

OVERVIEW OF COMPANIES BILL 2012

(as passed by Lok Sabha on 18th December 2012)



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THE COMPANIES BILL 2012

The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs on the basis of a detailed consultative process. The Companies Bill, 2012 was passed by Lok Sabha on the 18th of December 2012 but stands pending in the Rajya Sabha and is all set to replace the 56 year old Companies Act 1956.

In the Companies Bill 2012, various new provisions have been included (which are not provided for in Companies Act, 1956) for better governance of the companies. Some of those new provisions are:

- Requirement to constitute Remuneration and Nomination Committee and Stakeholders
- Grievances Committee
- Granting of More powers to Audit Committee
- Specific clause pertaining to duties of directors
- Mode of appointment of Independent Directors and their tenure
- Code of Conduct for Independent Directors
- Rotation of Auditors and restriction on Auditor's for providing non-audit services
- Enhancement of liability of Auditors
- Disclosure and approval of RPTs
- Mandatory Auditing Standards
- Enabling Shareholders Associations/Group of Shareholders for taking class action suits and reimbursement of the expenses out of Investor Education and Protection Fund
- Constitution of National Financial Reporting Authority, an independent body to take action against the Auditors in case of professional mis-conduct
- Requirement to spend on CSR activities

The introduction of this basket of measures offers immense opportunities for all professionals also. India has suffered many corporate frauds and scams in the recent years and the new law proposes to plug the loopholes, smoothen out the wrinkles and speed up the corporate laws reform process.

After discussing the provisions of the Companies Bill 2012, the law making powers of the Parliament of India have been discussed in brief for more clarity on the subject.

The Background of Companies Bill 2012

The Companies Act 1956 is all set to be replaced by the Companies Bill 2012 which was passed by the Lok Sabha on 18th December 2012.

A brief background to the Introduction and status of the Companies Bill 2012 is as under:

- Companies (Amendment) Bill, 2003 had been introduced by Ministry of Corporate Affairs (MCA) (then Department of Company Affairs) in the Rajya Sabha on 7.5.2003.
- Later on, a large number of changes were found to be necessary in the Bill. The Ministry of Corporate Affairs took up a comprehensive revision of the Companies Act, 1956 (the Act) in 2004
- A 'Concept Paper on new Company Law' was placed on the website of the Ministry on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December 2004 to advise on new Companies Bill. The Committee submitted its report to the Government on 31st May 2005.
- A Companies Bill 2008 was introduced by the Government in the Lok Sabha on October 23, 2008.
- Due to dissolution of the 14th Lok Sabha, the Companies Bill, 2008 lapsed. The Government decided to re-introduce the Companies Bill, 2008 as the Companies Bill, 2009, without any change except for the Bill year and the Republic year. The Ministry of Corporate Affairs had introduced the Companies Bill, 2009 in the Lok Sabha on August 3, 2009.
- The 2009 Bill was referred to Parliamentary Standing Committee on Finance on 9th September, 2009 which gave its report on 31st August, 2010.
- The standing committee, headed by the then finance minister, Yashwant Sinha, had given its recommendations on the Companies Bill, 2009, which has since

been withdrawn (The Companies Bill of 2012 incorporates 162 recommendations made by the Standing Committee.)

- In view of numerous amendments to the Companies Bill 2009 arising out of the recommendations of the Parliamentary Standing Committee on Finance and suggestions of the stakeholders, the Central Government withdrew the Companies Bill 2009 and introduced a fresh bill – The Companies Bill 2011.
- The 2011 bill was introduced in Parliament on Wednesday, 14th December 2011.
- The Companies Bill, 2011 was referred to the Standing Committee on Finance on 5th January, 2012 after an objection was raised against it in Parliament.
- In the meanwhile, a corrigendum to the Companies Bill, 2011 had been issued that contained some changes of a substantive nature.
- The Standing Committee Report came on 26 June 2012
- The Union Cabinet had issued a Press Release dated 04.10.2012 setting out amendments to the Companies Bill, which had been approved and the final draft of the Companies Bill 2011 was prepared after considering the recommendations of the Parliamentary Standing Committee and taking the inputs from the finance and law ministries as well as the Planning Commission
- Based on the Standing Committee's recommendations, the Bill was amended and introduced as the Companies Bill 2012.
- The Lok Sabha on 18th December, 2012 gave its approval for the Companies Bill 2012, paving the way for a new modern company law. The Companies Bill 2012 was passed by a voice vote in Lok Sabha in a marathon late night sitting.

The Bill is passed by Lok Sabha and has been introduced in the Rajya Sabha. After Rajya Sabha passes the Bill, the assent of the President of India and the Bill's publication in the Official Gazette will be necessary before the Bill becomes as Act.

NEW PROVISIONS

IN

COMPANIES BILL 2012 vis-à-vis COMPANIES BILL 2011

1. Inclusion of whole-time director in the definition of 'key managerial personnel'
2. The term 'private placement' has been defined to bring clarity.
3. Approval of the Tribunal shall be required for consolidation and division of share capital only if the voting percentage of shareholders changes consequent on such consolidation
4. Provisions relating to voluntary rotation of auditing partner (in case of an audit firm) modified to provide that members may rotate the partner at such interval as may be resolved by members instead of every year as in the Companies Bill 2011 earlier.
5. The limit in respect of maximum number of companies in which a person may be appointed as auditor has been changed to 20 companies. The limit, in case of firm, is made applicable to each partner.
6. Appointment of auditors for five years shall be subject to ratification by members at every Annual General Meeting.
7. Companies provided 1 year period for complying with new provisions relating to composition of Board of Directors
8. The rate of interest on inter corporate loans will be the prevailing rate of interest on dated Government Securities
9. Where an auditor has been convicted he shall be liable to pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report. Under the Companies Bill 2012, the Central Government shall, by notification, specify any statutory

body or authority or an officer for ensuring prompt payment of damages to the company or the other specified persons and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

10. Exclusion of independent directors from retirement by rotation - `Independent Directors` shall be excluded for the purpose of computing `one third of retiring Directors`.

11. Provisions relating to separation of office of chairperson and managing director (`MD`) or the chief executive officer (`CEO`) - The Companies Bill, 2012 does not permit the same person to be appointed as the chairperson as well as the MD or CEO unless where the articles of association clearly provide. Further, the restriction of appointing the same person to be the chairperson as well as the MD or CEO has also been eased in the case of those classes of companies engaged in multiple businesses and which have appointed one or more CEOs for each such class of businesses.

SALIENT FEATURES OF THE COMPANIES BILL 2012

The Companies Bill 2012 contains 29 Chapters, 7 Schedules, 470 clauses as against the Companies Act, 1956 which consists of 658 sections under 13 Parts and 15 schedules. In so far as section numbers are concerned more than 200 sections have been deleted from the Companies Act, 1956. While this is on one side of it, number of provisions have been removed or discontinued or dispensed with in the existing but revised section/clause numbers. The clauses to the Companies Bill, 2012 have been categorized into Introduced, Amended sections for easy and quick reference.

Introduced

1. For the first time introduced the concept of One Person Company [Clause 2(62)].
2. Expert [Clause 2(38)]
3. Inclusive definition of Financial Statement [Clause 2(40)]
4. Entrenchment Provisions in Articles of Association (Clause 5)
5. Public Offer and Private Placement deals with issue of securities by a public and a private company (Clause 23)
6. Class Action Suits (Clause 37)
7. E-governance in all company processes (Clause 120)
8. Corporate Social Responsibility - 2% of average net profits of the previous three years (Clause 135)
9. Mandatory Internal Audit for prescribed classes of companies (Clause 138)
10. Mandatory Rotation of auditors for listed companies and other prescribed classes of companies after 1 terms of 5 consecutive years in case of individual auditor and after 2 terms of 5 consecutive years for audit firm (Clause 139)
11. 5 year tenure for auditor appointed at AGM of company (other than Government Company/ Government controlled Company) instead of annual appointment/ re-appointment
12. Limited Liability Partnership eligible to be appointed as Auditor of Company (Clause 141)
13. Auditor not to render certain services (Clause 144)
14. Independent Directors [Clause 149] 1/3rd of the total number of directors as independent directors - listed public companies
15. Inclusion of at least one woman director on board (Clause 149)
16. 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.(Clause149 (3))
17. Nomination and Remuneration committee [Clause 178(1)]
18. Stakeholders relationship committee [Clause 178(5)]

19. Key Managerial Personnel [Clause 2(51) and Clause 203] Key managerial personnel (KMP) to include Manager or Managing Director (MD) or Chief Executive Officer (CEO), Whole time director, Chief Financial Officer (CFO) and Company Secretary (CS).
20. Insider Trading of Securities Prohibited (Clause 195)
21. Statutory Status to the Serious Fraud Investigation Office (SFIO) (Clause 211)
22. Specific framework for Merger and Acquisitions of companies. Single forum for approval of mergers and acquisitions (Clause 233)
23. Merger or Amalgamation of a Company with Foreign Company (Clause 234)
24. Protection to minority shareholders, Class Action Suits for prevention of oppression and mismanagement [Clause 245]
25. Registered Valuers (Clause 247)
26. Interim administrators or Company administrators [Clause 259]
27. Mediation and Conciliation Panel (Clause 442)
28. Punishment for Fraud (Clause 447)

Amended

1. 'Financial year' in relation to any company or body corporate, means the period ending on the 31st day of March every year (Clause 2(41))
1. Limit on maximum number of members of private company increased to 200 from 50 (Clause 2(68)(ii))
2. Matter to be stated in Prospectus (Clause 26) – Unlike Companies Act, 1956
3. Allotment of Securities by Company (Clause 39) – the scope has been widened from shares to 'Securities' defined under Clause 2(81). According to Clause 2(81) 'Securities' means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956
4. Further issues of share capital (Clause 62) – No restriction on the nature of companies to which this clause is applicable and for the purposes of further issue of capital such shares shall also be offer to employees under a scheme of employees stock option

5. National Advisory Committee on Accounting Standards (NACAS) renamed as National Financial Reporting Authority (NFRA) and changes in responsibilities and powers (Clause 132)
6. Annual Ratification of Appointment of Auditors [Clause 139 (1)]
7. Mandatory Compliance with Auditing Standards (Clause 143)
8. Audit Committee [Clause 177]
9. Punishment for personation for acquisition etc. of securities (Clause 38) – is punishable under Section 447 under punishment for fraud
10. Automatic re-appointment of existing auditor (without resolution) at AGM where no auditor is appointed/ re-appointed at AGM. The Central Government's role to appoint a person to fill the vacancy has been removed.
11. Under clause 186 dealing with Loan and Investment by Company, except for the provision pertaining to making investment through not more than two layers of investment companies dealt with under sub clause 1, no other provision of Clause 186 shall be applicable to a loan made, guarantee given or security provided by a banking company, insurance company, housing finance company in the ordinary course of business and to any acquisition made by a non banking finance company (NBFC) registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities and to acquisition made by a company whose principal business is the acquisition of securities and to any acquisition of shares allotted in pursuance of clause (a) of sub section (1) of clause 62.
12. Purchase of Minority Shareholding (Clause 236)
13. Company Liquidators [Clause 275]
14. Technical members of the National Company Law Tribunal or the Appellate Tribunal [Clause 409(3)]
15. Relaxation of restriction limiting the number of persons in Association or Partnerships etc. at a time to a maximum of 100 [Clause 464]
16. No ceiling on number of members/partners as to associations or partnerships formed by professionals regulated by special acts. [Clause 464]

CONCEPTS AND AMENDMENTS IN THE COMPANIES BILL, 2012

General

- The Companies Bill, 2012 applies to the whole of India and is also applicable to certain companies or bodies corporate governed by Special Acts
- Substantial part of the Companies Bill, 2012 will be in form of rules , to be prescribed separately.
- The Government of India has the power to notify different provisions of the Act at different point of time.
- The maximum number of members, which a Private Company can have, is increased from 50, as provided in the Companies Act 1956 (and Companies Bill 2009), to 200 (except in case of One Person Company).
- The definition of Public Company provides that a private subsidiary of a public company shall be deemed to be a public company even though the subsidiary continues to be a private company in the Articles.
- The scope of “officer who is in default” has been broadened. The share transfer agents, registrars and merchant bankers to the issue or transfer related to issue of shares & Chief Financial Officer are also brought under its ambit. Directors who are aware of the default by way of participation in board meeting or receiving the minutes without objecting to the same will also be included in this category even if company has Managing Director /Whole Time Director / other Key Managerial Personnels.
- Defaults of procedural nature to be penalized by levy of monetary penalties by adjudicating officers not below level of Registrar. Appeals against such orders will lie with designated higher authorities.

CHAPTER I – PRELIMINARY

DEFINITIONS

While close to 30 definitions have been introduced by the Companies Bill, 2012 in addition to the definitions under Companies Act, 1956. Some of the important definitions in the Companies Bill, 2012 are given hereunder.

1. **“Associate Company”**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation - For the purpose of this clause, “significant influence” means control of at least twenty percent of total share capital, or of business decisions under an agreement. (Clause 2(6))
2. **“Auditing standards”** means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143. (Clause 2(7))
3. **“Chief Executive Officer”** means an officer of a company, who has been designated as such by it (Clause 2(18))
4. **“Chief Financial Officer”** means a person appointed as the Chief Financial Officer of a company (Clause 2(19))
5. **“Employees’ Stock Option”** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price. (Clause 2(37))
6. **“Financial statement”** in relation to a company, includes-
 - (i) A balance sheet as at the end of the financial year;
 - (ii) A profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

- (iii) Cash flow statement for the financial year; and
- (iv) Any explanatory note attached to, or forming part of, any document referred to in sub-clause(i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.
(Clause 2(40))

7. **“Financial Year”** in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:
Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:
Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;
(Clause 2(41))
8. **“Global Depository Receipt (GDR)”** means any instrument in the form of a deposit receipt, by whatever name called created by a foreign depository outside Indian and authorized by a company making an issue of such depository receipts.
(Clause 2(44))
9. **“Independent Director”** means an independent director referred to in sub-section (5) of section 149. (Clause 2(47))
10. **“Key managerial personnel”** in relation to a company, means –
(i) the Chief Executive Officer or the managing director or the manager;
(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(iv) such other officer as may be prescribed; (Clause 2(51))

11. **“One Person Company”** means a company which has only one person as a member. (Clause 2(62))

12. **“Promoter”** means a person who-

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

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

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clauses (b) and (c) shall apply to a person who is acting in a professional capacity; (Clause 2(69))

13. **“Related party”** with reference to a company means-

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager is a member or director;

(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or
(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed; (Clause 2(76))

14. **“Small company”** means a company, other than a public company,
(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act; (Clause 2(85))

15. **“Turnover”** means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year; (Clause 2(91))

CHAPTER II - INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (CLAUSES 3 TO 22)

I Types of Companies

A. One Person Company -

The concept of a “one-person company”, or OPC, has been introduced in the Bill, and the intent is apparently to permit entrepreneurship of a single individual to obtain the benefit of a corporate form of organization.

According to Clause 2(62) of the Companies Bill, 2012 **“One Person Company”** means a company which has only one person as a member. It is a one shareholder corporate entity, where legal and financial liability is limited to the company only.

Some important features of the Bill in this regard are:

- The One Person Company will be formed as a private limited company.
- “One Person Company” means a company which has only one person as a member (clause 2(62))
- The words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved (Proviso to Clause 12(3))
- One Person Company may be formed for any lawful purpose as a private Company with one member (Clause 3(1)(c) of the Companies Bill, 2012) and shall have a minimum of 1 director (Clause 149(1)(a))
- The memorandum of a One Person Company has to prescribe the name of the person who in the event of death of the subscriber shall become the member of the company. (Clause 4(1)(f) of the Companies Bill, 2012)

- Annual return of a One Person Company should be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company. (proviso to Clause 92 (1))
- Provision of Annual General Meeting is not applicable for a One Person Company. (Clause 96(1))
- Applicability of Chapter VII on Management and Administration - The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company (Clause 122(1))
- Financial Statement, Board's Report etc - The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the Chairman where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and Chief Executive Officer, if any, if he is a director in the company and by Chief Financial Officer and company secretary of the company, or, in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon(Clause 134(1))
- Company to have Board of Directors - Every company shall have a Board of Directors consisting of individuals as directors and shall have 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(Clause 149(1)(a))
- Appointment of Directors - Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section (clause 152(1))
- Meetings of Board - 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 (Clause 173)

- Where One person Company enters into a contract with the sole member of the company who is also a director (excluding contracts entered into by the company in the ordinary course of business), the company should, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The Company shall inform the Registrar about every such contract within 15days of the date of approval by the Board. (Clause 193)

B. Small Company –

The concept of Small Company has also been introduced in the Companies Bill, 2012.

According to (Clause 2(85) of the Companies Bill, 2012, “**Small company**” means a company, other than a public company, -
(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

C. Classification of companies –

The Companies Act, 1956 broadly classifies the companies into private and public companies and provides for regulatory environment on the basis of such classification. However, with the growth of the economy and increase in the complexity of business operation, the forms of corporate organizations keep on changing. Classification of Companies can therefore take many shapes and a multiple classification of companies can be made.

- i) On the basis of size:
 - a. Small companies
 - b. Other companies
- ii) On the basis of number of members:
 - a. One person company
 - b. Private companies
 - c. Public companies
- iii) On the basis of control:
 - a. Holding companies
 - b. Subsidiary companies
 - c. Associate Company
- iv) On the basis of liability
 - a. Limited

- I) by Shares
- II) by Guarantee (with or without share capital)
 - b. Unlimited
- v) On the basis of manner of access to capital
 - a. Listed companies
 - b. Un-listed companies
- vi) On the basis of nature of business
 - a. Companies with charitable objects etc. (Clause 8 of the Companies Bill 2012)
 - b. Dormant Company (Clause 455 of the Companies Bill 2012)
 - c. Companies incorporated outside India (Chapter XXII of the Companies Bill 2012)
 - d. Government Companies (Chapter XXIII of the Companies Bill 2012)
 - e. Nidhi Companies (Chapter XXVI of the Companies Bill 2012)

D. Commencement of Business –

The provisions with regard to Certificate of Commencement of business have been dispensed with under the Companies Bill, 2012. Only declaration and verification is required by the Public Company under the Companies Bill, 2012.

II. Incorporation of company

- The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. (Clause 5)
- The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
- Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
- The number of documents to be submitted for registration has been increased under the Companies Bill, 2012 compared to the lesser number of documents to be submitted under the Companies Act, 1956.
- Clause 7(1) of Companies Bill, 2012 lists the documents and information for registration
- Documents to be filed at the time of incorporation should also contain name of first directors, their Director Identification Number (DIN), address etc, along with their consent and particulars of interest. (Clause 7(1)(f) of Companies Bill, 2012)
- The provision with regard to printing of Memorandum under Section 15 of the Companies Act, 1956 has been dispensed with under the Companies Bill, 2012.
- A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and

articles of the company in accordance with the provisions of Chapter II of the Act. (Clause 18(1))

- In the Memorandum of Association of the Company, there is no requirement as to bifurcation of the objects clause into main, ancillary and other objects. Only objects for which company is incorporated along with matters considered necessary for its furtherance shall be mentioned. The Company cannot provide for other object clause.
- Articles of Association of the Company may contain provision with respect to entrenchment. Entrenchment provisions provide a more restrictive procedure than passing a special resolution for altering certain provisions in the Articles.
- For commencement of business by public/private Company, following needs to be filed with the registrar of companies
 - o declaration by director in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them, and
 - o Confirmation that the company has filed a verification of its registered office, with the Registrar.
- Company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects unless a special resolution is passed by the company and other requirements of advertisement and exit opportunity to dissenting shareholders is complied with, there was no such requirement under the Companies Act 1956

CHAPTER III - PROSPECTUS AND ALLOTMENT OF SECURITIES
(CLAUSES 23 TO 42)

Part I – Public Offer

I. Prospectus and Allotment of Securities

- Issues of all types of securities are covered under Clause 39 of the Companies Bill, 2012 dealing with Allotment of Securities by Company, where as only shares and debentures were covered under section 69 and 75 of the Companies Act 1956 Clause 2(81) of the Companies Bill ,2012 defines Securities to mean securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956; Accordingly Sec 2(h) of the Securities Contracts (Regulation) Act, 1956 defines Securities “securities” to include—
 - (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;]
 - (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;]
 - (id) units or any other such instrument issued to the investors under any mutual fund scheme;]
 - (ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

- Clause 23 of the Companies Bill, 2012 provides the manner in which
 - A public company may issue securities namely
 - To public through prospectus
 - Through private placement
 - Through rights issues or a bonus issue
 - A private company may issue securities
 - by way of rights issue or bonus issue
 - through private placement

All of the above in accordance with the provisions of this Act.

- Disgorgement provisions to deter personation for acquiring securities (Clause 38)
- New enabling provisions for issue of GDR's - Companies may now issue Global Depository Receipt by passing a special resolution in its general meeting and subject to such conditions as may be prescribed.
- The content to be prescribed in the Prospectus has now been made more detailed.
- A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution (Clause 27(1))
- The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf (Clause 27(2))

- The Bill provides provisions with respect to offer of sale by existing shareholders of the company.
- Any company specified by Securities and Exchange Board (SEBI) Regulations in this regard, may file a shelf prospectus (a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus) with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- A company proposing to make an offer of securities may issue a Red Herring prospectus (a prospectus which does not include complete particulars of the quantum or price of the securities included therein) prior to the issue of a prospectus.
- Provisions relating to Statement in lieu of Prospectus in the Companies Act 1956, omitted from the Companies Bill 2012
- If it is proved that prospectus was issued with intent to defraud the applicants or any other person or for a fraudulent purpose, the directors, promoters, experts etc. shall be personally responsible without any limitation of liability for all or any of the losses / damage that may have been incurred by any person who subscribed to the securities on the basis of such prospectus (Clause 35(3))
- Class Action Suits in case of misleading prospectus - A suit can be filed or any action can 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 the prospectus. (Clause 37 of Companies Bill, 2012)

Part II – Private Placement

Offer or invitation for subscription of securities on private placement

- A Private company may issue securities only through private placement by complying with the provisions of Part II of Chapter III.
- Raising of capital by Private Placement basis – new provisions to ensure more transparency and accountability (Clause 42)
- Clause 42 lays down that an offer or invitation of securities through private placement may be made in the form and manner prescribed subject to compliance with the following conditions prescribed:
 - (a) the offer or invitation in a financial year, shall be made to such number of persons, excluding qualified institutional buyers, and on such conditions (including the maximum amount to be raised) as may be prescribed;
 - (b) the value of such offer or invitation shall be with an investment size of such amount as may be prescribed; and
 - (c) the company shall not issue any prospectus for such offer or invitation and such offer or invitation shall be made through a private placement offer letter
- Qualified Institutional Buyer (QIB) shall not be covered under the provisions related to Private Placement
- If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions provided in this regard by SEBI.(Explanation I to Clause 42(2))
- Any company making any offer or invitation of securities under private placement has to allot the securities within 60 days of receipt of application money. (Clause 42(6))

CHAPTER IV – SHARE CAPITAL AND DEBENTURES - (CLAUSES 43 -72)

Share Capital and Debentures

- Equity share capital has now been defined
- Equity share capital, with reference to any company limited by shares, means all share capital which is not preference share capital and preference share capital with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
 - payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
 - repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company [clause 43].
- If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or Rs.10 crore whichever is higher. Stringent penalties have also been imposed for defaulting officers of the company [Clause 46(5)]
- Where any depository has transferred shares with an intention to defraud a person, it shall be punishable under clause 447 [Clause 46(6)]
- Where dividends payable in respect of a class of preference shares are in arrears for a period of 2 years or more, such class of preference shareholders will have a right to vote on all resolutions placed before a meeting of the company. This voting right is irrespective whether the preference shares are cumulative or non-cumulative. (Clause 47)
- If variation of rights by one class of shareholders affects the rights of any other class of shareholders, the consent of atleast 75% of such other class of

shareholders shall also be obtained and provisions of Clause 48 shall apply to such variation

- Security Premium Account may also be applied for the purchase of its own shares or other securities [Clause 52(2)(e)]
- Company cannot issue shares at a discount other than as sweat equity shares (Clause 53)
- As opposed to Companies Act, 1956, under the new Bill, a company may issue preference shares redeemable after 20 years for such infrastructure projects as may be specified subject to redemption of specified % of preference shares on annual basis at the option of the preference shareholder. The term Infrastructure projects has been defined for the purpose of this section as the infrastructure projects specified in Schedule VI to the Bill.
- The provisions related to further issue of capital will now be applicable to all types of Companies.
- Apart from existing shareholders, if the company having share capital at any time, proposes to increase its subscribed capital by the issue of further shares, such shares may also be offered to employees by way of Employee Stock Options subject to approval of shareholders by way of special resolution and subject to prescribed conditions.
- New enabling provisions for issue of Bonus Shares provide that a company may issue fully paid up bonus shares to its members, in any manner out of – i. Its free reserves; ii. The Security premium account or iii. The Capital Redemption Reserve Account. No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. Bonus shares shall not be issued in lieu of dividend.
- The securities or other interest of any member in a public company shall be freely transferable (Clause 58(2). Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.
- The provision on Further issue of share capital (hitherto covered under Section 81 is covered under Clause 62 of the Companies Bill,2012) has been modified to

remove restriction on the type of company issuing further share to whom this clause is made applicable as is clear from clause 3 of the Clause 62 and further the clause also provides for issue of further capital to employees by way of ESOP in addition to the existing shareholders

- Clause 66 deals with reduction of share capital. It mandates approval of National Company Law Tribunal (NCLT) for the same.
- No reduction of capital will be allowed if the company is in arrears for payment of deposits, accepted either before or after the commencement of this Act, or the interest payable thereon. (Clause 66)
- No buyback upto a period of 1 year from the date of pervious buyback whether approved by BoD or shareholders. (Proviso to Clause 68 (2)(g)) .
- The buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist. (Where a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company) (Chapter IV – Proviso to Clause 70(1)(c))
- No company shall issue any Debentures carrying any voting rights (Clause 71(2))
- Secured debentures to be issued only subject to prescribed terms and conditions (Clause 71(3))
- Compulsory to create a Debenture Redemption Reserve Account out of the profits of the company available for payment of dividend and the amount credited to such account shall be utilized only for the purpose of redemption of debentures. (Clause 71(4))
- Appointment of Debenture Trustee compulsory for public issue of debentures through prospectus to more than 500 persons. (Clause 71(5))
- Special Resolution required to issue Debentures with a conversion option (Clause 71)

CHAPTER V - ACCEPTANCE OF DEPOSITS BY COMPANIES (CLAUSES 73-76)

I. Acceptance of Deposits by Companies

- **Prohibition on Acceptance of Deposits from Public** - On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter. Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf – (Clause 73(1))

- On and after the commencement of the Companies Act 2012, only the following companies may invite, accept or renew deposits from the public – i. Banking companies; ii. Non Banking Financial Companies (NBFC); iii. notified companies; iv. public company having such net worth or turnover as may be prescribed as per audited balance sheet of the immediately preceding financial year

- A company other than those specified above, may invite, accept or renew deposits only from its members subject to fulfillment of the following conditions (Clause 73):
 1. Passing of resolution in a general meeting

 2. Issue of circular to members showing the financial position of the company, the credit ratings obtained the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company etc.

 3. Filing a copy of the circular with the registrar within 30 days before the date of issue of the circular.

4. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.
5. Providing deposit insurance.
6. Certification by the company that it has not defaulted in the repayment of deposits.
7. Provision of security in respect of deposit and interest and creation of charge on company's properties and assets.

The penalty for failure to repay deposit has been made extremely stringent. The depositor may apply to Tribunal for an order directing the company to pay the sum due or loss or damage incurred by him as result of non-payment (Clause 73).

CHAPTER VI - REGISTRATION OF CHARGES (CLAUSES – 77-87)

I. Registration of Charges

- The scope of the term “charge” has been enlarged. As per Clause 2(16) “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
- The specific list of cases in which it was necessary to register the charge, as provided by in the Companies Act 1956 has been dispensed with. Now all types of charge created by the company on its property or assets or any of its undertakings would be required to be registered.
- Every company creating a charge within or outside India on its property or assets or any of its undertakings should register the particulars of the charge with the Registrar within thirty days of its creation. If the company fails to register the charge within the prescribed period, then the person in

whose favour the charge is created can apply to the Registrar for registration of the charge along with the instrument created for the Charge. (Clause 77)

CHAPTER VII - MANAGEMENT AND ADMINISTRATION (CLAUSES 88-122)

I. Management and Administration

- Annual return in such form as may be prescribed should form part of the Board's report. (Clause 92(3))
- Return to be filed by listed company in the prescribed form with Registrar of Companies (ROC) in case promoter's stake changes. The return shall be filed with respect to change in the number of shares held by promoters and top ten shareholders of such company, within 15 days of such change. (Clause 93)
- One Person Companies are not required to hold Annual General Meeting (AGM). All other companies are required to hold AGM in each calendar year within the prescribed time limits. (Clause 96)
- The AGM has to be called during business hours i.e between 9:00am and 6:00pm.
- Annual General Meeting can be called on a "public holiday" but not on a "National Holiday". "National Holiday" means and includes a day declared as such by the Central Government. (Clause 96(2))
- Increase in Quorum requirements for public companies having more than 1000 members. (Clause 103)
- Voting through electronic means by members at meetings is permitted (Clause 108)
- A company shall transact the items of business notified by the Central Government by means of postal ballot. It can also transact any item of business other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting. This can be

done by means of postal ballot instead of transacting such business at a general meeting. (Clause 110)

- Resolutions requiring Special Notice – Presently there is no requirement as to members who give special notice to hold some minimum voting power or shares. Clause 115 introduces such a requirement by providing that the resolution requiring special notice has to be moved by such number of members holding not less than one per cent of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid-up.
- Every listed public company should file a report on each annual general meeting with the Registrar of Companies within 30 days of the conclusion of the annual general meeting. (Clause 121)
- Provisions relating to Statutory meeting and Statutory report dispensed with.

CHAPTER VIII - DECLARATION AND PAYMENT OF DIVIDEND (CLAUSES 123-127)

I. Declaration and payment of Dividend

- No dividend shall be declared or paid by a company from its reserves other than free reserves (Third Proviso to Clause 123(1))
- The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account and out of profits of the financial year in which such interim dividend is sought to be declared. (Clause 123(3))
- In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

- **No Compulsory Transfer of Profits to Reserves.** Before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it **MAY** consider appropriate to the reserves of the company (Chapter VIII – proviso to Clause 123 (1) (b)). Hence compulsory transfer of profits to reserves is done away with.
- Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account (Clause 124(1))
- The amounts in the Unpaid Dividend Account of companies which have remained unclaimed and unpaid for a period of 7 years from the date they became due for payment shall be transferred by a company to the Investor Education and Protection Fund.
- Unpaid dividend can be claimed any time and the time limit of seven years will not apply.

CHAPTER IX - ACCOUNTS OF COMPANIES (CLAUSES 128-138)

I. Accounts of Companies

- The Bill permits the maintenance of books of accounts and other books and papers in electronic mode (Second Proviso to Clause 128(1))
- Every Company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

- a. Books of Accounts and other relevant books and papers to be kept at Registered office on accrual & double entry basis
- b. In case if books are maintained at any other place in India as decided by Board of Directors, company shall intimate it to Registrar of Companies within 7 days.
- c. Books can be kept at any other place outside India, only if duly maintained in compliance with the conditions as prescribed.
- d. Preserve books for 8 years (with additional provision giving rights to Central Government to extend such period where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit)
- Where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit. (Proviso to Clause 128(5))
 - If the company has one or more subsidiaries, then along with financial statement, consolidated financial statement of the company and all its subsidiaries will be prepared in the same form and manner as its own and shall also be laid before the Annual General Meeting. Subsidiary shall for the purpose of this requirement include associate company and joint venture. The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements also.
 - Reopening of Accounts on Court's or Tribunal's Order - A company shall not re-open its books of account and not recast its financial statements, unless an order in this regard is made by a court of competent jurisdiction or the Tribunal. The accounts so revised or re-cast shall be final. (Clause 130)
 - Voluntary Revision of Financial Statements or Board's Report may be made with Tribunal's consent (Clause 131)
 - Constitution of National Financial Reporting Authority - The National Advisory Committee on Accounting Standards (NACAS as introduced by the Companies

Bill 2009) has been renamed National Financial Reporting Authority (NFRA) and unlike NACAS it is not merely an advisory body.

- The mandate of the NFRA is to:

- (i) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (ii) monitor and enforce the compliance with accounting and auditing standards recommended by it in such manner as may be prescribed;
- (iii) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and
- (iv) perform such other functions as may be prescribed.

- Functioning of NFRA

The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner

as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

- The Report of the Board of Directors

Additional Disclosure - The Board of Director's report for every company except for One Person Company, shall have various types of additional information (Clause 134)

Clause 134(1) has stipulated the following new disclosures in Board of Director's Report:

1. number of meetings of the Board
2. a statement on declaration given by independent directors
3. company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters

4. explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the company secretary in his secretarial audit report

5. particulars of loans, guarantees or investments

6. particulars of contracts or arrangements with related parties

7. a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company

8. the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year

9. in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors

10. such other matters as may be prescribed.

- The Directors' responsibility statement in case of listed company shall also include additional declarations related to internal financial controls and compliance systems (Clause 134(5))

The additional declarations are given in Clause 134(5)(e) and 134(5)(f) as follows:

”(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively;

Explanation.—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”

- Corporate Social Responsibility (CSR) Obligations introduced - Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. 2% of average net profits of the previous three years will have to be spent on corporate social responsibility activities with disclosure to shareholders about the policy adopted in the process, giving reasons on failure of implementation (Clause 135)
- Compulsory Internal Audit for certain prescribed companies (Clause 138)

CHAPTER X - AUDIT AND AUDITORS (CLAUSE 139-148)

I. Audit and Auditors

- Subject to the provisions of Chapter X of the Bill, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting

- and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed. (Clause 139)
- The Bill provides for compulsory rotation of individual auditors and of audit firm. No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
(a) an individual as auditor for more than one term of five consecutive years; and
(b) an audit firm as auditor for more than two terms of five consecutive years. (Clause 139(2)). Also, enabling provisions for members to resolve rotation of audit partners and his team are provided in the Bill.
 - Members of the company may resolve to rotate auditing partner and his team at specific interval
 - Companies existing on or before the commencement of this Act are required to comply with the provisions of rotation of auditors within a period of 3 years from the commencement of this Act
 - 5-years tenure for auditors appointed at Annual General Meetings (AGMs) of companies (other than Government Companies/ Government Controlled Companies) instead of annual appointment/ re-appointment
 - Appointment of First Auditors for Five Years shall be subject to ratification by members at every Annual General Meeting
 - Automatic reappointment of existing auditor (without passing any resolution) at AGM where no auditor is appointed/ reappointed at AGM.
 - Limited Liability Partnerships may be appointed as Auditors (Clause 141)
 - Auditing Standards to be made mandatory (Clause 143)
 - If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. (Clause 143).
 - The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as 20 companies. In case of Firm, limit is made applicable to each partner.

- The Central Government may prescribe in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost shall also be included in the books of account kept by that class of companies
- The Central Government may direct that the audit of cost records of class of companies which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order
- The audit shall be conducted by a Cost Accountant who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed

CHAPTER XI - APPOINTMENT AND QUALIFICATIONS OF DIRECTORS **(CLAUSES 149 – 172)**

I. Appointment and Qualifications of Directors

- In prescribed class or classes of companies, there should be atleast 1 woman director. (Second Proviso to Clause 149(1))
- Every Company to have atleast one director who has stayed in India for one hundred and eighty-two days or more in the previous calendar year. (Clause 149)
- A company can have a maximum number of 15 directors. However, a company may appoint more than 15 directors by passing a special resolution. No Central Government approval required.
- Every listed public company shall have at least one-third of the total number of directors as independent directors and Central Government may prescribe the minimum number of independent directors in case of any class or classes of public company. (Clause 149(3))

- An independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- The provisions in respect of the tenure and liability of the Independent director have been provided
- The Code for Independent Directors provided in a new Schedule to the Bill. The Schedule to the Bill provides the following in respect of an Independent Director
 - Professional Conduct
 - Role & Functions
 - Duties
 - Manner of Appointment
 - Removal & Resignation etc
- A databank of Independent directors proposed to be maintained by a body/ institute notified by the Central Government to facilitate appointment of Independent directors.
- A person cannot become directors in more than 20 companies instead of 15 as provided in the Companies Act 1956 and out of this 20, he cannot be director of more than 10 public companies. 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. 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.
- Duties of the directors towards the company specified (Clause 166)
- 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. 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. (Clause 168)

II. Provisions pertaining to Independent Directors

- Every listed public company shall have at least one-third of the total number of directors as independent directors and Central Government may prescribe the minimum number of independent directors in case of any class or classes of public company. (Clause 149(3))
- Every Company existing on or before the commencement of the Companies Act 2012 shall comply with the requirement relating to independent directors within 1 year of such commencement.
- 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 (5) of Clause 149
- The company and independent directors shall abide by the provisions specified in Schedule IV
- Subject to the provisions of section 198, an independent director shall not be entitled to any remuneration, other than a 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.
- A databank of Independent directors proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of Independent directors.
- The provisions in respect of the tenure and liability of the Independent director have been provided as follows
 - No independent director shall hold office for a term exceeding an aggregate of five consecutive years on the Board of a company, but shall be eligible for reappointment (clause 149 (10))

- He shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- 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.
- Notwithstanding anything contained in the Bill,—
 - (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.
- The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.
- The appointment of independent director shall be approved by the company in general meeting 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.(Clause 150(2))
- Only an independent director can be appointed as alternate director to an independent director [first proviso to Clause 161(2)].
- The Code for Independent Directors is provided in Schedule IV to the Companies Bill, 2012. The Company and Independent Directors have to comply with the provisions of the Code of Conduct specified in Schedule IV to the Companies Bill 2012
- The Audit committee shall consist of a minimum of three directors with independent directors forming a majority (Clause 177(2))

III. List of Duties of Directors (Clause 166)

- A director of a company shall act in accordance with the articles of the company.
- 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.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 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.
- 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 under sub-section (7), he shall be liable to pay an amount equal to that gain to the company.
- A director of a company shall not assign his office and any assignment so made shall be void.
- 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

CHAPTER XII - MEETINGS OF BOARD AND ITS POWERS (CLAUSES 173 – 195)

I. Meetings of Board

- Not more than 120 days gap between two Board Meetings (Clause 173)
- Director can participate in the Board meeting 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. 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 (Clause 173)

- A notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means. 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. 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. (Clause 173)
- Audit Committee - Every Listed Company and such other company as may be prescribed shall form Audit Committee. The Audit Committee shall comprise of minimum 3 directors Independent Directors forming a majority and majority of members of committee including its Chairperson shall be person with ability to read and understand financial statement. (Clause 177)
- Nomination and Remuneration Committee - Every listed company and prescribed class or classes of companies, 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. (Clause 178(1))
- Stakeholders Relationship Committee - Every company 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. (Clause 178(5))
- The limits for political contribution by company increased from 5% as provided in the Companies Act 1956. to 7.5%. of the average net profits of the Company during the three immediately preceding financial years. (Clause 182)

- **Restriction on Loan to Directors etc – Applicable to both Public and Private company** - Clause 185 begins with “Save as otherwise provided in this Act, NO COMPANY SHALL”. This clarifies that the given restrictions is applicable to both Public and Private companies unlike the existing Companies Act, 1956 where it is applicable only to Public Companies (Section 295 (2) exempting Private Company which is not a subsidiary of a public company)
- **Exemption – from the applicability of restriction on Loan to Directors etc (proviso to Clause 185(1))**

(a) The giving of any loan to a MD or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

- A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies. This statement 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.

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,

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. (Clause 186)

- **Related Party Transaction – Clause 188 - The scope of the Clause 188 dealing with Related Party Transaction have been widened. 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:

- In order to enter into the above transactions **Approval is Required (Clause 188)**

- Consent of the BoD given by a resolution

- Prior Approval by the Company – in cases where the paid-up capital of the company or transaction amount exceeds the prescribed limit

- **Related Parties** – Clause 2(76) “related party”, with reference to a company, means—
 - a director or his relative;
 - a key managerial personnel or his relative;
 - a firm, in which a director, manager or his relative is a partner;
 - a private company in which a director or manager is a member or director;
 - a public company in which a director or manager is a director or holds long with his relatives, more than two per cent. of its paid-up share capital;
 - any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - any person on whose advice, directions or instructions a director or manager is accustomed to act:
 - Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
 - any company which is—
 - a holding, subsidiary or an associate company of such company; or
 - a subsidiary of a holding company to which it is also a subsidiary;
 - such other person as may be prescribed:
(More coverage when compared to Companies Act, 1956)
- **Exemption from application of Clause 188(1) – According to 3rd proviso to 188(1)** 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.

- Restrictions on non-cash transactions by directors - 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 subsection shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer. (Clause 192)

- 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. This provision shall not apply to contracts entered into by the company in the ordinary course of its business. (Clause 193)
- Prohibition on Forward Dealings in securities of company by Director or Key Managerial Personnel (Clause 194)
- Prohibition on Insider Trading of Securities (Clause 195). The definition of price sensitive information has also been included.

CHAPTER XIII - APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL (CLAUSE 196 – 205)

I. Appointment and Remuneration of Managerial Personnel

- Provisions relating to limits on remuneration provided in the existing Act being included in the Bill. Maximum limit of 11% (of net profits) being retained.
- For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration (Schedule V) and in case a company is not able to comply with such Schedule, approval of Central Government would be necessary.
- As per Section II of Part II of Schedule V - Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A) Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60lakhs
(iv) 250 crores and above the effective capital in excess of Rs. 250 crores	60 lakhs plus 0.01% of

(B) In case of a managerial person who was not a shareholder, employee or a director of the company at any time during the two years prior to his appointment as a managerial person – 2.5% of the current relevant profit.

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution

- Independent Directors not to get Stock Options but may get payment of fee and profit linked commission subject to limits specified in the Bill/rules. Central Government to prescribe amount of fees under the rules
- The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, shall not be treated as part of the remuneration payable to any such personnel.
- Every company belonging to such class or description of companies as may be prescribed shall have Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director and Company Secretary (Clause 203)
- The Bill provides for provision related to secretarial audit in certain prescribed companies. (Clause 204). The Secretarial Audit Compliance Report from Company Secretary to be attached to Board's Report in certain prescribed companies
- The Bill prescribes the functions of the Company Secretary. (Clause 205)
- Independent Directors not to get stock option but may get payment of fee and profit linked commission subject to limits specified in the Bill/rules. Central Government to prescribe amount of fees under the rules (Clause 197(7)).

CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION (CLAUSES 206-229)

I. Inspection, Inquiry and Investigation

- Statutory Status to Serious Fraud Investigation Office (SFIO) proposed (Clause 211)
- The Tribunal can freeze the assets for a period not exceeding three years, on an inquiry and investigation of a company, if transfer or disposal of

funds, properties or assets is likely to take place which is pre-judicial to the interest of the company. (Clause 221)

- The provisions of inspection, inquiry or investigation as applicable to Indian companies shall apply mutatis mutandis to foreign companies also. (Clause 228)

CHAPTER XV - COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS (CLAUSES 230-240)

I. Compromises, Arrangements And Amalgamations

- **Introduction of Postal Ballot for Approval - Clause 230 (6)**
Approval by majority representing 3/4th in the value of creditors or members or class thereof present and voting in person or by proxy or by **postal ballot**
- **Valuation Report to Shareholders/Creditors –(Clause 230 (3)) -**
Valuation report to be given to Shareholder/Creditors along with notice convening meeting. Under Companies Act, 1956 there is no requirement to given valuation report
- **Objection to Compromise, Arrangement and Amalgamation - Clause 230(4)**
Any objection to the compromise or arrangement shall be made only by
 - persons holding >10% of the shareholding or
 - having outstanding debt amounting to > 5% of the total outstanding debtas per the latest audited financial statement.
- **Buy Back – Scheme of Compromise or Arrangement – Clause 230(10)**

No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

- **Take Over Offer - Clause 230(11)**

Any compromise or arrangement may include takeover offer made in such manner as may be prescribed. Provided, that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board. e

- **Transfer of Listed Company with Unlisted Company – Clause 232(3)(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

Under the Companies Act, 1956 there is no specific provision on this

- **Expediting Merger Process – Clause 233 (1) –**

A scheme of merger or 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

- i. Approval of the ROC
- ii. Approval of Official Liquidator
- iii. Members or class of members holding atleast 90% of the total number of shares
- iv. Majority of creditors or class of creditors representing 9/10th in value

- **Merger or Amalgamation of an Indian Company with a Foreign Company – Clause 234**

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. **Clause 234(2).** 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.

No such provision under the Companies Act, 1956

- **Purchase of minority shareholding – Clause 236**

- i. In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. Majority or

holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares

- ii. The acquirer, person or group of persons shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders **at a price determined on the basis of valuation by a registered valuer** in accordance with such rules as may be prescribed.

No provision under the Companies Act, 1956

CHAPTER XVI - PREVENTION OF OPPRESSION AND MISMANAGEMENT (CLAUSES 241- 246)

I. Prevention Of Oppression And Mismanagement

- Application to National Company Law Tribunal (NCLT) for relief in cases of oppression etc. Application can also be made for relief in cases of past acts of oppression. (Clause 241)
- Class Action Suits (Clause 245) – Such specified number of member or members, depositor or depositors or any class of them, as the case may be, 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 depositors. The order passed by the Tribunal shall be binding on the company and all its members and depositors. This Provision is not applicable to Banking Companies.

- Class Action Suits against 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. (Clause 245(1)(g)(ii))
- 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. Clause 245(2)
- Members or depositors can claim damages or compensation or demand any other suitable action from or against 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, wrongful act or conduct or any likely act or conduct on his part (Clause 245(1)(g)(iii))

CHAPTER XVII - REGISTERED VALUERS (CLAUSE 247)

I. Registered Valuers

- 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. (Clause 247)
- The valuer appointed 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

(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.

- If a valuer contravenes the provisions of Clause 247 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. 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.

- Where a valuer has been convicted as above, 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.

- **Reference made in various Clauses to the Bill**
 - Clause 62 – Further Issue of Share Capital
 - Clause 236 – Purchase of Minority Shareholding
 - Clause 281 – Submission of report by Company Liquidator
 - Clause 305 – Declaration of solvency in case of proposal to wind up voluntarily.
 - Clause 319 – Power of Company Liquidator to accept shares etc., as consideration for sale of property of company

CHAPTER XVIII - REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES (CLAUSES 248 -252)

- Where the Registrar has reasonable cause to believe that
 - (a) a company has failed to commence its business within one year of its incorporation;
 - (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or
 - (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

A notice shall be sent to the company and all the directors of the company, conveying his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. (Clause 248 (1))

- At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. (Clause 248(5))
- Restrictions on making application under section 248 in certain situations. (Clause 249)
- Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company (Clause 250)
- Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—
 - (a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
 - (b) be punishable for fraud in the manner as provided in section 447.

Without prejudice to the above, the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248. (Clause 251)

CHAPTER XIX - REVIVAL AND REHABILITATION OF SICK COMPANIES
(CLAUSES 253 – 269)

I. Revival and Rehabilitation of Sick Companies

- The manner of declaring a company sick and process of its revival and rehabilitation has been completely rationalized
- The coverage of Sick Industrial Companies Act 1985 is limited to only Industrial Companies while Chapter XIX of the Bill covers revival and rehabilitation of all companies irrespective of which sector they are in.
- Any company and not only industrial company can be declared as sick company.
- Secured creditors representing 50% or more of the debt of the company and whose debt the company has failed to pay within 30 days of service notice, can apply to Tribunal for declaring the company as sick or the company who fails to repay the debt of secured creditor representing 50% or more of debt, may also apply to Tribunal for declaring itself sick. (Clause 253)
- The entire rehabilitation and liquidation process has been made time bound (Clause 254).
- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company (Clause 258).
- The criteria of erosion of 50% of the networth for declaring the company as sick has been dispensed with. The sickness of company will be determined on the basis of whether the company is able to pay its debts.
 - Interim administrator can be appointed by the Tribunal for management of the company 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. (Clause 259)
 - Powers and duties of company administrator. (Clause 260)

- Scheme of revival and rehabilitation should be prepared by the company administrator. (Clause 261)
- If the Scheme is not approved by the creditors of the company in the manner specified, then the Tribunal can order winding up of the company upon submission of report by the company administrator. (Clause 265)
- The Rehabilitation and Revival Fund as provided in the Companies (Second Amendment) Act, 2002 is to be replaced by Rehabilitation and Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency. (Clause 269).

CHAPTER XX - WINDING UP (CLAUSE 270)

PART I— WINDING UP BY THE TRIBUNAL (CLAUSES 271 – 303)

- The Tribunal may appoint Provisional Liquidator of the company till the making of a winding up order (Clause 273).
- 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 by the Central Government. (Clause 275)
- 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 years' experience in company matters (Clause 275)

- The jurisdiction of the Tribunal with regard to winding up. (Clause 280)
- Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a Report containing specified particulars (Clause 281)
- The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed (Clause 288)
- The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act (Clause 291)

PART II.—VOLUNTARY WINDING UP (CLAUSES 304 – 323)

PART III.—PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP (CLAUSES 324 – 358)

PART IV.—OFFICIAL LIQUIDATORS (CLAUSES 359 – 365)

- Apart from company liquidators, provision has been made for appointment of Official Liquidators. (Clause 359)
- Where the company to be wound up (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 Part IV of Chapter XX.

CHAPTER XXI

PART I.—COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT (366

– 374)

- Companies that are capable of being registered under Clause 366 of the Companies Bill, 2012 include any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.(Clause 366)
- Obligation of Companies registering under this part. Every company which is seeking registration under this Part shall,—
 - (a) Ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;
 - (b) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;
 - (c) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.
 - (d) comply with such other conditions as may be prescribed. (Clause 374)

PART II.—WINDING UP OF UNREGISTERED COMPANIES (CLAUSES 375 –

378)

- Any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company
- No unregistered company shall be wound up under this Act voluntarily.
- An unregistered company may be wound up under the following circumstances, namely:—
 - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up. (Clause 375)
- Unregistered Company for the purpose of this Part, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal. (Clause 375(4))

CHAPTER XXII - COMPANIES INCORPORATED OUTSIDE INDIA (379 – 393)

I. Companies incorporated outside India

- Where not less than 50% 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 Chapter XXII 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. (Clause 379)

- The Central Government may make rules for the offer of Indian Depository Receipts, requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts, the manner in which the Indian Depository Receipts should be dealt with in a depository mode and by custodian and underwriters and the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, and whether or not it has established or will or will not establish a place of business in India. (Clause 390)

CHAPTER XXIII - GOVERNMENT COMPANIES (394 – 395)

I. Government Companies

- **Introduction of Chapter XXIII exclusively for Government Companies – Clauses 394 & 395**
- Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—
 - (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and
 - (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India. (Clause 394(1))
- Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—
 - (a) prepared within the time specified in sub-section (1) of section 394;
 - and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section (Clause 395(1))

- Corresponding sections of the Companies Act, 1956 Sections 617 & 619A.

CHAPTER XXIV - REGISTRATION OFFICES AND FEES (CLAUSE 396 – 404)

- The Central Government shall, by notification, establish such number of offices at such places specifying their jurisdiction for the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made there under and for the purposes of registration of companies under this Act (Clause 396 (1))
- The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act (Clause 396 (2))

CHAPTER XXV - COMPANIES TO FURNISH INFORMATION OR STATISTICS (CLAUSE 405)

Companies to Furnish Information or Statistics

The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order (Clause 405)

CHAPTER XXVI – NIDHIS (CLAUSE 406)

I. Nidhis

Power to modify Act in its Application to Nidhis - “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 (**Chapter XXVI - Clause 406 (1)**)

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.

CHAPTER XXVII - NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (CLAUSES 407 – 434)

I. National Company Law Tribunal and Appellate 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. (**Clause 408**)
- 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 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. (Clause 410)

- **Expeditious Disposal by Tribunal and Appellate Tribunal – Clause 422**

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.

CHAPTER XXVIII - SPECIAL COURTS (435 – 446)

I. Special Courts

- Special Courts to deal with offences under the Bill (Chapter XXVIII consisting of Clauses 435 to 446)
- 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. 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 (Clause 435)
- Mediation and Conciliation Panel (Clause 442) – Mediation and Conciliation Panel proposed to be created and maintained for facilitating mediation and conciliation between parties during any proceeding under the Bill before the Central Government or Tribunal.

CHAPTER XXIX – MISCELLANEOUS (CLAUSES 447 – 470)

Other provisions

- Punishment for Fraud (Clause 447) - “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;
- Dormant company (Clause 455) - 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.
- Relaxation of restriction limiting the number of persons in Association or Partnerships etc. at a time to a maximum of 100 with no ceiling as to associations or partnerships formed by professionals regulated by special acts.

SCHEDULES TO THE COMPANIES BILL, 2012

1. SCHEDULE I – (Sections 4 & 5)

- **TABLE A – MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**
- **TABLE B - MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**
- **TABLE C - MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**
- **TABLE D - MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL**

- **TABLE E** - MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING SHARE CAPITAL
 - **TABLE F** - ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES
 - **TABLE G** - ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL
 - **TABLE H** - ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL
 - **TABLE I** - ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL
 - **TABLE J** - ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL
2. **SCHEDULE II - (Section 123) - USEFUL LIVES TO COMPUTE DEPRECIATION**
 3. **SCHEDULE III - (Section 129) - GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY**
 4. **SCHEDULE IV –(Section 149(7)) CODE FOR INDEPENDENT DIRECTORS**
 5. **SCHEDULE V - (Sections 196 and 197) - PART I CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT & PART II REMUNERATION**
 6. **SCHEDULE VI - (SECTIONS 55 AND 186) - THE TERM “INFRASTRUCTURAL PROJECTS” OR “INFRASTRUCTURAL FACILITIES” INCLUDES CERTAIN PROJECT AND ACTIVITIES**
 7. **SCHEDULE VII – SECTION 135 - ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY POLICIES**

Few of the SCHEDULES reproduced for your reference:

SCHEDULE IV - CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a *bona fide* manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;

- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and ensure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the

Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

(4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :

(a) the term of appointment;

(b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;

(c) the fiduciary duties that come with such an appointment along with accompanying liabilities;

(d) provision for Directors and Officers (D and O) insurance, if any;

(e) the Code of Business Ethics that the company expects its directors and employees to follow;

(f) the list of actions that a director should not do while functioning as such in the company; and

(g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Reappointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or removal:

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:

(a) review the performance of non-independent directors and the Board as a whole;

(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

SCHEDULE VII – SECTION 135 - ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY POLICIES

Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.

THE COMPANIES BILL, 2012 AND THE CHARTERED ACCOUNTANT

1. Declaration on Incorporation of Company

Under Clause 7 of the Companies Bill 2012, at the time of Incorporation of the company, there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

2. Key Managerial Personnel

As per Clause 2(51) “key managerial personnel”, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole time director
- (iii) the Chief Financial Officer; and
- (iv) such other officer as may be prescribed;

Appointment of Key Managerial Personnel

1. As per Clause 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; and
- (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:

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. Whole-time key managerial personnel should be appointed by Board resolution containing the terms and conditions of the appointment including the remuneration.

3. Whole-time key managerial personnel shall not hold office in more than 1 company except in its subsidiary company at the same time:

However, this shall not disentitle a key managerial personnel from being a director of any company with the permission of the Board.

If he holds office in more than 1 company at the same time on the date of commencement of this Act, he should, within a period of 6 months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

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 Board meeting 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 6 months from the date of such vacancy.

5. If a company contravenes the provisions of section 203 regarding appointment of key managerial personnel, the company shall be punishable with fine which shall not be less than Rs. 100000/- but which may extend to Rs. 500000/- and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to Rs. 50000/- and where the contravention is a continuing one, with a

further fine which may extend to Rs. 1000/- for every day after the first during which the contravention continues.

3. Independent Directors

The Concept of Independent Directors has been introduced for the first time in company law. All listed companies and such other public companies as may be prescribed by the Central Government are required to appoint independent directors.

Criteria of Independence:

As per Clause 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,—

(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 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 nonprofit 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.

4. **Financial Statements**

The Companies Bill, 2012 defines “financial statement” in relation to a company, in Clause 2(40), small company and dormant company, may not include the cash flow statement.

As per Clause 129 (1), the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under clause 133 and shall be in the form(s) as may be provided for different class or classes of companies in Schedule III to the companies Bill 2012.

The financial statement, including consolidated financial statement, if any, has to be approved by the before they are signed on behalf of the Board at least by the Chairman

where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and Chief Executive Officer, if any, if he is a director in the company and by Chief Financial Officer and company secretary of the company, or, in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

The auditors' report shall be attached to every financial statement. (Clause 134 (2))

A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report referred to in sub-section (3). (Clause 134(7))

5. Accounting Standards

As per Clause 2 (2) "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in Clause 133 of the Bill.

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

6. Compulsory Internal Audit for certain prescribed companies (Clause 138)

Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

7. Audit and Auditors

Chapter X of the Companies Bill 2012 consisting of clauses 139 to 148 deals with the provisions relating to Audit and Auditors.

Under Clause 139(1), Every company shall appoint an individual or a firm as an auditor at the first annual general meeting of the company. Such person or firm shall hold office from the conclusion of that meeting in which he is appointed till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be prescribed.

Before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor. The certificate shall also indicate whether the auditor satisfies the criteria provided in Clause 141 with respect to eligibility, qualifications and disqualifications of auditors.

The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Appointment of first auditors for five years shall be subject to ratification by members at every Annual General Meeting.

Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

Where a company is required to constitute an Audit Committee under the Bill, all appointments, including the filling of a casual vacancy of an auditor shall be made after taking into account the recommendations of such committee.

The Bill provides for compulsory rotation of individual auditors and of audit firm. No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years. (Clause 139(2)). Also, enabling provisions for members to resolve rotation of audit partners and his team are provided in the Bill.

As per Clause 139(3), members of a company may resolve to provide that— (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated every year; or (b) the audit shall be conducted by more than one auditor. Provisions relating to voluntary rotation of auditing partner (in case of an audit firm) modified to provide that members may rotate the partner `at such interval as may be resolved by members` instead of `every year` proposed in the clause earlier in the 2011 Bill.

Eligibility, Qualifications and Disqualifications of Auditors

A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant. The following persons are eligible for appointment as auditor of a company:

- a firm whereof majority of partners practising in India are qualified for appointment as auditor aforesaid, may be appointed by its firm name to be auditor of a company.
- a firm including a limited liability partnership(LLP). Where such firm/LLP is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in Clause 144 of the Bill.

Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in the Bill after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Auditor not to render certain services – (Clause 144)

An auditor shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company or associate company), namely:—

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and

(i) any other kind of services as may be prescribed.

Services other than the above may be provided by the Auditor to the company only if the services are approved by the Board of Directors or the audit committee, as the case may be.

Powers and Duties of Auditors

1. Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor. The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

2. The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required to be laid before the company in general meeting. The report shall state whether the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

3. The Auditor's Report shall also state:

(a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns

adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the report on the accounts of any branch office of the company audited by a person other than the company's auditor has been sent to him and the manner in which he has dealt with it in preparing his report;

(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(e) whether, in his opinion, the financial statements comply with the accounting standards;

(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(g) whether any director is disqualified from being appointed as a director;

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

(j) such other matters as may be prescribed.

Where any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons therefor.

4. Every auditor shall comply with the auditing standards.

5. If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

6. Auditor of the company shall sign the auditor's report or sign or certify any other document of the company, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company

7. All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Increased Accountability of Auditors (Clause 147)

Where an auditor of a company contravenes any of the provisions of Clause 139 to 146 of the bill (relating to contents of audit report, compliance with auditing standards, rendering prohibited services, signing of audit report etc.), the company shall be punishable with fine which shall not be less than Rs. 25000/- but which may extend to Rs. 500000/- 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 Rs. 10000/- but which may extend to Rs. 100000/-, or with both.

If an auditor of a company contravenes any of the provisions of Clause 143 (Powers and duties of auditors and auditing standards), Clause 144 (Auditor not to render certain services) and Clause 145 (Auditors to sign audit reports, etc.), the auditor shall be

punishable with fine which shall not be less than Rs. 25000/- but which may extend to Rs. 500000/-. If an auditor has contravened such provisions with the intention to deceive the company or its shareholders or creditors or any other person concerned or interested in the company, 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 twenty-five lakh rupees.

Where an auditor has been convicted of an offence as above, 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 persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners of the audit firm and of the firm jointly and severally and such partner or partners of the audit firm shall also be punishable in the manner as provided in Clause 447 of the Companies Bill 2012, which lays down the punishment for fraud.

Under Clause 447, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

For the purposes of Clause 447 —

- (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

8. Registered Valuers

Chapter XVII of the Bill consisting of Clause 247 pertains to Registered Valuers. It seeks to provide a framework for enabling fair valuations in companies for various reasons

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.

9. Company Liquidators

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 provisional liquidator from the panel maintained by the Central Government as the Company Liquidator.

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 years' experience in company matters.

Under Clause 291 of the Companies Bill 2012, 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. Any person appointed as such shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

10. Legal Representation before the Tribunal or Appellate Tribunal

Under Clause 432 of the Bill, 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.

11. Serious Fraud Investigation Office

The SFIO is a multi-disciplinary organization under Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation for detecting and prosecuting or recommending for prosecution white-collar crimes/frauds.

The Central Government shall, by notification will 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 the Bill, 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 Bill.

Clause 211 provides Statutory Status to Serious Fraud Investigation Office (SFIO) has been proposed in the Companies Bill, 2012. More powers are being given to the SFIO in the Companies Bill 2012. Investigation Report of SFIO filed with the Court for framing of charges will be treated as a report filed by a police officer. SFIO will have powers to arrest in respect of certain offences in the Bill which attract the punishment for fraud.

12. National Financial Reporting Authority

Clause 132 of the Companies Bill 2012, contains provisions with respect to constitution of National Financial Reporting Authority.

The NFRA has a mandate to ensure monitoring and compliance of accounting and auditing standards and to oversee quality of service of professionals associated with compliance. The Authority is also proposed to be empowered with quasi-judicial powers to investigate into professional or other misconduct by chartered accountants and to impose penalties on them.

The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance, business administration, business law, economics or similar disciplines, to be nominated by the Central Government and such other members not exceeding 15 consisting of part-time and full-time members, as may be prescribed. The terms and conditions of appointment of the chairperson and members shall be such as may be prescribed. The chairperson and members shall make a declaration to the Central Government in the prescribed form

regarding no conflict of interest or lack of independence in respect of his or their appointment.

The chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

Functions of NFRA:

Under Clause 132(2), the National Financial Reporting Authority shall—

- (i) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (ii) monitor and enforce the compliance with accounting and auditing standards recommended by it in such manner as may be prescribed;
- (iii) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services and such other related matters as may be prescribed; and
- (iv) perform such other functions as may be prescribed.

Powers of NFRA

Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

- (a) have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any

member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation.

(b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
- (iv) issuing commissions for examination of witnesses or documents;

(c) where professional or other misconduct is proved, have the power to make order for—
(A) imposing penalty of—

(I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

(II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

(B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India refund to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted in such manner as may be prescribed.

11. Corporate Social Responsibility Obligations

Introduction of CSR Provisions in the Companies Bill 2012

Corporate Social Responsibility (CSR) Obligations have been introduced under Clause 135 of the Companies Bill, 2012. With the passage of this Act, India would become the first country to mandate corporate social responsibility (CSR) through a statutory provision. Under the new law, the CSR spending would be the responsibility of companies. The Bill, seeks to make CSR spending compulsory for companies that meet certain criteria. The companies will have to mandatorily spend 2% of their average net profit for CSR activities. If companies are unable to meet the CSR norms, they will have to give explanations. In case, the companies are not able to do the same, they have to disclose reasons in their books. Otherwise, they would face action, including penalty.

However, an important point to be noted is that even though CSR provisions have been made mandatory for certain types of companies, there is no penalty for non-contribution to CSR.

CSR Provisions in Companies Bill 2012

1. Every company having

- net worth of Rs. 500 crore or more, or
- turnover of Rs. 1000 crore or more or
- net profit of Rs. 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of 3 or more directors, out of which at least 1 director shall be an independent director. The Board's report under clause 134(3) shall disclose the composition of the Corporate Social Responsibility Committee.

2. The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII to the Companies Bill 2012

(b) recommend the amount of expenditure to be incurred on the activities undertaken by the company related to CSR, and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

3. The Board of every such company which has to fulfill CSR obligations, shall also after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

4. The Board has to ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

5. For the purposes of calculating “average net profit”, the provisions of clause 198 of the Bill shall be applicable which are given hereunder:

”198. (1) In computing the net profits of a company in any financial year for the purpose of section 197,—

(a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and

(b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorized in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—

(a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;

(b) profits on sales by the company of forfeited shares;

(c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

(d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value;

(e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

- (a) all the usual working charges;
- (b) directors' remuneration;
- (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
- (f) interest on debentures issued by the company;
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
- (h) interest on unsecured loans and advances;
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
- (j) outgoings inclusive of contributions made under section 181;
- (k) depreciation to the extent specified in section 123;
- (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
- (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;

(n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);

(o) debts considered bad and written off or adjusted during the year of account.

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

(a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);

(b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);

(c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

(d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.”

6. If the company fails to spend the specified amount on CSR activities, the Board shall, in its report made under clause 134(3), specify the reasons for not spending the amount.

7. The company shall give preference to local area and areas around where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

8. Activities which may be included by companies in their Corporate Social Responsibility Policies is given in Schedule VII to the Companies Bill 2012

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**ANNEXURE I - UNDERSTANDING THE LEGISLATURE AND
PARLIAMENTARY SYSTEM OF GOVERNMENT**

A legislature is an organization comprising members who use parliamentary procedure to make decisions with the power to pass, amend, and repeal laws. The law created by a legislature is called legislation or statutory law. In addition to enacting laws, legislatures usually have exclusive authority to raise or lower taxes and adopt the budget and other money bills.

Legislatures are known by many names, the most common being parliament and congress, although these terms also have more specific meanings.

Parliaments vary in size, in how members are elected, how long they hold office, in their ways of relating to political parties and to constituents, in their relations with executive powers, in their responsibilities in lawmaking and budgeting, in how they oversee executive spending and activities, and in a dozen other ways. But scholars tend to agree that there are three functions common to parliaments in democracies; representation, lawmaking, and oversight.

There can be different types of Parliamentary systems. Given below is a brief on the Parliamentary systems of different countries:

- **United Kingdom** - The Westminster system is a democratic parliamentary system of government modelled after the politics of the United Kingdom. This term comes from the Palace of Westminster, the seat of the Parliament of the United Kingdom. The system is a series of procedures for operating a legislature. It is usually found in Commonwealth of Nations.
- In a Westminster system, some members of parliament are elected by popular vote, while others are appointed. All Westminster-based parliaments have a lower house with powers based on those of the House of Commons (under various names), comprising local, elected representatives of the people. Most also have a smaller upper house, which is made up of members chosen by various methods:
 - Lifetime appointees from successive Prime Ministers (such as most members of the British House of Lords)
 - De facto appointees of the cabinet or premier (such as the Canadian Senate)
 - Direct election (such as the Australian Senate)
 - Election by sub-national governments (such as the Indian Rajya Sabha)
- In the UK, the lower house is the de facto legislative body, while the upper house practices restraint in exercising its constitutional powers and serves as a

consultative body. In other Westminster countries, however, the upper house can sometimes exercise considerable power.

- Some Westminster-derived parliaments are unicameral for two reasons:
 - some, such as the Parliament of New Zealand, Parliament of Queensland, and the parliaments of Canadian provinces have abolished their upper houses.
 - others have never had them, such as the Parliament of Malta, the Papua New Guinea Parliament, and the Legislative Council of Hong Kong.
- **Australia** - Australia is, in many respects, a unique hybrid with influences from the United States Constitution as well as from the traditions and conventions of the Westminster system. Australia is exceptional because the government faces a fully elected upper house, the Senate, which must be willing to pass its budgets. Although government is formed in the lower house, the House of Representatives, the support of the Senate is necessary in order to govern.
- **USA** - There are major differences between the political system of the United States and that of most other developed democracies. These include greater power in the upper house of the legislature, a wider scope of power held by the Supreme Court, the separation of powers between the legislature and the executive, and the dominance of only two main parties. The United States is a federal constitutional republic, in which the President of the United States (the head of state and head of government), Congress, and judiciary share powers reserved to the national government, and the federal government shares sovereignty with the state governments. The executive branch is headed by the President and is independent of the legislature. Legislative power is vested in the two chambers of Congress, the Senate and the House of Representatives. The judicial branch (or judiciary), composed of the Supreme Court and lower federal courts, exercises judicial power (or judiciary). The judiciary's function is to interpret the United States Constitution and federal laws and regulations.

The Structure of Parliament of India

India has a parliamentary system of government based largely on that of the United Kingdom (Westminster system). The Parliament of India is the supreme legislative body in India. Founded in 1919, the Parliament alone possesses legislative supremacy and thereby ultimate power over all political bodies in India.

The Parliament of India comprises the President of India and the two Houses, Lok Sabha (House of the People/ Lower House) and Rajya Sabha (Council of States Upper House). The parliament is bicameral and the two Houses meet in separate chambers in the Sansad Bhavan in New Delhi. The Members of either house are commonly referred to as Members of Parliament or MP. The MPs of Lok Sabha are elected by direct election and the MPs of Rajya Sabha are elected indirectly by the members of the State Legislative Assemblies and Union territories.

Rajya Sabha Membership is limited to 250 members, 12 of whom are chosen by the President of India for their expertise in specific fields of art, literature, science, and social services. These members are known as nominated members. The remainder of the body is elected by the state and territorial legislatures. Terms of office are six years, with one third of the members retiring every two years. The Rajya Sabha meets in continuous sessions and, unlike the Lok Sabha, is not subject to dissolution.

Members of the Lok Sabha are elected by direct election under universal adult suffrage. The Constitution limits the Lok Sabha to a maximum of 552 members, including no more than 20 members representing people from the Union Territories, and two appointed non-partisan members to represent the Anglo-Indian community (if the President feels that that community is not adequately represented). Each Lok Sabha is formed for a five-year term, after which it is automatically dissolved, unless extended by a proclamation of emergency. In such cases, the term may be extended by one-year increments.

Powers of the Two Houses of Parliament in the Sphere of Law Making

In the sphere of law making, both Houses enjoy equal powers as originating and revising chambers. All Bills (other than Money Bills or Finance Bills) including the Constitution Amendment Bills, may originate in either House of Parliament. A bill introduced by a Minister is known as Government Bill, and a Bill introduced by a private member, is known as private member's Bill. The procedure for the passage of the Bills is similar in both the cases. A Bill has to pass through 3 stages known as The First Reading, Second Reading and the Third Reading in each House of Parliament and receive the Assent of the President before it becomes an Act of Parliament.

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Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team.

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Professional Association: *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*