*), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.	before the commencement of [the Companies (Amendment) Act, 2000] shall, within two months from such commencement,— (*a*) choose not more than [fifteen] of those companies, as companies in which he wishes to continue to hold the office of director; (*b*) resign his office as director in the other companies; and (*c*) intimate the choice made by him under clause (*a*) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company, and also to the Central Government.	
(*4*) Any resignation made in pursuance of clause (*b*) of sub-section (*3*) shall become effective immediately on the despatch thereof to the company concerned.	(2) Any resignation made in pursuance of clause (*b*) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.	
(*5*) No such person shall act as director in more than the specified number of companies,— (*a*) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (*b*) of sub-section (*3*); or (*b*) after the expiry of one year from the commencement of this Act, whichever is earlier.	(3) No such person shall act as director— (*a*) in more than [fifteen] companies, after the expiry of two months from the commencement of [the Companies (Amendment) Act, 2000]; or (*b*) of any company after despatching the resignation of his office as director thereof, in pursuance of	

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	clause (*b*) of sub-section (1).	
	278. Exclusion of certain directorships for the purposes of sections 275, 276 and 277.—(1) In calculating, for the purposes of sections 275, 276 and 277, the number of companies of which a person may be a director, the following companies shall be excluded, namely:— (*a*) a private company which is neither a subsidiary nor a holding company of a public company; (*b*) an unlimited company; (*c*) an association not carrying on business for profit or which prohibits the payment of a dividend; (*d*) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director. (2) In making the calculation aforesaid, any company referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1) shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses.	Exclusion of certain companies is not provided under new law.
(*6*) If a person accepts an appointment as a director in contravention of sub-section (*1*), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during	**279. Penalty**.— Any person who holds office, or acts, as a director of more than fifteen companies in contravention of the foregoing provisions shall be punishable with fine which may	Punishment has been increased.

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which the contravention continues.	extend to fifty thousand rupees] in respect of each of those companies after the first twenty.	
168. Resignation of director. (*1*) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company: Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed. (*2*) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later: Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure. (*3*) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in	**No provision**	New Provision. In case of resignation, the Board is duty bound to take note of it and shall place the fact of such resignation in the report of directors to be laid down before the next general meeting. Director himself shall also forward his resignation to Registrar within thirty days of resignation. The resignation shall be effective from the date on which notice is received by the company or the date specified in the notice by the director whichever is later. Director is liable for the offences that occurred during his tenure.

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his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.		
	CHAPTER XII	
Meetings of Board and Its Powers **173.** (*1*) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board: Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification. (*2*) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:	**285. Board to meet at least once in every three calendar months**.— In the case of every company, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year: Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.	Now every company is required to hold the first meeting of the Board of Directors within thirty days of the date of incorporation. The gap between any two Board meetings shall not be more than one hundred and twenty days The new law recognizes participation of directors in Board Meetings through video conferencing or other audio visual means. It is subject to restriction that Central

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Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.		Government may, by notification, specify the matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. Internationally, countries such as USA, Canada, Australia, Mauritius through their respective Business Corporations Acts, permit participation of members at meetings of Board of Directors, through **electronic** means i.e., **tele or video conferencing**, provided certain safeguards are taken.
(*3*) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means: Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting: Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.	**286. Notice of meetings**.— (1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.	Electronic means of sending the notice has also been recognised. Sections 308 and 309 of the UK Companies Act, 2006 enable a company to send notice of a general meeting in **electronic** form. It fact aforesaid 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. To ensure that views of independent directors are duly considered at meetings of the Board the clause provides that in case of emergency meetings where shorter notice is to be

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		given, the presence of one independent director is a must. However, if such presence is not possible, the decisions taken at the meeting should be ratified by atleast one independent director.
(*4*) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees. *(5)* A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days: Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.	(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.	Penalty has been considerably increased. In case of a One Person Company, small company and dormant company, one meeting in each half calendar year is sufficient and the gap between the two meetings should not be less than ninety days.
174. Quorum for meetings of Board	**287. Quorum for meetings**.— (1) In this section— (*a*) "total strength" means the total strength of the Board of directors of a company as determined in pursuance of this Act, after deducting therefrom the number of the directors, if any, whose places may be vacant at the time; and (*b*) "interested director" means any	

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Explanation to sub-section (3) hereunder.	director whose presence cannot, by reason of section 300, count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.	
(1) The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.	(2) The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher:	Participation of directors through video conferencing or by other audio visual means is recognized for the purpose of quorum.
(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.	Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested [present at the meeting being not less than two], shall be the quorum during such time.	The continuing directors may act notwithstanding any vacancy in the Board. In case the number of directors reduces below the quorum, the continuing directors or director may act only for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose
(3) Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. Explanation.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (2) of section 184.	**288. Procedure where meeting adjourned for want of quorum**.—(1) If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.	
(4) Where a meeting of the Board could not	(2) The provisions of section 285 shall	

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be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place. Explanation.—For the purposes of this section,— (i) any fraction of a number shall be rounded off as one; (ii) "total strength" shall not include directors whose places are vacant.	not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.	An explanation has been added to interpret the terms 'fraction of a number ' and 'total strength'.
177. Audit Committee. (*1*) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. (*2*) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority: Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. (*3*) Every Audit Committee of a company	**292A. Audit Committee**.— (1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as "Audit Committee" which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors. (2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board. (3) The members of the Audit Committee shall elect a chairman from amongst themselves.	As per new law, every listed company (as per Act only public company having paid up capital of not less than five crore rupees) and such other class of prescribed companies are required to constitute an Audit Committee. The audit committee shall consist of minimum 3 directors with Independent directors forming a majority. The majority shall be persons with ability to read and understand, the financial statement.

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existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (*2*).	(4) The annual report of the company shall disclose the composition of the Audit Committee.	
(*4*) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall *inter alia,* include,— (*i*) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (*ii*) review and monitor the auditor's independence and performance, and effectiveness of audit process; (*iii*) examination of the financial statement and the auditors' report thereon; (*iv*) approval or any subsequent modification of transactions of the company with related parties; (*v*) scrutiny of inter-corporate loans and investments; (*vi*) valuation of undertakings or assets of the company, wherever it is necessary; (*vii*) evaluation of internal financial controls and risk management systems; (*viii*) monitoring the end use of funds raised through public offers and related matters.	(5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.	Terms of reference of the Committee have been specifically provided in the clause itself.
(*5*) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management	(6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.	

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of the company. (*6*) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (*4*) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.	(7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.	
(*7*) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.	(8) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.	The auditors and Key Managerial personnel shall have a right to attend meeting of Audit Committee but have no right to vote.
(*8*) The Board's report under sub-section (*3*) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.	(9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders. (10) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit. (11) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.]	
(*9*) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.		This is new provision under the Bill. Establishment of vigil mechanism by listed and prescribed class of companies has been made mandatory.

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(*10*) The vigil mechanism under sub-section (*9*) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.		
Nomination and Remuneration Committee and Stakeholders Relationship Committee. **178.** *(1)* The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors: Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee. (*2*) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may	No Provision	New Provision. Every listed company and prescribed class of companies are required to constitute Nomination and Remuneration Committee. Minimum three non-executive directors are required out of which one half shall be independent directors.. The Committee is required to recommend appointment and removal of directors and carry out their performance evaluation etc. It shall formulate a policy for determining remuneration for directors, employees and key managerial personnel.

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be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance. (*3*) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.		
(*4*) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (*3*) ensure that— (*a*) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully; (*b*) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and (*c*) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals: Provided that such policy shall be disclosed in the Board's report.		Nomination & Remuneration Committee while formulating the policy must consider the given attributes.
(*5*) The Board of Directors of a company		Constitution of Stakeholders

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which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. (*6*) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company. (*7*) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company. (*8*) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both: Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section. *Explanation.*—The expression ‘‘senior		Relationship Committee is also mandatory in the company which has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year. The Committee shall consider and resolve the grievances of security holders.

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management'' means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.		
188. Related party transactions. (*1*) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to— (*a*) sale, purchase or supply of any goods or materials; (*b*) selling or otherwise disposing of, or buying, property of any kind; (*c*) leasing of property of any kind; (*d*) availing or rendering of any services; (*e*) appointment of any agent for purchase or sale of goods, materials, services or property; *(f)* such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (*g*) underwriting the subscription of any securities or derivatives thereof, of the company: Provided that no contract or arrangement, in the case of a company having a paid-up	**297. Board's sanction to be required for certain contracts in which particular directors are interested.**— (1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company— (*a*) for the sale, purchase or supply of any goods, materials or services; or (*b*) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company: Provided that in the case of a company having a paid-up share capital of not less	The following transactions also require the approval of Board : - selling or otherwise disposing of, or buying, property of any kind; - leasing of property of any kind; - availing or rendering of any services; - appointment of any agent for purchase or sale of goods, materials, services or property; - such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and - underwriting the subscription of any securities or derivatives thereof, of the company: Further, in the case of a company having prescribed amount of paid up share capital and for the transactions

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share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution: Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party: Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis. *Explanation.*— In this sub-section,— (*a*) the expression "office or place of profit" means any office or place— *(i)* where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise; *(ii)* where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way	than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.	exceeding the prescribed amount, the prior approval of company by way of special resolution is required under the new law instead of Central Government approval which is required under 1956 Act. Furthermore, the member shall not vote at any such resolution for approving any contract, if he is a related party. The transactions entered into in ordinary course of business are exempted from taking Board's approval except the transactions which are not on arm's length basis. Arm's length basis has been defined in the explanation appended to the clause.

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of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise; *(b)* the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. (*2*) Every contract or arrangement entered into under sub-section (*1*) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement. (*3*) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (*1*) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it. (*4*) Without prejudice to anything contained in sub-section (*3*), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this	(2) Nothing contained in clause (*a*) of sub-section (1) shall affect— (*a*) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or (*b*) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business: Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or (*c*) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.	Disclosure of all such contracts alongwith the justification for entering into such contracts needs to be given under Board's report. Companies can proceed against a director/employees who had authorized such contract in violation of provision of this section for recovery of any loss sustained by it.

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section for recovery of any loss sustained by it as a result of such contract or arrangement. (*5*) Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,— (*i*) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and: (*ii*) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.	(3) Notwithstanding anything contained in sub-sections (1) and (2) a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into. (4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into. (5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board. (6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960 (65	The penalty structure has been changed. The amount of penalty is different for public company whose shares are not listed in any stock exchange and listed public company.

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	of 1960). **314. Director, etc., not to hold office or place of profit**.— [(1) Except with the consent of the company accorded by a special resolution,— (*a*) no director of a company shall hold any office or place of profit, and (*b*) [no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of [such sum as may be prescribed], except that of managing director or manager,] banker or trustee for the holders of debentures of the company,— (*i*) under the company; or (*ii*) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company: Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first	The provisions for prior approval of Board for appointment to any office or place of profit in the company or its subsidiary company are clubbed. Approval of Central Government is not required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary. These sections are clubbed in one clause 188 of the Bill. Language is simplified. Redundant provisions deleted.

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	time after the holding of such office or place of profit: Provided further that where a relative of a director or a firm in which such relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later. *Explanation.*—For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution. (1A) Nothing in sub-section (1) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director becomes a director of the company. (1B) Notwithstanding anything contained in sub-section (1),— (*a*) no partner or relative of a director or manager, (*b*) no firm in which such director or manager, or relative of either, is a	

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	partner, (*c*) no private company of which such a director or manager, or relative of either, is a director or member, shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than [such sum as may be prescribed], except with the prior consent of the company by a special resolution and the approval of the Central Government: (2) [(*a*)] If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, or the manager concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit. (*b*) The company shall not waive the recovery of any sum refundable to it under clause (*a*) unless permitted to do so by the Central Government. (2A) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to	

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	which this section applies shall, before or at the time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in sub-section (1). (2B) If, after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974) any office or place of profit is held, without the prior consent of the company by a special resolution and the approval of the Central Government, the partner, relative, firm or private company appointed to such office or place of profit shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him on and from the date on which the office was so held by him. (2C) If any office or place of profit is held in contravention of the provisions of the proviso to sub-section (1B), the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the expiry of six months from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974) or the date next following the date of the general meeting of the company referred to in the said proviso, whichever is earlier, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.	

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	(2D) The Company shall not waive the recovery of any sum refundable to it under sub-section (2B) unless permitted to do so by the Central Government. (3) Any office or place shall be deemed to be an office or place of profit under the company [within the meaning of this section],— (*a*) in case the office or place is held by a director, if the director holding it [obtains from the company anything] by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise; (*b*) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it obtains from the company anything] by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise. (4) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.	

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Register of directors and key managerial personnel and their shareholding **170.** (*1*) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies. (*2*) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place. .	**303. Register of directors etc.**— (1) Every company shall keep at its registered office a register of its directors, managing director, manager and secretary, containing with respect to each of them the following particulars, that is to say:— (*a*) in the case of an individual, his present name, and surname in full; any former name or surname in full; [his father's name and surname in full; or where the individual is a married woman, the husband's name and surname in full]; his usual residential address; his nationality and, if that nationality is not the nationality of origin, his nationality of origin, his business occupation, if any, if he holds the office of director, managing director, manager or secretary in any other body corporate, the particulars of each such office held by him; and except in the case of a private company which is not a subsidiary of a public company, the date of his birth; (*b*) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality [the father's name or where a director is a married woman, the husband's name] of each of its directors; and if it holds the office of manager or secretary in any other	Register of Directors, KMP and register of their shareholding have been merged into one register. Now return for appointment or changes therein shall also be filed for appointment of Key managerial personnel along with directors. The particulars of directors and key managerial personnel to be entered in the register shall be in the format as given in the rules. The particulars shall include the details of securities held by each of them in the company or its holding, subsidiary or associate companies. Section 303, 307 and 308 are combined in one section under the Companies Bill, 2012.

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	body corporate, the particulars of each such office; (*c*) in the case of a firm, the name of the firm, the full name, address, nationality, and nationality of origin, if different from that nationality [the father's name or where a partner is a married woman, the husband's name] of each partner; and the date on which each became a partner; and if the firm holds the office of manager or secretary in any other body corporate, the particulars of each such office; (*d*) if any director or directors have been nominated by a body corporate, its corporate name; all the particulars referred to in clause (*a*) in respect of each director so nominated, and also all the particulars referred to in clause (*b*) in respect of the body corporate; (*e*) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (*a*) in respect of each director so nominated, and also all the particulars referred to in clause (*c*) in respect of the firm. *Explanation*.—For the purposes of this sub-section— (1) any person in accordance with [whose directions or instructions], the Board of directors of a company is accustomed to act shall be deemed to be a director of the	

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	company; (2) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and (3) reference to a former name or surname do not include— (*i*) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title; (*ii*) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; and (*iii*) in the case of a married woman, the name or surname by which she was known previous to the marriage. (2) The company shall, within the periods respectively mentioned in this sub-section, send to the Registrar [a return in duplicate in the prescribed form] containing the particulars specified in the said register and [a notification in duplicate in the prescribed form] of any change among its directors, managing directors, managers or secretaries specifying the date of the change. The period within which the said return is to be sent shall be a period of [thirty] days	

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	from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be [thirty] days from the happening thereof. (3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees] for every day during which the default continues. **307. Register of directors' shareholdings, etc.**— **308**. **Duty of directors and persons deemed to be directors to make disclosure of shareholdings.**	
CHAPTER XIII		
197. Remuneration of managerial personnel. (*1*) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:	**309. Remuneration of directors.**— (1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting [and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director	The scattered provisions relating to remuneration are provided at one place. The provisions are simplified. Provisions on Remuneration to managerial personnel and to non-executive directors are provided in separate clauses leaving no scope for confusion.

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Provided that the company in general meeting may, with the approval of the Central Government, authorize the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V: Provided further that, except with the approval of the company in general meeting,— (*i*) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together; (*ii*) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,— (*A*) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager; (*B*) three per cent. of the net profits in any other case. (*2*) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (*5*).	for services rendered by him in any other capacity: Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if— (*a*) the services rendered are of a professional nature, and (*b*) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession]. [(2) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him: Provided that where immediately before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) fees for meetings of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer. (3) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other:	Limit of eleven percent is retained.

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(*3*) Notwithstanding anything contained in sub-sections (*1*) and (*2*), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (*5*) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government. (*4*) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity: Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if— (*a*) the services rendered are of a	Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.] [(4) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration either— (*a*) by way of a monthly, quarterly or annual payment with the approval of the Central Government; or (*b*) by way of commission if the company by special resolution authorises such payment: Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed— (*i*) one per cent of the net profits of the company, if the company has a managing or whole-time director, or a manager; (*ii*) three per cent of the net profits of the company, in any other case: Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent or, as the case may	In the event of nil or inadequate profit, the conditions under which the company can pay remuneration have been changed.

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professional nature; and (*b*) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (*1*) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession. *5*) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board: Provided that the amount of such fees shall not exceed the amount as may be prescribed: Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed. (*6*) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. (*7)* Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (*5*), reimbursement of expenses for participation in the Board and other meetings and profit related commission as	be, three per cent of its net profits.] (5) The net profits referred to in sub-sections (3) and (4) shall be computed in the manner referred to in section 198, sub-section (1). (5A) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. (5B) The company shall not waive the recovery of any sum refundable to it under sub-section (5A) unless permitted by the Central Government.] (6) No director of a company who is in receipt of any commission from the company and who is either in the whole-time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.	Remuneration payable to any such director in other capacity is not included in the upper limits, if such services are of professional nature and Nomination and Remuneration Committee or the Board opines that the director possesses the requisite qualification for the practice of the profession. Different sitting fees may be prescribed for Independent directors. Independent directors are not entitled receive stock options. They are entitled to sitting fees and reimbursement of expenses for participation in the Board and other meetings. They are also allowed for

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may be approved by the members. (*8*) The net profits for the purposes of this section shall be computed in the manner referred to in section 198. (*9*) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. (*10*) The company shall not waive the recovery of any sum refundable to it under sub-section (*9*) unless permitted by the Central Government. (*11*) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied with, the approval of the Central Government had been obtained. (*12*) Every listed company shall disclose in	(7) The special resolution referred to in sub-section (4) shall not remain in force for a period of more than five years; but may be renewed, from time to time, by special resolution for further periods of not more than five years at a time: Provided that no renewal shall be effected earlier than one year from the date on which it is to come into force. (8) The provisions of this section shall come into force immediately on the commencement of this Act or, where such commencement does not coincide with the end of a financial year of the company, with effect from the expiry of the financial year immediately succeeding such commencement. (9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company. **387. Remuneration of manager**.—The manager of a company may, subject to the provisions of section 198, receive remuneration either by way of a monthly payment, or by way of a specified percentage of the "net profits" of the company calculated in the manner laid down in sections 349 and 350, or partly by the one way and partly by the other: Provided that except with the approval of	profit related commission as may be approved by the members. Every listed company shall disclose in

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the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed. (*13*) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel: Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. (*14*) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report. (*15*) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend	the Central Government such remuneration shall not exceed in the aggregate five per cent of the net profits. **388. Application of sections 269, 310], 311, 312 and 317 to manager**.—The provisions of sections 269, 310, 311 and 317 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 312 shall apply in relation to the manager of a company, as they apply to a director thereof.	the Board's report the ratio of the remuneration of each director to the median employee's remuneration. Premium paid on any insurance policy taken by a company on behalf of managerial personnel for indemnifying them against any liability in respect of negligence, shall not be treated as part of the remuneration unless such personnel is proved to be guilty. Internationally the laws of various countries including U.K., Australia, Canada and Singapore do not provide for any upper ceiling or minimum level of directors' remuneration. Global practice in relation to managerial remuneration is that companies should be provided full freedom to remunerate their directors but a proper disclosure should be made by the company. In U.K., the Directors' Remuneration Report is required to be audited and laid before the company in general meeting.

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to five lakh rupees.		
Recovery of remuneration in certain cases. **199.** Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.	**No provision**	Now in case a company is required to re-state its financial statements due to fraud or non-compliance with any requirements under this law, the company can recover from any past or present Managing Director or WTD or Manager who, during the period for which the financial statements are to be re-stated.
Central Government or company to fix limit with regard to remuneration. **200.** Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the	**310. Provision for increase in remuneration to require Government sanction**.—[In the case of a public company or a private company which is a subsidiary of a public company, any provision relating to the remuneration of any director including a managing or whole-time director, or any amendment thereof, which purports to increase] or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in	The factors which the Central Government will consider while approving the applications with regard to appointment or remuneration of managerial personnel in excess of the limits are provided under the Bill itself.. Under the 1956 Act, there were no such factors which would be considered by the Central Government.

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Central Government or the company shall have regard to— (*a*) the financial position of the company; (*b*) the remuneration or commission drawn by the individual concerned in any other capacity; (*c*) the remuneration or commission drawn by him from any other company; (*d*) professional qualifications and experience of the individual concerned; (*e*) such other matters as may be prescribed.	general meeting or by its Board of directors, [shall not have any effect— (*a*) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule; and (*b*) in any other case, unless it is approved by the Central Government], and the amendment shall become void if, and in so far as, it is disapproved by that Government: [Provided that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or a committee thereof attended by any such director and the amount of such fee after such increase does not exceed [such sum as may be prescribed]: [Provided further that where in the case of any private company which converts itself into a public company or becomes a public company under the provisions of section 43A, any provision relating to the remuneration of any director including a managing or whole-time director as contained in its memorandum or articles or in any agreement entered into by it or in any resolution passed by it in general meeting or by its Board of directors includes a provision for the payment of fee for each meeting of the Board or a Committee thereof attended by any such director which is in excess of	

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	the sum specified under the first proviso, such provision shall be deemed to be an increase in the remuneration of such director and shall not, after it ceases to be a private company, or, as the case may be, becomes a public company, have any effect unless approved by the Central Government]. **311. Increase in remuneration of managing director on re-appointment or appointment after Act to require Government sanction**.	
Appointment of key managerial personnel. **203.** (*1*) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,— (*i*) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (*ii*) company secretary; and (*iii*) Chief Financial Officer : Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of	**316. Number of companies of which one person may be appointed managing director**.— (1) [No public company and no private company which is a subsidiary of a public company] shall, after the commencement of this Act, appoint or employ any person as managing director, if he is either the managing director or the manager of [any other company (including a private company which is not a subsidiary of a public company)], except as provided in sub-section (2). (2) A public company or a private company which is a subsidiary of a public company] may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company (including	Concept of KMP introduced. Every company belonging to prescribed class or classes of companies is compulsorily required to appoint MD or CEO or manager and CS and CFO. An individual shall not be appointed or reappointed as the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act. Subject to the provisions provided in this clause. However, if a class of companies is engaged in multiple

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commencement of this Act unless,— (*a*) the articles of such a company provide otherwise; or (*b*) the company does not carry multiple businesses: Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government. (*2*) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.	a private company which is not a subsidiary of a public company): Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. (3) Where, at the commencement of this Act, any person is holding the office either of managing director or of manager in more than two companies of which each one or at least one is a public company or a private company which is a subsidiary of a public company], he shall, within one year from the commencement of [the Companies (Amendment) Act, 1960 (65 of 1960)], choose not more than two of those companies as companies in which he wishes to continue to hold the office of managing director or manager, as the case may be; and the provisions of clauses (*b*) and (*c*) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director. (4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a managing director of more than two companies if the Central Government is satisfied that it is necessary that the companies should, for	business and which has appointed one or more CEOs for each such business; these provisions are not applicable to them. KMP to be appointed by way of Board resolution specifying the terms and conditions including remuneration.

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	their proper working function as a single unit and have a common managing director.	
	317. Managing director not to be appointed for more than five years at a time.—	
	(1) No company shall, after the commencement of this Act, appoint or employ any individual as its managing director for a term exceeding five years at a time.	
	(2) Any individual holding at the commencement of this Act the office of managing director in a company shall unless his term expires earlier, be deemed to have vacated his office immediately on the expiry of five years from the commencement of this Act.	
	(3) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion:	
	Provided that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force.	
(*3*) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time: Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any	[(4) This section shall not apply to a private company unless it is a subsidiary of a public company.] **386. Number of companies of which a**	Whole time KMP shall not hold office in more than one company at the same time. He may do so with the permission of Board.

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company with the permission of the Board: Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel: Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. (*4*) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy. (*5*) If 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	**person may be appointed manager**.—(1) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director of any other company, except as provided in sub-section (2). (2) A company may appoint or employ a person as its manager, if he is the manager or managing director of one, and not more than one, other company: Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, and of which meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. (3) Where, at the commencement of this Act, any person is holding the office either of manager or of managing director in more than two companies, he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he wishes to continue to hold the office of manager or managing director, as the case may be; and the provisions of clauses (*b*) and (*c*) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director. (4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any	An obligation to fill the vacancy has been made time bound under the Bill. Within six months of his vacancy, the resulting vacancy is required to be filled.

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to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.	person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager.	
Secretarial audit for bigger companies. **204.** (*1*) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (*3*) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed. (*2*) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company. (*3*) The Board of Directors, in their report made in terms of sub-section (*3*) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (*1*). (*4*) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this	No provision	This is a new provision. All listed and other prescribed companies are required to annex with its Board's report, a Secretarial audit report given by a company secretary in practice. Company is under duty to give all assistance to the company secretary for conducting the secretarial audit. The Board is required to give explanation on any qualifications/ the remarks made by company secretary in practice his report. In the event of contraventions of the provisions, the company, every officer or the company secretary in his default shall be punished by imposing a penalty of one lakh rupees which may extend to five lakh rupees.

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section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.		
Functions of company secretary. **205.** (*1*) The functions of the company secretary shall include,— (*a*) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company; (*b*) to ensure that the company complies with the applicable secretarial standards; (*c*) to discharge such other duties as may be prescribed. *Explanation.*—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. (*2*) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in	**No Provision**	New provision. Functions of Company Secretary are now provided under the law. They are required to report to the Board about the compliances with provisions of this Act and other laws applicable to the company including applicable secretarial standards.. Other duties shall be prescribed through rules.

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force.		
Restriction on non-cash transactions involving directors. **192.** (1) No company shall enter into an arrangement by which — (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company. (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer. (3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of	No Provision	A company is prohibited from entering into any arrangement which allows its director/director of holding, subsidiary or associate company or any person connected with him, to acquire any assets from the company for consideration other than cash. For such type of arrangements, prior approval of members through special resolution in a general meeting is necessary. The particulars of such arrangement are required to be given in the notice for approval in general meeting.

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the company unless— (a) the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.		
Contracts by One Person Companies. **193.** (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract: Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business. (*2*) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (*1*) within a period of fifteen days of	New provision.	If one person company enters into any contract with the sole member who is also the Director of the company, except, when, the contract in ordinary course of business shall ensure that the terms of contract shall be either contained in a Memorandum or are recorded in the Minutes of the first Board Meeting held next after entering into contract.

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the date of approval by the Board of Directors.		
Prohibition on forward dealings in securities of company by a key managerial personnel. **194.** (*1*) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company— (*a*) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or (*b*) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures. (*2*) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (*1*), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. (*3*) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (*1*), he shall, subject to the provisions contained in sub-section (*2*), be liable to surrender the same	No Provision	Directors and Key Managerial Personnel are prohibited from forward dealings in securities of company.

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to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors. *Explanation*.—For the purposes of this section, ''relevant shares'' and ''relevant debentures'' mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.		
Prohibition on insider trading of securities. **195.** (*1*) No person including any director or key managerial personnel of a company shall enter into insider trading: Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law. *Explanation.*—For the purposes of this section,— (*a*) "insider trading" means— (*i*) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of	No provision	No person including any director or key managerial personnel of a company shall enter into insider trading. The term 'insider trading' and 'price sensitive information' is defined in the section itself. Provisions of the insider trading shall not be applicable to any communication in the ordinary course of business.

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a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or (*ii*) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person; (*b*) "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company. (*2*) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.		

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186. Loan and investment by company. (*1*) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:	**372A. Inter-corporate loans and investments.**—	A company cannot make investment through more than two layers of investment companies. Exceptions to the clause are

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Provided that the provisions of this sub-section shall not affect,— (*i*) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country; (*ii*) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.		also provided. Investment company is defined under the clause as explanation.
(*2*) No company shall directly or indirectly — (*a*) give any loan to any person or other body corporate; (*b*) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (*c*) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,	(1) No company shall, directly or indirectly,— (a) make any loan to any other body corporate; (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person, by any body corporate; and (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,	No company can give any loan, guarantee or acquire the securities exceeding sixty percent of paid up share capital, free reserves and securities premium account or hundred percent of its free reserves and securities premium account.
exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.	exceeding sixty per cent of its paid-up share capital and free reserves, or hundred per cent of its free reserves, whichever is more: Provided that where the aggregate of the loans and investments so far made, the amounts	Securities premium account is addition in calculating the limits.

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(*3*) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (*2*) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary. (*4*) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security. (*5*) No investment shall be made or loan or	for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided further that the Board may give guarantee, without being previously authorised by a special resolution, if,— (a) a resolution is passed in the meeting of the Board authorising to give guarantee in accordance with the provisions of this section; (b) there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee; and (c) the resolution of the Board under clause (a) is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board's resolution, whichever is earlier: Provided also that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.	For giving loans / guarantee / providing security exceeding these limits prior approval at general meeting by means of special resolution is necessary. The law now requires the company to disclose the full particulars of loans / guarantee / security provided along with the purpose for which these are proposed to be utilized.

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guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained: Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (*2*), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.	(2) No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution referred to in section 4A, where any term loan is subsisting, is obtained: Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, alongwith the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of sixty per cent specified in sub-section (1), if there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.	Consent of all the directors is required.
(*6*) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.		The companies which are registered under section 12 of the SEBI Act, 1992 and are covered under prescribed class of companies, for them there is a prescribed limit and also those companies shall furnish in its financial statement the details of loan or deposits.
(*7*) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.	(3) No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934 (2 of 1934).	

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(*8*) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.	(4) No company, which has defaulted in complying with the provision of section 58A, shall, directly or indirectly,— (a) make any loan to any body corporate; (b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate, till such default is subsisting.	
(*9*) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.	(5) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1), namely:— (i) the name of the body corporate; (ii) the amount, terms and purpose of the investment or loan or security or guarantee; (iii) the date on which the investment or loan has been made; and (iv) the date on which the guarantee has been given or security has been provided in connection with a loan. (b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register	The particulars and manner of keeping the register shall be provided through rules.

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	aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.	
(*10*) The register referred to in sub-section (*9*) shall be kept at the registered office of the company and — (*a*) shall be open to inspection at such office; and (*b*) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.	(6) The register referred to in sub-section (5) shall be kept at the registered office of the company concerned and— (a) shall be open to inspection at such office; and (b) extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.	
[corresponds to sub-clause (12) below].	(7) The Central Government may, prescribe guidelines for the purposes of this section.	
(*11*) Nothing contained in this section, except sub-section (*1*), shall apply— (*a*) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities; (*b*) to any acquisition — (*i*) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:	(8) Nothing contained in this section shall apply,— (a) to any loan made, any guarantee given or any security provided or any investment made by— (i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities; (ii) a company whose principal business is	Exemption to private companies, companies whose principle business is acquisition of securities, loan by a holding company to its wholly owned subsidiary has been done away with.

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Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities; (*ii*) made by a company whose principal business is the acquisition of securities; (*iii*) of shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62.	the acquisition of shares, stock, debentures or other securities; (iii) a private company, unless it is a subsidiary of a public company; (b) to investment made in shares allotted in pursuance of clause (a) of sub-section (1) of section 81; (c) to any loan made by a holding company to its wholly owned subsidiary; (d) to any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary; or (e) to acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly onwed subsidiary.	
(*12*) The Central Government may make rules for the purposes of this section.		Penalty provisions revised.
(*13*) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.	(9) If default is made in complying with the provisions of this section, other than sub-section (5), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees:	
Explanation.—For the purposes of this section,— (*a*) the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities;	Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which	

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(*b*) the expression "infrastructure facilities" means the facilities specified in Schedule VI. 2(43) ""free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that— (*i*) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or (*ii*) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.	may be imposed under this sub-section by way of imprisonment shall be appropriately reduced: Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company. (10) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first during which the default continues. Explanation.—For the purposes of this section,— (a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company; (b) "free reserves" means those reserves which, as per the latest audited balance sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.] **373. Investments made before commencement of Act.**— **374. Penalty for contravention of section 372 or 373**.	

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Conduct of inspection and inquiry. **207.** (*1*) Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.	**209A. Inspection of books of account, etc., of companies**.— (1) The books of account and other books and papers of every company shall be open to inspection during business hours— (*i*) by the Registrar, or (*ii*) by such officer of the Government as may be authorised by the Central Government in this behalf; (*iii*) by such officers of the Securities and Exchange Board of India as may be authorised by it: Provided that such inspection may be made without giving any previous notice to the company or any officer thereof: Provided further that the inspection by the Securities and Exchange Board of India shall be made in respect of matters covered under sections referred to in section 55A. (2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify. (3) It shall also be the duty of every director, other officer or employee of the company to give	Every director, officer or other employee of the company is under duty to produce all the required documents to the Registrar or inspector and render every assistance in connection with inspection.

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(*2*) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,— (*a*) make or cause to be made copies of books of account and other books and papers; or (*b*) place or cause to be placed any marks of identification in such books in token of the inspection having been made.	to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give. (4) The person making the inspection under this section may, during the course of inspection,— (*i*) make or cause to be made copies of books of account and other books and papers, or (*ii*) place or cause to be placed any marks of identification thereon in token of the inspection having been made.	
(*3*) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the 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:— (*a*) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry; *(b)* summoning and enforcing the attendance of persons and examining them on oath; and *(c)* inspection of any books, registers and other documents of the company at any place.	(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:— (*i*) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person; (*ii*) summoning and enforcing the attendance of persons and examining them on oath; (*iii*) inspection of any books, registers and other documents of the company at any place.	The provision as provided under the Companies Act, 1956 has been retained which provides that the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit with respect to the specified matters.

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(*4*) (*i*) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (*ii*) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company. **Report on inspection made**. **208.** The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.	(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government or the Securities and Exchange Board of India in respect of inspection made by its officers. (7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries. (8) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees], and also with imprisonment for a term not exceeding one year. (9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date.	The Registrar may recommend in the report for further investigation into the affairs of the company along with the necessary reasons thereof.
Search and seizure.	**234A. Seizure of documents by Registrar**.—(1) Where, upon information in his possession or	If the Registrar or Inspector

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209. (*1*) Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,— (*a*) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and (*b*) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.	otherwise, the Registrar has reasonable ground to believe that books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of the First Class or as the case may be, the Presidency Magistrate having jurisdiction for an order for the seizure of such books and papers. (2) After considering the application and hearing the Registrar, if necessary, the Magistrate may, by order, authorise the Registrar— (*a*) to enter, with such assistance as may be required the place or places where such books and papers are kept; (*b*) to search that place or those places in the manner specified in the order; and (*c*) to seize such books and papers as he considers necessary.	has any ground to believe that the books and papers of Company, or **books relating to key managerial personnel or any director or auditor or company secretary in practice** are likely to be mutilated, destroyed or altered, they with the approval of Special Court, have the power to seize such books and papers. Seizure of books relating to KMP/director/auditor/CS is addition under the new law. Permission of special court is required by the Registrar or inspector instead of Magistrate of the First Class or as the case may be, the Presidency Magistrate having jurisdiction as provided under the 1956 Act.
(*2*) The Registrar or inspector shall return the books and papers seized under sub-section (*1*), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized: Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again: Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or	(3) The Registrar shall return the books and papers seized under this section as soon as may be, and in any case not later than the thirtieth day, after such seizure, to the company or the other body corporate or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return: Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or	The period of returning the books/ papers seized to the company is increased from 30 days to 180 days.

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extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary. (*3*) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, *mutatis mutandis,* to every search and seizure made under this section.	deal with the same in such other manner as he considers necessary. (4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 relating to searches or seizures made under that Code.	
Establishment of Serious Fraud Investigation Office **211.** (*1*) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company: Provided that until the Serious Fraud Investigation Office is established under subsection (*1*), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section. (*2*) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,— (*i*) banking; (*ii*) corporate affairs; (*iii*) taxation;	**No Provision**	New Provision. Under the new law, the establishment of SFIO has been provided for investigation of frauds related to the Companies. It is further provided that till the time SFIO is established under this clause, the existing SFIO set up by Central Government, shall be deemed to be SFIO for the purpose of this clause. The composition of SFIO is provided under the clause.

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(*iv*) forensic audit; (*v*) capital market; (*vi*) information technology; (*vii*) law; or (*viii*) such other fields as may be prescribed. (*3*) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs. (*4*) The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act. (*5*) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.		
Investigation into affairs of Company by Serious Fraud Investigation Office **212.** (*1*) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office— (*a*) on receipt of a report of the Registrar or inspector under section 208; (*b*) on intimation of a special resolution passed by a company that its affairs are required to be investigated; (*c*) in the public interest; or	No Provision	New Provision. The Central Government may refer the matter for investigation to SFIO either on receipt of report of Registrar under section 208 or on receipt of special resolution from company or in public interest or on

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(*d*) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.		request from any Department of the Central Government or a State Government.
(*2*) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.		Once the case is assigned to SFIO by Central Government, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act.
(*3*) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.		SFIO will submit its investigation report to Central Government within the period as specified in the order.
(*4*) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.		

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(*5*) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation. (*6*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (*5*) and (*6*) of section 7, section 34, section 36, subsection (*1*) of section 38, sub-sections (*5*) of section 46, sub-section (*7*) of section 56, subsection (*10*) of section 66, sub-section (*5*) of section 140, sub-section (*4*) of section 206, section 213, section 229, sub-section (*1*) of section 251, sub-section (*3*) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless— (*i*) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (*ii*) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing		The company and its officers and employees are responsible to provide every information and assistance to the investigating officer.

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made by— (*i*) the Director, Serious Fraud Investigation Office; or (*ii*) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government. (*7*) The limitation on granting of bail specified in sub-section (*6*) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. (*8*) If the Director, Additional Director or Assistant Director of Serious Frauds Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (*6*), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. (*9*) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (*8*), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed. (*10*) Every person arrested under sub-section (*8*) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours		The Director, Additional Director or Assistant Director of Serious Frauds Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason (to be recorded in writing) to believe that any person has been guilty of any offence punishable under sections referred to in sub-section (*6*), he may arrest such person. He is under duty to inform him of the grounds for such arrest.

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shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.		
(*11*) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.		
(*12*) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.		
(*13*) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.		A copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.
(*14*) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.		
(*15*) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.		
(*16*) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.		Transitional provisions.
(*17*) (*a*) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State		

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Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office; (*b*) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.		
Procedure, powers, etc., of inspectors. **217.** (*1*) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person— (*a*) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and (*b*) otherwise to give to the inspector all	**240. Production of documents and evidence**. (1) It shall be the duty of all officers and other employees and agents of the company and where the affairs of any other body corporate are investigated by virtue of section 239, of all officers and other employees and agents of such body corporate— (*a*) to preserve and to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the company or, as the case may be, or of relating to the other body corporate, which are in their custody	Duty has been imposed on all officers and other employees including former officers and employees of a company which is under investigation, to preserve and to produce the books and papers and give all assistance to the inspector.

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assistance in connection with the investigation which they are reasonably able to give.	or power; and (*b*) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.	
(*2*) The inspector may require any body corporate, other than a body corporate referred to in sub-section (*1*), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.	(1A) The inspector may, with the previous approval of the Central Government, require any body corporate other than a body corporate referred to in sub-section (1) to furnish such information to, or produce such books and papers before, him or any person authorised by him in this behalf with the previous approval of that Government as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.	Previous approval of Central Govt. is not required for requiring other body corporate to furnish the required information.
(*3*) The inspector shall not keep in his custody any books and papers produced under sub-section (*1*) or sub-section (*2*) for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced: Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.	(1B) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (1A) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books, and papers are produced: Provided that the inspector may call for the books and papers if they are needed again: Provided further that if certified copies of the books and papers produced under sub-section (1A) are furnished to the inspector, he shall return those books and papers to the body corporate concerned.	The period of keeping the books in custody is same as is in the 1956 Act. If needed again, such books and papers may be called by the inspector for a further period of 180 days. In the 1956 Act, no period was provided for further requiring the documents.
(*4*) An inspector may examine on oath— (*a*) any of the persons referred to in sub-section	(2) An inspector may examine on oath—	

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(*1*); and (*b*) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally: Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (*b*). (*5*) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the 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:— (*a*) the discovery and production of books of account and other documents, at such place and time as may be specified by such person; (*b*) summoning and enforcing the attendance of persons and examining them on oath; and (*c*) inspection of any books, registers and other documents of the company at any place. (*6*) (*i*) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (*ii*) If a director or an officer of the company has been convicted of an offence under this section,	(*a*) any of the persons referred to in sub-section (1); and (*b*) with the previous approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate, as the case may be; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally. (3) If any person fails without reasonable cause or refuses— (*a*) to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (1) or sub-section (1A) to produce; or (*b*) to furnish any information which it is his duty under sub-section (1A) to furnish; or (*c*) to appear before the inspector personally when required to do so under sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or (*d*) to sign the notes of any examination referred to in sub-section (5), he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to twenty thousand rupees, or with both, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.	The inspector has all the powers as vested in a civil court under the Code of Civil Procedure 1908 regarding discovery and production of books of account, summoning and enforcing the attendance of persons and examining them on oath and inspection of any books of the company at any place. Punishment is enhanced.

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the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.		
(*7*) The notes of any examination under sub-section (*4*) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.	(5) Notes of any examination under sub-section (2) shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him.	
(*8*) If any person fails without reasonable cause or refuses— (*a*) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (*1*) or sub-section (*2*) to produce; (*b*) to furnish any information which is his duty under sub-section (*2*) to furnish; (*c*) to appear before the inspector personally when required to do so under subsection (*4*) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or (*d*) to sign the notes of any examination referred to in sub-section (*7*), he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.	(6) In this section— (*a*) the expression "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate; (*b*) the expression "agent", in relation to any company, body corporate or person, means any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers and legal advisers of, and persons employed as auditors by, such company, body corporate or person; and (*c*) any reference to officers and other employees, agents or partners shall be construed as a reference to past as well as present officers and other employees, agents or partners, as the case may be.	The definitions of 'officers', 'agent' and reference to officers and other employees, agents or partners is not provided in this clause under the Bill.
(*9*) The officers of the Central Government, State Government, police or statutory authority shall		With the prior approval of the Central Government, the officers of the Central Government, State Government, police or statutory authority are under duty to provide assistance to

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provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.		the inspector for the purpose of inspection, inquiry or investigation as may be required by him.
(*10*) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.		Central Government may enter into any agreement with the government of foreign state for reciprocal arrangements to assist in any inspection and investigation under this Act or under any corresponding law in force in that state.
(*11*) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request: Provided that the letter of request shall be		Central Government is authorized to forward letter of request to court or competent authority outside India which shall thereupon to summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs.

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transmitted in such manner as the Central Government may specify in this behalf: Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation. (*12*) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within thirty days or such extended time as the court may allow for further action: Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.		
Freezing of assets of company on inquiry and	No Provision	New provision.

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investigation. **221.** (*1*) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (*1*) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit. (*2*) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (*1*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.		Where the Tribunal has reason to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, It may direct that the transfer, removal or disposal shall not take place during such period not exceeding three years or as given in the order.
Penalty for furnishing false statement, mutilation, destruction of documents.	No Provision	

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229. Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,— (*a*) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate; (*b*) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or (*c*) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.		Penalty for furnishing false statement, mutilation, destruction of documents is linked to the fraud provisions. The person who destroys, mutilates or falsifies the documents relating to the property, assets or affairs of the company or the body corporate or makes a false entry in any document concerning the company or body corporate; or provides an explanation which is false, he shall be punishable as per the provisions provided under section 447.
CHAPTER XV		
232. Merger and amalgamation of companies. (*1*) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal— (*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or	**394. Provisions for facilitating reconstruction and amalgamation of companies**.— (1) Where an application is made to the Tribunal under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal, (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the	Under the companies Bill, 2012 now merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting of the members or creditors the following- *(a)* the draft of the proposed terms of the scheme drawn

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the amalgamation of any two or more companies; and (*b*) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (*3*) to (*6*) of section 230 shall apply *mutatis mutandis.* (*2*) Where an order has been made by the Tribunal under sub-section (*1*), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:— (*a*) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company; (*b*) confirmation that a copy of the draft scheme has been filed with the Registrar; (*c*) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;	reconstruction of any company or companies, or the amalgamation of any two or more companies; and (b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as the "transferee company"); the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:— (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company; (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person; (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company; (iv) the dissolution, without winding up, of any	up and adopted by the directors of the merging company; *(b)* confirmation that a copy of the draft scheme has been filed with the Registrar; *(c)* a report adopted by the directors of the merging companies explaining **effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio**, specifying any special valuation difficulties; *(d)* the **report of the expert with regard to valuation**, if any;

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(*d*) the report of the expert with regard to valuation, if any; (*e*) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme. (*3*) The Tribunal, after satisfying itself that the procedure specified in sub-sections (*1*) and (*2*) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:— (*a*) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise; (*b*) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person: Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;	transferor company; (v) the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:	*(e)* a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme. Division of undertaking has also been recognized in the Act. The Tribunal on receipt of application may order a meeting of the creditors or the members. Where such an order (as

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(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer; (*d*) dissolution, without winding-up, of any transferor company; (*e*) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; (*f*) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order; (*g*) the transfer of the employees of the transferor company to the transferee company; (*h*) where the transferor company is a listed company and the transferee company is an unlisted company,— (*A*) the transferee company shall remain an unlisted company until it becomes a listed company; (*B*) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:		above) is passed, merging companies or companies in respect of which division is proposed shall circulate certain information/ documents for the purpose of meeting. After the satisfaction of the Tribunal about the completion of proper procedure by companies, the Tribunal shall order for sanction/ compromise or arrangements. Further the Bill provides that in case of the merger of a listed company and an unlisted company, the Tribunal can order that unlisted company i.e. transferor company shall continue to be listed.

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Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it; (*i*) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and (*j*) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out: Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133. (*4*) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect. (*5*) Every company in relation to which the order	Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest: Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. (2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.	In case of dissolution of transferor company, the fee already paid on authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation. A certificate by the Company's auditor is required to be filed with the Tribunal to the effect that accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards. Under the Bill, a certified copy of order is required to

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is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order. (*6*) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. (*7*) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not. (*8*) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.	(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees. (4) In this section— (a) "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description; and (b) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.	be filed with the Registrar of Companies for registration within thirty days of its receipt.. The clause provides that the scheme shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. The clause also provides that every company in relation to which the order is made shall, until the completion of the scheme, file a statement in prescribed form and time with the Registrar every year duly certified by professionals indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not. Penal provisions have been made stringent.

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Explanation.—For the purposes of this section,— (*i*) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company; (*ii*) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies; (*iii*) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and (*iv*) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.		
233. Merger or amalgamation of certain companies (*1*) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or	No Provision	This is a new provision in the Bill.

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amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:— (*a*) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company; (*b*) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. Of the total number of shares; (*c*) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and (*d*) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing. (*2*) The transferee company shall file a copy of the scheme so approved in the manner as may		Separate and simpler provisions have been provided for the merger or amalgamation between two small companies or between a holding company and its wholly owned subsidiary company or such other class or classes of companies as may be prescribed. In case of merger or amalgamation under this clause certain additional conditions also need to be satisfied.

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be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated. (*3*) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies. (*4*) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days: Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme. (*5*) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (*2*) stating its objections and requesting that the Tribunal may consider the scheme under section 232. (*6*) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:		In case Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall approve the scheme. The proposal is to be approved by the members of the respective companies. A short form and time bound procedure has been provided for this kind of merger. In case the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the objections and requesting that the Tribunal may consider the scheme under section 232.

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Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme. (*7*) A copy of the order under sub-section (*6*) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated. (*8*) The registration of the scheme under sub-section (*3*) or sub-section (*7*) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up. (*9*) The registration of the scheme shall have the following effects, namely:— (*a*) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company; (*b*) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company; (*c*) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and		

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(*d*) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company. (*10*) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation. (*11*) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital: Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation. (*12*) The provisions of this section shall *mutatis mutandis* apply to a company or companies specified in sub-section (*1*) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (*b*) of subsection (*1*) of section 232. (*13*) The Central Government may provide for the merger or amalgamation of companies in such		The Central Government may provide through rules for the manner in which such companies may merge or

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manner as may be prescribed. (*14*) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.		amalgamate.
234. Merger or amalgamation of company with foreign company. (*1*) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply *mutatis mutandis* to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government: Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section. (*2*) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.	No provision	The Bill now makes provision for cross border mergers and amalgamations between Indian companies and companies incorporated in the jurisdictions of such countries. The manner in which such cross border merger will take place would be given under rules which would be prepared in consultation with Reserve Bank of India. The term ‘foreign company’

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Explanation.—For the purposes of sub-section (*2*), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.		is explained for this section.
CHAPTER XVI **PREVENTION OF OPPRESSION AND MISMANAGEMENT** **Application to Tribunal for relief in cases of oppression, etc.** **241.** (*1*) Any member of a company who complains that— (*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or (*b*) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order	**CHAPTER VI** **PREVENTION OF OPPRESSION AND MISMANAGEMENT** A. Powers of Tribunal **397. Application to [Tribunal] for relief in cases of oppression**.— (1) Any member of a company who complain that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399. (2) If, on any application under sub-section (1) the [Tribunal] is of opinion— (a) that the company's affairs [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up; the [Tribunal] may, with a view to bringing to an end the matters complained of, make such order	Provisions for relief in cases of oppression and for relief in cases of mismanagement are combined under one clause. Central Government may also file application to the Tribunal, if it is satisfied that the affairs of the company are being conducted in a manner prejudicial to the public interest.

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under this Chapter.	as it thinks fit.	
(*2*) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter	**398. Application to [Tribunal] for relief in cases of mismanagement**.— (1) Any members of a company who complain: (a) that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company; or (b) that a material change (not being a change brought about by, or in the interests of, any creditors (including debenture holders, or any class of shareholders, of the company has taken place in the management or control of the company, whether by an alteration in its Board of directors, [or manager], or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company [will be conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company; may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399. (2) If, on any application under sub-section (1), the [Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in	The Central Government may also apply to the Tribunal for an order under these provisions.

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	the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.	
242. Powers of Tribunal. (*1*) If, on any application made under section 241, the Tribunal is of the opinion— (*a*) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and (*b*) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit. (*2*) Without prejudice to the generality of the powers under sub-section (*1*), an order under that sub-section may provide for— (*a*) the regulation of conduct of affairs of the company in future; (*b*) the purchase of shares or interests of any members of the company by other members thereof or by the company; (*c*) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction	**402. Powers of Tribunal on application under section 397 or 398.**— Without prejudice to the generality of the powers of the Tribunal under section 397 or 398, any order under either section may provide for— [Corresponds to section 408 below] (a) the regulation of the conduct of the company's affairs in future; (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company; (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital.	Provisions under section 402, 403 and 404 of the Act have been combined under the new law as a single clause. It is proposed to provide for more powers to the Tribunal for the purpose of bringing to an end the oppression or mis- management in a company.

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of its share capital; (*d*) restrictions on the transfer or allotment of the shares of the company; (*e*) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;	(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:— (i) the managing director, (ii) any other director, (iii) [* * *], (iv) and (v) the manager, upon such terms and conditions as may, in the opinion of the [Tribunal] be just and equitable in all the circumstances of the case;	Restriction on the transfer or allotment of the shares of the company is a new power given to the Tribunal.
(*f*) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (*e*): Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;	(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;	
(*g*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be	(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under	

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deemed in his insolvency to be a fraudulent preference;	section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;	
(*h*) removal of the managing director, manager or any of the directors of the company;	[Corresponds to section 408, 409 given below]	
(*i*) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;	[Corresponds to section 408, 409 given below]	
(*j*) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (*h*); (*k*) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; (*l*) imposition of costs as may be deemed fit by the Tribunal;		Manner of appointing the managing director or manager would be provided under the rules as against the 1956 Act in which the procedure and manner of appointment as well as removal of the directors is provided under the Act.
(*m*) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.	(g) any other matter for which in the opinion of the Tribunal, it is just and equitable that provision should be made.	
(*3*) A certified copy of the order of the Tribunal under sub-section (*1*) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.		
(*4*) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and	**403. Interim order by Tribunal**.— Pending the making by it of a final order under section 397 or 398, as the case may be, the Tribunal may, on the application of any party to	

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conditions as appear to it to be just and equitable.	the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.	
(*5*) Where an order of the Tribunal under sub-section (*1*) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.	**404. Effect of alteration of memorandum or articles of company by order under section 397 or 398**.— (1) Where an order under section 397 or 398 makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the [Tribunal] any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.	
(*6*) Subject to the provisions of sub-section (*1*), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.	(2) Subject to the provisions of sub-section (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act; and the said provisions shall apply accordingly to the memorandum or articles as so altered.	
(*7*) A certified copy of every order altering, or	(3) A certified copy of every order altering or giving leave to alter a company's memorandum or articles, shall within [thirty] days after the making thereof, be filed by the company with the Registrar who shall register the same.	

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giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same. (*8*) If a company contravenes the provisions of sub-section (*5*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both. . [corresponds to 242 (2)(j) and (k) stated above]	(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty thousand rupees] B. Powers of Central Government **408. Powers of Government to prevent oppression or mismanagement**— **409. Power of Tribunal to prevent change in Board of directors likely to affect company prejudicially**.	Punishment is enhanced. The manner of appointing director, managing director is provided under the rules to the Companies Bill. Duplicity is avoided under the Bill. Common provision find place under one clause.
Class action. **245.** (*1*) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (*2*) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or	**No provision**	New provision Specified number of members or depositors may file class action suit in the Tribunal against the company if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a

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depositors for seeking all or any of the following orders, namely:— (*a*) to restrain the company from committing an act which is *ultra vires* the articles or memorandum of the company; (*b*) to restrain the company from committing breach of any provision of the company's memorandum or articles; (*c*) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors; (*d*) to restrain the company and its directors from acting on such resolution; (*e*) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force; (*f*) to restrain the company from taking action contrary to any resolution passed by the members; (*g*) to claim damages or compensation or demand any other suitable action from or against— (*i*) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part; (*ii*) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or (*iii*) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;		manner prejudicial to the interests of the company or its members or depositors. Banking companies are exempted under this clause. The ambit of order which a Tribunal may pass is specified in the clause.

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(*h*) to seek any other remedy as the Tribunal may deem fit. (*2*) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. (*3*) (*i*) The requisite number of members provided in sub-section (*1*) shall be as under:— (*a*) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares; (*b*) in the case of a company not having a share capital, not less than one-fifth of the total number of its members. (*ii*) The requisite number of depositors provided in sub-section (*1*) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed. (*4*) In considering an application under sub-section (*1*), the Tribunal shall take into account, in particular— (*a*) whether the member or depositor is acting in good faith in making the application for seeking		The requisite number of members and depositors who may apply for class action suit is provided under the clause. The factors which may be considered by the Tribunal for admitting the application are specified under the clause.

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an order; (*b*) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (*a*) to (*f*) of subsection (*1*); (*c*) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section; (*d*) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section; (*e*) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be— (*i*) authorised by the company before it occurs; or (*ii*) ratified by the company after it occurs; (*f*) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company. (*5*) If an application filed under sub-section (*1*) is admitted, then the Tribunal shall have regard to the following, namely:— (*a*) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed; (*b*) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead		

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applicant, who shall be in charge of the proceedings from the applicant's side; (*c*) two class action applications for the same cause of action shall not be allowed; (*d*) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.		
(*6*) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company. (*7*) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.		The order passed by the Tribunal is binding on company, members, depositors, auditors and any other person associated with the company.
(*8*) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order. (*9*) Nothing contained in this section shall apply to a banking company. (*10*) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (*1*).		The Tribunal may reject the application if it founds the same to be frivolous or vexations. It has also the power to penalise the frivolous applicants.

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	CHAPTER XVII	
REGISTERED VALUERS **Valuation by registered valuers.** **247.** (*1*) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company. (*2*) The valuer appointed under sub-section (*1*) shall,— (*a*) make an impartial, true and fair valuation of any assets which may be required to be valued; (*b*) exercise due diligence while performing the functions as valuer; (*c*) make the valuation in accordance with such rules as may be prescribed; and	**No provision**	It is a new provision under the Bill. Where under the provision of this new law, a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, these should be valued by the registered valuer. A registered valuer is required to be appointed by the audit committee or in its absence by the Board of Directors of the company. The qualifications and experience for becoming a registered valuer are proposed to be provided under the rules. The valuer while doing valuation is required to follow the good practices specified under the clause.

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(*d*) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets. (*3*) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees: Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. (*4*) Where a valuer has been convicted under sub-section (*3*), he shall be liable to— (*i*) refund the remuneration received by him to the company; and (*ii*) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.		Penalty provisions are provided under the clause.
CHAPTER XIX		
Revival and Rehabilitation of Sick Companies **Determination of sickness.** **253.** (*1*) Where on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of	PART VIA **REVIVAL AND REHABILITATION OF SICK INDUSTRIAL COMPANIES** **424A. Reference to Tribunal.**— (1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal	The concept of Industrial company/undertaking and criterion of Net Worth (as was there in SICA) has been

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demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company. (*2*) The applicant under sub-section (*1*) may, along with an application under that subsection or at any stage of the proceedings thereafter, make an application for the stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with. (*3*) The Tribunal may pass an order in respect of an application under sub-section (*2*) which shall be operative for a period of one hundred and twenty days. (*4*) The company referred to in sub-section (*1*) may also file an application to the Tribunal on one or more of the grounds specified in sub-sections (*1*) and (*2*) above.	along with an application containing such particulars as may be prescribed for determination of the measures which may be adopted with respect to such company: Section 2 (46AA) "sick industrial company" means an industrial company which has - (i) the accumulated losses in any financial year equal to fifty per cent or more of its average net worth during four years immediately preceding such financial year ; or (ii) failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company Provided that nothing contained in this sub-section shall apply to a Government company: Provided further that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company. (2) The application under sub-section (1) shall be accompanied by a certificate from an auditor from	dropped under this Companies Bill. More realistic definition viewing the practical aspects and past experience, has been given for considering as sick company. Sickness has now been linked with cash flows and the rights of majority Secured Creditors are being protected under these provisions. If any Company has failed to pay/secure/compound their debt within 30 days of notice to company, they may file an application to Tribunal for determination of company as sick company. Further, Section 253 (4) authorizes company to file an application on ground mentioned. Reference to Tribunal can be either made by Secured creditor or Company. Jurisdiction and power lies with Tribunal.

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	a panel of auditors prepared by the Tribunal indicating— (a) the reasons of the net worth of such company being fifty per cent or less than fifty per cent; or (b) the default in repayment of its debt making such company a sick industrial company, as the case may be.	
(*5*) Without prejudice to the provisions of sub-sections (*1*) to (*4*), the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any company has become, for the purposes of this Act, a sick company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:	(3) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:	
Provided that a reference shall not be made under this sub-section in respect of any company by— (*a*) the Government of any State unless all or any of the undertakings belonging to such company are situated in such State; (*b*) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.	Provided that a reference shall not be made under this sub-section in respect of any industrial company by— (a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State; (b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.	
(*6*) Where an application under sub-section (*1*) or		

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sub-section (*4*) has been filed,— (*a*) the company shall not dispose of or otherwise enter into any obligation with regard to, its properties or assets except as required in the normal course of business; (*b)* the Board of Directors shall not take any steps likely to prejudice the interests of the creditors.	(4) A reference under sub-section (1) or sub-section (3) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, come to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier.	
(*7*) The Tribunal shall, within a period of sixty days of the receipt of an application under sub-section (*1*) or sub-section (*4*), determine whether the company is a sick company or not: Provided that no such determination shall be made in respect of an application under sub-section (*1*) unless the company has been given notice of the application and a reasonable opportunity to reply to the notice within thirty days of the receipt thereof.	(5) The Tribunal may, on receipt of a reference under sub-section (1), pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.	
(*8*) If the Tribunal is satisfied that a company has become a sick company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts referred to in sub-section (*1*) within a reasonable time.		Where the Tribunal is satisfied that a company has become sick company, it shall after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts within a reasonable time.
(*9*) If the Tribunal deems fit under sub-section (*8*) that it is practicable for a sick company to pay its debts referred to in that sub-section within a reasonable time, the Tribunal shall, by order in		If the Tribunal deems fit that

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writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make repayment of the debt.		it is practicable for a sick company to pay its debts within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make repayment of the debt.
254. Application for revival and rehabilitation. (1) On the determination of a company as a sick company by the Tribunal under section 253, any secured creditor of that company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company: Provided that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted, such reference shall abate if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002: Provided further that no reference shall be made under this section if the secured creditors representing three-fourths in value of the amount		On the determination of sickness by the tribunal, the applicant shall make an application within 60 days of determination, for measures to be adopted for revival or rehabilitation. Application shall be accompanied by audited financial statement, scheme for revival or rehabilitation and other documents as may be prescribed.

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outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002: Provided also that where the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of securitization company or reconstruction company which has acquired such assets. (2) An application under sub-section (1) shall be accompanied by— (a) audited financial statements of the company relating to the immediately preceding financial year; (b) such particulars and documents, duly authenticated in such manner, along with such fees as may be prescribed; and (c) a draft scheme of revival and rehabilitation of the company in such manner as may be prescribed: Provided that where the sick company has no draft scheme of revival and rehabilitation to offer,		If the financial assets have been acquired by securitization or reconstruction company, then application for revival and rehabilitation can be made with the consent of securitization company or reconstruction company which has acquired such assets. Under SICA, absolute prohibition for reference being made to BIFR, if financial assets have been acquired by any securitization or reconstruction company u/s 5(1) of that Act.

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it shall file a declaration to that effect along with the application. (3) An application under sub-section (1) shall be made to the Tribunal within a period of sixty days from the date of determination of the company as a sick company by the Tribunal under section 253.		
256. Appointment of interim administrator. (*1*) On the receipt of an application under section 254, the Tribunal shall, not later than seven days from such receipt,— (*a*) fix a date for hearing not later than ninety days from date of its receipt; (*b*) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 257 to be held not later than forty-five days from receipt of the order of the Tribunal appointing him to consider whether on the basis of the particulars and documents furnished with the application made under section 254, the draft scheme, if any, filed along with such application or otherwise and any other material available, it is possible to revive and rehabilitate thesick company and such other matters, which the interim administrator may consider necessary for the purpose and to submit his report to the Tribunal within sixty days from the date of the order: Provided that where no draft scheme is filed by the company and a declaration has been made to that effect by the Board of Directors, the		Under the Bill, the Tribunal shall not later than seven days from receipt of application for revival and rehabilitation under clause 254 fix the date of hearing and appoint an interim administrator to convene a meeting of creditors of the company. The Tribunal may issue such directions as it may consider necessary. Where the Tribunal determines the Company as Sick and where the company has no draft scheme for its revival and rehabilitation, the

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Tribunal may direct the interim administrator to take over the management of the company; and (*c*) issue such other directions to the interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the sick company and for its proper management. (*2*) Where an interim administrator has been directed to take over the management of the company, the directors and the management of the company shall extend all possible assistance and cooperation to the interim administrator to manage the affairs of the company.		Tribunal may direct the Interim administrator to take over the management of the Company. Interim Administrator is also appointed to convene meeting of creditors. Interim Administrator shall be appointed by Tribunal from a panel maintained by the Central Govt. Under SICA, there was no provision for Interim administrator. BIFR appoints operating agency for conducting inquiry into working of sick industrial companies
259. Appointment of administrator. (*1*) The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government. (*2*) The terms and conditions of the appointment of interim and company administrators shall be such as may be ordered by the Tribunal.	**No Provision**	Under SICA, operating agency is appointed by BIFR for preparation of scheme of revival and its implementation. Under the Bill, in case the Tribunal is satisfied that the sick company may be revived, it may appoint a Company Administrator to prepare a scheme of revival and rehabilitation/take over the management of the Company. Company Administrator shall be

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(*3*) The Tribunal may direct the company administrator to take over the assets or management of the company and for the purpose of assisting him in the management of the company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.		appointed by Tribunal from a panel maintained by Central Govt. Under the clause a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government, it is from this databank that the tribunal shall appoint interim administrator. The company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts for the purpose of assisting him in the management of the company. Expert has been defined under the definitions clause.
269. Rehabilitation and Insolvency Fund.	**441C. Rehabilitation Fund**.—(1) There shall	

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269. (1) There shall be formed a Fund to be called the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies. (2) There shall be credited to the Fund— (a) the grants made by the Central Government for the purposes of the Fund; (b) the amount deposited by the companies as contribution to the Fund; (c) the amount given to the Fund from any other source; and (d) the income from investment of the amount in the Fund. (3) A company which has contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX, may make an application to the Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of the company or meeting the incidental costs during proceedings. (4) The Fund shall be managed by an administrator to be appointed by the Central Government in such manner as may be prescribed.	be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund. (2) There shall be credited to the Fund— (a) all amounts paid under section 441B; (b) any amount given as grants by the Central Government for the purposes of this Fund; (c) any amount given to the Fund from any other source; (d) any income from investment of the amount in the Fund; (e) amount refunded by the company under section 441G.	A Rehabilitation and Insolvency fund is to be set up for the purpose of Rehabilitation, Revival and Liquidation of Sick Company. However as per the existing provisions, it is not mandatory for any Company to transfer any such amount. More or less the provisions of the clause remain the same as in the existing Act.

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270. Modes of winding up. (1)The winding up of a company may be either— (a) by the Tribunal, or (b) voluntary. (2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1).	**425. Modes of winding up.**— (1) The winding up of a company may be either— (a) by the Tribunal; or (b) voluntary (2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.	
271. Circumstances in which company may be wound up by Tribunal. (1) A company may, on a petition under section 272, be wound up by the Tribunal,— (a) if the company is unable to pay its debts; (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality; (d) if the Tribunal has ordered the winding	**WINDING UP BY THE TRIBUNAL** Cases in which company may be wound up by the Tribunal **433. Circumstances in which company may be wound up by Tribunal.**— A company may be wound up by the Tribunal,— (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting; (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; (d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a	Grounds in respect of “reduction in number of members”, “default in filing statutory report to the Registrar” and “non-commencement of business” have been omitted in the Bill.

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up of the company under Chapter XIX;	private company, below two; (e) if the company is unable to pay its debts; (f) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up;	
(e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;		One more ground that has been added to order winding up of the company is if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.
(f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or	(g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years;	The words 'any five consecutive financial years' existing under the Companies Act are replaced with 'immediately preceding five consecutive financial years' in the Bill.
(g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.	(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality; (i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G: Provided that the Tribunal shall make an order for winding up of a company under	

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	clause (h) on application made by the Central Government or a State Government.	
	434. **Company when deemed unable to pay its debts**.—	
(2) A company shall be deemed to be unable to pay its debts,—	(1) A company shall be deemed to be unable to pay its debts—	
(a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;	(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;	"Re-structure" is also added as one of the tool which company can do on receipt of demand to repay the debt.
(b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or	(b) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or	
(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective	(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and	

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liabilities of the company.	prospective liabilities of the company. (2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.	The manner of giving authorization for raising the demand by a creditor has not been provided in the Bill as it is a matter of procedure.
275. Company Liquidators and their appointments. (1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator. (2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten	**449**. **Official Liquidator to be liquidator**.— On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company. **448. Appointment of Official Liquidator**.— (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who— (a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or (b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or	For the first time, the term 'company liquidator' is coined in the Bill. The requirement of appointment from the panel maintained by the Central Government is same both under the Companies Act and the Bill. However under the Bill the panel may consist of body corporate also. The Bill provides that such professionals on the panel must be having at least ten years' experience in company matters and such other qualifications as may be prescribed.

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years' experience in company matters. (3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator. (4) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence: Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard. (5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company. (6) On appointment as provisional liquidator or Company Liquidator, as the	(c) may be a whole-time or a part-time officer appointed by the Central Government: Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen. (2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be— (a) approved by the Tribunal for those appointed under clauses (a) and (b) of sub-section (1), subject to a maximum remuneration of five per cent of the value of debt recovered and realisation of sale of assets; (b) approved by the Central Government for those appointed under clause (c) of sub-section (1) in accordance with the rules made by it in this behalf. (3) …… (4) ……. (5) …….	The provision for taking views from the secured creditors and workmen has been omitted in view of Clause 275(3) and (4) to make the winding up process time bound and faster. The clause also empowers the Central Government to remove the name of a person from the panel on the grounds of misconduct, fraud, etc., after giving him an opportunity of being heard. Under the Bill, the terms and conditions of appointment of a liquidator/ company liquidator and the fee payable to him is required to be specified by the Tribunal on the basis of task required to be performed, experience, qualification of liquidator and size of the company. A declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment is required to be filed by the company liquidator or provisional liquidator within seven days of appointment. This is considered

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case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment. (7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.	(6) ……. **450. Appointment and Powers of Provisional Liquidator** (1) At any time after the presentation of a winding up petition and before the making of a winding up order, the Tribunal may appoint the Official Liquidator to be liquidator provisionally. (2) Before appointing a provisional liquidator, the Tribunal shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice. (3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or by a subsequent order ; but otherwise he shall have the same powers as a liquidator. (4) The Official Liquidator shall cease to hold office as provisional liquidator and shall become the liquidator, of the company, on a winding up order being made.	necessary to avoid any conflict of interest.
284. Promoters, directors, etc., to cooperate with Company Liquidator.	**No Provision**	**New Provision**

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(1) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties. (2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.		The clause casts an obligation upon the promoters, directors and officers of the company to cooperate with the company liquidator during winding up process. The contravention of sub clause (1) invites punishment.
291. Provision for professional assistance to Company Liquidator. (1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act. (2) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.	**459. Provision for legal assistance to liquidator**.— The liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD to assist him in the performance of his duties.	In addition to professionals mentioned in the existing Act, the Bill refers to 'other professionals' as may be necessary to assist Company Liquidator. The professionals appointed under this clause to assist the company liquidator shall disclose the conflict of interest or lack of independence in respect of his appointment.
301. Arrest of person trying to leave India or abscond. At any time either before or after passing a	**479**. **Power to arrest absconding contributory**.— At any time either before or after making a winding up order, the Tribunal may, on	The Bill provides for the detention of

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winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause— (a) the contributory to be detained until such time as the Tribunal may order; and (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.	proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause— (a) the contributory to be arrested and safely kept until such time as the Tribunal may order; and (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.	a person having property, accounts or papers of the company in his possession, if he is trying to leave India or abscond in addition to the contributory.
302. Dissolution of company by Tribunal. (1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company. (2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.	**481. Dissolution of Company** (1) When the affairs of a company have been completely wound up or when the Tribunal is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. (2) A copy of the order shall, within thirty days	Now, the Company Liquidator has to file the application before the Tribunal for dissolution when the affairs of a company have been completely wound up. The language has been simplified.

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(3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company. (4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.	from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company. (3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.	The penalty has been enhanced in the Bill.
304. Circumstances in which company may be wound up voluntarily. A company may be wound up voluntarily,— (a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or (b) if the company passes a special resolution that the company be wound up voluntarily.	**484**. **Circumstances in which company may be wound-up voluntarily**.— (1) A company may be wound-up voluntarily— (a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound-up voluntarily; (b) if the company passes a special resolution that the company be wound-up voluntarily. (2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or (b) of sub-section (1).	The language is simplified in the Bill. Sub-section (2) has been omitted in the Bill.

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310. Appointment of Company Liquidator. (1) The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.	**490**. **Power of company to appoint and fix remuneration of liquidators**.— (1) The company in general meeting shall— (a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and (b) fix the remuneration, if any, to be paid to the liquidator or liquidators. 490(2) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the Tribunal. 490(3) Before the remuneration of the liquidator or liquidators is fixed as aforesaid, the liquidator, or any of the liquidators, as the case may be, shall not take charge of his office.	The Bill provides that for voluntary winding up, the Company Liquidator shall be appointed by the Company in general meeting from the panel prepared by the Central Government.
(2) Where the creditors have passed a resolution for winding up the company under sub-section (3) of section 306, the appointment of the Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company: Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator. (3) The creditors while approving the appointment of Company Liquidator	**502. Appointment of liquidator**.— 502(1) The creditors and the company at their respective meetings mentioned in section 500 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. **504. Fixing of liquidators' remuneration**.— (1) The committee of inspection, or if there is no such committee, the creditors, may fix the	Now majority approval from creditors is required for the appointment of Company Liquidator to be effective. In case creditors do not approve appointment of company liquidator, they shall appoint another company liquidator. Under the Companies Act, remuneration is to be fixed by the committee of inspection and if there is no such committee, then by the creditors. The Tribunal shall

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appointed by the company or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution with regard to the fee of the Company Liquidator. (4) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.	remuneration to be paid to the liquidator or liquidators. (2) Where the remuneration is not so fixed, it shall be determined by the Tribunal. (3) Any remuneration fixed under sub-section (1) or (2) shall not be increased in any circumstances whatever, whether with or without the sanction of the Tribunal. 502(2) If the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator: Provided that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Tribunal for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors. 502(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator. 502(4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.	determine remuneration, if it is not so determined by creditors or committee. However, under the Bill, the creditors while approving the appointment of company liquidator or appointing the company liquidator of their own choice pass suitable resolution with regard to the fee of the company liquidator. Under the Bill, a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment is required to be filed by the liquidator within 7 days of such appointment. This is considered necessary to avoid conflict of interest.
314. Powers and duties of Company Liquidator in voluntary winding up.	**512. Powers and duties of liquidator in voluntary winding up**.—(1) The liquidator may,—	

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(1) The Company Liquidator shall perform such functions and discharge such duties as may be determined from time to time by the company or the creditors, as the case may be. (2) The Company Liquidator shall settle the list of contributories, which shall be prima facie evidence of the liability of the persons named therein to be contributories. (3) The Company Liquidator shall call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may consider necessary.	(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditor's voluntary winding up, with the sanction of the Tribunal or, the committee of inspection or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by clauses (a) to (d) of sub-section (1) of section 457 to a liquidator in a winding up by the Tribunal; (b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the liquidator in a winding up by the Tribunal; (c) exercise the power of the Tribunal under this Act of settling a list of contributories (which shall be prima facie evidence of the liability of the persons named therein to be contributories); (d) exercise the power of the Tribunal of making calls; (e) call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit. (2) The exercise by the liquidator of the powers given by clause (a) of sub-section (1) shall be subject to the control of the Tribunal;	In the Act, company in general meeting or liquidator may give powers to Board of directors to continue even after appointment of Liquidator, the Bill does not provide for such power.

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(4) The Company Liquidator shall maintain regular and proper books of account in such form and in such manner as may be prescribed and the members and creditors and any officer authorised by the Central Government may inspect such books of account. (5) The Company Liquidator shall prepare quarterly statement of accounts in such form and manner as may be prescribed and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.	and any creditor or contributory may apply to the Tribunal with respect to any exercise or proposed exercise of any of the powers conferred by this section.	Now the company liquidator is required to maintain the proper books of account. The members, creditors and any officer authorised can inspect such books of account. In addition, quarterly statement of accounts shall be prepared and filed within 30 days from the date of closure of quarter with the Registrar. Any failure may invite penalty upon company liquidator.
(6) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.	(3) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves. (4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number of them not being less than two.	
(7) The Company Liquidator shall observe due care and diligence in the discharge of his duties. (8) If the Company Liquidator fails to		Sub-clause (7) and (8) are new provisions to ensure accountability

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comply with the provisions of this section except sub-section (5) he shall be punishable with fine which may extend to ten lakh rupees.		by the Company Liquidator.
315. Appointment of committees. Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.	**503. Appointment of committee of inspection**.— (1) The creditors at the meeting to be held in pursuance of section 500 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons. (2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number of persons (not exceeding five) as they think fit to act as members of the committee: Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection. (3) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the Tribunal otherwise directs, be qualified to act as members of the committee. (4) On any application to the Tribunal for a direction under sub-section (3), the Tribunal may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution. (5) Subject to the provisions of sub-sections (1) to (4) and to such rules as may be made by the Central Government, the provisions of section 465 except sub-section (1) thereof	The Companies Act provides for Appointment of committee of inspection. The Bill provides for appointment of appropriate committee(s) to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions. Under Companies Act 1956 the Inspection committee is appointed by the creditors only. Whereas the committees under the Bill may be appointed by the members also, if no creditors are there.

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	shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Tribunal.	
359. Appointment of Official Liquidator. (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator. (2) The liquidators appointed under sub-section (1) shall be whole-time officers of the Central Government.	**448. Appointment of Official Liquidator**.— (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who— (a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or (b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or (c) may be a whole-time or a part-time officer appointed by the Central Government: Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen. (2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be— (a) approved by the Tribunal for those appointed under clauses (a) and (b) of	Under the Companies Act, the Official Liquidator is appointed from the Panel of professional firms, body corporate or whole-time or part-time officer appointed by the Central Government. Whereas in the Bill only whole-time officers of the Central Government shall be appointed as official liquidators. Further under the Bill the Official Liquidators shall be appointed only for small companies i.e. companies having assets of book value not exceeding one crore and for prescribed class of companies as per clause 361 as stated below.

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Corresponding to sub clause (1) (3) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.	sub-section (1), subject to a maximum remuneration of five per cent of the value of debt recovered and realisation of sale of assets; (b) approved by the Central Government for those appointed under clause (c) of sub-section (1) in accordance with the rules made by it in this behalf. (3) Where the Official Liquidator is an officer appointed by the Central Government under clause (c) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government. (4) All references to the "Official Liquidator" in this Act shall be construed as reference to the Official Liquidator specified in sub-section (1), or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be. (5) The amount of the remuneration payable shall— (a) form part of the winding up order made by the Tribunal; (b) be treated as first charge on the realisation of the assets and be paid to the Official Liquidator or to the	Now the salary and other allowances of the Official liquidator shall be paid by the Central Government.

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	Central Government, as the case may be. (6) The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf: Provided that the Tribunal may— (a) transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing; (b) remove the Official Liquidator on sufficient cause being shown; (c) proceed against the Official Liquidator for professional misconduct.	
361. Summary procedure for liquidation. (1) Where the company to be wound up under this Chapter, — (i) has assets of book value not exceeding one crore rupees; and (ii) belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provided under this Part. (2) Where an order under sub-section (1) is made, the Central Government shall appoint the Official Liquidator as the	**No Provision**	**New Provision** The summary procedure for liquidation is introduced in the Bill. The Central Government may order the company to be wound up by summary procedure if the company has assets of less than one crore rupees or belongs to prescribed class of companies. The Central Government has to appoint the official liquidator for said purpose. The official liquidator shall take into

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liquidator of the company. (3) The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled. (4) The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not. (5) On receipt of the report under sub-section (4), if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified. (6) After considering the investigation report under sub-section (5), the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.		his custody all the assets and actionable claims. A report is required to be submitted by the official liquidator within 30 days of his appointment to the Central Government specifically stating that the affairs of the company are conducted in fraudulent manner. On receiving the report, of the official liquidator, the Central Government may direct further investigation into the affairs of the company. After considering the investigation report, the Central Government may order for winding up of the company.
365. Order of dissolution of company. (1) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—	**No Provision**	**New Provision** The official liquidator is required to submit a final report to the Central Government and the Tribunal that company is finally wound up.

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(i) the Central Government, in case no reference was made to the Tribunal under sub-section (4) of section 364; and (ii) in any other case, the Central Government and the Tribunal. (2) The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved. (3) Where an order is made under sub-section (2), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.		On the basis of final report, the Central Government/ Tribunal has to issue the order that the company be dissolved. After making such order, the Registrar is required to strike off the name of the company from the register of companies.

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	CHAPTER XXII	
379. Application of Act to foreign companies.	**591. Application of sections 592 to 602 to foreign companies.**— (1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:— (a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and (b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business	The language is simplified in the Bill.

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Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.	within India at the commencement of this Act. (2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.	The 'foreign company' is used in the Bill, instead of 'a company incorporated outside India and having an established place of business in India' as used in the Companies Act 1956.
CHAPTER XXIV		
400. Electronic form to be exclusive, alternative or in addition to physical form. The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.	**No Provision**	**New Provision** The electronic form is exclusive, or in the alternative or in addition to the physical form.

CHAPTER XXVI

406. Power to modify Act in its application to Nidhis. (1) In this section, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.	**Modification of Act in its application to Nidhis and Mutual Benefit Societies** **620A. Power to modify Act in its application to Nidhis, etc.**— (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.	The Nidhi company is defined in the Bill. Provisions have been made slightly simpler but the effect is same.
(2) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.	(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the Notification— (a) shall not apply to any Nidhi or Mutual Benefit Society, or (b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.	
(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed	(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.	The Companies Act 1956 provides that every notification under this section shall be laid as soon as may be after it is issued, before each House of parliament. While the Bill provides that the notification to be issued by the Central Government with respect to the application of the provisions to the Nidhi Companies shall be laid in draft before each House of the Parliament before it is issued.

upon by both the Houses.		

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	CHAPTER XXVII	
408. Constitution of National Company Law Tribunal. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.	*PART IB* ***NATIONAL COMPANY LAW TRIBUNAL*** **10FB. Constitution of National Company Law Tribunal**.—The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force. ***10FC. Composition of Tribunal***.—*The Tribunal shall consist of a President and such number of judicial and Technical Members not exceeding sixty-two, as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette*.	Under the Bill, the number of Judicial and Technical members shall be prescribed by notification by the Central Government.
409. Qualification of President and Members of Tribunal. *(1)* The President shall be a person who is or has been a Judge of a High Court for five years. (*2*) A person shall not be qualified for appointment as a Judicial Member unless he— (*a*) is, or has been, a judge of a High Court; or	***10FD. Qualifications for appointment of President and Members***.— (*1*) *The Central Government shall appoint a person who has been, or is qualified to be, a Judge of a High Court as the President of the Tribunal*. (*2*) *A person shall not be qualified for appointment as Judicial Member unless he—* (a) *has, for at least fifteen years, held a judicial office in the territory of India;*	The criteria for appointment of Members to the Tribunal has been provided under the Bill. Language is simplified. Explanation to clause (c) of sub-section is newly inserted.

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(*b*) is, or has been, a District Judge for at least five years; or (*c*) has, for at least ten years been an advocate of a court. *Explanation*.— For the purposes of clause (c), in computing the period during which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.	*or* (b) *has, for at least ten years been an advocate of a High Court, or has partly held judicial office and has been partly in practice as an advocate for a total period of fifteen years; or* (c) *has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government including at least three years of service as a Member of the Indian Company Law Service* (*Legal Branch*) *in Senior Administrative Grade in that service*; *or* (d) *has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government* (*including at least three years of service as a Member of the Indian Legal Service in Grade I of that service*).	
(*3*) A person shall not be qualified for appointment as a Technical Member unless he— (*a*) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or (*b*) is, or has been, in practice as a chartered	(*3*) *A person shall not be qualified for appointment as Technical Member unless he—* (a) *has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government* [*including at least three years of service as a Member of the Indian Company Law Service* (*Accounts Branch*) *in Senior Administrative Grade in that Service*]; *or* (b) *is, or has been, a Joint Secretary to*	

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accountant for at least fifteen years; or (*c*) is, or has, been, in practice as a cost accountant for at least fifteen years; or (*d*) is, or has been, in practice as a company secretary for at least fifteen years; or (*e*) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or (*f*) is or has been for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947. **407. National Company Law Tribunal And Appellate Tribunal - Definitions.** **407.** In this Chapter, unless the context	*the Government of India under the Central Staffing Scheme, or any other post under the Central Government or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India for at least five years and has adequate knowledge of, and experience in, dealing with problems relating to company law; or* (c) *is, or has been, for at least fifteen years in practice as a chartered accountant under the Chartered Accountants Act, 1949* (*38 of 1949*); *or* (d) *is, or has been, for at least fifteen years in practice as a cost accountant under the Costs and Works Accountants Act, 1959* (*23 of 1959*); *or* (e) *is, or has been, for at least fifteen years working experience as a Secretary in whole-time practice as defined in clause* (*45A*) *of section 2 of this Act and is a member of the Institute of the Company Secretaries of India constituted under the Company Secretaries Act, 1980* (*56 of 1980*); *or* (f) *is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, science, technology, economics, banking, industry, law, matters relating to industrial finance, industrial management, industrial*	

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otherwise requires,— (*a*) "Chairperson" means the Chairperson of the Appellate Tribunal; (*b*) "Judicial Member" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be; (*c*) "Member" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be; (*d*) "President" means the President of the Tribunal; (*e*) "Technical Member" means a member of the Tribunal or the Appellate Tribunal appointed as such.	*reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would be in the opinion of the Central Government useful to the Tribunal; or* (g) *is, or has been, a Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947* (*14 of 1947*); *or* (h) *is a person having special knowledge of, and experience of not less than fifteen years in, the matters relating to labour*. Explanation.—*For the purposes of this Part*,— (i) *"Judicial Member" means a Member of the Tribunal appointed as such under sub-section* (*2*) *of section 10FD and includes the President of the Tribunal*; *(ii) "Technical Member" means a Member of the Tribunal appointed as such under sub-section (3) of section 10FD.*	
410. Constitution of Appellate Tribunal. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the	***10FR. Constitution of Appellate Tribunal***.— (*1*) *The Central Government shall, by notification in the Official Gazette, constitute with effect from such date as may be*	The Tribunal requires specialized expertise to address the issues referred to it.

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National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal. **411. Qualifications of Chairperson and Members of Appellate Tribunal.** (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court. (2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years. (3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.	*specified therein, an Appellate Tribunal to be called the "National Company Law Appellate Tribunal" consisting of a Chairperson and not more than two Members, to be appointed by that Government, for hearing appeals against the orders of the Tribunal under this Act*. (*2*) *The Chairperson of the Appellate Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.* (*3*) *A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would be in the opinion of the Central Government useful to the Appellate Tribunal.*	Concept of Judicial member and Technical Member introduced for Appellate Tribunal. Under the Bill the maximum number of Judicial and Technical Members provided are eleven. The reference to getting opinion from Central Government on qualification of members of the Appellate Tribunal does not find place in the Bill.
412. Selection of Members of Tribunal and Appellate Tribunal. (I) The President of the Tribunal and the	***10FX. Selection Committee***.— (*1*) *The Chairperson and Members of the Appellate Tribunal and President and*	The President of the Tribunal and

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Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India. (2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of – (*a*) Chief Justice of India or his nominee—Chairperson; (*b*) a senior Judge of the Supreme Court or a Chief Justice of High Court— Member; (*c*) Secretary in the Ministry of Corporate Affairs—Member; (*d*) Secretary in the Ministry of Law and Justice—Member; and (*e*) Secretary in the Department of Financial Services in the Ministry of Finance—Member. (3) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.	*Members of the Tribunal shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—* (a) *Chief Justice of India or his nominee .... Chairperson*; (b) *Secretary in the Ministry of Finance and Company Affairs .... Member*; (c) *Secretary in the Ministry of Labour .... Member*; (d) *Secretary in the Ministry of Law and Justice* (*Department of Legal Affairs or Legislative Department*) .... *Member*; (d) *Secretary in the Ministry of Finance and Company Affairs* (*Department of Company Affairs*) .... *Member*. (*2*) *The Joint Secretary in the Ministry or Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.* (*3*) *The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and*	the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India. The members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on recommendation of a Selection committee. The constitution of the selection committee has been provided in the bill. Convener to Selection Committee shall be the Secretary, Ministry of Corporate Affairs in place of Joint Secretary provided in the existing Act.

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	Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy.	
(4) The Selection Committee shall determine its procedure for recommending persons under sub-section (2).	(*4*) *The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.*	Selection Committee has been allowed to determine its procedure for recommending persons.
	(*5*) *Before recommending any person for appointment as the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal or President or Member of the Tribunal, as the case may be*.	
(5) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.	(*6*) *No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee*	
Appeal from orders of Tribunal. **421.** *(1)* Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.	*PART IC* ***APPELLATE TRIBUNAL*** ***10FQ. Appeal from order of Tribunal***.— (*1*) *Any person aggrieved by an order or decision of the Tribunal may prefer an*	An appeal is to be filed within a

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(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.	*appeal to the Appellate Tribunal.* (*2*) *No appeal shall lie to the Appellate Tribunal from an order or decision made by the Tribunal with the consent of parties.*	period of 45 days. The further extension of time period of forty five days has been fixed for entertaining appeal by the Appellate Tribunal.
(3) Every appeal under sub-section *(1)* shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:	(*3*) *Every appeal under sub-section* (*1*) *shall be filed within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:*	
Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.	*Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from not filing the appeal in time.*	
(4) On the receipt of an appeal under sub-section *(1)*, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.	(*4*) *On receipt of an appeal preferred under sub-section* (*1*), *the Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against*.	
(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal. **Expeditious disposal by Tribunal and**	(*5*) *The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal*.	The period of six months from the date of the receipt of the appeal, is reduced to three months from the date of commencement of the proceeding before the Tribunal or

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Appellate Tribunal **422.** (*1*) Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal. (*2*) Where any application or petition or appeal is not disposed off within the period specified in sub-section (*1*), the Tribunal or, as the case may be the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (*1*) by such period not exceeding ninety days as he may consider necessary.	(*6*) *The appeal filed before the Appellate Tribunal under sub-section* (*1*) *shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal*.	the filing of the appeal before the Appellate Tribunal, for the disposal of the proceeding or appeal
423. Appeal to Supreme Court Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:	***10GF. Appeal to Supreme Court***.— *Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of*	 The language has been slightly changed to bring clarity. In place of the words "from the date of communication of the decision or order", the words, "from the date of

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Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.	*such decision or order:* Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]	receipt of the order" have been substituted.
432. Right to legal representation. A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be. **2(*17*) "chartered accountant**" means a chartered accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (*1*) of section 6 of that Act; **2(*25*) "company secretary in practice**" means a company secretary who is deemed to be in practice under sub-section (*2*) of section 2 of the Company Secretaries Act, 1980;	***10GD. Right to legal representation***.—*The applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be*. Explanation.—*For the purposes of this section*,— (a) *"chartered accountant" means a chartered accountant as defined in clause* (b) *of sub-section* (*1*) *of section 2 of the Chartered Accountants Act, 1949* (*38 of 1949*) *and who has obtained a certificate of practice under sub-section* (*1*) *of section 6 of that Act*; (b) "*company secretary" means a company secretary as defined in clause* (c) *of sub-section* (*1*) *of section 2 of the Company Secretaries Act, 1980* (*56 of 1980*) *and who has obtained a certificate of practice under sub-section* (*1*) *of section 6 of that Act*;	Any party to the proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize any professional or legal practitioners or any other person (as against any other officer) to present his case.

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(*28*) "cost accountant" means a cost accountant as defined in clause (*b*) of subsection (*1*) of section 2 of the Cost and Works Accountants Act, 1959;	(c) *"cost accountant" means a cost accountant as defined in clause* (b) *of sub-section* (*1*) *of section 2 of the Cost and Works Accountants Act, 1959* (*23 of 1959*) *and who has obtained a certificate of practice under sub-section* (*1*) *of section 6 of that Act*; (d) *"legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice*.	
Transfer of certain pending proceedings. **434 (1)** On such date as may be notified by the Central Government in this behalf,— (*a*) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (*1*) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act; (*b*) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: Provided that the High Court may if it is	**10F. Appeals against the orders of the Company Law Board**.—Any person aggrieved by any decision or order of the Company Law Board *made before the commencement of the Companies* (*Second Amendment*) *Act, 2002* may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.	Section 434 of the new Act provides for the transfer of the pending proceedings to the tribunal constituted under the bill. Power has been given to the Central Government to make rules to ensure timely transfer of all matters, proceedings or cases pending before the CLB or other courts.

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satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; (*c*) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer: (*d*) any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated: Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act: Provided further that no fees shall be payable for making such reference under		

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this Act by a company whose appeal or reference or inquiry stands abated under this clause. (2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section		

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CHAPTER XXVIII **SPECIAL COURTS** **435. Establishment of Special Courts**. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. (3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.	**622**. **Jurisdiction to try offences.—** No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.	The provisions relating to offences have been revised in the Bill. The Bill states that Special Courts may be set up by the Central Government to ensure speedy trial of offences punishable under the new law. Special Court shall consist of a single judge. The judge shall be appointed by the Central Government with the concurrence of the Chief Justice of High Court within whose jurisdiction the judge to be appointed is working. However, such person should not be a Sessions Judge or an additional Sessions Judge immediately before such appointment.

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436. Offences triable by Special Courts. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— (a) all offences under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned; (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction; (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under	**No Provision**	**New provision** Under the Bill, notwithstanding anything contained in the Code of Criminal procedure, 1973: a. all offences under this Bill shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.; b. where a person accused of, or suspected of the commission of, an offence under this Bill is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate.

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section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.		
(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.		When trying an offence under this Bill, a Special Court may also try an offence other than an offence under this Bill with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years: Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed: Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance		The Special Court may try in a summary way any offence if it is punishable with imprisonment upto 3 years.

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with the procedure for the regular trial.		
437. Appeal and revision. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.	**No Provision**	**New provision** All appeals from Special Court shall lie to the High Court.
442. Mediation and Conciliation Panel. (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act. (2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1). (3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter pertaining	**No Provision**	**New provision** The Bill provides provisions for Mediation and Conciliation. For the purpose of mediation and conciliation, the Central Government shall maintain a panel of experts to be called as the 'Mediation and Conciliation Panel' consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Bill. The powers are vested with the Central Government, the Tribunal and the Appellate Tribunal to refer any matter to the panel of experts.

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to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit. (4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed. (5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be. (6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.		The Panel has to follow the prescribed procedure for disposal of matters. The party aggrieved by the recommendations of the Panel may file objections with the Central Government or the Tribunal or the Appellate Tribunal.

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CHAPTER XXIX		
447. Punishment for fraud. 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	**No Provision**	**New Provision** Now, the Bill provides for specific provisions relating to any act of fraud. This clause provides penalty for the person who is found to be guilty of fraud.

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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 is any wrongful gain or wrongful loss; (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled; (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.		The word ‘fraud’ has been explained in the clause. Further, the terms ‘wrongful gain’ and ‘wrongful loss’ also defined in the clause.
454. Adjudication of penalties. (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may	**No Provision**	**New Provision** The Central Government may appoint adjudicating officers for adjudging penalty under the provisions of this Bill.

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be prescribed. (2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1). (3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act. (4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default. (5) Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter. (6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed. (7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against. (8) (i) Where company does not pay the penalty imposed by the adjudicating officer or		The adjudicating officer may impose penalty on the company and the officer in default for any non-compliance or default. Before imposing penalty the company or the officer shall be given an opportunity of being heard. Aggrieved person may appeal to the Regional Director against the order of the adjudicating officer.

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the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees. (ii) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.		In the event of not paying the penalty within the stipulated time, the officer in default shall be punishable with imprisonment which may extend to six months or with fine or with both.
455. Dormant company. (1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company. Explanation.—For the purposes of this section,— (i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;	**No Provision**	**New Provision** If a company has been formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such an inactive company may make an application to the Registrar in the prescribed manner for obtaining the status of a dormant company. The terms 'inactive company' and 'significant accounting transaction' have been defined in this clause.

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(ii) “significant accounting transaction” means any transaction other than— (a) payment of fees by a company to the Registrar; (b) payments made by it to fulfil the requirements of this Act or any other law; (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records. (2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect. (3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed. (4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.		The Registrar shall maintain a register of dormant companies. The clause further provides that in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies. The company is required to pay the

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(5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. (6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.		annual fee as may be prescribed to the Registrar to retain its dormant status. However, if the dormant company fails to comply with the requirements of this clause then the Registrar shall have the power to strike off its name.
462. Power to exempt class or classes of companies from provisions of this Act. (1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,— (a) shall not apply to such class or classes of companies; or (b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification. (2) A copy of every notification proposed to be issued under sub-section (1), 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, and if,	**620. Power to Modify Act in Relation to Government Companies** (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than sections 618, 619 and 619A) specified in the notification : - (a) shall not apply to any Government company ; or (b) shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification. (2) A copy of every notification proposed to be issued under sub- section (1), 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, and if,	Instead of specific exemptions in the Bill itself, the Central Government may in the public interest, by notification direct that any of the provisions of this Act, shall not apply to such class or classes of companies; or shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification. Under the Companies Act 1956 such power can only be exercised in relation to Government Company.

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before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.	before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.	
464. Prohibition of association or partnership of persons exceeding certain number. (*1*) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force: Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred. (*2*) Nothing in sub-section (*1*) shall apply to— (*a*) a Hindu undivided family carrying on any	PART II **INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO** *Certain companies, associations and partnerships to be registered as companies under Act* **11 Prohibition of associations and partnerships exceeding certain number**.— (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian Law. (2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law. (3) This section shall not apply to a joint family as such carrying on a business; and	Maximum number of persons who can carry on any business, that has for its object the acquisition of gain, without registering it as a company under the new Act has been prescribed as one hundred. Professionals governed by Special Acts may form association or partnership without any restriction on maximum numbers.

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business; or (*b*) an association or partnership, if it is formed by professionals who are governed by special Acts. (*3*) Every member of an association or partnership carrying on business in contravention of sub-section (*1*) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.	where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded. (4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business. (5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to ten thousand rupees.	Amount of fine has been raised from ten thousand rupees to one lakh rupees.
465. Repeal of certain enactments and savings. (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed: Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies: Provided further that until a date of notified by the Central Government under subsection (1)	**PRODUCER COMPANIES** **SECTIONS 581A TO 581 ZT** **[TEXT OF THESE SECTIONS NOT RE-PRODUCED FOR BREVITY OF THE STATEMENT]**	The clause is framed by clubbing different sections of the Companies Act 1956. The Companies Act 1956 and the Registration of Companies (Sikkim) Act 1961 shall stand repealed. The provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* as if Companies Act, 1956 has not been repealed The Bill further provides that till the formation of Tribunal and Appellate

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of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed: Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed. (2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,— (a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;	**645. Saving of orders, rules, etc., in force at commencement of Act.**— Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it	Tribunal, the provisions of Companies Act 1956 with regard to Company Law Board and Court shall continue to apply. It has also been provided that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

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(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;	could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act. **652. Appointment under previous companies laws to have effect as if made under Act**.— Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act.	
(c) any principal or rule of law or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;	**653. Former registration offices continued**.— The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act.	
(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;	**656. Saving of incorporation under repealed Acts**.— Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed. **654. Registers under previous**	

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(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored. (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act; (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act; (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act; (i) any prosecution instituted under the repealed enactments and pending	**companies laws to be deemed to be part of registers under Act**.— Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act. **655. Funds and accounts under Act to be in continuation of funds and accounts under previous companies laws**.—All funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under previous companies laws. **646. Saving of operation of section 138 of Act 7 of 1913**.— Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (7 of 1913), as respects inspectors, or as respects the continuation of an inspection begun by inspectors, appointed before the commencement of this Act, and the provisions of this Act shall apply to or in relation to a report of inspectors appointed under the said section 138 as they apply to or in relation to a report of inspectors appointed under section 235 or 237 of this Act.	The prosecution proceedings pending before any Court shall continue to be heard and disposed of by the said Court.

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immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court; (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal. (3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act.	**658. Section 6 of the General Clauses Act, 1897 (10 of 1897) to apply in addition to sections 645 to 657 of Act**.—The mention of particular matters in sections 645 to 657 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals.	It has been provided in the Bill that any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act 1956 shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.
466. Dissolution of Company Law Board and consequential provisions. (*1*) Notwithstanding anything contained in section 465, the Board of Company Law	10A "Company Law Board" means the Board of Company Law Administration constituted under section 10E;	Dissolution of Company Law Board has been provided for in Clause 466 of the Bill.

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Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal		
469. Power of Central Government to make rules. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules. (3) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues. (4) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before	**642. Power of Central Government to make rules**. (1) In addition to the powers conferred by section 641, the Central Government may, by notification in the Official Gazette, make rules— (a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Central Government; and (b) generally to carry out the purposes of this Act. (2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues. (3) Every rule made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made 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	The provisions have been simplified. The penalty under this clause has been increased. Clause 24(1)(a) of the Companies Bill, 2012 provides that the provisions of Chapter III, Chapter IV and clause 127 of the Bill shall in so

CLAUSES OF THE COMPANIES BILL, 2012	CORREPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.	more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. (4) Every regulation made by the Securities and Exchange Board of India under this Act shall be laid, as soon as may be after it is made, 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.	far as they relate to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed on any stock exchange in India, shall, except as provided under this Bill, be administered by the SEBI by making regulations and to be laid before each House of Parliament for any modification and annulment. The clause does not provide the manner in which Rules made by the Central Government under this Bill are to be laid before the each House of Parliament.
470. Power to Remove difficulties. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not	**No Provision**	**New Provision** The clause seeks to empower Central Government to remove difficulty by publishing order in the Official Gazette in case of any

CLAUSES OF THE COMPANIES BILL, 2012	CORREPONDING SECTIONS OF THE COMPANIES ACT, 1956	COMMENTS
inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act. (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.		difficulty arises in giving effect to the provision of this Bill before the expiry of 5 years from the date of commencement of clause 1. The clause further provides that every order made to be laid before each House of Parliament as soon as possible.