NEW PROVISIONS PROPOSED BY COMPANIES BILL, 2008

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
32	**PROSPECTUS & ALLOTMENT OF SECURITIES : ACTION TO BE TAKEN BY AFFECTED PERSONS** Clause 32 seeks to provide that a suit may be filed or any other action may be taken by any person, group of persons or any association of persons who have been affected by any misleading statement or the inclusion or omission of any matter in the prospectus.
36	**PROSPECTUS & ALLOTMENT OF SECURITIES : GLOBAL DEPOSITORY RECEIPT** Clause 36 seeks to provide that a company may issue depository receipts to be dealt with in a depository mode in any foreign country.
67	**ACCEPTANCE OF DEPOSIT BY COMPANIES : REPAYMENT OF DEPOSITS, ETC., ACCEPTED BEFORE COMMENCEMENT OF ACT** Clause 67 seeks to provide that the deposit accepted before this Act comes into force by the company or any interest due thereon shall be repaid within one year. Extension of time for repayment may be granted by the Tribunal on an application.
68	**ACCEPTANCE OF DEPOSIT BY COMPANIES : DAMAGES FOR FRAUD** Clause 68 seeks to provide that in case the company fails to pay the deposit or any interest thereon and it is proved that the deposits had been accepted with intent to defraud the depositors, every officer who was responsible for acceptance of deposits shall be personally responsible, without any limitation of liability for all losses or damages incurred by the depositors.
70	**REGISTRATION OF CHARGES : APPLICATION FOR REGISTRATION OF CHARGE** Clause 70 seeks to provide that where a company fails to register the charge, the person in whose favour the charge is created may apply to the Registrar for registration of charges.
97	**MANAGEMENT AND ADMINISTRATION : VOTING THROUGH ELECTRONIC MEANS** Clause 97 seeks to provide that a member may exercise his vote at a meeting by electronic means.

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
109	**MANAGEMENT AND ADMINISTRATION : REPORT ON GENERAL MEETING** Clause 109 seeks to provide that every listed company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provision of the Act and the rules made thereunder. A copy of this report shall be filed with the Registrar.
127	**AUDIT AND AUDITORS : AUDITOR NOT TO RENDER CERTAIN SERVICES** Clause 127 seeks to provide that an auditor can do such services as approved by the Board or audit committee. The clause further provides for the services which the auditor cannot perform.
147	**DIRECTORS : DUTIES OF DIRECTORS** Clause 147 seeks to provide that a director of a company shall act in accordance with the company's articles. It further seeks to provide for the various duties of directors. In case of contravention, director is punishable with fine and if a director is found guilty of making any undue gain either to himself or to his relatives, partners or associates he shall also be liable to pay an amount, equal to that gain, to the company.
149	**DIRECTORS : RESIGNATION OF DIRECTOR** Clause 149 seeks to provide that a director may resign from his office by giving a notice in writing and the board shall, on receipt of such notice intimate the Registrar and place such resignation in the subsequent general meeting of the company. The clause further provides for the date on which the notice of resignation shall take effect. The clause seeks to provide that where the number of directors is reduced below the quorum fixed, the continuing director or directors shall be deemed to constitute the quorum.
170	**MEETING OF BOARD & ITS POWERS : RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS** Clause 170 seeks to provide for the manner in respect of regulation of arrangements between a company and its directors in respect of acquisition of assets for consideration other than cash. The clause provides that such arrangements shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company. The clause also provides the circumstances when an arrangement entered into by a company or its holding company in contravention of the provisions is voidable at the instance of the company.
171	**MEETING OF BOARD & ITS POWERS : CONTRACTS BY ONE PERSON COMPANIES** Clause 171 seeks to provide for the manner in which certain transactions or contracts are entered between a one person company and its sole member. It seeks to provide that where a One Person Company Limited by shares or

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
	by guarantee enters into a contract with the sole member of the company who is also director, 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 Board meeting held after entering into the contract and every such contract shall be informed to the Registrar.
172	**MEETING OF BOARD & ITS POWERS : PROHIBITION ON FORWARD DEALINGS IN SECURITIES OF COMPANY BY A KEY MANAGERIAL PERSONNEL** Clause 172 seeks to prohibit whole time director or any its key managerial personnel from buying certain kinds of future contracts in relation to securities of the company. It further provides that where whole-time director or key managerial personnel acquires any securities in contravention of this clause he shall, surrender such securities and the company shall not register the same in his name in the register and if they are in dematerialised form, it shall inform the depository not to record such acquisition.
173	**MEETING OF BOARD & ITS POWERS : PROHIBITION ON INSIDER TRADING OF SECURITIES** Clause 173 seeks to prohibit directors or key managerial person of the company from dealing in securities of a company, or counselling about, procuring or communicating, directly or indirectly, any unpublished price-sensitive information to any person.
178	**APPOINTMENT & REMUNERATION OF MANAGERIAL PERSONNEL : APPOINTMENT OF KEY MANAGERIAL PERSONNEL** Clause 178 seeks to provide that every company belonging to such class or description of companies, as prescribed by the Central Government, shall have whole-time key managerial personnel. It also seeks to provide that a whole-time key managerial personnel shall not hold office in more than one company at the same time except that of a director if company permits him in this regard.
191	**INSPECTION, INQUIRY AND INVESTIGATION : FREEZING OF ASSETS ON AN INQUIRY AND INVESTIGATION OF A COMPANY** Clause 191 seeks to provide that where in connection with inquiry or investigation into the affairs of the company or a reference by the Central Government or on complaint by any person that transfer or disposal of funds, properties or assets is likely to take place which is pre-judicial to the interest of company, then Tribunal may order for a period freezing such transfer, removal or disposal of assets for a period of three years.
194	**INSPECTION, INQUIRY AND INVESTIGATION : NO SUIT OR PROCEEDING TILL SUBMISSION OF FINAL REPORT** Clause 194 seeks to provide that no suit or proceedings shall lie in any Court or Tribunal or other authority in respect of any action initiated by the

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
	Central Government for making an investigation or for appointment of any inspector in this regard and no proceedings of any inspection shall be called in question or stayed by any Court or Tribunal or any authority till such investigation report is submitted.
199	**INSPECTION, INQUIRY AND INVESTIGATION : INVESTIGATION, ETC., OF FOREIGN COMPANIES** Clause 199 seeks to provide that the provisions of inspection or investigation applicable to Indian companies shall also apply *mutatis mutandis* to inspection or investigation of foreign companies.
204	**COMPROMISES, ARRANGEMENT & AMALGAMATIONS : MERGER OR AMALGAMATION OF CERTAIN COMPANIES** Clause 204 seeks to provide for merger or amalgamation between two small companies or between a holding company and its wholly owned subsidiary company by giving a notice of the proposed scheme inviting comments or objections by both the transferor and the transferee company. The scheme is to be approved by the respective members at a general meeting by passing a special resolution and by three-fourths in value of the creditors of respective companies. Transferee company shall file a copy of the approved scheme with the Registrar and the Official Liquidator. If the Registrar is of the opinion that such a scheme is not in public interest or in interest of the creditors, he may file an application before the Tribunal stating his objections and requesting to consider the scheme for reconstruction, merger or amalgamation, etc., under clause 203. The Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit. The transferor company shall be deemed to be dissolved on registration of the scheme. This clause also provides for effects of registration of the scheme with the Registrar.
205	**COMPROMISES, ARRANGEMENT & AMALGAMATIONS : AMALGAMATION BY MUTUAL AGREEMENT** Clause 205 seeks to provide the mode of merger or amalgamation between registered companies and companies incorporated in the jurisdiction of such countries as notified from time to time by the Central Government by mutual agreement. This clause further provides that foreign company may merge or amalgamate into a company or *vice versa* and the terms and conditions of the scheme of merger or amalgamation may provide for the payment of consideration to the shareholders of the merging company in cash or partly in cash or partly in Indian Depository Receipts.
209	**COMPROMISES, ARRANGEMENT & AMALGAMATIONS : REGISTRATION OF OFFER OF SCHEMES INVOLVING TRANSFER OF SHARES** Clause 209 seeks to provide mode of registration of offer of schemes or contract involving the transfer of shares. Every circular containing such offer and recommendation and containing a statement shall be

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
	accompanied by requisite information and must be registered with the Registrar before issue. The Registrar may refuse to register any such circular which does not contain the requisite information. This clause further seeks to provide that power to appeal shall lie with Tribunal in the event of refusal of registration of offer of scheme by Registrar of Companies.
211	**COMPROMISES, ARRANGEMENT & AMALGAMATIONS : LIABILITY OF THE OFFICERS IN RESPECT OF OFFENCES COMMITTED PRIOR TO AMALGAMATION, TRANSFER, ETC.** Clause 211 seeks to provide that the liability in respect of offences committed by the officers in default of Transferor Company prior to its merger/ amalgamation/acquisition shall continue after such merger or amalgamation/acquisition.
216	**PREVENTION OF OPPRESSION AND MISMANAGEMENT : CLASS ACTION** Clause 216 seeks to provide that any one or more members or one or more creditors may file an application before the Tribunal on behalf of the members and creditors if they are of the opinion that the management or control of the affairs of company are being conducted in a manner prejudicial to the interests of the company or its members or creditors and to restrain the company from oppression and mis-management. The order passed by the Tribunal shall be binding on the company and all its members and creditors.
218	**REGISTER VALUERS : VALUATION BY REGISTERED VALUERS** Clause 218 seeks to provide that valuation in respect of any property, stocks, shares, debentures, securities, goodwill or net worth of a company or its assets shall be valued by a person registered as a valuer, appointed by the audit committee or in its absence by the Board of Directors of the company.
219	**REGISTER VALUERS : REGISTRATION OF VALUERS** Clause 219 seeks to provide the procedure for registration as valuer. The Central Government shall maintain a register called the register of valuers in which the names and addresses of persons registered as valuers are to be recorded. It also provides that a Chartered Accountant, Cost and Works Accountant, Company Secretary or other persons possessing prescribed qualifications may apply to the Central Government to be registered as a valuer. The clause further provides that no company or body corporate shall be eligible to apply as registered valuer.
220	**REGISTER VALUERS : APPOINTMENT OF COMMITTEE OF EXPERTS** Clause 220 seeks to provide powers to the Central Government for appointment of a committee of experts to recommend suitable names for the purpose of inclusion in the register of valuers.
221	**REGISTER VALUERS : PRACTICE AS REGISTERED VALUERS** Clause 221 seeks to restrict a person to practice, describe or project himself as a registered valuer unless he is registered as a valuer. Further, the clause

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
	seeks to provide for submission of the report of valuation of any assets by a registered valuer. The registered valuer shall not charge at a rate exceeding the rate prescribed.
222	**REGISTER VALUERS : FURNISHING OF PARTICULARS IN CERTAIN CASES** Clause 222 seeks to provide that a registered valuer or a person who has made an application for registration as a valuer is sentenced to a term of imprisonment for any offence or found guilty of misconduct in his professional capacity, shall immediately after such conviction or finding intimate the particulars thereof to the Central Government.
223	**REGISTER VALUERS : REMOVAL AND RESTORATION OF NAMES OF VALUERS FROM REGISTER** Clause 223 seeks to provide the circumstances under which die name of a valuer may be removed from the register or restored in the register by the Central Government. The Central Government shall review the performance of all registered valuers once in three years and may remove the name of any person after giving opportunity of being heard.
225	**REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER : NO APPLICATION UNDER SECTION 224 IN CERTAIN SITUATIONS** Clause 225 seeks to provide certain situations in which no application be made by the company for removing its name from the register. It further provides penalty if a company files an application in violation of the conditions prescribed. An application filed by a company for removing its name shall be withdrawn by the company or rejected by the Registrar as soon as conditions when no application for removing name of the company from register is brought to his notice.
227	**FRAUDULENT APPLICATION FOR REMOVAL OF NAME** Clause 227 seeks to provide penalty in case fraudulent application is made for removal of name of the company from the register with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other person. Further, the Registrar may also recommend prosecution against the persons responsible for the filing such applications.
231	**REVIVAL & REHABILITATION OF SICK COMPANIES : APPOINTMENT OF INTERIM ADMINISTRATOR** Clause 231 seeks to provide that the Tribunal shall fix a date of hearing not later than ninety days from date of the receipt of an application and appoint an interim administrator to convene a meeting of creditors of the company to ascertain whether it is possible to revive and rehabilitate the sick company. In case, no draft scheme is filed by the company, the Tribunal may direct the interim administrator to take over the management of the company to protect and preserve the assets of the sick company and for its proper management

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
232	**REVIVAL & REHABILITATION OF SICK COMPANIES : COMMITTEE OF CREDITORS** Clause 232 seeks to provide that the interim administrator shall appoint a committee of creditors having not more than seven members including a representative of secured-creditor, if any. The interim administrator may direct any promoter, director or any other key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as considered necessary by the interim administrator.
233	**REVIVAL & REHABILITATION OF SICK COMPANIES : ORDER OF TRIBUNAL** Clause 233 seeks to provide that if the Tribunal is satisfied with the report of the interim administrator wherein the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that it is not possible to revive and rehabilitate such company, the Tribunal shall order that the proceedings for the winding-up of the company be initiated; or shall appoint a company administrator for the company and advice such administrator to prepare a scheme of revival and rehabilitation of the sick company. The Tribunal may, appoint an interim administrator as the company administrator.
234	**REVIVAL & REHABILITATION OF SICK COMPANIES : APPOINTMENT OF ADMINISTRATOR** Clause 234 seeks to provide that the interim administrator or company administrator shall be appointed by the Tribunal from a panel of advocates, company secretaries, chartered accountants, cost and works accountants, etc. The Tribunal may direct the company administrator to take over the assets or management of the company to assist him in the management of the company. The company administrator may engage the services of experts.
240	**REVIVAL & REHABILITATION OF SICK COMPANIES : WINDING-UP OF COMPANY ON REPORT OF COMPANY ADMINISTRATOR** Clause 240 seeks to provide that if the scheme is not approved by the creditors in the manner specified, the company administrator shall submit a report to the Tribunal and the Tribunal shall order for the winding-up of the sick company.
243	**REVIVAL & REHABILITATION OF SICK COMPANIES : BAR OF JURISDICTION** Clause 243 seeks to provide that no appeal shall lie and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Chapter. Further, no civil court shall have any jurisdiction in respect of matter which Tribunal or Appellate Tribunal is empowered.
251	**WINDING-UP BY TRIBUNAL : REMOVAL AND REPLACEMENT OF LIQUIDATOR** Clause 251 seeks prescribe the grounds on which the Tribunal may remove the provisional liquidator or the company liquidator as liquidator of the

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
	company. In case of death, resignation or removal, the Tribunal may transfer the work assigned to another company liquidator after recording the reasons in writing. The clause also authorises the Tribunal to recover such loss or damage from the liquidator who fails to perform his duty after providing him a reasonable opportunity of being heard.
255	**WINDING-UP BY TRIBUNAL : JURISDICTION OF TRIBUNAL** Clause 255 seeks to provide the jurisdiction of Tribunal to entertain or dispose of any suit or proceedings or claim by or against the company and also to entertain or dispose of any question of law arising before or after winding-up.
257	**WINDING-UP BY TRIBUNAL : DIRECTIONS OF TRIBUNAL ON REPORT OF COMPANY LIQUIDATOR** Clause 257 seeks to empower the Tribunal to consider the report of Company Liquidator and fix a time limit or revise the time limit already fixed within which the entire proceedings shall be completed and the company dissolved. The clause further seeks to empower the Tribunal to order for sale of assets of the company or appointment of sale committee to assist the company liquidator in sale. The clause seeks to empower the Tribunal, to order for investigation where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company and also order such steps as may be necessary to protect, preserve or enhance the value of the assets of the company.
259	**WINDING-UP BY TRIBUNAL : DIRECTORS, OFFICERS AND EMPLOYEES TO CO-OPERATE WITH COMPANY LIQUIDATOR** Clause 259 seeks to provide for co-operation by the promoters, directors, officers and employees, past and present, of the company to the Company Liquidator in discharge of his functions and duties. This clause further seeks to provide that if any of the aforesaid person fails to discharge his obligations, he shall be punishable with imprisonment or with fine or with both.
261	**WINDING-UP BY TRIBUNAL : OBLIGATIONS OF DIRECTORS AND MANAGERS** Clause 261 seeks to put obligations on directors and managers of limited company whose liability is unlimited, to contribute in addition to his liability to contribute as an ordinary member. The clause further provides for the exemptions when a past Director or manager shall not be liable to make further contribution as if he were at the commencement of winding-up, a member of an unlimited company.
263	**WINDING-UP BY TRIBUNAL : SUBMISSION OF PERIODICAL REPORTS TO THE TRIBUNAL** Clause 263 seeks to provide that the Company Liquidator shall make quarterly reports to the Tribunal with respect to the progress of the winding-up of the company. The clause further provides that the Tribunal may, on

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	an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.
334	**OFFICIAL LIQUIDATOR : APPOINTMENT OF OFFICIAL LIQUIDATOR** Clause 334 seeks to empower the Central Government for appointment of as many Official Liquidators as it may consider necessary and may also appoint Joint, Deputy or Assistant Official Liquidators to assist him in discharge of his functions in relation to the winding up of companies by the Tribunal. It also seeks to provide that the salary and allowances to the Official Liquidator, etc., shall be paid by the Central Government.
336	**OFFICIAL LIQUIDATOR : SUMMARY PROCEDURE FOR LIQUIDATOR** Clause 336 seeks to provide for winding-up of company having assets of book value not exceeding one crore rupees through summary procedure. This clause also seeks to empower the Tribunal to appoint Official Liquidator as the Liquidator of the company, who shall submit a report to the Tribunal indicating whether any fraud has been committed in promotion, formation or management of affairs of the company. It also seeks to provided that the Tribunal if satisfied that fraud has been committed, may order for the investigation of the affairs of the company. The clause finally provides that the Tribunal may order for the winding-up of the company after considering the investigation report.
337	**OFFICIAL LIQUIDATOR : SALE OF ASSETS AND RECOVERY OF DEBTS DUE TO COMPANY** Clause 337 seeks to provide that the Official Liquidator shall dispose of all the assets and collect the amount payable to the company from the debtors and contributories. It also seeks to provide that the Official Liquidator shall deposit the amount recovered into the public account of India in the Reserve Bank of India.
338	**OFFICIAL LIQUIDATOR : SETTLEMENT OF CLAIMS OF CREDITORS BY OFFICIAL LIQUIDATOR** Clause 338 seeks to provide for settlement of claims of creditors by the Official Liquidator.
339	**OFFICIAL LIQUIDATOR : APPEAL BY CREDITOR** Clause 339 seeks to provide that any creditor aggrieved by the decision of the Official Liquidator may apply to the Tribunal who shall either dismiss the application or modify order of Official Liquidator. If the claim has been accepted, the Official Liquidator shall make payment to the creditors.
340	**OFFICIAL LIQUIDATOR : ORDER OF DISSOLUTION OF COMPANY** Clause 340 seeks to provide for submission of final report to the Tribunal by the Official Liquidator when he is satisfied that the company can be finally wound up. The Tribunal shall on receiving the report order for the dissolution of the company. After the order is passed, the Registrar shall strike off

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
	the name of the company from the register of companies and a notification to this effect be published in the Official Gazette.
361	**REGISTRATION OFFICES & FEES : ELECTRONIC FORM TO BE EXCLUSIVE, ALTERNATIVE OR IN ADDITION** Clause 361 seeks to provide that the Central Government may provide that the electronic form shall be exclusive, or in the alternative or in addition to the physical form.
383	**NATIONAL COMPANY LAW TRIBUNAL : EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL** Clause 383 deals with expeditious disposal of cases before Tribunal or Appellate Tribunal. It provides that the Tribunal or the Appellate Tribunal shall make every effort to dispose of cases within three months from the date of commencement of proceedings before Tribunal or filing of appeal before Appellate Tribunal.
387	**NATIONAL COMPANY LAW TRIBUNAL : DELEGATION OF POWERS** Clause 387 deals with delegation of powers. It provides that the Tribunal or the Appellate Tribunal may by general or special order authorise any person to inquire into the matter connected with any proceeding and report to it.
396	**SPECIAL COURTS : ESTABLISHMENT OF SPECIAL COURTS** Clause 396 deals with the establishment of Special Courts by the Central Government in consultation with the Chief Justice of the High Court within whose jurisdiction the Judge is to be appointed. It further provides that person so appointed as Judge of Special Court shall be one who immediately before such appointment was a Session Judge or an Additional Sessions Judge.
397	**SPECIAL COURTS : OFFENCES TRIABLE BY SPECIAL COURTS** Clause 397 seeks to provide that all offences under this Act shall be triable by the Special Courts. However, where an accused is produced before Magistrate, the Magistrate may order detention of such person and if he considers the detention unnecessary, he shall forward the case to the Special Court. The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years although it may order for the regular trial.
398	**SPECIAL COURTS : APPEAL AND REVISION** Clause 398 seeks to deal with appeal and revision. It provides that High Courts shall have the power of appeal or revision as if special courts were Court of Session trying cases within the local limits of the jurisdiction of the High Court.

CLAUSE NO. OF COMPANIES BILL, 2008	DESCRIPTION OF PROPOSED PROVISION
399	**SPECIAL COURTS : APPLICATION OF CODE TO PROCEEDINGS BEFORE A SPECIAL COURT** Clause 399 deals with application of code to the proceedings before the Special Court. It provides that Special Court shall be deemed to be a Court of Session and the provisions of the Code of Criminal Procedure, 1973 shall apply to the Special Court.
401	**SPECIAL COURTS : TRANSITIONAL PROVISIONS** Clause 401 deals with transitional power. It seeks to provide that till such time Special Courts are established the existing Court of Session will continue to exercise jurisdiction. However, it will not affect the powers of High Court to transfer any case.
405	**SPECIAL COURTS : COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE** Clause 405 deals with compensation for accusation without reasonable cause before the Special Court or Court of Session.
410	**MISCELLANEOUS : PUNISHMENT IN CASE OF REPEATED DEFAULT** Clause 410 seeks to provide that if any default is repeated, it shall be punishable with imprisonment as provided and twice the amount of fine for such default.
413	**ADJUDICATION OF PENALTIES** Clause 413 seeks to provide that Central Government may appoint adjudicating officers for adjudging penalty under the provision of this Act. The company or officer shall be given an opportunity to be heard before imposing any penalty. Aggrieved person may appeal to Regional Director. Any person not paying penalty shall be punished with imprisonment or fine or with both.
414	**DORMANT COMPANY** Clause 414 seeks to deal with dormant company. It seeks to provide that a dormant company shall be one which has not been carrying any business or has not made any significant accounting transaction in the last two financial years. Such a company may make an application to Registrar for obtaining the status of a dormant company. The Registrar shall maintain the register of dormant company, which shall keep the minimum number of directors and pay annual fees. This clause further provides that in case of a company which has not filed Balance Sheet, Profit and Loss Account or annual return for two financial years, the Registrar shall enter the name in the register maintained for dormant company. 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.

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415	**MISCELLANEOUS : PROTECTION OF ACTION TAKEN IN GOOD FAITH** Clause 415 seeks to provide that no suit, prosecution or other legal proceedings shall lie against the Government or any other person authorised by the Government for acts done or intended to be done in good faith.
421	**MISCELLANEOUS : POWER TO MODIFY CERTAIN PROVISIONS OF ACT IN THEIR APPLICATION TO PRIVATE COMPANY, ONE PERSON COMPANY AND SMALL COMPANY** Clause 421 seeks to provide that in case of one person company or small company the Central Government may by notification exempt the compliance of certain provisions. However, a copy of draft notification shall be laid before both the Houses of Parliament
423	**REPEAL OF CERTAIN ENACTMENTS AND SAVINGS** Clause 423 deals with repealing of Companies Act, 1956 and Registration of Companies (Sikkim) Act, 1961. However, the provisions relating to producer companies shall be applicable *mutatis mutandis* as if Companies Act has not been repealed. It further provides that till the formation of Tribunal and Appellate Tribunal, the provisions of Companies Act, 1956 with regard to Company Law Board shall continue to apply.
425	**MISCELLANEOUS : POWER TO REMOVE DIFFICULTIES** Clause 425 seeks to provide that Central Government may remove any difficulties which may arise in giving effect to the provisions within three years of commencement of the Act by publishing it in the Official Gazette and laying before each House of Parliament

COMPANIES ACT, 1956 VERSUS COMPANIES BILL, 2008 - AN ANALYSIS

Introduction

1. Much awaited Companies Bill, 2008 has been finally introduced. If we see the provisions, mainly it is old wine in new bottle. However, various sections have been rearranged and arrangement is much more logical compared to 2006 Act.

If we compare Companies Act, 1956 (as amended by Amendment Act, 2002 which are not made effective) with Companies Bill, 2008, there are only some changes which can be termed as radical. These are -

- All restrictions on managerial remuneration removed.
- Concept of one person company introduced.
- Company (except NBFC and Banks) prohibited from accepting public deposits.
- In addition to Company Secretary and Managing Director/Manager, a company having prescribed paid up capital should have 'Chief Financial Officer'.

Overall arrangement of sections

1.1 The overall arrangement of sections is as follows -

Chapter	*Title*	*Clause numbers as per 2008 Bill*	*Corresponding sections as per Companies Act, 1956*
1	Preliminary	1 to 2	1 to 6
2	Incorporation of companies	3 to 21	11 to 54
3	Prospectus and allotment of securities	22 to 36	55 to 81
4	Share capital and debentures	37 to 65	82 to 123
5	Acceptance of deposits by companies	66 to 68	58A to 58B
6	Registration of charges	69 to 77	124 to 145
7	Management and administration	78 to 109	146 to 197
8	Declaration and payment of dividend	110 to 115	205 to 207
9	Accounts of companies	116 to 122	209 to 223

Chapter	*Title*	*Clause numbers as per 2008 Bill*	*Corresponding sections as per Companies Act, 1956*
10	Audit and auditors	123 to 131	224 to 233B
11	Appointment and qualification of directors	132 to 153	252 to 284
12	Meeting of Board and its powers	154 to 173	285 to 308
13	Appointment and remuneration of managerial personnel	174 to 178	309 to 311
14	Inspection, Inquiry and Investigation	179 to 200	234 to 251
15	Compromise, Arrangements and Amalgamations	201 to 211	390 to 396A
16	Prevention of oppression and mis-management	212 to 217	397 to 409
17	Registered Valuers	218 to 223	New provision
18	Removal of names of companies from the Register	224 to 228	560
19	Revival and rehabilitation of sick companies	229 to 244	424A to 424L
20	Winding up	245 to 340	425 to 559
21	Companies incorporated outside India	341 to 355	591 to 608
22	Government companies	356 and 357	617 to 620
23	Registration offices and fees	358 to 365	609 to 614A
24	Companies to furnish information and statistics	366	615
25	Nidhis	367	620A
26	NCLT and NCLAT	368 to 395	10FB to 10GF
27	Special Courts	396 to 406	New provision
28	Miscellaneous	407 to 426	621 to 658

Recap of changes made vide Companies (Amendment) Act, 2002

1.2 Major changes were made by Companies (Amendment) Act, 2002 and Companies (Second Amendment) Act, 2002. These Acts were passed by Parliament in December, 2002. Provisions of Companies (Amendment) Act in respect of producer company have been brought into force w.e.f. 6-2-2003.

Provisions of Companies (Second Amendment) Act, which are in respect of NCLT, sick company, winding up etc. have not been brought into effect. Now these stand merged with Companies Bill, 2008.

The highlights of changes made by the Amending Act 2002 are as follows -

- Formation of 'Tribunal' to be known as National Company Law Tribunal (NCLT).

- Abolition of present Company Law Board (CLB). Matters pending with CLB will be transferred to NCLT. Orders already passed by CLB are valid and can be enforced through Court.
- Powers of High Court relating to reduction of capital, amalgamation and reconstruction and winding up will be transferred to the 'Tribunal'.
- Powers of CLB (Company Law Board) relating to public deposits, complaints regarding refusal to transfer/transmit securities, rectification of register, ordering that inspection of company should be conducted, oppression and mismanagement etc. will be transferred to Tribunal.
- Powers of Company Law Board (CLB) in respect of change of registered office from one State to another, compelling inspection of register/documents when refused by company, debenture trustees, register of charges, ordering general meetings, ordering that representation of a member or director/auditor under removal need not be circulated and composition of offences will be transferred to Central Government.
- Appeal against order of NCLT will be with National Company Law Appellate Tribunal [NCLAT].
- Appeal against order of NCLAT to Supreme Court only on question of law.
- Jurisdiction of civil court barred where jurisdiction is available to NCLT. Of course, Constitutional Powers of High Court remain unaffected, as these powers cannot be curtailed by any legislation.
- Levy of cess on all companies. The cess shall be not less than 0.005% but not more than 0.1% on the value of turnover or its annual gross receipts, whichever is higher. The provision is made under chapter of winding up. It seems to be placed at wrong place, as it should have been near provision relating to revival of sick companies.
- The Cess will be transferred to 'Rehabilitation and Revival Fund' with sanction of Parliament. The fund will be utilized for making interim payments to workmen, protection of assets of sick company and revival and rehabilitation of sick company
- Powers in respect of rehabilitation of sick industrial companies to be undertaken by Tribunal and not by BIFR. However, the provision may not be made effective as SICA has not been repealed. Till SICA is repealed, NCLT may have jurisdiction in respect of ancillary undertakings only.
- Government Sick Companies out of NCLT - No need to make reference to NCLT by sick Government companies.
- Company itself has to submit scheme for its revival/rehabilitation, along with CA certificate giving reasons why it became sick, while making reference.
- Definition of 'sick company' made very tight. Now, even erosion of 50% net worth or not paying creditors for three consecutive quarters is sufficient to make a company 'sick industrial company'.
- Protection to sick company against suits, recovery proceedings and winding up petitions as was available under section 22 of SICA is not available under new provisions.
- Time limit prescribed for various stages for decision in respect of revival and rehabilitation of sick industrial company. Hopefully, it will speed up the matters.
- SICA provisions were overriding provisions. The provisions of SICA prevailed over all other laws, except FEMA and Urban Land Ceiling Act, as per section 32(1) of SICA. In absence of such overriding powers, even if scheme of revival is approved by Tribunal (NCLT),

formalities and procedures as required under Companies Act and other laws will be required to be completed.

- Firm of professionals (like CA, CS or ICWA) or body corporate formed by professionals can be appointed as 'Official Liquidator'. Their powers and duties considerably enhanced so that winding up process can be expedited.
- Power of compounding offences will be with Central Government concurrently with Court.
- Provision made for 'Producer Company' as an alternative to cooperative form of organization. The provision will be useful particularly in case of Multi State Cooperative Societies or large cooperative societies of producers of primary produce, handlooms, handicrafts and products resulting from them and ancillary activities. [This amendment has been made effective w.e.f. 6-2-2003]

Summary of important changes proposed by Companies Bill, 2008

2. Some important changes made in 2008 Bill are as follows -

General

- Concept of 'one person company' introduced. It has only one member [Clause 2(*zzk*) of Companies Bill, 2008]. Memorandum has to prescribe name of person who will be member in event of death or disability of the one member [Clause 3(1) of Companies Bill, 2008]. It will have OPC Ltd. at the end of name.
- Small company means a private company having paid up capital and turnover lower than the limit as prescribed [Clause 2(1)(*zzzg*) of Companies Bill, 2008].
- Provisions relating to minimum capital of private and public companies dispensed with.

Elimination of some unnecessary formalities

- Provisions relating to certificate of commencement of business dispensed with. Only declaration required by public company [Clause 10 of Companies Bill, 2008].
- No provision relating to statutory meeting and statutory report dispensed with.

Incorporation of company

- Documents to be filed at the time of incorporation should contain name of first directors, their DIN, address etc. with their consent and particulars of interest [Clause 7(*f*) of Companies Bill, 2008]. Provision of 'printing' of memorandum and articles dispensed with.
- Change of registered office outside city by only special resolution. No permission required [Clause 11 of Companies Bill, 2008]. However, change outside State will require approval of Central Government [Clause 12(4) of Companies Bill, 2008].
- Company can re-register itself with change in memorandum and articles [Clause 17 of Companies Bill, 2008].

Share capital

- Concept of shares with differential rights eliminated.
- Provisions relating to register and index of members continue.
- A suit may be filed or any action may be taken by any person, group of persons or association of persons who have been affected by misleading statement or inclusion or omission of any matter in prospectus [Clause 32 of Companies Bill, 2008].

Public deposits and charges

- A company (other than NBFC, banking company etc.) can accept deposits only from members. Acceptance of deposits from public is prohibited except by NBFC and banking company [Clause 66 of Companies Bill, 2008]
- If deposits accepted before the new Act are not repaid within one year, officer concerned will be personally liable [Clause 68 of Companies Bill, 2008]
- If company fails to register a charge, person in whose favour charge is created may apply to ROC for registration of charge [Clause 70 of Companies Bill, 2008]

Management and administration

- Register and index maintained by depository will be deemed to be register and index for purpose of Companies Act [Clause 78 of Companies Bill, 2008]
- Extract from Annual Return shall form part of report of Board of Directors [Clause 82(2) of Companies Bill, 2008]
- For purpose of holding AGM, what is relevant is 'National Holiday' and not holidays under Negotiable Instruments Act [Clause 85(2) of Companies Bill, 2008]
- If explanatory statement to general meeting does not disclose interest of director or manager or managerial personnel, he will be liable to compensate to company to the extent of benefit received by him [Clause 91(4) of Companies Bill, 2008]
- If meeting is adjourned, notice of three days is required either individually or by press advertisement [proviso to Clause 92(2) of Companies Bill, 2008]
- Voting by electronic mode at meeting will be permitted [Clause 97 of Companies Bill, 2008]
- Listed company to publish report of each AGM with ROC [Clause 109 of Companies Bill, 2008]
- Unpaid dividend can be claimed any time. The limit of seven years will not apply [Clause 112 of Companies Bill, 2008]

Accounts and Audit of accounts

- There is no limit on number of subsidiaries but preparation of consolidated statement and presentation at AGM is required [Clause 117 of Companies Bill, 2008]
- In addition to accounting standards, auditing standards will also be mandatory [Clauses 126(3)(*e*) and 126(9) of Companies Bill, 2008]
- Auditor can render additional services as approved by Board or Audit Committee. However, auditor cannot render services like internal audit, investment advise, management services etc. [Clause 127 of Companies Bill, 2008]
- Cost Auditor will be appointed by Board of Directors but remuneration to be fixed by members. Approval of Central Government is not required [Clause 131(3) of Companies Bill, 2008]

Appointment and qualification of directors

- At least one director should be a person ordinarily resident in India, i.e. for at least 182 days stay in India in a calendar year [Clause 132(2) of Companies Bill, 2008]
- Listed company with paid up capital above prescribed limit to have at least one-third independent directors. In case of other companies, Central Government can prescribe minimum number of independent directors [Clause 132(3) of Companies Bill, 2008]

- A director can be disqualified for non-attendance only if he remains absent for all meetings of Board for period of twelve months without obtaining leave of Board [Clause 148(*b*) of Companies Bill, 2008]
- Director can himself file details of his resignation to ROC [Clause 149(1) of Companies Bill, 2008]. It is now made clear that company has no discretion in accepting resignation of director. It becomes effective when his resignation is received or date specified in his resignation letter, whichever is later [provision useful when there are disputes among directors].

Meeting of Board and its powers

- Provision made for Board meeting by video conferencing [Clause 154(2) of Companies Bill, 2008]. Board meeting to require seven days notice except for urgent business if at least one independent director is present.
- Composition of audit committee, remuneration committee and stakeholders grievance committee has been specified in clause 158. The provisions are slightly different from earlier provisions.
- Stakeholders grievance committee to be formed to resolve grievances of shareholder, debenture holders and other security holders, if they are more than 1,000 [Clause 158(12) of Companies Bill, 2008]
- If there is arrangement between company and its directors in respect of acquisition of assets for consideration other than cash, prior approval in general meeting is required. In some cases, approval of holding company is also required [Clause 170 of Companies Bill, 2008]
- Approval of general meeting required for disposal of undertaking only if investment in such undertaking is more than 20% of net worth of company.
- Director or key managerial personnel shall not get involved in forward dealing in securities of the company [Clause 172 of Companies Bill, 2008]. [He can do it through his spouse or relative. This seems to be loophole]
- Director and key managerial personnel should not involve in insider trading on basis of non-public price sensitive information [Clause 173 of Companies Bill, 2008]
- Managing Director or Chief Executive Officer, Company Secretary and Chief Financial Officer will be 'key managerial personnel' [Clause 2(*1*)(*zza*) of Companies Bill, 2008]. Details of their appointment are to be entered in a register and return filed with ROC [Clause 151 of Companies Bill, 2008].
- Companies having share capital above prescribed limits should have whole time key managerial personnel [Clause 178 of Companies Bill, 2008].

Appointment and remuneration of managerial personnel

- Managing Director, wholetime director or Manager to be appointed with consent of all directors present in meeting for which due notice has been given with prescribed details [Clause 174(5) of Companies Bill, 2008]. His appointment is subject to approval in general meeting of members.
- Members are free to decide remuneration payable to Managerial Personnel. No statutory restrictions on remuneration to managerial personnel.

Registered Valuers

- Provision of registered valuers made for valuation of property, stocks, shares, debentures, securities etc. [Clauses 218 to 223 of Companies Bill, 2008]

Winding up

- Provision of 'Company Liquidator' made who will be a professional person and not Government employee [Clause 250 of Companies Bill, 2008]
- Summary procedure for liquidation where book value of assets of company are less than Rs. 1 crore [Clause 336 of Companies Bill, 2008]

Other provisions

- Indian company can merge with company incorporated abroad, subject to prescribed conditions [Clause 205 of Companies Bill, 2008]
- Interim administrator can be appointed in case of sick company [Clause 231 of Companies Bill, 2008]
- Foreign companies to comply with prescribed provisions only if not less than 50% of capital of the foreign company is held by Indian citizen or companies incorporated in India [Clause 341 of Companies Bill, 2008]
- Special Courts to try offences under Companies Act [Clause 396 of Companies Bill, 2008]. The judge will be of grade of Sessions Judge or Additional Sessions Judge.
- Concept of dormant company introduced. If it has no significant accounting transaction or is an inactive company, it can make application to ROC for obtaining status of a dormant company. Even such company has to file annual return.
- Association of partnership consisting of more than 100 persons to be prohibited, against present limit of 20 [Clause 422 of Companies Bill, 2008]. This has no effect on number of partners in Limited Liability Partnership [LLP]

Some major changes

3. Some of the major changes compared to Companies Act, 1956 (as amended by Amendment Act, 2002) *vide* Companies Bill, 2008 are summarised below.

Auditor cannot undertake certain services

3.1 Auditor can render additional services as approved by Board or Audit Committee. However, an auditor appointed to audit accounts of company shall not be allowed to undertake following services [Clause 127 of Companies Bill, 2008]

- Accounting and book keeping service
- Internal audit
- Design and implementation of any financial information system
- Actuarial services
- Investment advisory services
- Investment banking services
- Rendering of outsourced financial services
- Management services

Independent director

3.2 Listed company with paid up capital above prescribed limit should have at least one-third independent directors. In case of other companies, Central Government can prescribe minimum number of independent directors [Clause 132(3) of Companies Bill, 2008]

Independent director will not be entitled to any remuneration except sitting fees and reimbursement of expenses. He will be entitled to profit related commission and stock options as approved by members [Clause 132(6) of Companies Bill, 2008]

Alternate director appointed to independent director should also be independent director [Clause 142(2) of Companies Bill, 2008]

Independent director has been defined in clause 132(5) of Companies Bill, 2008, as follows -

"Independent director", in relation to a company, means a non-executive director of the company, other than, a nominee director,—

(*a*) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(*b*) who, neither himself nor any of his relatives—

(*i*) has or had any pecuniary relationship or transaction with the company; its holding, subsidiary or associate company, or its promoters, or directors amounting to ten per cent, or more of its gross turnover or total income during the two immediately preceding financial years or during the current financial year,

(*ii*) holds or has held any senior management position, position of a key managerial personnel or is or had been employee of the company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(*iii*) is or has been an employee or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(*A*) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(*B*) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(*iv*) holds together with his relatives two per cent, or more of the total voting power of the company; or

(*v*) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its income from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent, or more of the total voting power of the company; or

(*c*) who possesses such other qualifications as may be prescribed.

Explanation.—For the purposes of this section, "nominee director" means a director nominated by any institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, to represent its shareholding.

Duties of Director

3.3 Duties of director have been codified for the first time. [Clause 147(2) of Companies Bill, 2008]. [Even otherwise, it was held that a director is in position of trustee to the company]. The duties of directors are as follows—

(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the company's articles.

(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 interest of the company.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence.

(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 die 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.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

Any director who contravenes the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees [Clause 147(7) of Companies Bill, 2008]. If he is found guilty of making any undue gain either to himself or to his relatives, partners or associates he shall also be liable to pay an amount equal to that gain to the company [proviso to Clause 147(7) of Companies Bill, 2008]

Key Managerial Personnel

3.4 Managing Director or Chief Executive Officer, Company Secretary and Chief Financial Officer will be 'key managerial personnel' [Clause 2(*1*)(*zza*) of Companies Bill, 2008]. Details of their appointment are to be entered in a register and return filed with ROC [Clause 151 of Companies Bill, 2008]. Companies having share capital above prescribed limits should have whole time key managerial personnel [Clause 178 of Companies Bill, 2008]

If there is any vacancy, it should be filled in 6 months.

No qualifications have been prescribed for post of 'key managerial personnel', except in case of company secretary.