57

STANDING COMMITTEE ON FINANCE
(2011-12)

FIFTEENTH LOK SABHA

Ministry of Corporate Affairs

THE COMPANIES BILL, 2011

FIFTY-SEVENTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

June, 2012/ Jyaistha, 1934 (Saka)

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Presented to Hon'ble Speaker on 26 June, 2012

LOK SABHA SECRETARIAT
NEW DELHI

June, 2012/ Jyaistha, 1934 (Saka)

CONTENTS

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-12

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

RAJYA SABHA

22. Smt. Renuka Chowdhury*
23. Shri Ravi Shankar Prasad*
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri P. Rajeeve *
27. Shri Satish Chandra Misra
28. Dr. Mahendra Prasad **
29. Dr. K.V.P. Ramachandra Rao
30. Shri Yogendra P. Trivedi
31. Shri Naresh Agrawal**

SECRETARIAT

1.	Shri A.K. Singh	-	Joint Secretary
2.	Shri R.K. Jain	-	Director
3.	Shri Ramkumar Suryanarayanan	-	Deputy Secretary

**Nominated to be the Member of the Standing Committee on Finance w.e.f 4th May, 2012*

***Nominated to be the Member of the Standing Committee on Finance w.e.f 15th May, 2012*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fifty-seventh Report on the Companies Bill, 2011.

2. The Companies Bill, 2011 introduced in Lok Sabha on 14 December, 2011, was referred to the Committee on 5 January, 2012 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha. The Standing Committee on Finance had earlier examined the Companies Bill, 2009 and presented report on the same in the Parliament on 31 August, 2010. Keeping in view the recommendations made by the Standing Committee, a revised Companies Bill, 2011 was prepared by the Ministry of Corporate Affairs. The Hon'ble Speaker referred the revised Bill to Parliamentary Standing Committee on Finance as certain new provisions were included in the Bill, which were not earlier referred to the Committee during the examination of Companies Bill, 2009.

3. The Committee obtained suggestion from organizations/experts as also written information on the aforesaid Bill from the Ministry of Corporate Affairs.

4. The Committee, at their sittings held on 24th January, 2012 and 20th April, 2012 took evidence of the representatives of the Ministry of Corporate Affairs.

5. The Committee, at their sittings held on 18 May, 2012 and 7 June, 2012 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Hon'ble Speaker/Parliament.

6. The Committee wish to express their thanks to the officials of the Ministry of Corporate Affairs for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

7. The Committee also wish to express their thanks to all the organizations and experts for their valuable suggestions on the Bill.

8. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
15 June, 2012
25 Jyaistha, 1934 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance

REPORT

PART I

I. Introduction

1.1 The Companies Act, 1956 had been enacted with the object to consolidate and amend the law relating to the companies and certain other associations. The said Act has been in force for about fifty-five years and had been amended 25 times. The number of companies has expanded from about 30,000 in 1956 to nearly 8 lakhs companies functioning as of date. A number of changes have taken place during the last 2-3 decades in the national and international economic and regulatory environment. The Indian economy has also experienced substantial expansion and growth. The change in regulatory structure for corporate sector was also considered necessary to address issues relating to regulatory harmony, recognition of good corporate practices and technological improvements.

1.2 Keeping in view the above factors, the Central Government after due consultations and deliberations decided to repeal the Companies Act, 1956 and enact a new legislation to provide for new provisions to meet the changed national and international economic environment and accelerate the expansion and growth of our economy.

1.3 A Concept Paper on Company Law was placed on the Ministry's official web-site on August 4, 2004 for suggestions/comments by all interested stakeholders. A large number of comments, responses and suggestions were received. To examine these comments, suggestions and to advise the Central Government on various issues, the Government constituted an Expert Committee under the Chairmanship of Dr. J.J. Irani, Director, Tata Sons Ltd. This Committee included representatives from various industry and trade bodies/associations, statutory professional bodies, experts and representatives from regulatory bodies such as Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and concerned Ministries/Departments.

1.4. The Committee submitted its report to the Government on 31st May, 2005. The Report of Dr. Irani Committee, in addition to publication on the website of the Ministry was also circulated to all Central Ministries/Departments, Chief Secretaries of State Governments and various Chambers/Professional Institutes. Taking into account the principles enunciated in the Report of the Irani Committee and views, comments and suggestions received by the Ministry from various quarters, the Companies Bill, 2008 was prepared.

1.5 The Companies Bill 2008 was introduced in the Lok Sabha, which was subsequently referred to the Parliamentary Standing Committee on Finance for examination and report. However, before the Committee could present its report, 14th Lok Sabha was dissolved and the Companies Bill, 2008 lapsed as per clause (5) of Article 107 of the Constitution of India. In view of this, it was proposed 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 Companies Bill, 2009 accordingly, was introduced in the Lok Sabha on 3rd August, 2009.

1.6 After introduction, the Companies Bill, 2009 was referred to Parliamentary Standing Committee on Finance for examination and report. The Committee examined the same in detail in consultation with various stakeholders including the administrative Ministry and submitted a comprehensive Report to the Parliament on 31st August, 2010. Keeping in view the recommendations made by the Standing Committee, a revised Companies Bill, 2011 was prepared which was approved by the Cabinet on 24th November, 2011. This Bill was introduced in the Lok Sabha on 14th December, 2011. The Hon'ble Speaker referred the Bill to Parliamentary Standing Committee on Finance on 5th January, 2012 as certain new provisions were included in the Bill, which were not earlier referred to the Committee during the examination of Companies Bill, 2009.

1.7 According to the Ministry of Corporate Affairs, most of the recommendations made by the Committee in their earlier Report (21st Report) on the Companies Bill, 2009 have been accepted by the Government and incorporated in the Companies Bill, 2011. In a statement furnished to the Committee, they have submitted that out of 178 recommendations made by the

Committee, 167 have been incorporated fully; six have been partially incorporated and in respect of five recommendations, a different view has been taken as indicated in the statement given below:-

Recommendations which have been partially accepted

S.No	Text of Recommendation	Clause in the Companies Bill, 2009	Clause in the Companies Bill, 2011	Comments
1.	Definition of the term Key Managerial Personnel: Keeping in view the suggestions made for greater clarification in the definition of 'Key Managerial Personnel' (KMP), the Committee recommend that whole-time Directors should also be recognized as a KMP irrespective of whether a company has Managing Director/Manager. [1.71]	2(1)(zza):	2(51):	The whole-time directors, in case of companies where managing directors or managers are there, do not exercise substantial powers of management and control a specific area of management (like Finance, Human Resource or Manufacturing/ Engineering etc). Hence it was felt that whole–time directors should not be recognized as KMPs However, they may be prescribed as KMPs under new sub-clause 2(50)(iv) at a subsequent stage if considered appropriate.
2.	The alternate provision proposed by the Ministry is not in conformity with that prescribed by SEBI for allotment of securities. As currently allotment of securities is being done on a fast track basis, the provision proposed by the Ministry seems to be out of sync with the reality. It may, therefore, be modified accordingly in tune with the SEBI norms as well as the emerging reality in the securities market. The afore-mentioned new proviso to the Clause may however be suitably incorporated, providing for monies received on application for shares to be kept in a separate bank account and to be utilized for specified purposes. A provision for payment of	24(3)	42	The suggestion is partially accepted. Clause 42 is not meant for public offers. It seeks to provide for private placements. Hence, a period of sixty days has been provided for such cases.

	interest on share application money remaining unpaid beyond the stipulated period may be incorporated in the Clause as an investor-friendly measure. [3.35]			
3.	The maximum number of listed companies in which a person can be appointed as a director may be reduced to five from the proposed seven. Number of public companies to be restricted to 10 instead of 15. The proposed alternate clause, as reproduced below, may be reconsidered, keeping in view practical considerations :- 'in case a person is a managing or whole-time director in a listed company, the number of public companies in which such a person can be appointed as non executive director, shall be restricted to ten and the number of listed companies in which such a person can be appointed as a non executive director, shall be restricted to two'. Similarly, the Committee also disagree with the proviso suggested in the alternate clause by the Ministry requiring Central Government permission for appointment as director in more than twenty private companies. The Ministry may, therefore, reconsider this proviso. [11.72 to 11.74]	146	165	The suggestion is partially accepted. The maximum number of public companies in which a person can be appointed as director has been restricted to 10. Other recommended modifications have been incorporated.
4.	Every Company to have only one investment company. [12.90]	164	186(1)	The suggestion is partially accepted. Clause 186(1) modified to enable formation of Special Purpose Vehicles (SPVs).
5.	The Committee are in agreement with the intent of the provisions proposed under Clause 229 (Determination of sickness) and Clause 230 (Application	229 & 230	253 & 254	The suggestion is partially accepted. The issues pertaining to absence of sufficient discretionary

	for revival and rehabilitation) which provide for a greater control and say to the creditors over the assets of a sick company, and in approving a revival plan. However, issues of concern as well as infirmities have been pointed out in the provisions proposed by the Chambers of Commerce, law firms as well as the Indian Banks' Association. These include: absence of sufficient discretionary powers with the tribunal to decide on issues relating to the company and its stakeholders; necessity of stipulating a time frame of 90 days from the date of hearing for submitting the draft scheme for the approval of creditors; reinstating the presently applicable mechanism for making references by the Central Government, Reserve Bank etc.; unsatisfactory working of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA); undermining the interests of non-secured creditors etc. Though the Ministry have sought to address the concerns expressed and infirmities pointed out, no alternate provisions or details in this regard have been provided. A detailed and clear response on the issues raised in regard to the provisions of the clauses being absent, the Committee hope and trust that the provisions of Clauses 229 and 230 are revisited and revised with a view to enabling effective revival of sick industrial companies and being in the interest of all categories of stakeholders. [19.13]			powers with the Tribunal to decide on issues relating to the company and its stakeholders & undermining the interests of non-secured creditors have been agreed.
6.	The suggestions include: (i) deletion of sub clause (a) of clause 279 (circumstances in which company may be wound up voluntarily),	279	(i) 304	The suggestions are partially accepted. (i): Relevant sub-clause (a) had to be retained to provide for situations for allowing winding up of a company as a result of expiry of period for

				duration originally fixed in the articles or on the occurrence of any event originally provided in the articles for company's winding up/dissolution.
	(ii) adding an enabling proviso for holding of joint meeting of members and creditors in Clause 281 (meeting of creditors), [20.59]	281	(ii) 306	(ii) Clause 281 (renumbered clause 306) is being retained. Since creditors meetings would be held during winding up as and when necessary considered necessary as per directions of Tribunal, the provisions of joint meeting are not being considered necessary.

Recommendations on which a different view has been taken by Ministry

S. No	Recommendation of the Committee (Para Number)	Clause in the Companies Bill, 2009	Clause in the Companies Bill, 2011	Comments
1	Unlisted companies not to be mandated consolidation of financial statements. [9.17]	117(3)	129(3)	Intention of consolidation of financial statements is to give true and clear picture of financial position of the holding company and its all subsidiary companies to the investor and public at large. This would reflect the true strength of the entire group of companies.
2	National Advisory Committee for Auditing and Accounting Standards (NACAAS) may be entrusted to develop and prepare a comprehensive list of audit firms over a period of three years, after which it will be mandatory for any company to appoint an auditor from this list. [10.12]	118/ 123	132/ 139	It is felt that maintenance of comprehensive list of audit firms may be best maintained by professional bodies like Institute of Chartered Accountants of India (ICAI).
3	Cost Auditor should be appointed by Share holders in Annual General Meeting. [10.67]	131	148	Cost Audit is to be provided for only certain classes of companies. Since cost records and cost audit are tools for management for achieving more cost

				efficiency, it is considered that their appointment may be decided by the Board itself.
4	To explore the feasibility of advisory Boards for bigger companies comprising of qualified persons/ professional experts. [29]	132	149	The Bill already provides for various Committees like Audit Committee and Nomination and Remuneration Committee etc. and elaborates their duties. Therefore, a separate advisory Board is not considered to be necessary.
5	Meeting to decide scheme of merger and amalgamation: If written consent is received from the requisite number of members or creditors, the requirement to hold a meeting could be dispensed with. [15.16]	201	230	Meeting should be held so that the information about the merger, amalgamation should be there in the knowledge of the members.

1.8 On being asked about these new provisions introduced in the Bill, the Ministry, while referring to the general recommendation of the Committee in their earlier Report on the subject, have submitted as below :-

Para 21 (Part – I) of 21st Report

> "However, the Committee believe that since the Companies Bill, 2009 needs to have a futuristic vision as well, all contemporary as well as emerging issues including anticipated problems concerning the corporate sector, such as ecology and environmental pressures, impact of global operations of Indian companies on domestic stakeholders, technological collaborations, free movement of capital etc. would therefore have to be appropriately addressed in the Bill.
>
> (ii) Most of the changes proposed in the Bill after submission of the report of the Committee seek to achieve the aim set out in the above paragraph and strengthen corporate governance. The main consideration for introducing these provisions was to avoid possibility of initiating a process of amendments soon after enactment of the new Companies Act."

II. New Provisions introduced in Companies Bill, 2011

2.1 While incorporating the several recommendations of the Committee, as also some of the suggestions/ representations received subsequent to submission of report of Committee, the provisions of the Companies Bill, 2009 were revised and a fresh Bill was formulated as Companies Bill, 2011 and introduced in Parliament. A statement indicating the changes made and the new provisions introduced has been submitted by the Ministry as below : -

SN	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
1	2(1)(zzp)	2(68)	Definition of 'private company' - Maximum number of members to be increased from 50 to 200.	To allow setting up of private companies with more number of members.
2	---	New Clause 29	Dematerialization of securities : - Mandatory for listed and such class of companies as may be prescribed; - Optional for other companies	Change is of procedural nature and seeks to synchronize the provisions of the Bill with the provisions of Depositories Act and SEBI Act. (Depositories Act enables dematerialization for all kinds of securities and SEBI Regulations make it mandatory for all public offers to be in dematerialized form.) Would result in good corporate governance since frauds related to loss of/duplicate securities certificates would not happen. Further it would also be more convenient for investors since there would not be need to exercise safeguards relating to physical share certificates.
3	24(2)	42	Modifications in clause relating to private placement.	To prevent misuse of existing provisions on the matter, to protect interest of investors and to synchronize the provisions with SEBI regulations / norms.

SN	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
4	52	New sub-clause (2) of clause 58.	While making securities of public companies to be freely transferable, shareholders contracts/ agreements also made enforceable.	To recognize Shareholders Agreements/ Contracts as per commercial practices.
5	112	125	Transfer of securities in respect of unclaimed dividend beyond 7 years to be also transferred to IEPF	It was felt that since dividend for relevant securities has been unclaimed for seven years or more, the underlying securities may be mis-used by vested parties and these should also be allowed to be transferred to IEPF. The rightful claimants can claim them back from IEPF through provisions in rules.
6	----	New Clauses 130 and 131	Re-opening of accounts by companies after obtaining approval of Tribunal.	The change proposes to provide procedural requirement in respect of revision in accounts in certain cases. The present law is silent in respect of re-opening or re-casting of accounts. In certain cases, particularly, in cases relating to fraud, there may be need to re-open/ re-cast accounts to reflect true and fair accounts. In case of Satyam case, such recasting was ordered by Court. The provisions in the Bill mandate such re-opening on the order of Court or Tribunal. In other cases the re-opening is being permitted, through order of Tribunal, with adequate safeguards.
7	----	New Clause 135	Corporate Social Responsibility (CSR)	CSR provisions have been included in accordance with recommendations made by Hon'ble Committee. Additionally, it is being proposed that companies covered under such provisions shall constitute a CSR Committee of

SN	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
				Board and the Board of such a company shall be required to make every endeavour to spend 2% amount as provided in clause. An indicative Schedule of CSR activities has also been appended to the Bill. The Schedule empowers the Central Government to prescribe new CSR activities by amending the Schedule as and when such a need arises.
8	123	139	Procedure with regard to appointment of auditors:- Instead of year to year basis it can be appointment by members in general meeting for five years.	The procedure has been proposed to be modified in respect of appointment of auditors. It is proposed that shareholders may have the power to appoint auditors for straight five years, instead of on year to year basis. This would ensure that promoter/company/ management does not change auditor who is doing good job pre-maturely. Auditor's early resignation and removal have been made possible. Approval of Central Government provided in case an auditor is removed before his tenure.
9	126	143(12) to 143(15)	Provisions proposed for statutory duties on Auditors (and other professionals) to report fraud to Central Government	Keeping in view the Satyam experience it was felt that such auditors/professionals should be under obligation to report fraud to Central Government.
10	132	New 149(1) 2nd proviso	Woman Director	Appointment of at least one Woman director has been proposed to be mandated in such class of companies as may be prescribed. The class shall be prescribed through rules. This is likely to be in line with the policy of the Government for encouraging more and more women participation in decision making at various levels.

SN	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
11	---	New 151	Small Shareholders' elected Director - Listed companies allowed to have one Director to be elected by small/minority shareholders.	Companies Act, 1956 has this provision but Companies Bill, 2009 did not include these provisions. These have been proposed to be included in the new Bill.
12	204	New sub-clause (10) to clause 233	A transferee (holding) company not to hold shares in its own name consequent upon merger of a subsidiary with a holding company.	Necessary for good corporate governance and to prevent market manipulation by companies by indulging in trading in their own shares.
13	204/336	233/361	Enhanced coverage/ scope for summary merger and summary liquidation	This has been proposed to ensure that the Bill is flexible and takes care of future anticipated problems for the corporate sector.
14	216	245	Class action to be allowed on the applications of members or depositors only.	It has been felt that since creditors can enforce their claims through contracts/ agreements with borrower companies, they may not be given statutory right for class action. On the other hand since depositors do not have any contractual rights and are mainly of unsecured nature, they are being proposed to be empowered with right to file class action petitions before Tribunal.
15	301	326(1) (proviso) and 326(2)	Wages/ Salaries payable to workmen for a period of 2 years protected in case of winding up of the company.	Such payments have been proposed to have overriding effect over all other claims, including those of secured creditors. This is being considered essential to protect interests of workmen in case of winding up of companies.
16	--	New Clauses 366 read with 374	Enabling provisions for allowing conversion of various entities (like societies,	Under the existing Act, mainly partnership firms are being allowed to be converted into companies subject to certain safeguards and

SN	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
			cooperative societies, firms and LLPs) into companies.	the satisfaction of the Registrar of Companies. Keeping in view the fact that LLP Act, 2008 has been in force since 2009 and various other entities like societies, cooperative societies may also have need commercial freedom for conversion into corporate form, the enabling provisions (on the lines of provisions in the existing Act) have been proposed for conversion of such entities into companies as well, subject to adequate safeguards.
17	370(3) 373(2)	409(3)(a) 412(2)(e)	NCLT provisions:- ICLS officers of JS rank proposed to become Technical Members in certain cases Selection Committee to also have Secretary, D/o Financial Services as Member	The provisions in respect of NCLT and NCLAT have been revised in view of Order of Hon'ble Supreme Court in the NCLT matter. Minor variation on these two issues have been proposed to ensure that (i) genuine experienced candidates (i.e. ICLS/ILS Officers having 15 years experience with at least 3 years in the rank of JS or above) are allowed to become Technical Members. (ii) Secretary, DFS has been proposed as Member in Selection Committee to ensure that candidates with adequate experience with reference to SICA cases are selected.
18	----	New Clause 442	Conciliation and Mediation Panel	To enable voluntary arbitration by parties and to expedite decision on applications/petitions filed under new Bill for approval.
19	357, 367 (2), 421	462	Exemption from provisions of the new legislation.	Presently, the Act/ Companies Bill allows Central Government to modify provisions of the law for class of companies e.g. Government Companies, Producer

SN	Clause No. in the Companies Bill, 2009	Clause No. in the Companies Bill, 2011	Issue	Remarks
				Companies, Nidhi Companies and in respect of e-governance initiatives. It is proposed to empower Central Government to have power, in public interest, to exempt/modify provisions of the Act for a class or classes of companies. Draft notification shall be laid in draft form in both the Houses of Parliament and shall be effective only after both the Houses approve it.
20	---	New Clause 463	Power of Court to grant relief in certain cases.	Section 633 of existing Companies Act, 1956 was not included in the Companies Bill, 2009 and is now proposed to be included.
21	424	466	Provisions regarding continuation of President/ Members of CLB with Tribunal	Existing Members/ Employees of CLB to be retained in NCLT if they qualify norms under new Bill. This has been proposed to ensure continuity in the functioning of the body.
22	174(5)	196(4)	Modification to be made in the requirement for passing of Special resolution before appointment of managing director, whole-time director or manager.	The clause 196(4) of the Companies Bill, 2011 presently provides for passing of special resolution, on the lines of similar provisions provided in clause 174(5) of the Companies Bill, 2009. However in view of the recommendation made by Hon'ble Committee to review the provisions in respect of appointment/ remuneration of managerial personnel keeping in view the provisions of Companies Act, 1956 it is felt that requirement of passing of special resolution may be modified to passing of ordinary resolution as provided in the existing Act.

III. Salient features of the Companies Bill, 2011

3.1 The following are the salient features of the Companies Bill, 2011:-

(*i*) E-Governance:- Maintenance and allowing inspection of documents by companies in electronic form being allowed for the first time.

(*ii*) Concept of Corporate Social Responsibility is being introduced.

(*iii*) Enhanced Accountability on the part of Companies:

(*a*) In addition to the concept of Independent Directors (IDs) introduced, the provisions in respect of their tenure and liability, etc., have been provided. Code for IDs provided in a new Schedule to the Bill. Databank for IDs proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of IDs.

(*b*) Corporate Social Responsibility (CSR) Committee of the Board proposed in addition to other Committees of the Board *viz* Audit Committee, Nomination and Remuneration and Stakeholders Relationship Committee. These committees shall have IDs/non-executive directors to bring more independence in Board functioning and for protection of interests of minority shareholders.

(*c*) Definition of ‘‘promoter’’ also included along with his liability in certain cases.

(*d*) Provisions in respect of vigil mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices.

(*e*) The Central Government has been empowered to prescribe restrictions in respect of layers of subsidiaries for any class or classes of companies.

(*f*) New provisions suggested for allowing re-opening of accounts in certain cases with due safeguards.

(*iv*) Additional Disclosure Norms:

(*a*) New disclosures like development and implementation of risk management policy, Corporate Social Responsibility Policy, manner of formal evaluation of performance of Board of directors and individual directors included in the Board report in addition to disclosures proposed in such report in the Companies Bill, 2009.

(*b*) Consolidation of accounts: Accounts of Foreign subsidiaries to be attached for filing them with the Registrar. Subsidiary to include ‘‘associate’’ and ‘‘joint venture’’ for the purpose of consolidation.

(*c*) Every listed company required to file a return with the Registrar regarding change in the shareholding position of promoters and top ten shareholders of such company.

(*v*) Facilitating raising of capital by companies:

(*a*) Provisions for offer or invitation for subscription of securities on private placement basis revised to ensure more transparency and accountability.

(*b*) Companies being allowed to issue equity shares with differential voting rights.

(*c*) Central Government empowered to prescribe, through rules, the requirements in connection with provision for money made by a company for allowing purchase of company’s shares by its employees under a scheme for their benefit. Disclosure to be made in the Board’s report in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates.

(*vi*) Audit Accountability:

(*a*) Rotation of auditors and audit firms being provided for.

(*b*) Stricter and more accountable role for auditor being retained. Provisions relating to prohibiting auditor from performing non-audit services revised to ensure independence and accountability of auditor. Subject to the maximum

prescribed number of companies, the members of a company may resolve that the auditor or audit firm of such company shall not become auditor in companies beyond the number as may be specified in such resolution.

(*c*) National Advisory Committee on Accounting and Auditing Standards (NACAAS) proposed to be renamed as National Financial Reporting Authority (NFRA) with 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 shall consider the International Financial Reporting Standards and other internationally accepted accounting and auditing policies and standards while making recommendations on such matters to the Central Government which will improve the competitiveness of our companies with other companies. The Authority is also proposed to be empowered with quasi judicial powers to ensure independent oversight over professionals.

(*d*) Cost Audit: Cost records to be mandated for companies engaged in production of such goods or rendering of such services as may be prescribed. The concept of ‘‘cost auditing standards’’ being mandated.

(*e*) Secretariat Audit: Prescribed class of companies would need to attach with the Board’s Report, a Secretarial Audit Report given by a company secretary in practice.

(*vii*) Managerial Remuneration:

(*a*) Provisions relating to limits on remuneration provided in the existing Act (11% of net profits) included.

(*b*) For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration annexed to the Bill and in case a company is not able to comply with such Schedule, approval of Central Government would be necessary. Individual limits for remuneration enhanced in the Bill *vis-à-vis* the existing limits. Concept of payment of periodic fees which shall include sitting fees to directors being included in the Bill.

(*c*) Independent Directors (IDs) not to get stock option: IDs not to get stock option but may get payment of fees and profit linked commission subject to limits specified in the Bill/rules. Central Government may prescribe amount of fees under the rules.

(*viii*) Facilitating Mergers/ Acquisitions:

Simplified procedure (through confirmation by the Central Government), laid down for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiary(ies), between two or more small companies and for such other class or classes of companies as may be prescribed. This would result into faster decisions on approvals for mergers and amalgamations resulting effective restructuring in companies and growth in the economy. For other companies, such matters would be approved by Tribunal.

(*ix*) Protection for Minority Shareholders:

(*a*) Exit option to shareholders in case of dissent to change in object for which public issue was made.
(*b*) Specific disclosure regarding effect of merger on creditors, key managerial personnel, promoters and non-promoter shareholders is being provided. The Tribunal is being empowered to provide for exit offer to dissenting shareholders in case of compromise or arrangement.
(*c*) The Board may have a director representing small shareholders who may be elected in such manner as may be prescribed by rules.

(*x*) Investor Protection:

(*a*) Acceptance of deposits from public subject to a more stringent regime.
(*b*) Central Government to have power to prescribe class or classes of companies which shall not be permitted to allow use of proxies. The Bill also to have provisions to provide that a person shall have proxies for such number of members /such shares as may be prescribed.

(*c*) Provisions for Class Action Suits revised to provide minimum number of persons who may apply for such suits. Safeguards against misuse of these provisions also being included.

(*xi*) Serious Fraud Investigation Office (SFIO): Statutory status to SFIO proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill. Definition of 'Fraud' provided. Stringent penalty provided for fraud related offences.

(*xii*) Woman Director: At least one woman director being made mandatory in the prescribed class or classes of companies.

(*xiii*) National Company Law Tribunal (Tribunal): Keeping in view the Supreme Court's judgment, on the 11th May, 2010 on the composition and constitution of the Tribunal, modifications relating to qualification and experience, etc., of the members of the Tribunal have been made. Appeals from Tribunal shall lie to National Company Law Appellate Tribunal.

(*xiv*) Mediation and Conciliation Panel: It is proposed to create and maintain as ''Mediation and Conciliation Panel'' for facilitating mediation and conciliation between parties during any proceeding under the proposed Legislation before the Central Government or Tribunal.

(*xv*) Central Government to have power to exempt/modify provisions of the Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of thirty days.

IV. Suggestions on the Companies Bill, 2011

4.1 A large number of suggestions were received by the Committee in response to the Press Communiqué dated 5 February, 2012. Many of these suggestions broadly

related to recommendations of the Committee made in their earlier Report, which have been accepted by the Ministry, as indicated in the Statement given below :-

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
1	2(6): Associate Company 2(27): Control 2(76) Related party 2(87) subsidiary company	It is suggested that the definitions of the terms 'associate company', 'control', 'related party' and 'subsidiary company' included under the Bill should be consistent with the Accounting Standards.	(i) These issues were also considered by Hon'ble Committee during examination of the Companies Bill, 2009. Kind attention is drawn to recommendations at Para 58, 59, 1.44, 1.112 and 1.122 of report of Hon'ble Committee. The provisions on these issues in the new Bill are based on such recommendations. (ii) The provisions of the Bill, on enactment, shall have precedence over accounting standards. Hence on such enactment, the accounting standards would be modified to bring them in line with the legislation.
2 (i)	2(40): financial statement	Clause 2(40) defines 'financial statement' whereas IFRS and Indian Accounting Standards (Ind AS) use the term 'general purpose financial statements'. These statements are those intended to meet the needs of users who are not in a position to require an entity to prepare reports tailored to their particular information needs and thus the term 'General purpose financial statements' may be used. In the definition, it may be desirable to add that GPFS includes consolidated financial statement wherever applicable.	(i) The term 'financial statement' was used in the Companies Bill, 2009 (in clause 2(1)(zp)), which was examined by Hon'ble Committee. The Committee did not make any recommendation to modify the nomenclature of the term. (ii) The suggestion to replace 'financial statement' with 'general purpose financial statement' can be adequately covered through proviso to clause 129(1) of the Bill which provides that items contained in financial statements shall be in accordance with the definitions of such items provided in the Accounting Standards. Even under the existing regulatory framework the term 'general purpose financial statements' has been defined under the Companies (Accounting Standards) Rules, 2006 through which accounting standards have been prescribed for compliance by companies.
2 (ii)	2(40): Financial statement	The phrase 'if applicable' needs to be added in clause 2(40) (iv) and accordingly the clause should read as……. "a statement of changes in equity, if applicable;…."	The suggestion is of a drafting nature and may be considered.
3	2(41): Financial	(i) Flexibility provided to companies to determine a financial year under	(i) Similar suggestion was made to Hon'ble Committee by a few

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	Year	section 2(17) of the existing Act may be retained. The choice may be driven by various factors other than just a holding or subsidiary company being located outside India. (ii) Alternatively, Tribunal while granting the permission under the proviso should take cognizance of the requirements of AS 21: Consolidated Financial Statements.	stakeholders during examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 1.58 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (ii) The Tribunal, being a quasi judicial body, is empowered to consider all legal and accounting aspects before granting approvals and, therefore, insertion of an explicit clause to that effect may not be necessary.
4	2(43): Free Reserves	Words 'unrealized gain' and 'notional gains' be deleted. The objective of ensuring that mere revaluation does not give rise to 'free reserves' will still be achieved by the definition which will exclude reserves arising from 'revaluation'.	The reference to such words is necessary to match the provisions with requirements under International Financial Reporting Standards (IFRSs).
5	2(52): Listed company	The definition may be amended to read as "means a company which has its equity shares listed on any recognized stock exchange"	The definition contained in the Companies Act, 1956 [section 2(23A)] has been practically retained; it has thus withstood the test of time as its operation has not caused any difficulty. It is, therefore, felt that it may be retained.
6	2(54) Managing Director –	It may be clarified that the MD shall exercise his powers subject to the superintendence, control and direction of the Board of directors';	(i) Kind attention is drawn to recommendation at Para 1.69(c) and 1.71 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (ii) Further, the fact that MD shall exercise his powers subject to the superintendence, control and direction of the Board of directors is now such an implicit part of the Company Law that no doubt exists on the subject. Hence there may not be any necessity of any change in the clause.
7 (i)	2(60)(iv) Officer who is in default-	The person charged with the responsibility should have given consent.	The provisions of clause 2(60)(iv) correspond to clause 2(1)(zzi)(iv) of the Companies Bill, 2009 without any change. On this issue no recommendation was made by Hon'ble Committee. Further, it is felt that

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			bringing in the element of 'consent' will provide a loop-hole to enable many persons in serious default to escape their liability. It is, therefore felt that the definition may be left as it is.
7 (ii)	2(60)(vi) Officer who is default	This clause states that merely by receipt by a director of proceedings of a board meeting would make a director officer in default. This provision is quite draconian and would prevent credible people getting onto company boards. Hence should be rectified.	(i) Kind attention is drawn to the relevant sub-clause 2(60)(vi) included in the definition of the term 'officer who in default':- *******:** *(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;* (ii) It can be observed that above provisions do not make a director an 'officer in default' only/merely on receipt of proceeding of Board meeting. The provisions would apply when the concerned director was aware of any contravention (through receipt of board proceedings) and who does not object to the same or if the contravention had taken place with his consent or connivance. (iii) The clause is well drafted and has also been appreciated in context of immunity for a director who either was genuinely unaware about any contravention or who did not consent or connived for any such contravention. The provisions may be retained as proposed in the Bill.
8 (i)	2(69): Promoter	A clarification be added to the effect that this definition will not affect definition of the term 'promoter' under SEBI Regulations.	Similar suggestion made during examination of Companies Bill, 2009 was considered by the Hon'ble Committee. Kind attention is drawn to recommendation at Para 1.95 to 1.98 of report of Hon'ble Committee. The provisions proposed in the new Bill are in line with such recommendation. Hence there may not be any necessity of any change in the clause.

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8 (ii)	2(69)(b) read with proviso: Promoter	In the proviso reference to sub-clause (b) is erroneous since it gives rise to a meaning that if a person is acting in a professional capacity he can still have control over the affairs of the company, directly or indirectly, whether as a shareholder, director, or otherwise and such a person would not be a promoter. This is a very easy gateway and would not be justified in public interest.	The suggestion which is of a drafting nature may be considered.
9 (i)	2(76): Related party	Clause 2(76)(vii) is very wide as influence over a single director is not enough to affect decisions of the company. The reference to a "director" should be replaced by reference to "Board of directors" or to "majority of the Board of directors"	(i) The phrase 'any person on whose advice, directions or instructions a director or manager is accustomed to act' is used in Company Law for 'shadow director'. Such phrase also appears in the term 'officer in default'. Inclusion of such a person within the definition of 'related party' is necessary to prevent diversion of funds. (ii) Further, the provisions of clause 2(76)(vii) correspond to clause 2(1)(zzy)(vi) of the Companies Bill, 2009 without any change. Since no recommendation was made by Hon'ble Committee on this issue, the provisions may be retained without any change.
9 (ii)	2(76):	The Committee had recommended the inclusion of Director and Key Managerial personnel in the definition of "related party". While this suggestion has been incorporated, it has not been suitably done across the definition in all the relevant places. Clause 2(76) (iii),(iv),(v),(vi) and (vii) should also include Key Managerial Personnel (KMPs) along with director.	Kind attention is drawn to recommendation at Para 1.112 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
10	2(77): Relative	(i) List of relatives that fall within the definition of 'Hindu Undivided Family" (HUF) should be specified in the Bill. (ii) List of the relatives to be prescribed should be consistent with the definition of the relative given in SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, viz:	(i) to (iv): (a) Kind attention is drawn to recommendation at Para 1.117 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (b) Further, the term 'HUF' has been used in section 6 of existing Act as well without any further elaboration as the term HUF is a well known term.

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		"Immediate Relative: means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse." (iii) Item (iii) of clause 2(77) empowers Central Government to prescribe relatives through rules. Suitable provisions to be included in the Bill itself in stead of under rules. (iv) Definition of Relative to be amended to include only spouse, dependent children and dependent parents staying connected with concerned individual.	(c) Hence there may not be any necessity of any change in the clause.
11	2(78): 'remuneration'	In the definition of term 'remuneration', stock option given to directors/employees would be covered. It is suggested that 'Stock options' should not be covered.	These provisions are exactly the same as included in clause 2(1)(zzza) of the Companies Bill, 2009. The Hon'ble Committee did not make any recommendation to modify this provision. The clause may, therefore, be retained as proposed.
12	2(85): Small Company	(i) Instead of keeping a low threshold and then increasing the same from time to time till figure reaches Rs. 5 crore, it would be better that the limit of Rs. 50 lakh be substituted by Rs. 5 crore. Change in limits from time to time cause hardships for those who are transitioning. (ii) The definition of 'small and medium company' under Companies (Accounting Standards) Rules, 2006, can be used to provide the limited number of benefits extended to the small companies in the Bill.	(i) Kind attention is drawn to recommendation at Para 18-20 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. (ii) The objective behind inclusion of the term 'small company' in the Companies Bill, 2011 is different from the definition of 'small and medium company' under accounting standards. Hence there may not be any necessity of change in the definition proposed in the Bill.
13	2(87)(ii): Subsidiary Company	The words 'total share capital' would mean both equity and preference, so, it should be rectified to mean only equity share capital as preference share capital represents non-voting shares.	It is a fact that the term 'total share capital' represents the aggregate of equity and preference shares. In other words, it is possible to envisage a situation where part of the 'total share capital' will not represent voting rights. While this is an innovative measure taken on account of experience gained from some recent cases involving the instrumentalities of subsidiaries as a means of transactions which the parent company was prohibited from

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			undertaking by reasons of ineligibility. The committee may take a final view on the matter.
14	2(89) Total voting power	The words 'all other persons' appearing in the existing definition have been left out. The words 'all other persons' would mean proxy (ies) whose presence in the meeting should also be taken into account. Hence clause may be modified.	The suggestion which is of a drafting nature may be considered.
15	Formation of companies: Number of Members	The number of members for wholly owned subsidiaries of companies may be kept at one (i.e., the holding company), regardless of whether the holding company is a private or public company. Such subsidiaries could be treated as private or public companies, depending on whether the parent is a private or public company as well as the Articles of Association of the subsidiary company. The requirement of having nominee shareholders to make up the minimum number of members may be avoided.	Kind attention is drawn to provisions of clause 187(1) proviso which is similar to clause 165(1) proviso of the Companies Bill, 2009. The suggestion made is already taken care of under such provisions. Hence there may not be any necessity of any change in the clause.
16	3(1) first proviso: nomination by sole member	Nomination should also cover situations where sole member becomes of unsound mind or is otherwise unable to contract.	The suggestion may be accepted.
17	3: Formation of companies: One Person Company (OPC)	Words 'one person company' appears 48 times under various provisions. There should be a separate chapter for OPC which would be helpful for small entrepreneurs.	Similar suggestion was made by stakeholders to Hon'ble Committee during examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 53 of report of Hon'ble Committee. The provisions proposed in clause 462 in the new Bill [Power to exempt class or classes of companies from the provisions of this Act] are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause and in any case introduction of a separate chapter is not justified as conditions/ exemptions/ special requirements for OPCs have been provided in the relevant provisions (about 15 clauses) itself for their easy reference.

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18	13(8): Exit offer to minority shareholders	(i) A threshold on the unutilised amount should be fixed. In other words, where minimal amount is unutilised, alteration should be allowed. (ii) This is welcome, however, undue powers to shareholders would lead to unnecessary hardships and hence there is need for balancing.	(i) and (ii):- The provisions of clause 13(8) aim to protect interests of minority shareholders and need to be retained as proposed. Any further safeguards/ balancing may be considered by SEBI under regulations to be framed under this clause.
19	26: Matters to be stated in Prospectus	(i) To the extent possible, the Bill should minimize regulation of capital issuances to the public as these are separately governed by detailed regulations laid down by the SEBI. This will avoid regulatory overlap and confusion. However, the Act should still set out guidance for SEBI to draft detailed regulations. (ii) SEBI be given authority under clause 26 to elaborate on, clarify and, if appropriate, exempt companies from requirements of clause 26.	(i) and (ii):- Kind attention is drawn to recommendation at Para 33, 3.10 to 3.27 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Fullest liberty is given to the SEBI to exercise jurisdiction in all matters connected with issue of capital. SEBI is now satisfied with the provisions in the Bill which have a bearing on its functioning. Hence there may not be any necessity of any change in the clause.
20	26(1)(a) (xi)(E)	Clause 26(1)(a)(xi)(E) may be amended to restrict disclosure to pending litigation or legal action and past cases where penalties have been imposed by concerned authorities.	Kind attention is drawn to recommendation at Para 3.15 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
21	26(7)	The clause be restricted to persons named as auditors, legal advisors, attorneys, solicitors, bankers or brokers, similar to section 60 of the Act.	These provisions are same as included in clause 23(5) of the Companies Bill, 2009. The Hon'ble Committee did not make any recommendation to modify these provisions. The clause may, therefore, be retained as proposed.
22	28(1): Offer for Sale of shares by certain members of a company	Language should be amended to include sale of whole of any members' shareholding and the clause should read "to offer whole or part of their holding of shares to the public."	The suggestion may be accepted.
23	32(4): Red Herring Prospectus	Words 'closing price of securities' appearing in clause: As the securities are not listed on the date the prospectus is filed with ROC and SEBI, the language should be	(i) The words 'closing price of securities' have been used in the existing Act as well as in the Companies Bill, 2009. (ii) However, the change is of drafting

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		changed to 'issue price of securities'.	nature and may be considered for addressing through legislative vetting.
24 (i)	35: Civil liability for mis-statements in prospectus	(i) Sections 62(2)(c); 62(2)(d) and 62(3)(c) of the Companies Act, 1956 be included in the Bill as these exceptions are relevant in relation to the extent of liability. (ii) Secondly, though directors are liable for the overall management and operations of a company, each person should be liable to the extent of his/her responsibilities in relation to the disclosures made in a prospectus issued by a company. If a mis-statement in a prospectus has been made by an expert who had provided such information as part of his/her expert report and if the company and its directors had reasonable ground to believe that such statement was true, the company and the directors should not be liable for the mis-statement made by the expert. The expert should be made liable for such mis-statement in the prospectus. We suggest inclusion of a provision to this effect. (iii) Protection to director may be restored and liability should be affixed only if the person as accorded his consent to his directorship and the impugned contents of the prospectus.	(i) to (iii):- Kind attention is drawn to provisions of clause 30 of the Companies Bill, 2009. The provisions proposed in clause 35 of the new Bill are similar to such provisions. The relevant exceptions have already been provided in clause 35(2). Hence there may not be any necessity of any change in the clause.
24(ii)	35:	Inclusion of auditors in these clauses is not appropriate where the auditor is not party to any fraudulent activity relating to the issue. The auditor should be liable only in relation to the work performed by it or for fraudulent act committed with his knowledge or consent.	The clause is similar to clause 30 of the Companies Bill, 2009. There is no direct reference of auditor in the clause. The auditor shall be liable if he is covered as an expert (alongwith other experts) referred to in the provisions. There may not be any necessity of modification of this clause.
25	43/47: Exemptions to Private Company regarding issue of types of shares	Similar to section 90 of the existing Act, a savings provision may be introduced exempting a private company from the restrictions imposed as regards types of share capital and voting to provide flexibility to private companies in these matters.	Section 90 of existing Act was not considered even in the Companies Bill, 2009 since it was felt that exemptions to class of companies (including private companies) can be given through notifications after due deliberations with concerned stakeholders and through

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			laying in draft form in the Parliament. Clause 462 provides for such powers/procedure. It is submitted that this approach is more conducive to deal with all possible eventualities.
26	52: Securities Premium Account	(i) Securities Premium account allowed to be used for bonus shares and writing off expenses/ commission allowed on issue of equity shares by certain class of companies: The right may be extended to all class of companies. (ii) Since IFRS does not permit adjustment of preliminary expenses and also premium payable on redemption of preference shares/debentures against share premium account, clause 52(3) should capture items (b) and (d) as against (a), (c) and (e) of clause 52(2).	(i) and (ii): (a) Kind attention is drawn to recommendation at Para 42 and 4.16 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (b) Provisions of clause 52(2) and 52(3) may be seen together which would clarify the intention. The intention is to provide flexibility to companies and distinguish companies which are required to follow IFRS converged standards and companies which are to follow Indian non converged standards. (c) Since, these provisions are in accordance with the IFRS requirements, there may not be any necessity of any change in the clause.
27	53: Issue of shares at discount	A company may be permitted to issue shares at discount subject to ordinary resolution and approval of Tribunal reflecting the position under section 79 of existing Act.	These provisions are similar to clause 47 of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill.
28	55: Redemption of Preference shares	As regards preference shares that are redeemable after 20 years a provision may be made to grant dividend on such preference shares at a specific percentage or by linking to a market benchmark.	(i) Kind attention is drawn to recommendation at Para 4.19 to 4.21 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Moreover, clause 55(2) proviso is not restricting payment of any such dividend. (ii) Hence there may not be any necessity of any change in the clause.
29	59: Rectification of Register of Members	Clause 59(4) should be suitably modified to prescribe a time limit of 'two months from the date of transfer of the shares or debentures held by a depository or from the date on which	These provisions are similar to clause 50(7) of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. In view of the procedural

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		instrument of transfer or intimation of transmission was delivered to the company' in line with section 111A of existing Act.	nature of the present suggestion the provision may, therefore, be retained as proposed in the Bill.
30	62: Further Issue of share capital	(i) A blanket restriction under clause 62(1) on all further issues by a company may affect the business and operations of a company and the restriction as under the Act may be retained. Since Clause 62 of the Bill is made applicable to a private company as well (while Section 81 of the Act excluded its applicability to a private company), a private company may continue to be exempted from complying with the provisions of the Clause. (ii) An exception should be created, whereby a company should be permitted to make a preferential allotment to its existing shareholders without being subject to conditions specified under Clause 62 of the Bill. Furthermore, the exclusion of applicability of the Clause in the event of allotment of shares under an underwriting agreement may be expressly stated. (iii) ESOP:- An employee stock option scheme may be adopted by ordinary resolution at the general meeting without any additional conditions other than as specified in the resolution. Provision may be made to ensure that as regards issue to non-residents, the pricing guidelines are to be complied with.	(i) These provisions are similar to clause 56(1) of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill. (ii) Making preferential allotment without following provisions of clause 62 may not be proper *as* this may result in offering of shares to selected (existing) shareholders without obtaining requisite approvals from Board/shareholders provided under clause 62. Hence the suggestion may not be accepted. (iii) Kind attention is drawn to recommendation at Para 4.30(iii) and 4.32 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
31	66(3) Proviso: Reduction of share capital:	Certificate about compliance with accounting standards to be filed by company's auditor with Tribunal: A specified time period may be prescribed within which such a certificate by the auditor is required to be filed.	(i) Kind attention is drawn to recommendation at Para 4.37 and 4.38 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (ii) Detailed requirements in connection with making of application/ petition and relevant time limits can be specified under the rules for uniformity. Hence

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			there may not be any necessity of any change in the clause.
32	67: Restrictions on loan for purchase of shares	Clause may be modified to provide specific exemption as regards leveraged buy outs.	Similar suggestion made during examination of Companies Bill, 2009 was evidently not considered by the Hon'ble Committee. Leveraged buy outs take place either contractually or through approvals of scheme of compromise/ arrangements by Courts (Tribunal once new Bill comes) and need not be referred to in statute specifically.
33	70: Buy back	The term 'term loan' used in clause 70(1)(c) may be defined and in particular to be specified if it includes working capital requirements.	The provisions are similar to clause 63(c) of the Companies Bill, 2009 and section 77B(c) of existing Act. No recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill. Moreover, 'term loan' is a commonly understood term and need not be defined.
34 (i)	71: Debentures	An issue of debentures would be duly approved in a meeting of board of directors. Therefore, Bill may provide ordinary resolution for such issue.	(i) It may be seen that requirement for special resolution is applicable only with reference to proviso to sub-clause (1) which pertains to issue of debentures with an option to convert debentures into shares. These provisions are on the lines of provisions of section 81(3)(b) of the existing Companies Act, 1956 and may be retained as proposed. (ii) For issue of other debentures, the powers are vested with the Board of directors as provided in clause 179(3)(c). The suggestion made, therefore, is already addressed.
34(ii)	71	(i) The terms and conditions of issue of secured debentures may be specifically provided in the Bill. (Clause 71(3))	(i) (a) Clause 71(3) reads as under:- *(3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.* (b) The clause is similar to clause 64(3) of Companies Bill, 2009. The clause seeks to provide flexibility which could be useful in case of need for urgent modifications in norms for terms and conditions for issue of secured

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		(ii) Under sub-clause (4), every company which issues debentures is required to create a debenture redemption reserve account out of its profits available for payment of dividend. However, the quantum of profit to be transferred is not specified. Hence, sub-clause (4) should be modified to prescribe a specified percentage of profits that is to be transferred to the debenture redemption reserve.	debentures. (ii) Clause 71(13) empowers Central Government to prescribe, inter-alia, quantum of debenture redemption reserve required to be created. The limits/quantum, thus, shall be prescribed under the rules.
34(iii)	71	(i) Enabling provisions to issue perpetual debentures as per Section 120 of the Act have been omitted in the Bill. (ii) The power granted to the companies to re-issue redeemed debentures, as contained in Section 121 of the Act is also missing in the Bill.	(i) and (ii):- The provisions now being suggested were not included even in the Companies Bill, 2009 since it was felt that such matters can be addressed/ clarified through rules, if required. Hence such provisions need not be included at this stage.
35	72: Power to nominate	As per judicial announcements nominee is regarded as 'trustee' to look after the property and property vests in legal heirs as per will or succession certificate (in absence of will). The clause therefore ought to be appropriately amended to bring it in line with judicial pronouncements.	(i) Similar suggestion made during examination of Companies Bill, 2009 was evidently not considered by the Hon'ble Committee. . (ii) Further, provisions of clause 72 of Companies Bill, 2011 are similar to section 109A of the existing Act and were included in clause 65 of the Companies Bill, 2009. The Hon'ble Committee did not make any recommendation to modify such clause. (iii) In view of above, there may not be any necessity of any modification in the Bill on this matter. Hence the suggestion may not be accepted.
36	Tracking Shares (No provision)	To introduce tracking shares as this would increase the depth of capital markets.	Similar suggestion made during examination of Companies Bill, 2009 was not considered by the Hon'ble Committee. During consultation with various stakeholders on the 2009 Bill at drafting stage, views were expressed that the concept of 'Tracking Shares' may confuse the investors and therefore, should not be introduced at this stage. In view of such comments,

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			the provisions were not included in the Bill and are still not considered necessary.
37	73: Acceptance of public deposits	This clause says that companies can accept depositors only from their shareholders. The pernicious practice of giving one or two shares to members of public and making them shareholders for accepting deposits should also be stopped. Such deposits should be accepted from members holding of a minimum 100 shares.	(i) Kind attention is drawn to provisions of clause 76 which allow a class or classes of companies (to be prescribed under rules) to accept deposits from public subject to compliance with provisions of that clause. (ii) Provisions of clause 73 seek to prohibit acceptance of deposits from public since it is felt that a shareholder, who has already invested risk capital with the company and who is aware about the objects/ business plan and prospects of the company (through various disclosures being provided by the company to him as shareholder) would be in a better position to take such investment decisions than a member of public. This approach seems to be justified. In addition, provisions of clause 73 also provide for following safeguards to protect interests of depositors:- (a) issuance of a circular to potential depositors indicating financial position of company, credit rating obtained, existing outstanding deposits etc. More details which may be issued under such circular can be prescribed under rules; (b) filing of such circular with the Registrar before actually accepting deposits; (c) creation and maintenance of deposit repayment reserve account with requisite amount kept in a separate bank account; (d) deposit insurance cover; (e) providing security, if deposits are secured; detailed disclosures/ disclaimers in case of unsecured deposits (f) remedy for grievance redressal in

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			case of non payments through orders of Tribunal. (g) compliance with the rules which may be prescribed by Central Government in consultation with RBI. (iii) Accordingly, it is felt that the above provisions seem to be reasonable and may be retained.
38	77: Duty to register charges	Bill should be amended to include a threshold above which charges would be required to be registered.	Similar suggestion was made by a stakeholder during the examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 6.5 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
39	78: Application for registration of charges	Extension of period for registration:- whether creditors' right to apply for registration of charge commences upon expiry of original 30 days or upon expiry of extended time period (which could potentially be 300 days). This aspect needs clarification.	The intention is to make Registry up-to-date on matters relating to charges. Accordingly, the intention is that if the borrower company does not create the charge within initial 30 days, the creditor shall have the right to get the charge registered immediately after expiry of this period. Any improvement in drafting, if required, in this clause can be addressed through legislative vetting.
40	90: Investigation into beneficial ownership of shares in certain cases.	These provisions could be misused to unduly harass and influence companies and should be deleted.	These provisions are same as included in clause 80 of the Companies Bill, 2009 (and as available under section 187D of existing Companies Act, 1956). Hon'ble Committee did not make any recommendation to modify these provisions. The clause may, therefore, be retained as proposed.
41	93: Return to be filed with the Registrar	(i) Generally top 10 shareholders changes very frequently in their shareholdings. Intimation to every such change is a very onerous and time consuming task and no meaningful purpose will be served at the RoC's end. Such returns should be filed on quarterly basis instead. (ii) Quantum has not been defined. i.e.	(i) and (ii):- Kind attention is drawn to recommendation at Para 7.12 and 7.13 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. The details about quantum/ percent of change which will trigger the

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		whether single share change will require filing. This may practically result in filing almost every week which will lead to increase in administrative work. Therefore, certain threshold (e.g. 2% or 5% should be prescribed) and the periodicity of the reporting may be changed to monthly or quarterly basis.	provisions may be prescribed under rules. The suggestion made, therefore, can be addressed under rules.
42	96(2): AGM - national holiday	Expression 'public holiday' be used in stead of 'national holiday' as provided in the existing Act.	As the intention is to facilitate widest participation by the shareholders, the term, "public holiday" was omitted to facilitate holding of such meetings as early as possible including on Sundays. The Honourable Committee had also not commented on this aspect though the provision was included in Companies Bill, 2009 also.
43	103(1): Quorum for meetings	To be amended to reflect the position under the existing Act since the number of members may change due to transfer of shares leading to uncertainty on whether quorum was present.	(i) Kind attention is drawn to recommendation at Para 63 and 7.28 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. The determination of total number of members for the purpose of calculation of quorum can be done through closure of register of members/ fixing a record date as is done for payment of dividend. (ii) Hence there may not be any necessity of any change in the clause.
44	108. Voting through electronic means	Advance Receipt of Intimations from Shareholders to participate in meeting through Video conferencing to be required and participation should be limited to watching proceedings only.	Kind attention is drawn to recommendation at Para 7.33 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Detailed procedural requirements are proposed to be prescribed under rules. Hence there may not be any necessity of any change in the clause.
45	110: Voting by postal ballot	The Bill should be amended to include a list of negative items that are to be transacted only at a general meeting and not through postal ballot.	These provisions are similar to clause 99 of the Companies Bill, 2009. No recommendation for any modification in such provisions was made by Hon'ble Committee. Since provisions relating to voting by postal ballot (which includes voting by electronic mode) are investor friendly and need to be encouraged,

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			these provisions may, therefore, be retained as proposed in the new Bill.
46	123 & Schedule II: Declaration of dividend	(i) The rate of depreciation seems to be very aggressive and specifically in continuous process plant reduce from earlier 18 years to 8 years now. Actual life of plant and machinery is generally much higher as prescribed. (ii) In case of heavy capital intensive industries for e.g. fertilisers the project itself will become economically unviable if such aggressive depreciation rates are applied. (iii) Need to upward revise the useful life of general plant and machinery not covered under special plant and machinery.	(i) to (iii):- (a) Kind attention is drawn to recommendation at Para 8.10 to 8.13 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (b) The Schedule II was prepared after examination of all related issues, consultation with various stakeholders like Chambers, Professional Institutes, concerned Regulators/ Ministries/ Departments. Thereafter the Schedule was scrutinized by ICAI. The National Advisory Committee on Accounting Standards (NACAS) had also deliberated on this Schedule and recommendation was made to Central Government to prescribe the same. (c) Further, since this is a Schedule which can be altered by Central Government in accordance with the provisions of clause 467 of the Bill, the difficulties, if any, can be removed through amendment of Schedule II on enactment of the Bill. (d) Hence there may not be any necessity of any change in the Schedule II at this stage.
47	125: Investor Education and Protection Fund (IEPF)	Provisions for giving immediate relief to small investors have not been included in the Bill. The same may be considered.	(i) Kind attention is drawn to provisions of clause 125(3)(c), (d) and (e) which read as under:- *"(3) The Fund shall be utilised for—* *** *(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;* *(d) reimbursement of legal expenses incurred in pursuing class action suits*

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and *(e) any other purpose incidental thereto,* *in accordance with such rules as may be prescribed:"* (ii) It is felt that the suggestion made is already covered under above provisions. Detailed requirements shall be prescribed under rules.
48	128(1): Books of Account, etc., to be kept by the Company	Cognizance may be given to the situations where the servers are maintained outside India. As long as there is access to add, modify and delete data exists in India, the information maintained on servers outside India should be considered as adequate compliance with the requirements of the Bill.	The suggestion is noted in context of rules to be made under this clause.
49	128(6)	There are several Government Companies who have not prepared their annual accounts in time. It may be difficult to prove that default was committed willfully. The default of Key Managerial Personnel concerned can be presumed and stringent provision made to enforce accountability in preparation of financial statements on an annual basis.	The suggestion is noted to be addressed through legislative vetting.
50	129(1): Financial Statements	First proviso to Clause 129(1) states that "…items contained in such financial statements shall be in accordance with the accounting standards" is redundant in view of Clause 129(1) which already states "The financial statements……. comply with the accounting standards notified under….."	(i) Kind attention is drawn to Para 9.9 and 9.10 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (ii) The proviso is necessary to recognize terms defined under various accounting standards as statutory terms for accounting purposes. (iii) Hence there may not be any necessity of any change in the clause.
51(i)	129(3): Financial statement	An express provision may be made, in line with Section 213 of the Act, prescribing the procedure to be	(i) The provisions of section 213 (Financial year of holding company and subsidiary) of existing Act were not

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		followed in the event that the financial years of the parent and subsidiary company or companies or the subsidiaries inter se, are different (in light of the definition of financial year suggested herein above).	included in the Companies Bill, 2009 since provisions for mandatory consolidation of accounts were provided. These provisions have been provided in clause 129(3) of Companies Bill, 2011. Any procedural requirements relating to consolidation of accounts can be prescribed either under relevant accounting standards or under rules to be framed under clause 129(3). (ii) Hence there may not be any necessity of any change in the clause.
51(ii)	129 (3) Consolidated Financial Statements	Where a company is already presenting Consolidated Financial Statements, the requirement to attach another statement containing salient features of financial statements of subsidiaries would be redundant and lead to increased work for companies. The manner of consolidation is covered in respective accounting standards (AS 21, 23 and 27) and therefore there is no requirement for any separate rules in this regard. Accordingly, requirements of second proviso to 129(3) are ambiguous and redundant.	(i) Consolidation of accounts is a very technical exercise requiring compliance with relevant accounting standards. The basic elements/ parameters in such exercise are not known to layman/ common investors. Hence enabling provisions (through rule making) have been retained to provide simplified consolidation summary for use of such investors. Further, accounting standards may be modified, subsequently to maintain consistency with the Bill/rules. (ii) Hence there may not be any necessity of any change in the clause.
52	129 (7): Financial Statements	The defense of default not committed willfully has been excluded from the penal provisions, which seems to be harsh, since there could be instances where such default are merely technical in nature or not of significance in view of the directors. The concept of willful default needs to be restored as it exists in the current Companies Act, 1956.	These provisions are same as included in clause 117(6) in the Companies Bill, 2009. Hon'ble Committee did not make any recommendation to modify these provisions. The Court or Tribunal will in any case have the opportunity to examine evidence in each case to determine whether a particular act or omission amounted to 'default' in the facts and circumstances of a given case. The clause may, therefore, be retained as proposed.
53	129, 136, 137: Waiver from furnishing Indian GAAP Consolidated financials	Companies which are preparing financial statements as per IFRS requirements, may be given the option to file/circulate such IFRS compliant financial statements rather than financial statements as per Indian Accounting Standards.	In order to ensure uniformity in following accounting norms for the purpose of preparation of financial statements, it may not be appropriate to give such an option to companies.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
54	129:	Annual report of Audit Committee members should be annexed in "Annual Balanced sheet".	(i) Clause 177(8) of the new Bill provides as under:- *"177 (8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor."* (ii) These provisions are considered sufficient. Attaching reports of audit committee with balance sheets will make them bulky and routine.
55	132: National Financial Reporting Authority (NFRA)	(i) Provision for a NFRA may be removed and furthermore the role of the NACAAS vis-à-vis the ICAI (which prescribed accounting standards and regulates the conduct of its members) may be clarified. (ii) Issues such as independent and other ethical requirements with regard to auditors arise from the Chartered Accountants Act and the Institute of Chartered Accountant (ICAI)'s Code of Ethics. Such requirements now proposed/ provided in the Bill (through NFRA) may lead to a conflict between the ICAI and NFRA. The roles and power of the regulators should be rationalized such that there are no conflicts. (iii) Matters of professional or other misconduct committed by any member or CA firm to be referred to ICAI firstly which may refer it to NFRA for final action. ICAI may be retained as regulating authority. (iv) As per international norms, NACAAS can continue the role of setting Accounting Standards and a separate audit oversight body can be set up for regulating the auditing profession.	(i) to (iv): (a) Kind attention is drawn to recommendation at Para 37 and 9.23 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. (b) The NFRA shall follow procedure which shall be fair to all concerned stakeholders. The apprehensions expressed can be suitably addressed in rules/procedure of functioning of NFRA. (c) Hence, the provisions may be retained as proposed in the Bill.
56 (i)	134(1): Financial statement	CEO to sign only if he is a director:- This provision may be removed and a	Kind attention is drawn to recommendation at Para 9.28 of report

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
	and board's report	chief executive officer may be permitted to sign the financial statements, whether or not he is a director of the company.	of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
56(ii)	134(1):	In clause 134(1) it is necessary to add Management Responsibility Statement. This needs to be addressed by assigning baseline accountability to the CEO/ CFO to bring in clear functional responsibility on the management as distinguished from a distributed responsibility of Board of directors.	(i) Since relevant disclosures/ declaration on integrity of financial statements are being included in the 'Directors Responsibility Statement' (Clause 134(3)(c)), which is the part of report of Board of directors, there is no need to make provisions for obtaining similar declaration from the executives/ management of the company. (ii) In any case the liability under clause 134(8) shall be attached to 'officer who is in default' which may include officers involved in non compliance or those charged with the responsibility. (iii) The clause may, therefore, be retained as proposed.
56(iii)	134(1):	(i) Provisions to require CEO to sign the financial statements only if he is a member of the Board have been included. However, the CFO is also now included as a signatory and there is no mandatory requirement that he should sign only if he is member of the Board. (ii) Clause 134(1) now requires signing of the financial statements by the CFO which implies that every company should mandatorily appoint a CFO, although such appointment is not mandated elsewhere in the Bill. Further, clause 203 requires mandatory signature by the Secretary in all cases. The phrase 'if any' should be added after the term 'CFO' and secretary', respectively.	(i) and (ii):- The suggestion may be accepted.
56(iv)	134(1)	Considering option of authentication of the financial statements by only one director in cases where only one director is present in India, with an explanatory statement has not been considered by the Bill.	The provisions for authentication by single director were not included in the Companies Bill, 2009 also with a view to ensure accountability on the part of directors. The preparation of annual accounts is the key function of the

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			Board of directors and at least two directors, if not the whole Board, need be accountable to authenticate the accounts. The suggestion made, therefore, may not be accepted.
57 (i)	134(3):	(i) The requirement under this provision would be difficult to comply with in practice and are unnecessary for private company and OPC. Such requirements be not made applicable to such companies. (ii) Disclosures under clause 134(3) are onerous and should be voluntary.	(i) and (ii): (a) The requirements proposed in clause 134 are not entirely new. Most of them are already provided in section 217 of existing Act (Board's report) and are applicable to all companies. New disclosures were provided in the Companies Bill, 2009 to make Directors' Report more informative and relevant for users, keeping into account the international practices on the matter. This approach has also been accepted by Hon'ble Committee. (b) Exemptions for any particular class of companies can be considered under provisions of clause 462, if considered so necessary. (c) The clause may be retained as proposed.
57(ii)	134(3)	Government issues directions to Government company some of which have bearing on the financial position of the Company. To bring in greater transparency, it is necessary to disclose impact of government directions on the financial position of Government Company in the report of Board under clause 134(3).	A large number of disclosures have already been provided for inclusion in the Board's report and adding further requirements for a particular class of companies in a general enactment on companies does not appear to be justified. The matter has been discussed by Secretary (MCA) with Secretary (DPE) who has agreed to examine if assessment of financial impact, if any, of Government directives to Government companies could be administratively prescribed.
57(iii)	134(3)	Since as per clause 204, secretarial audit report is to be given by a company Secretary in practice, in clause 134(3) (f) (ii), the words "in practice" should be added.	The suggestion may be accepted.
58	134(8): Financial Statement, Board's Report, etc	The defense of default not committed willfully has been excluded from the penal provisions, which seems to be harsh, since there could be instances where such default are merely	(i) These provisions are similar to clause 129 (7) of the Companies Bill, 2009. Comments made with reference to that clause at serial number 52 of this statement (page 19) are relevant to this

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		technical in nature or not of significance in view of the directors. The concept of willful default needs to be restored as it exists in the current Companies Act, 1956.	clause also. (ii) Further, no recommendation for any modification in such provisions was made by Hon'ble Committee. These provisions may, therefore, be retained as proposed in the new Bill.
59 (i)	135 Corporate Social Responsibility ("CSR")	(i) The clause adequately covers areas pertaining to which are the companies eligible to practice CSR (in terms of net worth, turn over and net profit), how and when the CSR report has to be furnished, points of evaluation, and who will form the review committee. Clause seems to provide a security valve for companies by stating under sub point (5), that if a company fails to meet the desired standard, it may get away by providing the reason. Such a statement may, in practice, defeat the very purpose of clause 135. (ii) Schedule VII of the Companies Bill, 2011 rightly provides an exhaustive list of possible areas in which one could carry out CSR initiatives. Speaking sociologically, apart from the role of the company in churning out a CSR project, what is also crucial is the role of the people who are the beneficiaries of the project. This makes it essential to add a sub clause that sensitizes the company to appreciate the role of the recipient of the initiative. The Bill could include this point within Schedule VII where, within the areas chosen by the company, the nature of project to be undertaken and executed should be in keeping with the needs of the people. (iii) Similarly, an additional schedule containing an ideal type of CSR policy framework could be constituted. Also, mention could be made of the region in which such initiatives should ideally be carried out. This is to say whether a company must engage in CSR in its immediate surrounding, or opt for any other convenient location or engage in regions having pressing needs. Last,	(i) to (v): (a) Kind attention is drawn to recommendation at Para 49-51 and 9.47 of report of Hon'ble Committee. (b) Keeping in view the need for balancing of various interests involved, the provisions on CSR as provided in clause 135 of the Bill read with Schedule VII to it appear to be reasonable. It may be appreciated that with these provisions included in the Companies Act, India will be the first country to include provisions on CSR in its Company Law. The provisions may be reviewed after enactment of the legislation and watching the experience of companies covered under clause 135. The broad objective is to instill the spirit of CSR amongst corporate sector. The provisions, therefore, may be retained as proposed.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		but not least the Bill could attempt to make clear whether the objective of the company by engaging in such a development oriented step should be a long term sustainable project, or a short term gesture of philanthropy. In this manner a fine line can be drawn between a sustainable CSR initiative and a mere act of donation or charity. (iv) It may be provided that in case company spends less than the required %, it shall transfer residual amount to the fund next year. Also, a Central Funding Agency to be created. Provision regarding social audit of companies' CSR policies may be considered. (v) Corporate should be given the flexibility to decide the extent of responsibility causes. While the Government can encourage CSR initiatives, it may not be appropriate to impose rules such as minimum spend to be incurred towards CSR initiatives, Additionally, such imposition may not even lead to the desired results as the companies which feel that they are forced to undertake such activities, may comply with it only as a mandatory regulation without any interest in the outcome.	
59(ii)	135	Profit making companies with turnover above Rs 100 crores must develop areas within 1 Km radius of their setup. Annual spend and benefits arrived should also be audited.	Besides, the clarification given above, it is submitted that rigid requirements like developing area within 1 km radius may not be provided as this will tend to work to the disadvantage of remote, backward areas which may be in greater need of such investment/ expenditure.
59(iii)	135:	Provision may be made for filing a certificate with the jurisdictional ROC, the Tribunal or any other authority, on an annual basis, indicating due compliance with the CSR provisions.	Details about CSR activities shall form part of Board's report (Clause 135(4)(a)) and shall also be placed on the website of the company, if any. Since Board's report is also filed (alongwith financial statements) with Registrar, the suggestion made is taken care of.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
60 (i)	136: Right of member to copies of audited financial statement	(i) Clause 136(1) refers to words 'annexed or attached'. Similar reference to 'annex' is also made in the explanation to Clause 129 which states: "Explanation --- For the purpose of this section, except where the context otherwise requires any reference to the financial statement shall include any notes or documents annexed or attached thereto….." (ii) It is noted that while there are requirements to attach certain documents to the financial statements (for example, the Auditor's report per Clause 134(2) and Report of the Board Directors per Clause 134(3)), there is no requirement to annex any document to the financial statements. To remove any ambiguity, it needs to be specified which are the documents that need to be annexed to the financial statements. If there are no such documents, the use of the term 'annexed' in the referred clauses above, is superfluous and should be deleted.	(i) and (ii): Though the provisions are similar to what were provided in Companies Bill, 2009 (Clause 121), the suggestion, which is of a drafting nature, is noted to be addressed with legislative vetting. Drafting inter-linkage required between clause 136 and 101 on this issue has been noted to be addressed through legislative vetting.
60(ii)	136 (read with clause 101): Meeting to held with shorter notice	Shorter notice may be permitted for circulation of Financial Statements which is one of the key requisites for holding annual general meeting (AGM).	Kind attention is drawn to provisions of clause 101(1) (proviso) of the Bill which allow holding of general meetings (including AGM) at shorter notice. Such provisions can be used for the purpose of holding AGM at shorter notice. The circulation of financial statements (as agenda item) can also be done by using such provisions. Hence there may not be any necessity of any change in the clause.
61	137(3): Filing of financial statements with the ROC	The provision may be restricted to imposition of a fine only, without any imprisonment, particularly in the event of absence of a director charged with the responsibility of complying with this Clause.	These provisions are same as included in clause 122(3) of the Companies Bill, 2009. Hon'ble Committee did not make any recommendation to modify these provisions. (Kind attention is drawn to recommendation at Para 9.56 /9.57 of report of Hon'ble Committee.) Hence there may not be any necessity of any change in the clause.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
62 (i)	138(1): Internal Audit	Unlisted companies may be exempted from the provisions of this Clause.	(i) Kind attention is drawn to the provisions of this clause which reads as under:- *"138(1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company."* (ii) Since the clause empowers Central Government to prescribe class of companies under rules, the suggestion is noted for consideration for rule making. Hence there may not be any necessity of change in the clause.
62(ii)	138(1) Appointment of external person as internal auditor	(i) Flexibility to be given to companies to appoint in-house employee to conduct internal audit. (ii) Professionals for internal audit should not be specified in law.	(i) and (ii):- The provisions of clause 138 do not prohibit appointment of in-house employee. Further, the provisions also empower the Board of relevant company to appoint any professional (even other than a CA or CWA) as internal auditor if it so decides. Hence both the suggestions are already taken care of.
63 (i)	139(2): appointment and rotation of auditors	(i) Instead of rotation of audit firms, rotation of audit partners (after 5 to 7 years) be considered, also joint audits be considered in some very large entities. Quality Review Board should also take adequate steps in this regard. (iii) Appointment of auditors be considered for block of 3 years in stead of 5 years. Rotation of partners could be after 9 years – 3 blocks of 3 years each. (iii) The disqualification should apply only to individual partner of audit firm/s not being permitted to be appointed as the auditor of the same company, irrespective of which audit firm he is a part of. (iv) To avoid deeply laid financial scams (such as Satyam fraud) Company Bill made "Mandatory	(i) to (v): (a) Kind attention is drawn to recommendation at Para 10.8 and 10.9 of report of Hon'ble Committee on the Companies Bill, 2009. The provisions proposed in clause 139(2) of the Companies Bill, 2011 are in line with such recommendation. Enabling provisions for joint audit (clause 139(3)(b) and oversight of quality by National Financial Reporting Authority (NFRA) (Clause 132) have also been provided. (b) Rotation of auditors including audit firms is being considered for introduction in EU, US, UK and Malaysia. Rotating partners without rotating the firm is also fraught with many risks and pitfalls and is best avoided. (c) In view of above, the provisions for

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		Rotation of auditors". But still it doesn't look too stringent it should have been framed as "Mandatory Rotation of audit firms". This may break the monopoly of top four audit firms (KPMG, Deloitte, PWC ,E&Y).Thus more transparency in ethical way of financial reporting can be achieved. Even Europe Union (EU) is making this as change, as one of the step to come out of recession. Very recently court of law of "United states of America" slapped E&Y audit firm with a fine of $2million. And we are aware of fraud which happened in Satyam, in which PWC were involved. We should take these steps because prevention is better than cure. (v) Various studies and current policies around the world indicate that rotation of audit firm, in fact, defeat the very purpose for which it is proposed to be introduced. Under Clause 139(2), the requirement of rotation of audit firm should be removed and the requirement for audit partner rotation should be introduced on the lines of ICAI's Code of Conduct.	rotation of auditors/audit firms may be considered to be retained as proposed in the Bill.
63(ii)	139(2)	(i) Since there may be listed companies which are small in size, applying the provisions relating to rotation of auditors/ audit firms to every listed company may not be appropriate. (ii) Ideally rotation should not be mandated by law. If it is required to be retained, companies below a certain size and listed Indian subsidiaries of MNCs listed abroad should be exempted from such provisions. Further, the audit committee/shareholders should have the power to decide on rotation, rather than through statute.	(i) and (ii):- All provisions for good corporate governance and protection of investors need to be complied with by all listed companies, and by such companies which have had access (beyond a limit) to public funds like debts or deposits and also by bigger companies like companies having turnover/networth beyond a size. The provisions proposed in clause 139(2) seek to capture such principle and such provisions may be retained without any change.
63(iii)	139(2) proviso: rotation of auditors	Tenure of the office held by auditors prior to the commencement of amended Act should not be considered i.e. the applicability of provisions should be with prospective	(i) Clause 139(2) Second Proviso reads as under:_ *"Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions*

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		effect. Provisions similar to clause 149(9) and (10) may be considered.	*of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act:"* (ii) Since a period of three years has been provided for companies as transitional period to align the tenure of auditors in accordance with the provisions of new Bill, which appears to be reasonable, no further change is necessary in the provisions.
64	139(5)	Clause 139(5) contains '---any other company owned or controlled—', however, the word 'owned' has not been defined in the Bill. To bring clarity, the word 'owned' may be defined.	The Bill has defined the term 'control' in clause 2(27) as per recommendation of Hon'ble Committee. It is felt that this would be adequate for the purpose of interpreting the wording of clause 139(5). Further the term 'own' is a general term which has been understood and known very well. Accordingly it is submitted that the term 'own' may be continued to be used in the Bill without being specifically defined.
65	139(11): Appointment of auditors	Audit Committee should ensure and monitor that independence criterion has been fulfilled by auditor of the company throughout his tenure.	Kind attention is drawn to provisions of clause 177(4)(i), 177(4)(ii), 177(4)(iii); 177(5) and 177(6) of the Bill which empower Audit Committee to monitor auditor's independence, functioning etc. The suggestion made, therefore, is already addressed.
66 (i)	140: Removal of Auditors	While the appointments of an auditor by a company that is required to constitute an audit committee are required to be made after taking into account the recommendations of the audit committee, even removal of auditors under Clause 140 should take into account the recommendations of the audit committee.	Removal of auditor before the expiry of his term requires special resolution and approval of Central Government. Hence the suggestion has been addressed in spirit.
66(ii)	140: Removal, resignation etc of auditor.	(i) Explanation to the clause should distinguish between individual partner responsible for audit conducted and other partners where the firm or LLP is appointed as an auditor. This should protect the other partners of such firm/LLP which are not in default.	(i) and (ii): The provisions have been included after detailed deliberations and experience gained recently in connection with various investigations initiated by this Ministry and other regulators. The provisions proposed are reasonable and should not be modified. The suggestion, however, is noted for

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		(ii) It should be clarified where the auditor is a firm, the order may be passed against the partner(s) who has/have colluded in committing the fraud.	drafting change, if any.
67	141(1) and 141(2): Eligibility for appointment as auditor	(i) Only those firms / LLPs of which all the partners are Chartered Accountants, be permitted to sign off on audits. (ii) Alternatively, as a second-best option, it may be provided that firms/ LLPs with non-Chartered Accountants as partners be structured in such a way , that the Chartered Accountant partners demonstrably have control over the firm / LLP and this be reflected in both, voting powers and profit shares, as set out in the documents of the firms / LLPs. As a further safeguard, it may be provided that if certain decisions in a firm or LLP require a super majority of the reach of the Chartered Accountant partners. This would be the only way to preserve the true independence of the Chartered Accountant partners, on their audit opinions, if at all an audit firm / LLP is to be permitted to have non-Chartered Accountant partners. A simple numerical majority will not do and can easily be circumvented to overwhelmed, defeating the intention of these provisions.	(i) and (ii):- (a) Keeping in view the enactment of Limited Liability Partnership Act, 2008 and the need for allowing setting up of multi disciplinary entities, it was suggested to Hon'ble Committee (during examination of the Companies Bill, 2009) that the provisions of clause 124 of the Companies Bill, 2009 (clause 141 in the new Bill) may be considered to be modified to allow setting up of multi disciplinary audit firms/ LLPs, with majority of partners of such firm/LLP being chartered accountants qualified to practice as auditors, individually. (b) Kind attention is drawn to suggestion at page number 37-38 of Statement attached with OM No. 1/7/2009-CL-I dated 26.2.2010 of this Ministry. (c) Further, Acts pertaining to three Institutes viz Chartered Accountants Act, 1949, Cost and Works Accountant Act, 1959 and Company Secretaries Act, 1980 have also been amended recently to allow setting up of multi disciplinary firms/LLPs. Hence there may not be any necessity of any change in the clause.
68	141(3)(d)(i) : Eligibility for appointment as auditor	(i) Mere holding of few shares does not create influence so as to have a bearing on judgment. The word 'relative' also ought to be deleted from this clause. In case it is not acceptable, the definition of relative for applicability of this clause should be restricted to spouse and minor children who are staying with auditor in the same shelter and are not dependent on the auditors. (ii) A definition of the term 'interest' for the purpose of this clause should be included.	(i) and (ii):- These provisions correspond to clause 124(3)(d)(i) of the Companies Bill, 2009 which also included 'relative' within the ambit of these provisions in a similar manner. No recommendation for any modification regarding use of term 'relative' in the clause was made by Hon'ble Committee. Since these provisions seek to ensure independence of auditors and, therefore, improve corporate governance standards, these provisions may, therefore, be retained as proposed in the new Bill.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
69	141(3)(d) (ii)	(i) Only material indebtedness and security holding should be eligible for restriction. (ii) The specific amount for indebtedness should be included in the Bill itself. This could be set at the similar threshold as that of securities held, i.e., Rs.1000.	(i) and (ii):- Since the amounts may need to be revised from time to time, it is appropriate to provide them under rules. Hence the provisions may be retained as proposed. This is also in line with the guiding principles recommended by Hon'ble Committee.
70	141(3)(e)	(i) While prescribing the nature 'business relationships', it would be relevant to refer to ICAI Code of Ethics for example of Close Business Relationship, like: > Having a material financial interest in a JV with the audit client or a controlling owner, director, officer or other individual who performs senior managerial functions for that client; and > Arrangement to combine one or more services or products of the Performing Firm, or a network firm, with one or more services or products of the audit client and to market the package with reference to both parties. (ii) Further, transactions in the ordinary course of business at arm's length price (e.g. purchase of general utilities like electricity) as well as those with other subsidiaries of the holding company should be excluded from the scope of business relationships which would disqualify a person from appointment as auditor. (iii) Material business relationships to also be allowed provided they are not material to either party. Threat aspects to be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to acceptance level.	(i) to (iii):- Clause 141(3)(e) empowers Central Government to prescribe, by rules, nature of 'business relationship' which shall disqualify a person from becoming auditor in a company. The suggestions made shall be considered at the time of making rules under such clause.
71	141(3) (g): Eligibility	(i) In considering the limits on the number of audits an auditor is eligible	(i) and (ii):- (a) The provisions with respect to restrictions on number of

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
	qualification and disqualification of auditors	to undertake, the exemption given to private limited companies should be restored as it exists in the Act currently. Existing provisions of Chartered Accountants Act and resolutions thereunder are adequate in this respect and it is unnecessary to introduce this provision in the Companies Act. If it desired to introduce this provision, the existing decisions of ICAI should be made integral part of the Act instead of inserted new and untested provisions. (ii) Restricting number of audits per firm is not a globally accepted practice. If required, it should be per partner.	audits have been provided in section 224(1C) Explanation-I of the existing Companies Act, 1956 and were also included in the Companies Bill, 2009 as clause 124(3)(g). (b) The suggestion, however, is noted in connection with prescription of limits of auditee companies under the rules to be prescribed under this clause.
72	141(3)(h)	Ineligibility should apply when the person is finally convicted i.e. he has not appealed the order within the permitted time.	Kind attention is drawn to recommendation at Para 10.27 and 10.28 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. In case of appeal, the appellate court can pass suitable orders (about stay of orders of lower court etc.) under general law. Hence there may not be any necessity of any change in the clause.
73	141(3)(i)	To be redrafted so as to delete associate company and any other form of entity from the scope of this clause.	Kind attention is drawn to Para 34 (Part I) of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Since these provisions seek to ensure independence of auditors and, therefore, improve corporate governance standards, the provisions may be retained as proposed in the Bill.
74	142(1): Remuneration of auditors	To be re-worded to provide that in case of first Auditors, the Board may fix the remuneration while appointing them.	Though the provisions are included in the same manner as in the 2009 Bill, the suggestion is noted to be addressed suitably through legislative vetting.
75	143(1) Proviso: Power and duties of auditors and auditing standards	In view of practical difficulties, the clause should be modified to exclude overseas subsidiaries. For reporting the matters under 143(2), the auditor should be allowed to rely on the audit	(i) Clause 143(1) proviso reads as under:- *"Provided that the auditor of a company which is a holding company shall also have*

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		reports of the subsidiaries for reporting on the Consolidated Financial Statements (CFS). However, to have sufficient overview of the consolidated Group, the auditor should be required to audit consolidated assets and revenues above a specified threshold, say above 50%.	*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."* (ii) The provisions simply seek to recognize the principle that auditor of a holding company shall have the right to access records of subsidiaries for the purpose of consolidation of financial statements. These are basic provisions which need to be there in law for facilitating audit of group accounts. (iii) Hence there may not be any necessity of any change in the clause.
76	143(3)(b) 143(3)(f) 143(3)(h) : Power and duties of auditors and auditing standards	(i) Clause 143(3) (f): The scope of reporting under this clause needs to be more specific since there could be a number of matters apart from 'financial transactions' which could have an adverse effect on the company, which are not even within the scope of an audit (e.g.; safety concerns, environment related issues, etc). (ii) The term ' financial transaction' itself should also be explained / defined, since certain financial transactions are already getting covered under this clause (e.g., transactions represented by book entries, terms of security for loans and advances, loans and advances shown as deposits, etc). Also, the term 'other matters' should be deleted from Clause 143(3)(f). (iii) The additional requirement relating to maintenance of accounts and matters related thereto required under clause 143(3)(h) is similar to the requirement under clause 143(3)(b). It is also suggested that the scope of "other matters connected" with maintenance of accounts should be specified in 143(3)(b) and the 143(h) is clarified.	(i) to (v):- (a) The suggestions seek clarification whether the role of auditor shall be limited to examination of financial aspects/matters only. (b) Kind attention is drawn to relevant provisions referred to in suggestions which read as under:- *"143 (3) The auditor's report shall also state—* *** *(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;* *** *(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;* *** *(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;"*

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		(iv) Under 143(3)(f), the scope of 'financial transactions or matters' needs to be defined and limited to financial reporting matters which are within scope of an audit. This may be combined with 143(3)(b). (v) 143(3)(h) may be amended to specify the scope of 'other matters connected" with maintenance of accounts.	(c) It can be observed that the above provisions require auditors to report only on issues relating to maintenance of books of account and financial transactions or financial matters and other matters connected therewith. These provisions seem to be appropriate and do not require any change. (d) These provisions are also similar to corresponding clauses included in Companies Bill, 2009 viz clause numbers 126(3)(b); 126(3)(f) and 126(3)(h)) and as per recommendation of Hon'ble Committee.
77	143(3)(i): Reporting on internal financial controls	(i) 143(3)(i) can be amended to limit internal financial controls to those which may impact financial statements. (ii) The additional requirement relating to reporting on adequate internal financial controls and operating effectiveness of such controls should be limited to those which may impact financial statements. Further, and assessment also needs to be made on benefit of imposing such duties with respect to private limited companies or small companies. It may not lead to the desired results while it would in almost all cases, increase the quantum of work to be performed by the auditors. Clause 143(3)(i) can be amended to limit internal financial controls to those which may impact financial statements.	(i) and (ii):- (a) The relevant provisions read as under:- *"143 (3) The auditor's report shall also state—* *** *(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;"* (b) Kind attention is drawn to recommendation at Para 9.41/9.47 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Kind attention is also drawn to Explanation to clause 134(5)(e) which defines the term 'internal financial control'. Such term basically refers to controls relating to efficient conduct of its business, safeguarding of its assets, prevention and detection of frauds and errors, accuracy of accounting records. (c) In view of above, there may not be any necessity of any change in the clause.
78	143(5): Directions by C&AG	Clause 143(5) inter alia provides for CAG's authority to issue directions to statutory auditors in respect of accounting standards only. CAG has	The suggestion may be accepted.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		to exercise oversight over functioning of statutory auditors of Govt companies. The existing mandate to issue directions on the manner in which accounts of Govt companies are to be audited should be continued without restricting it to accounting standards only.	
79	143 (6)(a): Power of auditor in case of Government companies	Clause 143(6)(a) to be brought in line with section 619(3)(b) of existing Act. The duties and powers of the CAG are derived from the Constitution of India and the Comptroller and Auditor-General's (DPC) Act, 1971. As such the same cannot be subjected to the rights and obligations applicable to auditor. This clause should read as *"conduct a supplementary audit of the company's financial statement by such person or persons as he may authorize in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorized, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may direct."*	The suggestion may be accepted.
80	143(6)(b) Proviso	As comments given by the Comptroller and Auditor-General of India are as a result of supplementary audit and not on the supplementary audit, this may be deleted. Further, as Sub section (1) of Section 136 deals with financial statements, the proper words to be used are 'financial statement'. The Proviso may be amended as under:- *Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report ~~or, on the report of the supplementary audit conducted by him~~ shall be sent by the company to every person entitled to copies of audited ~~balance sheet~~ financial statements under sub section (1) of section 136 and also placed before*	This will be dealt with in accordance with the decision about Clause 143 (6) (a) above.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		annual general meeting of the company at the same time and in the same manner as the audit report.	
81	143: Audit documentation in case of Govt companies	With a view to exercise oversight over functioning of CAs appointed as statutory auditors, it is necessary that there is statutory backing for access to audit documentation of the statutory auditors of Government Companies.	It will not be desirable to provide a discriminatory provision which obliges Auditors of Government Companies to make more disclosures to their appointer than Auditors of non Government Company. However, the objective of accessing documents of the auditor can be achieved by the C&AG by incorporating suitable provisions in their "Compendium of Directions" meant for Auditors of Government Companies.
82	143(8): Branch audits	The existing Act provides exemptions from audit of branches subject to certain rules. However, the Bill does not have any similar provisions. Provisions should be incorporated to prescribe rules for exemption of specific branches from audits.	Kind attention is drawn to clause 143 (8) of the Companies Bill, 2011 which provides for right of auditors in connection with audit of branches. These provisions are similar to clause 126(8) of Companies Bill, 2009. The provisions may be retained in the same manner as these have been examined and deliberated extensively and meet the objectives and intention of legislation.
83	143: Certificate from auditor	Insertion of provision in the Bill whereby a certificate has to be obtained from Statutory Auditor certifying that the Balance-Sheet prepared is same as filed with Different authorities.	As various statutes like Electricity Act, Banking Regulation Act, TRAI Act, IRDA Act etc require a different format of balance sheet, the suggestion is not feasible. In any case clause 1(4) and 129 of the Companies Bill, 2011 allow such different forms of presentation of financial statements.
84	144: Auditor not to render certain services	(i) This clause be made applicable to only listed and large sized companies as may be prescribed. (ii) It is suggested that a situation where a subsidiary is audited by another firm of Chartered Accountants should be included as an exception to Explanation (ii). (iii) A distinction to be made between an entity with which the client has a control relationship and another entity with which there is a significant influence relationship.	(i) to (vii): (a) These provisions were included in the Companies Bill, 2009 as Clause 127 which were examined by Hon'ble Committee. Kind attention is drawn to recommendation at Para 34 and para 10.50 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. These provisions were included in the regulatory framework by various jurisdictions post 2002 scams of Enron/ Worldcom etc to ensure independence of auditors. Implementation of such provisions

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		(iv) Provision should be amended to delete associate companies from the scope of this clause. Explanation to Clause 144 is very wide and needs to be deleted. Restrictions should be applicable only for a subsidiary or associate that is material to the auditee company or if the auditee company is material to the holding company. (v) Management services should be defined services such as valuations, due diligence, special audit/ investigation etc which could have bearing on the audit services. (vi) Scope of terms ‘‘investment advisory services’ and ‘management services’ should be clarified so that there is no doubt as to whether a service falls under these or not. AICPA Code of Professional Conduct defines the terms ‘investment advisory services’; ‘investment banking services’ and ‘management services’ which can be used. Some mechanism may be considered through which certain non audit services which are being provided by auditors traditionally consistent with their skills and expertise may be continued with adequate safeguards. It may be necessary to evaluate the significance of any threat created by provisions of non audit services. Clause may be amended to exclude services where there are no self-review threats from scope of this clause. (vii) If at all the Bill needs to cover non-audit services, the Bill itself should contain only minimum restrictions and further restrictions may be prescribed through Code of Ethics.	internationally has successfully enhanced the standards of accountable and transparent financial reporting and auditing requirements. The need for such prohibition for auditors has also been widely felt necessary across various fora in India as well. (b) Hence there may not be any necessity of any change in the clause.
85	145: Auditors to sign audit reports, etc	In view of the fact that LLP can now be appointed as an auditor and since Clause 141(2), provides that only that partners who are chartered	The suggestion could be accepted.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		accountants shall be authorised to act sign on behalf of the firm, similar requirement should be prescribed here or Clause 141(2) should be cross referred.	
86	146: Auditors to attend general meetings	Attendance of auditors be made mandatory only in annual general meeting instead of in all the general meetings.	These provisions are same as under section 231 of present Companies Act, 1956 and was repeated in the 2009 Bill. Hon'ble Committee did not make any recommendation to modify these provisions. No difficulty has ever been faced in giving effect to the relevant provision.
87	147(2) to (4): Punishment for contravention	(i) Before any complaint is lodged in any court/forum, such complaint should be first sent to ICAI for preliminary enquiry and if according to ICAI, after prime facie case of negligence, then only such complaint should be permitted to be filed in the court. In absence of such provision, auditors may have to devote considerable time in defending frivolous suits or damages. (ii) Defenses available as per section 233B of the existing Act for defaults not committed wilfully should be provided to auditors to ensure that the auditor is not unduly harassed/ punished for technical/ procedural/ administrative defaults.	(i) and (ii):- The jurisdiction of ICAI arises in cases of professional misconduct and not for punishment for offences as defined under various laws. Thus where an offence triable by a court of law is committed the matter shall have to be dealt with by the court of competent jurisdiction under the Code of Criminal Procedure. Similarly, for civil liability the competent civil court will adjudicate. It will of course be open for the ICAI to deal with cases of professional misconduct where its jurisdiction exists.
88	147:	The provision for indemnifying the auditors as stated in present clause 201 of Companies Act, 1956, needs to be inserted again.	(i) The provisions for indemnification of liability of senior management of a company (viz managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary) through Directors and Officers (D&O) Insurance have been incorporated in clause 197(13) of the Bill. Similar provisions were part of Companies Bill, 2009 and no modification to such provisions was suggested by Hon'ble Committee. (ii) The provisions for indemnification of auditors were not included in the Companies Bill, 2009 after detailed examination and consultation with all stakeholders. There may not be any

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			justification for their inclusion at this stage without any detailed reasoning. The suggestion may therefore not be accepted.
89	148(1) Cost Audit requirements	Requirements for Cost Accounting and Cost Audit should be mandated in law particularly for industries falling under specified consumer goods category and not for all industries. IT industries need not be covered under these provisions.	Kind attention is drawn to recommendation at Para 10.67 and 10.68 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. Clause 148 enables Central Government to prescribe such norms for specific classes of companies.
90	149(1): companies having more than 15 directors on commencement of the Act.	Companies having more than 15 directors as on the commencement of this Act may be allowed to have such number directors.	In the absence of any reasons having been given in support of the contention the Ministry finds no reason to consider revisiting the provision.
91	149(3): Central Government's power to prescribe minimum number of independent directors	Thresholds or tests may be prescribed for unlisted companies and private companies which are subsidiaries of public companies in relation to this provision as it may not be appropriate for independent directors to be appointed to all unlisted public companies and private companies. One example could be the requirement to appoint independent directors on the board of a unlisted public company which accepts public deposits.	As submitted during examination of Companies Bill, 2009, these aspects shall be taken into account while prescribing such requirements (through rules) under clause 149(3) on enactment of the legislation.
92	149(5) & (6): Attributes/ Requirements relating to IDs	(i) The definition of an "Independent director" in the Bill and the number of independent directors are in conflict with the provisions contained in Clause 49 of the Listing Agreement. These should be harmonized. Further, in order to ensure flexibility in connection with any future amendments, the same be defined through rules made under the Bill instead of the Act. (ii) The reference to relative should not be brought under the purview of this provision. Otherwise, the	(i) to (v):- Similar suggestion was made by stakeholders during examination of Companies Bill, 2009. Kind attention is drawn to recommendation at Para 33 and 11.45 of report of Hon'ble Committee regarding "Regulatory harmony". The provisions proposed in the new Bill are in accordance with such recommendation. As recommended by Hon'ble Committee, the Companies Bill, 2011 seeks to provide for minimum benchmarks for all companies in the Bill and SEBI has been given delegated powers to prescribe more detailed or additional regulatory regime for

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		reference to relative in this clause should be limited to 'spouse and minor children dependent on the concerned ID'. (iii) This is not in harmony with clause 49 of Listing Agreement. Harmonization ought to be achieved for each understandability and compliance. (iv) SEBI guidelines allow ESOPs to IDs. There ought to be harmony between SEBI guidelines and provisions of the new Bill. (v) The Bill does away with employee stock options as remuneration for independent directors. This may be reconsidered.	companies under SEBI's jurisdiction. Hence there may not be any necessity of any change in the clause.
93 (i)	149(7) and Schedule IV: Code for IDs	(i) It ought to be made clear that Schedule IV is only guidelines and also needs complete review to bring it in line with the functions that an ID can perform practically. (ii) Modification/Clarification needed as to whether Code for IDs is mandatory or whether it is a guide to professional conduct for IDs.	(i) and (ii):- Kind attention is drawn to recommendation at Para 29 and para 11.45 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Clause 149 (7) of the Bill provides that the company and independent directors shall abide by the provisions specified in Schedule IV. Provisions of Schedule IV provide for various guiding principles to be followed by IDs during discharge of their duties and role effectively. In other word, Schedule -IV is not merely a guideline.
93(ii)	149(7): Code for IDs	(i) The code states that an Independent Director (ID) shall uphold ethical standards of integrity and probity. What would constitute an ethical behavior is not defined and thus open to interpretation. (ii) The code does not give any cognizance to the need for training for the IDs.	(i) It is correct that these terms have not been formally defined and that these need to be determined on a case to case basis. (ii) Kind attention is drawn to provisions of clause 149(5)(f) which empowers Central Government to make rules with regard to such other qualifications as may be prescribed for IDs. The requirement for training etc can be provided in the rules framed under such clause.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
94	149(8):	(i) Clause 149(8) provides that an Independent Director shall not be entitled to any remuneration other than- (a) fee as in section 197(5); (b) reimbursement of expenses for attending meetings and; (c) profit-related commission approved by members. (ii) Clause 197(7) says that an independent Director may receive remuneration only by way of commission or fee under sub-clause (5). But sub-Clause (5) only talks about fees and not commission. (iii) Therefore, Clause 197 should also provide for commission to independent Director as prescribed in Clause 149(8) to be approved by members.	(i) to (iii):- These are drafting issues and phraseology will be improved to maintain consistency and uniformity.
95	149: Explanation to sub-clauses (9) and (10): tenure of independent director (ID)	Appropriate transition period of 2/3 years be provided for smooth transition e.g. in cases when the reappointment of IDs comes up after the commencement of the Act, the director who has served the longest and in excess of say, 15 years to begin with, should not be considered for reappointment so that over a period of time, there is full and smooth transition and benefit of the experience of the IDs is available to the entity.	The provisions of clause 470 (Removal of difficulty clause) can address such issues.
96	149(9) and (10): Tenure of IDs	Given that a director would usually take a year or two to be familiar with the dynamics of a company, the functioning of the board etc, a term greater than five years or a term which may be fixed (within reasonable limits) by the company may be more appropriate.	The provisions allow an ID to have a maximum tenure of 10 years subject to compliance with the provisions of clause 149 (9) and (10). Further, the past period is also not proposed to be counted for computation of such limits. These provisions are considered to be already highly liberal and no further change appears to be necessary.
97	149 (11): Indemnity for IDs	(i) The non-obstante clause at the start of Clause 149(11) of the Bill should be modified to provide that the liability of such directors is limited in	(i) to (iv):- Kind attention is drawn to recommendation at Para 11.43 and 11.45 of report of Hon'ble Committee. The provisions proposed in the new Bill

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		the manner specified therein irrespective of any other law in force. (ii) The clause does not give desired protection to IDs and non executive directors (NED). The clause may be modified to ensure protection from other laws as well and for restriction on arrest. A new clause is suggested as under:- *"Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force,-* *(a) Independent director shall not be liable or punishable for any act or omission by the company or by any officer of the company which constitutes a breach or violation of any of the provisions of this Act or any other law for the time being in force; and* *(b) no arrest warrant shall be issued against an independent director without authorization by a Judge of the rank of the District Judge, who shall give to the independent director an opportunity of being heard before issuing such authorization.* *Provided that the aforesaid provisions shall not apply if such independent director was directly involved in or responsible for such breach or violation or such breach or violation had been committed with his knowledge or consent or he was guilty of gross or willful negligence or fraud in relation thereto."* (iii) We appreciate the effort of the Ministry to mitigate the liability of the IDs however the fact that the Bill still treats them equivalent to other directors by holding them responsible through board processes. (iv) Non executive directors who are relatives of promoters may also be given immunity.	are in accordance with such recommendation. Since the provisions appear to be reasonable and practical, there may not be any necessity of any change in the clause.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
98	149(12)/ 152(6): Rotation of directors	(i) Clause 149(12) provides for IDs would not be liable to retire by rotation, whereas, clause 152(6) of the Bill that the directors not liable to retire by rotation cannot exceed 1/3rd of the total number of directors. Therefore, there should be clarity to provide that IDs shall not be counted/ included in total number of directors while complying with provisions of clause 152(6). Following explanations may be inserted at the end of clause 152(6):- *Explanation.- (i) For the purposes of this section 'total number of directors' shall not include independent directors on the board of a company whether appointed under this Act or otherwise.* *(ii) In this section and in section 160, the expression, 'retiring director' means a director retiring by rotation.* (ii) Compliance with both clauses 152(6)(a) and 149(12) may not be feasible and these provisions may accordingly be reconsidered.	(i) and (ii):- The suggestions may be accepted.
99	150(1) Selection of Directors from panel	(i) Flexibility to be given to Companies to appoint independent directors from outside the mandated panel. (ii) Constitution of a panel may complicate the appointment process and raise issue regarding the selection, verification, validation and management of independent directors in the panel.	(i) and (ii):- (a) Kind attention is drawn to the following extracts from Para 29 of report of Hon'ble Committee:- *"**** The appointment process of IDs may also be made independent of the company management by constituting a panel or a data bank to be maintained by the MCA, out of which companies may choose their requirement of Independent Directors. *****."* (b) In view of above recommendation, the provisions of clause 150 have been included in the Bill. The provisions do not require companies to mandatorily choose IDs from such databank. The conditions/ attributes for appointment of IDs specified in clause 149(5) shall have to be fulfilled by every ID. Databank shall only disclose names, addresses and qualifications of persons who are eligible and willing to act as IDs. This is basically to facilitate the

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			users. More safeguards to ensure independence and convenience for users about these issues can be prescribed in the rules under this clause.
100	165: Number of directorships	The permission from Central Government to hold directorship in more than the number specified in the clause should be done away with in accordance with the views of the Standing Committee.	Kind attention is drawn to para 11.72 to 11.74 of the report of Hon'ble Committee. The provisions are in accordance with such recommendation and do not require any permission from Central Government on the matter. The suggestion made has already been taken care of.
101	166(4) and 166(7): Duties of Directors	The provisions may discourage multiple directorships. To avoid confusion, it should be clarified that common directorships by themselves will not attract liability pursuant to Clause 166(4) read with Clause 166(7) unless the director fails to recuse himself from a decision where he has a conflict of interest.	(i) Similar suggestion was made before Hon'ble Committee during examination of Companies Bill, 2009 which was evidently not accepted by the Committee. It was indicated by this Ministry at that stage that the intention is not to prohibit directors from entering into fair dealings. The clause only prohibits a director making undue personal gains at the cost of the company in which he has been appointed. The duties provided under this clause are being and have always been considered to be duties of directors who have to act in a fiduciary and trusteeship role for the companies in which they have been appointed. Various courts have also upheld such duties in their pronouncements. The Bill has only tried to codify these duties for awareness and due compliance by directors. (ii) In view of above, there may not be any necessity of any modification in the Bill on this matter.
102	168: Resignation of directors	As information provided to the ROC may be made public, directors of private companies may be excluded from the ambit of this provision.	These provisions are same as included in the Companies Bill, 2009. Hon'ble Committee did not make any modification to modify these provisions. The clause may, therefore, be retained as proposed. Exemptions for any class of companies, if required after examination and deliberations, can be considered under clause 462.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
103	169 (2): Removal of directors	Attention is drawn to clause 115 of the Bill which deals with resolutions requiring special notice. There is need for provision of uniform period of notice to move such resolution. Even if uniform period is not provided, for any reason, it is suggested that the provision regarding special notice should be clubbed together at one place.	Kind attention is drawn to recommendation at Para 7.39 -7.43 and Para 11.94 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. However, the suggestion to align requirements for giving special notice provided under provisions of clause 115 and 169(2) may be considered.
104	173(2): Holding of meetings through video conferencing	(i) In order to permit free and frank discussions by the Board, the Bill should expressly provided that only the start of the Board meeting and the voting on each item be recorded i.e. there should be no requirement to record the entire proceedings. (ii) Requirement of recording of proceedings of Board meetings conducted through video conferencing should be dispensed with and Board meeting through audio conferencing to be permitted.	(i) and (ii):- Similar suggestion made during examination of Companies Bill, 2009 was not agreed to by the Hon'ble Committee. Kind attention is drawn to recommendation at Para 12.8 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. In any case, it is felt that the manner of recording minutes is a matter of internal policies and practices of a company and the legislation need not concern itself with such details.
105	175: Passing of resolution by circulation	(i) It was suggested that Ministry should prescribed the number of Directors that may be required in respect of any important matter which should be decided only through physical meeting and not through circulation of resolution. The suggestion has not been considered in the Bill. (ii) Since foreign directors are permitted, the words 'in India' may be deleted from Clause 175 of the Bill.	(i) (a) The comments indicated are not correct. Kind attention is drawn **to** recommendation of Hon'ble Committee at para 12.15 and provisions of clause 175(1) (Proviso) which read as under:- *"Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.".* (b) Hence the recommendation of Hon'ble Committee has been implemented. (ii) The provisions are similar to clause 156(1) of the Companies Bill, 2009. No recommendation for any modification on this issue was made by Hon'ble Committee. The provisions, since appear to be reasonable and relevant, may be retained as proposed in the Bill.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
106 (i)	177: Composition of Audit Committee	The requirements in respect of constitution of audit committee are different in the provisions of clause 177 and Clause 49 of Listing Agreement on some parameters. The two would need to be harmonized with each other.	Kind attention is drawn to recommendation at Para 12.22 and 12.31 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. The provisions of the Bill have been seen and commented upon by various stakeholders including the SEBI which chose not to comment on this provision. Therefore, it can be presumed that SEBI will carry out necessary harmonisation of such minor details.
106 (ii)	177: Whistle blower mechanism	There should be provision regarding whistle blowing in the proposed Bill and legal protection to the whistle blowers.	(i) Kind attention is drawn to provisions of clause 177(9) and (10) which provide for provisions in respect of vigil mechanism (which is similar to whistle blowing mechanism) for a class or classes of companies as may be prescribed under rules. Safeguards against victimization for whistle blowers have also been provided for in such provisions. (ii) The suggestion made, therefore, has already been addressed.
107	178. Nomination and Remuneration Committee	Companies may have the option to have two Separate Committees 'Nomination Committee' and 'Remuneration Committee' instead of a single 'Nomination and Remuneration Committee'.	Kind attention is drawn to recommendation at Para 12.22 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Since the matter of nomination/selection of directors and their remuneration are interlinked, it is appropriate if the same Committee decides both the matters. Hence the nomenclature of the Committee may be retained as 'Nomination and Remuneration Committee'.
108	179: Power of the Board	It is not the intention that every individual allotment of shares under ESOPs shall have to be approved by Board. The rules to be framed under this clause may clarify this aspect.	The suggestion is noted for being addressed while framing the rules.
109	185: Loans to directors etc.	(i) This clause corresponds to section 295 of existing Act. However, section 295(2) seems to have been inadvertently overlooked. Such	(i)(a) The Irani Committee on new Company Law (2005) had made following recommendations in connection with restrictions for loans to

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		exemption is necessary. A holding and subsidiary company are in substance one entity and consolidated financials ensure that all their transactions with third parties are accounted and disclosed. Consequently, it is necessary to give freedom to companies to deal with their subsidiaries as if they are mere divisions of the company. (ii) The recommendation of Committee for clarifying the expression used in the clause i.e. "to any other person in whom the director is interested' has not been accepted in the Bill and should accordingly be addressed.	be made to directors :- *"5.1 Generally the directors should not be encouraged to avail of loans or guarantees from companies. They should be allowed remuneration or sitting fees only. In case company decides so, loans to directors should be allowed only when company by special resolution approves such loans. Disclosures to be made to shareholders, through the explanatory statement, should be specified in the rules. It should be open to a company to formulate schemes (such as Housing Loan Schemes) for the benefit of Executive Directors. Once such schemes are approved by the shareholders by special resolution, loans under such schemes may be allowed to eligible directors, without again going to shareholders for approval."* (b) The provisions proposed in the Companies Bill, 2011 are in accordance with above recommendation and were similarly included in the Companies Bill, 2009. (ii) Kind attention is drawn to recommendation at Para 12.68 of report of Hon'ble Committee. The provisions proposed in the new Bill (Explanation to clause 185(1)) are in accordance with such recommendation. The suggestion, therefore, has already been accepted. Hence there may not be any necessity of any change in the clause.
110	186: Loans and investments by company	The companies may be allowed transition period after the date of notification of about six months to enable them to take post facto shareholders' approval for those loans, investments and guarantees which are necessitated on the day of the notification of or immediately thereafter.	These aspects can be addressed during availability of period between passing of the Bill by Parliament and issue of notification for commencement of relevant provisions. Any important issue can be addressed through issue of notification under clause 470 (Power to remove difficulty).
111	189(3): Register of contracts or arrangements	Clause 189 (3) requires every Director to give notice to the Company about himself. It is not clear what this notice	The suggestion is noted to be addressed suitably through legislative vetting.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
	in which directors are interested.	should contain. Sub-clause (2) already requires Directors and KMP to give notice of particular relating to his concern or interest.	
112	195: Prohibition on Insider Trading of Securities	(i) To avoid any overlap between these provisions and SEBI regulations on the matter, these provisions be deleted from the Bill. Separately, it may also be noted that whereas the concept of insider trading is generally understood to apply within the framework of listed companies, clause 195 of the Bill does not draw this distinction and makes it application to all companies. (ii) Explicit provision be made that this clause does not apply to private companies.	(i) and (ii):- (a) Kind attention is drawn to recommendation at Para 12.113 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause. (b) Kind attention is also drawn to following provisions of clause 458(1)(Proviso) through which powers to enforce these provisions have been delegated to SEBI. The provisions read as under:- *"458(1) Proviso:- Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction."* (c) There is therefore no apprehension of any inconsistency with SEBI regulations.
113	196(3)(a): Age Limit of Managerial personnel	If the limits in respect of age are required to be retained, their applicability be limited to listed public companies and a specified class of public companies (e.g. companies which have accessed public deposits) and the same should not be made applicable to private companies.	(i) These provisions were included in the Companies Bill, 2009 as clause 174(4)a). Kind attention is drawn to recommendation at Para 13.8 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. (ii) Hence there may not be any necessity of any change in the clause.
114	196(4) Requirement of Special Resolution for appointment	The requirement relating to passing of 'special resolution' should be modified to 'ordinary resolution'.	The suggestion may be accepted.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
	of managerial person		
115	203: Appointment of key managerial personnel	(i) The provisions for separate position for Chairman and CEO in companies may be reviewed in case of companies having majority of independent directors in their Board. (ii) There should be a clarification that where there is an existing resolution for such appointment approved by shareholders, such resolution would continue to remain effective and new provisions shall apply for fresh appointment requiring approval of shareholders. The provisions should be applicable prospectively.	(i) (a) Kind attention is drawn to relevant provisions 203(1) Proviso which read as under:- *Provided that unless the articles of such a company provide otherwise, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time.* (b) It can be observed that provisions are voluntary in nature and company can amend its articles to allow a person to become Chairman as well as CEO/MD. (ii) There may not be any need for transitional arrangement since the provisions are voluntary in nature and the company has to amend its articles in case it does not intend to comply with the provisions. The need for any transitional time period, if at all required, can be considered through notification under clause 470 (Power to remove difficulty).
116	205(1)(b): Secretarial standards	Secretarial standards dealing with procedural matters only should be considered for mandatory compliance. Secretarial Standards dealing with interpretation of statutory provisions should not be made mandatory since such an interpretation may not always be in consonance with common law.	(i) The Standards issued by the Institutes (like ICAI, ICSI, ICWAI) are subject to provisions of all applicable laws in the country. In case of any inconsistency between provisions of any law and the standard, the provisions of law shall have overriding effect. This approach has been reflected in the Preface/Introduction to Standards issued by such Institutes. The same effect shall be retained in the Secretarial Standards after the new Bill is implemented. (ii) In view of above, there does not appear to be any necessity of any modification in these provisions.
117	212: Investigation by SFIO	A time frame has not been provided for completing such investigation. Time frame be provided for	(i) Similar suggestion was also made by certain stakeholder to Hon'ble Committee in context of inspection/investigation under the

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		completing such investigation.	Companies Bill, 2009. It was submitted by this Ministry at that stage that there may not be any time limit on the action to be taken in connection with any inspection or investigation against a company since any contravention, which may also include any fraudulent action, may come to notice at any time and there should not be any statutory or legal restriction in respect of limitation of time on the Government in taking such action. (ii) In view of above, there may not be any necessity of any modification in the Bill on this matter.
118	230(5): Multiplicity of Regulators	It may be reconsidered whether such intimation is required as the appropriate regulation independently regulate compromise/ arrangements under various statutes, as applicable. However, if this provision is retained, the phrase "such other regulators or authorities which are likely to be affected" be deleted as this is very broad and ambiguous.	Kind attention is drawn to recommendation at Para 15.20 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. In any case, the words recommended for deletion are necessary to rule out a possibility of some statutory authority having jurisdiction in some aspect of the case having been left out.
119	230(9) Dispensing with the meeting of Creditors in compromise	A similar provision may be provided dispensing with the meeting of shareholders of closely held companies if they agree and confirm by affidavit the scheme of compromise and arrangement.	The members and creditors stand on different footing so far as protection of their interests are concerned. The meetings of members are considered to be essential for such important matters to ensure corporate democracy and principle of participation in important decision makings.
120	230 (10): Buy back in case of compromise, arrangements	Consideration of capital adequacy is safeguarded in a scheme of compromise or arrangement by the judicial oversight and the opportunity given to creditors. Hence buy-backs that form part of such compromises or schemes of arrangements need not be in accordance with clause 68. Hence clause 230(10) should be deleted.	These provisions are same as included in clause 201(9) of the Companies Bill, 2009. Hon'ble Committee did not make any modification to modify these provisions. The intention is to allow buy back after following comprehensive provisions of clause 68 of the Companies Bill, 2011 which seek to protect interests of investors, particularly minority investors. The provisions of clause 230(10) seek to check the malpractice adopted by companies to use compromise/ arrangement route for buying back of securities in stead of specific provisions

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			of clause 68. Hence the intention behind clause 230(10) is to disallow such route. Such provisions may, therefore, be retained as proposed.
121	234(1): Cross border mergers	It should be clarified that whist companies located in all (even un-notified) jurisdiction may merger into an Indian company; an Indian company may only merger into companies located in notified jurisdictions.	Kind attention is drawn to recommendation at Para 15.41 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
122	235: Acquisition of shares of minority	(i) Sub-clause (3) provides that a copy of notice will be sent to the transferor company together with an instrument to be executed on behalf of the shareholders by the person appointed by the transferee (1) company and on its own behalf by the transferor (2) Company. Here the shareholder holds the shares of the transferor Company. Therefore it is presumed that the instrument will be executed by a person appointed by the transferor Company and not the transferee company as stated in the sub-clause. (ii) Similarly, there is no scope for the transferor company to sign the instrument on its behalf. On the other hand, the instrument will be signed by the transferee company or its nominee. <u>Suggestion:-</u> In the first para the word transferee (1) may be changed "transferor" and the word 'transferor' (2) be changed as "transferee".	(i) and (ii):- The suggestion could be considered.
123 (i)	236: Minority Squeeze Out	(i) This provision should apply only to listed companies in which case the same may be dealt with by the SEBI separately under the regulations issued be it and removed from the Bill. (ii) Further, the Clause does not appear to provide for a compulsory squeeze out of the minority shareholders. In the event that it is desired that the Bill provide for these matters (instead of the matter being	(i) to (iii):- The suggestion is noted for improvement in language to clarify intent clearly.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		dealt with separately by the SEBI which may be preferable), we recommended that the Clause be modified to provide for a process for compulsory squeeze out of minority shareholders of the listed company in question. (iii) In such case, the relevant provisions of the Bill would also need to be harmonized with the SEBI(Delisting of Equity Shares) Regulations, 2009 and suitable drafting changes be made to Clause 236 of the Bill. By way of an illustration, it is not clear how the provisions of Clause 236(9) of the Bill would work.	
123 (ii)	236: Purchase of minority shareholding	Sub-clauses (2) and (3) appear to state the same actions as one says valuation by valuer according to rules to be prescribed and the other says price to be determined on the basis of sub-clause (2).	The objectives of these sub-clauses are different. While in sub-clause (2) majority shareholder offer to take stake of minority shareholders, in sub-clause (3) it is the minority shareholders who may offer their shares to majority shareholders. Since in both the situations valuation has been provided the set of rules framed under sub-clause (2) can also be used for valuation required under circumstances under sub-clause (3). Hence these two sub-clauses are different but interlinked. The provisions may be retained as proposed in the Bill.
124 (i)	245: class action	The clause does not expressly provide for filing of derivative suits by shareholders of a company whereby shareholder initiates legal action when management fails to do so. Express provision dealing with derivative action by shareholders on behalf of a company be incorporated in clause 245.	Kind attention is drawn to recommendation at Para 16.25 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
124 (ii)	245: Class Action Suits	(i) The fact that there are always possibilities of misuse cannot be ignored and a manner should be prescribed to prevent misuse of these provisions. (ii) Class action is particularly intended to redress grievances of	(i) and (ii):- (a) As recommended by Hon'ble Committee at para 16.25 of its report, the provisions on class action were examined in the light of such provisions provided under laws of other countries like UK and Singapore. The provisions have been revised accordingly and are part of clause 245

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		members/ depositors. auditors are not involved in such wrong doings. Hence should be kept out of ambit of this clause. (iii) Clause to be amended to recover costs or expenses connected to the application for class action from person or company responsible for oppressive act only after the order is passed declaring them as guilty.	in the new Bill. Safeguards like making of application for class action by a minimum number of members/depositors; Tribunal to have power to consider certain important aspects while hearing class action applications and penal action in case of frivolous/ vexatious applications have been included in the revised clause. (b) The suggestions made, therefore, have been addressed in the new provisions. (iii) This can be decided by the Tribunal and need not be provided in the law.
124 (iii)	245(1)(g)(ii) Class action:	The term "wrongful act or conduct" is very ambiguous and may be omitted. Transgression of procedural/ technical or unintentional should be viewed in broader perspective and should not be subject matter of class action suits. Only audit partner who acted in gross negligent or fraudulent manner should be made responsible for outcome of class action and not the firm.	On further consideration the Ministry is now inclined to be of the view that while civil liability needs to be shared by all auditors/ partners in the auditing firm, criminal liability will be restricted to individuals to whom specific wrongful acts of omission and commission (which are declared to be offences under the Companies Act or other Law) are attributable. For the purpose of levy of fine, however, the firm will also be liable.
124 (iv)	245: Derivative action	Class action suits are poor substitutes for derivative actions and would not be effective in India where effective corporation action is available only to the rich and mighty. Provision for derivative action should be considered to empower shareholders to go against the wrong doings of the companies at the expense of such companies.	These types of concepts evolve over time and should not be included hurriedly. The provisions proposed are in accordance with 2009 Bill and as per recommendations made by Hon'ble Committee. At this stage, inclusion of new concepts may not be accepted.
125	247: Valuation by registered valuers	(i) Only those valuers, who are (a) not already otherwise required to be registered with professional bodies or the Government, (b) not already subject to professional body supervision, and, (c) not liable to professional disciplinary proceedings,	(i) and (ii): (a) The provisions proposed in clause 247 seek to recognize the concept of valuer for the purpose of valuation of shares/assets/properties required under some of the provisions of the new Bill. These provisions are relevant for arriving at value of

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		should be required to register, as proposed. (ii) To deter valuers from contravening the provisions of Clause 247 of the Bill, it may also be provided that a valuer who contravenes the provisions of this section shall (in addition to attracting the suggested penal clause) be disqualified from being re-appointed as a valuer of such company and of any other companies for a prescribed period of time.	consideration for issue of securities for consideration other than cash and for right offer/exit offer etc. The intent behind these provisions is to ensure fair valuation of such shares/ assets/ properties and to protect interest of non promoter shareholders. (b) Detailed requirements and safeguards shall be prescribed under rules to be framed under this clause. The suggestions made have been noted be considered at the time of such rule making.
126	253(1): Determination of sickness	The term 'sick company' needs to be defined in the Bill.	(i) The term 'sick company' was not defined even in the Companies Bill, 2009 since the provisions of clause 253 are self-explanatory with regard to determination of sickness and the term 'sick company' has been used in context of such determination. Moreover, the term is relevant mainly for chapter relating to rehabilitation of companies only. (ii) Kind attention is drawn to recommendation at Para 19.13 of report of Hon'ble Committee. The provisions proposed in the new Bill are in accordance with such recommendation. Hence there may not be any necessity of any change in the clause.
127	253(1)	On several occasions creating security involves obtaining approval of the lessor, permission of the state government, etc. These requirements cannot be dispensed with and at the same time it is beyond the control of the companies to expedite such approvals/ permissions. Thus it would be pertinent to note that even though a company has the ability to pay of its debts or create adequate security in favour of its lenders, delay in aforementioned approvals will trigger the 30 days timeline. Hence it is requested to revise the clause keeping in view the above issues.	The period of 30 days provided in clause 253(1) does not refer to any period before creation of security. It merely refers to period of default in payment of debts outstanding to creditors. The provisions propose to give an additional statutory period of 30 days for settling debts of creditors before they can initiate the process for determination of the company as a sick company. The provisions are similar to provisions of clause 229 of the Companies Bill, 2009 which were seen by Hon'ble Committee. Hence there may not be any necessity of any change in this clause.
128	447: Punishment for fraud.	Clause 447 may be amended to restrict its applicability to clauses	(i) As per recommendation made by Hon'ble Committee, the Bill has defined

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		where the fines are not specified in any other clause.	the term 'fraud' and provided punishment for the same. Offences involving fraud have also been inter-linked with such term and punishment. Additionally, in view of the recommendations made by Hon'ble Committee to strengthen the SFIO, fraud related offences have been made severe and power of arrest has been proposed for SFIO in such cases, subject to certain safeguards as provided under clause 212. (ii) In view of above, the suggestion may not be considered.
129	464: Prohibition of association or partnership	To ensure quality, professional service, firms need to have critical strength and therefore may be permitted 100 partners in a firm.	The suggestion has already been incorporated in the provisions of clause 464(2)(b). As recommended by Hon'ble Committee, the provisions proposed in Companies Bill, 2009 have been retained in this regard which seek to provide that restrictions about number of partners shall not be applicable to any association/ partnership formed by professionals who are governed by special Acts (like CAs/CWAs/CSs). The suggestion, therefore, has already been accepted in the new Bill.
130 (i)	469: Power to make rules	There are many matters which would be prescribed under the Rules. There is a need to strike balance between flexibility and certainty of law to face the challenges of increasing globalization. There is every possibility that the requirements may be changed frequently, by way of changing rules. It is suggested that all draft rules should be kept open for public debate for sixty days.	The suggestion has been noted and as submitted earlier draft rules would be placed in public domain for comments for appropriate duration.
130 (ii)	469: Rules on accounts and audit provisions.	Certain matters like (a) rules to facilitate rotation of auditors (b) manner of selection of auditors (c) conditions with regard to appointment of auditors w.r.t. consent to be given by auditor and (d) number of audits that an auditor/firm can undertake should be incorporated in the Bill itself rather than making these a part of rules.	It may kindly be noted that though all substantive provisions/ principles on the matters referred to in the suggestion like rotation norms for auditors, power of shareholders or C&AG to appoint auditors and conditions with regard to disqualifications of auditors have been specifically indicated in the Bill. It is only the additional/ procedural requirements like rules to facilitate rotation of auditors in a seamless manner, manner of giving

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			of consent by auditor on his appointment and maximum number of audits which an auditor can perform which are proposed to be prescribed through rules. These provisions seek to ensure flexibility in the provisions. Moreover, framing of rules would also be as per consultative process and the views of all concerned stakeholders would be taken into account for this purpose.
130 (iii)	469: Rule making on certain matters.	(i) Definition of KMP [Clause 2(51)], related party [Clause 2(76)], number of investors in case of a private placement [Clause 42] and duties of debenture trustees [Clause 71] should be addressed through the provisions of the Act and not through rules. (ii) Similarly, Qualifications of IDs [Clause 149(5)] and contents of prospectus [Clause 26] could be better covered through rules.	(i) and (ii):- The suggestion has been examined and it is felt that the referred provisions proposed in the Bill (which (except clause 42) are as per Companies Bill, 2009) and have been already much deliberated and almost accepted by all. Hence no change seems to be necessary.
131	Schedule V: remuneration payable to managerial personnel read with clause 196/197	Section II Para (B): Under this clause if a person who is non executive director becomes an executive director, he can not get the benefit if the person is holding only one share of the company. Provisions may be therefore changed. Further these clauses should not be made applicable to private companies.	Suggestion is acceptable in principle. However, some threshold shall have to be prescribed so that persons with substantial stake (who may be de-facto promoters) do not take advantage of such special dispensation.
132	General	Following provisions require review in context of criminal liability :- Delay in registering transfer of shares within the prescribed period [clause 56(6)]; Defaults relating to registration of charges [clause 86]; Failure to file certain agreements and resolutions with RoC [cl. 117(2)] Failure to fine DIN with the RoC [cl. 157]; Failure to disclose interest by directors [cl. 184(4)].	(i) The Ministry has been guided by the recommendation of Hon'ble Committee to ensure that technical or procedural defaults of companies are seen in a broader perspective in contrast to fraudulent practices/ activities which need to be dealt with severely and decisively. The provisions in the new Bill are in accordance with such recommendation. (ii) The detailed analysis for distinguishing offences/ defaults/ non compliances was done in the light of such recommendation. The offence and penalty structure in the Bill seeks to provide for

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			(a) regularization of filing of documents through late fees (b) adjudication of procedural non compliances/defaults through levy of monetary penalties by Registrars (c) adjudication of offences (involving fine or imprisonment or both) through Special Courts to be designated/set up under the Bill (d) redressal of civil action/liabilities through National Company Law Tribunal (NCLT) (iii) The penal clauses for non-compliances indicated in the suggestion appear to be appropriately provided.
133	New	The concept/profession of "Certified Fraud Examiner" may be recognized in the Companies Bill in connection with carrying out investigation on fraud related matters.	(i) Concept of 'Certified Fraud Examiner" was not included in the Companies Bill, 2009, nor was any suggestion/recommendation on such matter during examination of such Bill. (ii) In view of strengthening of norms on statutory audit, internal audit, secretarial and cost audits, role of audit committee, enhanced role for IDs, accountability on the part of promoters/officers in default and management, recognition of SFIO and stricter regime to regulate fraud included in the Bill, there may not be any necessity of recognition of concept of 'Certified Fraud Examiner" in the Bill. The suggestion, therefore, may not be considered.
134	General	Company making positive announcements for shareholders (right/ bonus/ New listings/ buyback) but not implementing the same within six months must compensate the shareholders.	These aspects are already appropriately being regulated by SEBI. No further change appears to be necessary.
135	General	Provision may be included in the Bill whereby Quarterly return regarding opening and closing of any office other than its registered office has to be filed by companies.	Suggestion is noted to be addressed through rules under clause 92 (Format of Annual Return to be filed with Registrar).
136	General	(i) Provision restricting companies not to receive share application money beyond its authorized share capital except in case of holding company	(i) This aspect has already been addressed in Para 5(G)(g) of "General Instructions for preparation of Balance Sheet" in Schedule III (Format of

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		receiving it by way of public issue may be included. (ii) Also, application of provisions of the Bill on small companies to be overlooked.	Financial Statement). (ii) Exemptions to small companies have been provided in respective relevant clauses and future exemptions, if required, can be considered through notification under clause 462.

4.2 There were some suggestions which relate to those recommendations of the Committee which were either not accepted or partially accepted by the Ministry. This has been indicated in the statement given below along-with comments of Ministry thereon:-

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
1	2(11): Body corporate or corporation	In order to be consistent with the provisions of Section 3 of the Limited Liability Partnership (LLP) Act, 2008, LLP should be specifically included in the definition of body corporate or corporation.	(i) Kind attention is drawn to recommendation at Para 1.44 of report of Hon'ble Committee. The Committee had recommended that the term 'LLP' may be included within the definition of the term 'body corporate'. The matter, however, was reviewed during consultation with concerned Ministries / Departments and vetting by Law Ministry. It was felt that though LLPs are bodies corporate under LLP Act, 2008 which is a general Act for LLPs, reference of such term in the definition of the term 'body corporate' under the Companies Bill, 2011 will create avoidable confusion as the Companies Act is meant for only a particular species of body corporates viz. Companies. (ii) Clause 141(3)(a) of the Bill, however, allows, LLPs to be appointed as auditors in companies. (iii) It is felt that these provisions may be retained as proposed in the Bill.
2	2(51): Key managerial	Whole time director (WTD) not included specifically as KMP. WTD	The whole-time directors, in case of companies where managing directors or

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
	Personnel:	to be included within definition of KMP even if the company has MD/Manager.	managers are in position, do not exercise substantial powers of management and control despite being in charge of specific areas of management (like Finance, Human Resource or Manufacturing/ Engineering etc). Hence it was felt that whole–time directors may not be brought within the purview of KMPs. There is, however, scope of bringing them within the purview of the term in view of clause 2 (51) (iv).
3	2(71): Public Company	Unlike the Act, the Bill does not specify clearly which provisions would be applicable to such subsidiaries. This will require such subsidiaries to necessarily follow additional compliances relating to public co. as it is now. Existing provision in the Act [Section 3(iv)] should continue.	(i) Clause 2(71) reads as under:- *(71) "public company" means a company which—* *(a) is not a private company;* *(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:* *Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;* (ii) Kind attention is drawn to recommendation at Para 1.103 of report of Hon'ble Committee. The above provisions are in line with the recommendation. Further, the position under the existing Act is vague since the phrase 'a private company which is a subsidiary of a public company' repeatedly occurs in various sections causing confusion. By including such phrase in the definition clause itself the need for repetition has been obviated. (iii) The Bill seeks to clarify this aspect. Hence no change may be considered for this clause.
4	2(87): Proviso: Subsidiary company: layers requirements	(i) The Act now provides for consolidation of accounts of subsidiaries including associates and joint ventures. Consequently, full information of all transactions of company and its subsidiaries would be transparently disclosed. Hence it is no longer relevant to limit the	(i) to (iii):- (a) Kind attention is drawn to recommendation at Para 58-59, 1.122 and 12.90 of report of Hon'ble Committee. The provisions proposed in the new Bill are broadly in accordance with such recommendation and in any case consolidation of accounts does not by itself rule out misuse of subsidiaries

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		number of layers of subsidiaries. (ii) The definition of subsidiary under the Bill and the AS21: Consolidated Financial Statements should be harmonized. The number of layers required by a company is dependent on the number of business lines that it operates, the number of countries where its operations are spread, etc. Accordingly, it may not be feasible to apply one rule for all companies - rather cognizance should be given to the facts and circumstances of each company. (iii) MCA should specify the sectors to which this clause shall be applicable and the number of subsidiaries should be prescribed under the Bill itself as this clause shall have large impact on the parent companies.	embedded in various layers to achieve ulterior motives. Thus a removal on number of 'layers' is not justified on this ground. (b) In any case requirements for restrictions for layers for class or classes of companies shall be specified under rules as considered appropriate through deliberations with concerned stakeholders.
5	105(1): Proxies	A representative of a member company should be allowed to appoint proxy and the authority of such proxy should not be restricted by number of shares the proxy represents.	(i) Kind attention is drawn to provisions of clause 113 which read as under:- *113. (1) A body corporate, whether a company within the meaning of this Act or not, may, —* *(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;* *** *(2) A person authorised by resolution under sub-section (1) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.* (ii) The above provisions are self explanatory with regard to powers of a member of a company, who is a body

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
			corporate, to appoint a representative to exercise powers to vote in general meetings on behalf of such body corporate member. Clause 113(2) further empowers such representative (of the body corporate) to vote through proxy or postal ballot. The restrictions about appointment of proxy by such a representative shall, however be in accordance with the provisions of clause 105 (Proxies) and the rules made thereunder. The suggestion, therefore, is noted in connection with rules to be framed under clause 105.
6	129: Financial Statement	Unlisted entities should not be mandated to prepare Consolidated Financial Statement (CFS), as this would increase the cost of compliance. The provision that requires attaching a statement containing salient features of the financial statements of the subsidiary would suffice for such entities.	Intention of consolidation of financial statements is to give true and clear picture of financial position of the holding company and its all subsidiary companies to the investor and public at large. This would reflect the true strength of the entire group of companies. Since these provisions seek to enhance standards of financial reporting and are for the benefits of users of financial statements, including investors, the provisions proposed in the Bill may be considered to be retained.
7	147(2)/ 147(3): Punishment for contravention	(i) The auditor would be liable only to a reasonable, limited and identifiable group of users that have relied on his work (e.g., creditors) even though these persons were not specifically known to the auditor at the time the work was done. Clause should be amended to prescribe no or low penalty for technical/ administrative defaults by the auditor. (ii) Since auditor, although appointed under the Act, is engaged by way of contractual relationship with the company and should therefore be obligor only to the company. Hence the words 'or to any other person' may be deleted. (iii) Also, the term "intent to deceive"	(i) to (vi):- (a) While the provisions under consideration are essentially those contained in the 2009 Bill, following the recommendations of the Honourable Committee requiring the Government to define 'Fraud' and to link serious acts of omissions and commissions with such definitions certain changes had to be introduced in 2011 Bill. This has resulted in fixing civil and criminal liabilities on errant Auditors/ Audit Firms. The role of auditor is very important in context of financial discipline and accountability amongst companies. Their role is very essential in ensuring good corporate governance and protection of interests of stakeholders, particularly, non promoter stakeholders. Liability of auditors, therefore, has to commensurate with the expectations

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		may lead to undue harassment and protracted litigation. Hence either this should be clarified further or should focus on willful non-compliance or gross negligence. Transgression of procedural/ technical or unintentional should be viewed in broader perspective and should not be viewed as case of willful misconduct or gross negligence. (iv) The liability towards other persons may be restricted to cases where the contravention is made with the intention to deceive the company or its shareholders or creditors or any other person concerned or interested in the company. (v) Cl. 147(3) should be made applicable only in cases where auditor has been found guilty under proviso to clause 147(2) and not in all cases where auditor is convicted under clause 147(2). (vi) Various penal clauses in respect of auditors should be amended to restrict maximum penalty to the audit fees received and minimum to Rs. 10,000. The ICAI should be made regulatory authority for this clause.	from them. (b) The present provisions mutatis mutandis continue the earlier formulation contained in clause 130 of the Companies Bill, 2009. Kind attention is drawn to recommendation at Para 10.60 of report of Hon'ble Committee. The provisions now proposed are in accordance with such recommendation. (c) Further, clause 147(2) does not include penalty for violation of clause 139 (contravention of provisions relating to rotation). Accordingly, reference of clause 139 may also be added in clause 147(2).
8	147(4): Punishment where audit is conducted by firm	(i) The clause is against norms of criminal law and it would be unfair to make other partners or the firm criminally liable for fraudulent act of a partner. (ii) Clause 147(4) should be amended by replacing the words 'liability, whether civil or criminal' with the words 'civil liability'. (iii) Joint and several liability of the partners should be removed in line with the LLP Act, 2008. It is not clear as to how would the firm be liable for criminal consequences. (iv) Clause 147(4) may be deleted	(i) to (iv):- On further consideration the Ministry is now inclined to be of the view that while civil liability needs to be shared by all auditors/ partners in the auditing firm, criminal liability will be restricted to individuals to whom specific wrongful acts of omission and commission (which are declared to be offences under the Companies Act or other Law) are attributable. For the purpose of levy of fine, however, the firm will also be liable.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		as clause 147(2) takes care of similar situations.	
9	186: Loan and Investments by Company	(i) Investments to be made through not more than two layers of investment companies:- This provision is restrictive and may be re-considered and revised to provide the required flexibility in view of the commercial realities. (ii) Loans/ investments to wholly owned subsidiaries (WOS) should be exempted.	(i) Kind attention is drawn to recommendation at Para 57-59 and 12.90 of report of Hon'ble Committee. The suggestion made regarding layers for investment subsidiaries has been partially accepted. Clause 186(1) allows two layers to enable formation of Special Purpose Vehicles (SPVs). (ii) In accordance with the recommendations made by Hon'ble Committee at Paras 57-59 and 12.90 of its Report, Clause 186 seeks to apply such provisions to all companies including wholly owned subsidiaries. These provisions are necessary to ensure good corporate governance and prevent siphoning of funds. Hence there may not be any necessity of any change in the clause.
10	203(1): Appointment of key managerial personnel	This clause does not include CFO. The Chief Financial Officer may be added in clause 203(1) as clause 2(51) which defines KMP includes CFO.	The suggestion may be accepted.

4.3 The suggestions received on new proposals (which were not included in the Companies Bill, 2009) along-with the Ministry's comments thereon are indicated below :-

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
1	23(2): Public offer and private placement	Clause 23(2) may be amended to make it consistent with clauses 62 and 63 to allow issue of shares through right issues and bonus issues.	The suggestion may be accepted.
2	23(2) read with clause 42	The word 'only' in clause 23(2) should be replaced with 'also' to remove confusion in interpretation of the two clauses. Restrictions on private placement are welcome.	The suggestion may be accepted.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
3	40: Securities to be dealt with in stock exchanges.	(i) It should be provided that if a company is not granted final listing approval, the company shall forthwith repay without interest all moneys received from the applicants within a specified period. (ii) Section 73(1A) of the Act provides that any allotment made in pursuance of a prospectus in a public offer shall be void if approval of the stock exchanges is not received within the prescribed time, and provision for appeal if application for listing is refused by any stock exchanges. Similar provisions were also included in Clause 35(2) of the Companies Bill, 2009. These Provisions are also very important for protection of investor interest, and hence we recommend that the same be re-instated.	(i) and (ii):- Since the new provisions now provide for obtaining permission from the recognized stock exchange prior to filing prospectus, the change suggested is not necessary. Once permission from recognized stock exchange has been received before filing of prospectus, there should not be any question of refund if permission by the exchange is not granted. Hence the provisions are more investors friendly and should be retained as proposed in the Bill.
4	42: Private Placement	(i) The term 'private placement' be defined in line with safe harbor provisions contained in section 67(3) of the existing Act. (ii) Clause 42(3): In order to prevent the clause from having an unintentional effect of prescribing that every fund raising has to be successful, the words "or such offer or invitation has been unsuccessful and withdrawn by the company or has been abandoned by the company' be added in the end. (iii) Shares offered to employees pursuant to ESOP pursuant to clause 62(1)(b) be exempted from restrictions relating to private placement. This could be covered in clause 42 or in the rules to be notified.	(i) Since the provisions of clause 42 provide for various requirements in respect of 'private placement', there may not be any necessity to further define the term 'private placement'. (ii) and (iii):- The suggestions may be accepted.
5	42 read with 26, 62 Issues relating to public offer, private	(i) On the following provisions/issues, status as approved by the Standing Committee in context of Companies	(i) to (iii):- (a) The Hon'ble Committee along with other observations, specifically observed that the Companies Bill, 2009 needs to have a

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
	placement and prospectus etc.	Bill, 2009 to be maintained. (a) Clause 2(70): Definition of the term 'Prospectus'; (b) Clause 2(31): Definition of the term 'Deposit'; (c) Clauses 42 and 23: "Powers of SEBI" and "Public officer and Private Placement" (d) Clause 26: Matter to be stated in the prospectus. (e) Clause 32: Regarding information memorandum/ red herring prospectus. (f) Clause 62: Further issue of share capital. (ii) The term 'Hybrid' should be included in the Bill on the lines of Companies Act, 1956. (iii) Notification No. GSR 879(E) dated 14th December, 2011 published in Extraordinary Gazette with regard to the Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011 needs to be revoked immediately, as it is unwanted and uncalled for as the Bill is still pending before the Parliament.	"futuristic vision as well, all contemporary as well as emerging issues including anticipated problems concerning the corporate sector would therefore have to be appropriately addressed in the Bill". (b) Further, the Committee had emphasised that adequate safeguards are to be provided for the investors, particularly the small investors and those investors be made well aware of the risks involved in their investments. A good investor protection mechanism requires proper disclosures and enforcement mechanism in the event of defaults by companies. The Companies Bill, 2011 to which the provisions under reference relate, has been prepared keeping in view the directions of the Committee. (c) A detailed consultative process had been undertaken in the Ministry with other Ministries, Departments and Regulators for finalistion of the Bill. The revised formulations are the outcome of this consultative process.
6	58: Refusal of Registration	Since the proviso refers to a contract between two or more persons, a contract to which a public company is a party would be enforceable and may affect the free transferability of the shares of such company. Therefore, further clarity may be provided as regards circumstances under which the exemption to free transferability of shares of a public company would be applicable.	The provision simply seeks to codify the pronouncements made by various Courts holding that contracts relating to transferability of shares of a company entered into by one or more shareholders of a company (which may include promoter or promoter group as a shareholder) shall be enforceable under law. The provisions proposed in the Bill may be retained. Any clarification, if required, can be issued through circulars etc after notification of the legislation.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
7	61(1)(b): Alteration of share capital	Since consolidation/division of shares is a process of internal reorganization of the share capital of a company, approval of Tribunal may not be necessary and hence the said provision requiring approval may be removed.	The approval of Tribunal is considered necessary to check the practice by companies of consolidating value of their shares with the objective to oust minority shareholders. Since these provisions seek to protect interests of minority shareholders and improve corporate governance norms, these may be retained as proposed in the Bill.
8	70: Buy back	Time lines similar to provided in this clause (default remedied and 3 years thereafter) may be prescribed as regards non compliance with provisions of clauses 92, 123, 127 and 129.	The provisions are similar to section 77B (2) of existing Act which have been included in the new Bill as these were inadvertently left out in Companies Bill, 2009. These provisions may, therefore, be retained as proposed in the new Bill since these seek to bring more accountability on the part of companies.
9	124(6): Unpaid Dividend Account - Transfer of securities to IEPF	The requirement of transfer to IEPF of shares in respect of which dividend has remained unpaid/ unclaimed for a consecutive period of 7 years or more should be dropped because companies cannot, in law, transfer such shares to IEPF.	(i) This point has been further examined in consultation with the Ministry of Finance on whose insistence this provision was inserted in the first instance. The position may be summarized as under:- (a) The provision applies only when dividends remain unclaimed for a consecutive period of seven years. Once this provision takes effect it will have force of law and there will be no bar on the companies to affect such transfers as it will be as per requirement of the law itself. (b) Provisions may be retained as they seek to achieve broader objective of safety and security in capital market since unclaimed securities could be misused by unscrupulous persons for money laundering activities. (ii) Supporting procedural requirements shall be prescribed in the rules under this clause.
10	130: Re-opening of Accounts	The powers of the Tribunal to permit re-opening or re-casting should be extended in addition to incidents of fraud or mismanagement, to an event of a manifest or patent error and for any other reason that the	The suggestion made is already covered under provisions of clause 131 of the Bill. (Voluntary Revision of Financial Statement or Board's report).

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		Tribunal may deem just and proper.	
11	139(1): Appointment and rotation of auditors	It is suggested that the present regime where shareholders appoint the auditors at every AGM be continued as it would be in line with the cardinal principle of Company Law that auditors are accountable to shareholders and in line with the practice followed internationally.	The suggestion could be accepted in a manner that while the appointment may be for five years, the AGM may take note of its continuance annually.
12	139(3): Voluntary annual rotation of audit partner and joint audit	(i) Annual rotation of audit partner and his team, if members of company so resolve, is not practical and feasible. (Clause 139(3)) It ignores basic principle of utilizing continuing knowledge. Conferring such power also suggests that members do not have inherent power to impose conditions and is liable to be misunderstood. Hence clause 139(3) be deleted. (ii) The option given to require auditing partner/staff rotate each year would be detrimental to audit quality apart from efficiencies of time and costs. Further, it is not clear in the Bill, as to how will the requirement relating to 'cooling off' period, be applied in such cases. While this requirement (including cooling off period, if prescribed), would not be feasible even in case of small firms with 2-3 partners. The option with the members to rotate audit partner and staff each year should be removed.	(i) and (ii):- (a) The relevant provisions of clause 139(3) read as under:- *"(3) Subject to the provisions of this Act, 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."* (b) Though the provisions are voluntary in nature, the suggestion to substitute the words 'every year' with 'at such interval as may be resolved by members' may be considered.
13	141(3)(g) Proviso: Eligibility, Qualifications and disqualification for auditor	(i) The purpose of giving the power to the members of a company of additionally imposing restrictions on the number of audits that the auditor can undertake is unclear. As there are limits to be prescribed on the number of audits as per the Bill as well as limits already imposed by the ICAI in place, such additional limits do not appear to benefit either in terms of audit quality or independence. Rather, such powers given to the members may in fact be a deterrent in achieving the goal of	(i) to (iii):- The suggestion for omitting the proviso to clause 141(3)(g) may be considered.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
		auditor independence. Also, such additional limitations to be imposed by the members has neither been considered nor recommended by the Committee. (ii) Even without this express provision under 141(3)(g) proviso, such power is vested in members. (iii) The members of a particular company should not be the deciding authority for determining the number of companies. The Bill should specifically provide the number, like in the case of directorships to be held in other companies.	
14	143(12) to (15): Auditor to report fraud to Central Government	(i) Duty to report fraud to the Central Government arise only if indicators of fraud are identified as part of audit process in accordance with auditing standards. If the amount involved is immaterial, the requirement to report may be dispensed with. (ii) The penalty imposed on auditor for failure to report any fraud does not appear to be commensurate with powers and duties bestowed/imposed on him.	(i) and (ii):- The provisions are based on similar provisions available in Singapore Companies Act. The provisions very clearly state that 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 report the matter to the Central Government. This is a wholesome provision and the suggestion is not accompanied by any reason why the formulation needs to be revisited. The provisions may be considered without any change.
15	149(1): Woman director	While it can be encouraged that companies should have women on the Board, it may not be practical for all prescribed companies to appoint a woman director, Further, where there are in fact, no women of the required caliber, qualifications, etc, the company cannot be forced to chose one or take in an outside just to comply with this requirement.	(i) This is an enabling provision to be used for a class of companies to be specified under the rules on enactment of the legislation. (ii) It is hoped that such indicative provisions will make the companies more alive to giving salience to the female gender in the realm of corporate governance. It is also in line with the Government policy to encourage women's participation in decision making at every level in the society. (iii) The provisions may be retained as proposed in the Bill.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
16	149(4): Transitional provisions for appointing woman director	Clause 149(4) be amended to give transitional period for the appointment of woman director and also for appointment of director who has stayed in India for total period of not less than 182 days in the previous year as provided in clause 149(2).	Clause 470 (Removal of difficulty) may be used for clarifying these transitional issues suitably.
17	151: Appointment of director elected by small shareholders	The existing requirement as per Clause 252(1) proviso of the Companies Act, 1956 relating to small shareholders should be retained.	(i) Provisions of section 252(1) proviso of existing Act have been proposed in slightly modified form as clause 151 of the Bill which reads as under:- ***"151.*** *A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed."* (ii) Since the above provisions are considered to be more reasonable, relevant and practical, these may be retained as proposed in the Bill.
18	167(1)(f): vacation of office of director	Vacation of office by a director should be effective only after the conviction has been upheld by the court of final appeal as there could be error in conviction by the court in the first instance.	Where an Appellate Court stays the conviction the requirement to vacate will also be in abeyance. Hence there may not be any necessity of any modification in the clause.
19	167 /164 Vacation/ Disqualification of office of director	Clauses cover offences whether involving moral turpitude or otherwise: Clause should cover only offence involving moral turpitudes.	Conviction of imprisonment of more than six months is for serious offence and it will be a difficult task to identify which offence in this category involves moral turpitude. The words "whether involving moral turpitude or otherwise" merely signify the fact that offences carrying a minimum sentence will attract the liability to vacate the position of Director. Hence there may not be any necessity of any modification in the clause.
20	232(3)(b) and 233(10): Treasury Stock	These provisions propose to impose a blanket ban on treasury stock. In the event it is thought necessary to regulate treasury stock, a limit may be imposed on the amount of treasury stock that may be held or the time period for which such treasury stock may be held.	It is felt that complete ban/ cancellation of such shares is necessary. This would ensure good corporate governance and prevent market manipulation by companies by indulging in trading in their own shares.

SN	Clause/ title/ Issue	Suggestion	Comments of Ministry
21	434 and 465: Transfer of certain pending proceedings and transitional arrangements.	Minor modifications of procedural nature in Clauses 434 and 465 of the Bill may be considered with a view to ensuring clarity in the provisions relating to transfer of pending cases with CLB/Courts to National Company Law Tribunal.	The changes suggested may be considered.
22	466: Dissolution of Company Law Board	CLB is proposed to be converted into NCLT and those CLB members, who meet the qualifications for NCLT memberships would become members of NCLT. This is not the right way to constitute NCLT as the functioning of the CLB Benches was far from satisfactory.	The provisions are required to ensure continuity in the functioning of the body. Since provisions provide for retention of only those members of CLB who meet the qualifications for NCLT members, the provisions seem to be fair and reasonable and may be retained.

Directions to Government Companies

4.4 It has been pointed out to the Committee by the C&AG that Government issues directions to Government companies from time to time, some of which have bearing on the financial position of the Company. C&AG has therefore suggested that to bring in greater transparency, it is necessary to disclose impact of government directions on the financial position of Government Company in the report of Board under clause 134(3).

4.5 The Ministry have clarified that a large number of disclosures have already been provided for inclusion in the Board's report and adding further requirements for a particular class of companies in a general enactment on companies does not appear to be justified. The matter has been discussed by Secretary (Ministry of Corporate Affairs) with Secretary (DPE) who has agreed to examine if assessment of financial impact, if any, of Government directives to Government companies could be administratively prescribed.

4.6 The Committee brought to the notice of the Ministry that this suggestion of C&AG needs to be examined again in the light of the recent development in case of a similar directive given by the Government to one of the PSUs with regard to entering into Fuel Supply Agreements (FSAs) with power companies. The Ministry was thus asked to give fresh inputs on the matter.

4.7 The Ministry clarified as follows:

(i) The suggestion made by the Comptroller and Auditor General of India (C&AG) to include in the Companies Bill provisions to require disclosure (in the report of Board of Directors under clause 134(3)) about impact of government directions on the financial position of Government Company was formally taken up with the Department of Public Enterprises (DPE). The following comments have been received from DPE:-

> *"Presidential Directives are issued by the Administrative Ministries to the concerned CPSEs, if these relate to a single CPSE and with the concurrence of DPE, if these are applicable to more than one CPSE. Further, DPE may also ask the administrative Ministries to issue Presidential Directives to one or more CPSEs on policy issues requiring a uniform approach. These directives may or may not have financial impact. In some cases, computation of the financial impact of such directives may be difficult and, therefore, it may not be desirable to have an omnibus provision for disclosure in the Report of Board of Directors of the concerned CPSE."*

(ii) DPE has accordingly agreed with the view that such a provision is not warranted in the Companies Bill. This Ministry feels that new provisions suggested by C&AG may not be considered to be included in the Companies Bill, 2011.

(iii) The Ministry further submits that it does not have requisite inputs to comment on specific Presidential Directives.

Clause 186: Loan and Investments by Company

4.8 Clause 186(*7*) which corresponds to section 372A(3) of present Companies Act reads as :

> No loan shall be given under this section at a rate of interest lower than the prevailing bank rate being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934.

4.9 The Committee have received a suggestion that the rate of interest on inter-corporate loans should be linked to the yield on the Government of India dated securities of equivalent maturity.

4.10 The Ministry's reply is as follows:

Section 49 of RBI Act, 1934 reads as under:-

49. Publication of bank rate. The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act.

The provisions of section 372A were included in the Companies Act, 1956 through Companies (Amendment) Act, 1999 to provide flexibility to companies in availing loans and investments from other companies. Prior to such amendment, the compliance with provisions of section 370 and 372 was required for making inter corporate loans and inter corporate investments respectively which required approval from Central Government in case such loans/investments exceeded the limits prescribed.

After coming into effect of section 372A, companies are not required to obtain approval of Central Government for inter corporate loans and investments. Such transactions can be made through approval of the Board of directors /shareholders through special resolution depending upon the limits provided in the section. Since requirement for obtaining approval of Central Government was removed, the following conditions were included in section 372A to protect interests of company and its shareholders:

(a) detailed disclosures to be made to the shareholders about particulars of the borrowing company, purpose of loan and specific source of funding etc;

(b) prior approval of public financial institution to which a loan may be outstanding in certain cases where any term loan is subsisting;

(c) loan not to be given at an interest rate lower than the prevailing bank rate being the standard rate made public under section 49 of the RBI Act;

(d) company making default in acceptance/repayment of deposits not to make loans etc till the default is subsisting.

Regulation of bank/interest rates is important for healthy and robust development of financial and commercial sector and RBI has been taking all necessary initiatives to prevent any risk to such sectors due to fluctuations in economic parameters. Revision in bank rates/interest rates therefore has significant implications for the financial sector in the economy. It is felt that making any change in provisions of the Bill affecting finances (through borrowing/lending) amongst companies may require detailed consultation with various stakeholders including Ministry of Finance and RBI. It is also appreciated that frequent fluctuations in Bank/Interest rates brings in an element of uncertainty, thereby affecting the growth of financial and corporate sector. It is requested that the Honourable Committee may kindly provide guidance on the matter.

Suggestion to modify 186(11) : Exemption clause

4.11 A suggestion has also been made to exempt 'investments made in securities issued by the Public Sector Undertakings' from the provisions of clause 186, as it would be necessary in context of Tax Free Bond issuances now being undertaken by PSUs engaged in Infrastructure Development/ Financing, which have to necessarily carry a coupon interest rate lower than the G-Sec of corresponding maturity and much lower than the bank rate of 9%.

4.12 The Ministry have furnished their comments on this suggestion as follows:

> "Kind Attention is drawn to provisions of clause 186 (11) which provide as under:-
>
> *(11) Nothing contained in this section, except sub-section (1), shall apply —*
>
> > *(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;*
>
> Thus, bonds issued by any company (including Government Company) engaged in the business of financing of companies or of providing infrastructural facilities would be exempted from the requirements of clause 186. Any further relaxation from these provisions for Government Companies, as a class, if required, can be considered through notification under clause 462. (Power to exempt class or classes of companies from provisions of this Act.)"

PART- II

OBSERVATIONS / RECOMMENDATIONS

1. The Committee had examined the Companies Bill, 2009 at length and presented a comprehensive Report to Parliament on 31 August, 2010 after a great deal of deliberation, considering carefully the suggestions / views submitted by different stakeholders and holding extensive discussions with the Ministry of Corporate Affairs, SEBI, RBI, Industry / Trade Associations, Professional bodies like Institute of Chartered Accountants of India, Institute of Company Secretaries of India and Institute of Cost Accountants of India. The Committee also heard the views of some experts on the subject.

2. The Committee note with satisfaction that the Companies Bill, 2011, although introduced by Government as a fresh Bill (in view of several amendments required), contains salutary provisions which seek to usher in a contemporaneous corporate law in the country, incorporating most of the recommendations made by the Committee in their Report.

3. However, as the Companies Bill, 2011 also included certain new provisions and suggestions, which were not earlier referred to and considered by the Committee, it was referred again to the Committee for examination and report. Accordingly, the Committee decided to invite suggestions from experts / stakeholders on these new proposals in the Bill. In response, the Committee received a large number of suggestions not only on the new proposals, but also on some general issues as well as points already covered and commented upon in their earlier Report. The Committee are happy to note that most of these suggestions, which are not

contrary to the Committee's earlier recommendations, have since been accepted by the Ministry. The Committee would expect that these suggestions would be appropriately incorporated in the Bill and the concerned clauses modified accordingly.

The Committee further note that the Ministry have not agreed to some of the suggestions and have expressed a contrary view thereon. The Committee would like to deliberate and comment upon these suggestions as follows :-

4. On the suggestion that, the term 'private placement' (clause 42) be defined, the Ministry have submitted that in view of the detailed treatment of all aspects of the subject and the fact that 'public offer' has been defined (Explanation to Clause 23), there is no need to further define the term. The Committee would however strongly recommend that as the Bill seeks to regulate a new and widely adopted method of raising capital, it would be fair and useful that 'private placement' is properly defined in the statute. The Committee also desire that the position of Bill as recommended by the Committee in their earlier Report presented to Parliament in August, 2010 needs to be maintained, to allow raising capital / borrowings by way of private placement by corporates / entities so that they can harness their capabilities and resources available with them.

5. The Committee note that Clause 61 requires the Company to obtain the approval of the Tribunal to consolidate/subdivide its share capital. Since consolidation or subdivision of shares does not affect the voting power of the shareholders, the Committee recommend that the said clause be modified to the extent that in cases of consolidation or sub-division of

share capital, the approval of the Tribunal would be required only if the voting percentage of shareholder is changed.

6. The Committee desire that time lines may be prescribed in the conditions stipulated in regard to purchase of own shares by companies, namely, filing of annual returns / financial statements, timely distribution of dividend etc. in the interest of greater accountability.

7. It has been suggested that the provisions of existing Act where shareholders appoint auditors at every Annual General Meeting (AGM) be continued in the interest of accountability to shareholders. The Committee would recommend that the proposal in the Bill [Clause 139(1)] for appointment of auditors for straight five years may be modified to the extent that the process be subject to ratification at every AGM. The Committee believe that the well-established principle of shareholders' democracy represented by the Annual General Meeting of the company should be preserved, while seeking to provide stability of tenure to auditors.

8. Similarly, the Committee desire that the suggestion to review the provision in Clause 139(3) allowing members of a company to pass a resolution requiring the partner in an audit firm to be rotated every year may be considered positively by the Ministry by substituting the words 'every year' with 'at such interval as may be resolved by Members'.

9. With a view to achieving the objective of rotation of auditors, the Committee would like to further recommend that the proviso to Clause 141(3)(g) empowering members of a company to pass resolution to reduce number of companies in which auditor/ audit firm shall become auditor

may be omitted. The Clause may thus clearly provide for the maximum number of companies a person can be appointed as auditor of, as provided for in the case of directors of companies. In this context, the Committee would also like to endorse the provision prescribing liabilities for auditors and extending them to the audit firm as well, since the distinction between the two is rather tenuous. The Committee are of the view that the safeguards provided in the Bill to ensure professionalisation and integrity of the audit process are necessary and optimal.

10. The Committee note that Clause 466 *inter-alia* allows Members of Company Law Board (CLB), who are eligible under the new Bill, to be appointed as Members of National Company Law Tribunal (NCLT). According to the Ministry, this provision is required to ensure continuity in functioning. The Committee apprehend that this should not result in defacto conversion of existing CLB benches into NCLT benches. As during the course of examination of the Demands for Grants of the Ministry of Corporate Affairs, the Committee have found the working of the CLB Benches to be far from satisfactory, it would be prudent that the constitution / selection process for NCLT is initiated de novo.

11. It has been suggested that similar to Section 90 of existing Act, a savings provision may be introduced exempting a private company from restrictions with regard to types of share capital / voting etc. to provide flexibility to such companies. According to the Ministry, such exemptions to class of companies can be given through notifications. The Committee would however re-iterate their earlier recommendation on this issue that the exemptions available for different classes of companies like private

company, one person company etc. may be clarified, as far as possible, in the Bill itself.

12. The Committee note an important suggestion made by the C&AG of India to include in the Companies Bill disclosure provisions in the report of the Board of Directors [Clause 134(3)] indicating the impact / implications of Government directives on the financial position of a Government Company. Although, the Ministry of Corporate Affairs as well as the Department of Public Enterprises have not agreed with this suggestion, the Committee are of the view that the suggestion of the C&AG is worth considering in the interest of functional autonomy and operational efficiency of PSUs. It will also help minimize Government interference in the management of PSUs.

13. The Committee are of the view that corporates in general are expected to contribute to the welfare of the society in which they operate and wherefrom they draw their resources to generate profits. Accordingly, the Committee recommend that Clause 135(5) of the Bill mandating Corporate Social Responsibility (CSR) be modified by substituting the words 'shall make every endeavour to ensure' with the words 'shall ensure'. Further, the Committee recommend that the said clause shall also provide that CSR activities of the companies are directed in and around the area they operate.

14. The Committee note that in clause 147(2) and clause 147(3), it is provided that if there is a non-compliance by the auditor of the specified provisions and the contravention is with an intent to deceive the company or its shareholders or creditors or any other person concerned or

interested in the company, then he shall be liable to a prescribed fine. The Committee further note that the term "any other person concerned or interested in the company" has potential for abuse. The Committee, therefore, are of the view that applying an open-ended test of liability without defined restrictions may result in undesirable situation of creating a liability which is not defined in terms of area, duration and amount and may expose the auditor to uninsurable risk. Accordingly, the Committee recommend that the clause 147(2) and clause 147(3) be suitably modified, clearly defining the term 'or any other person concerned or interested in the company'. Further, in order to provide for punishment under Clause 447 for fraud to those partners of audit firm who acted in a fraudulent manner, the Committee recommend that Clause 147(4) of the Bill be modified to the extent that 'such partner or partners of the audit firm' be replaced by 'such concerned partner or partners of the audit firm'.

15. As regards the suggestion to exempt investments made in securities issued by the PSUs from the provisions of Clause 186 relating to Loan and Investments by companies, the Committee accept the Ministry's clarification that the bonds issued by any company including a government company, engaged in the business of financing of companies or of providing infrastructural facilities would be exempted from the requirements of Clause 186 by virtue of exemption sub-clause 186(11).

16. With regard to the suggestion that the rate of interest on inter-corporate loans should be linked to the yield on Government of India dated securities of equivalent maturity instead of the prevailing bank rate under the RBI Act, the Ministry have submitted that detailed consultations are

required in this regard with Ministry of Finance and RBI. When the bank rate was prescribed as a benchmark for inter-corporate loans /investments, it was the major policy rate at that time and market related benchmarks had not stabilized yet. However, now that the dated government securities market is well developed with enough liquidity precluding any manipulation of yields, this may very well replace the bank rate as the benchmark. The Committee would like the Ministry to consider this suggestion in the current economic perspective.

17. The Committee had recommended in their earlier Report that whole-time Director should be included within the definition of Key Managerial Personnel (KMP), even if the company has Managing Director / Manager. According to the Ministry, whole-time directors may not be brought within the purview of KMPs, as they do not exercise substantial powers of management where Managing Directors are in position. The Committee, while disagreeing with the Ministry's view in this case, would like to reiterate their earlier recommendation, as whole-time directors, being important functionaries in a company with substantial role in decision-making, cannot be kept outside the purview of KMPs.

18. The Committee in its 21st report on Companies Bill 2009 had emphasized that transgressions, purely procedural or technical in nature, should be viewed in a broader perspective, while serious non-compliance or violations including fraudulent conduct should invite stringent /deterrent provisions. However, the Committee observe that there are many instances in the Bill where criminal liability have been imposed for technical mistakes of law like Clause 157 (failure to file DIN with Registrar

of Companies), Clause 56 (delay in registering transfer of shares within the prescribed period), Clause 117(2) (failure to file certain agreements and resolutions with Registrar of Companies), etc. The Committee reiterate the principle enunciated in its previous report that technical defaults which are minor infractions of law should not carry criminal liability. Accordingly, the Committee recommend that all such clauses in the Bill which impose criminal liability for technical defaults may be modified suitably.

19. Clause 2(52) of the Bill defines "Listed Company" as a company which has any of its securities listed on any recognized stock exchange. "Securities" would thus include all instruments including bonds, debentures etc. It has been suggested that with a view to accord some freedom and flexibility of operations to Companies, specially when public funds are not involved, the above definition may be amended to limit the applicability only to : (a) Companies where the equity shares or any security convertible into equity shares are listed; or (b) companies where the debt instruments are listed, having been issued to public at large. The Committee find merit in the argument from operational perspective that the scope of above definition of "Listed Company" may be confined to listed securities issued through the process of 'Public offer' [as defined in clause 23(1)] only, so that the regulatory framework can focus on such instruments only without dissipating energy and resources on all kinds of instruments, since the unlisted instruments are already subject to scrutiny of Ministry of Corporate Affairs. The Ministry of Corporate Affairs may

accordingly consider appropriate modification in the definition of "Listed Company" in consultation with Ministry of Finance.

New Delhi;
15 June, 2012
25 Jyaistha, 1934 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance

NOTE OF DISSENT

Gurudas Dasgupta, MP

The companies run their business with the people's money by raising share capital, by sale of shares; they take loans from banks and also corporate loans. The promoters' capital in our country is note more than 7 to 8 per cent. Therefore, it is with people's money that the private managements are running their business with. Above all, they get loan at concessional rate, they get tax exemptions. Therefore, the management may be private but resources are of public. It is necessary to monitor their activity to ensure safe utilisation of the public funds and they do not default in the repayment of loans whether from the banks o the individual citizens. There has to be social accountability. In the background of increasing corporate delinquency all over the world, more so glaring in our country, there is no monitoring system to ensure private utilisation of funds and private corporate governance. This Bill does not provide anything. Most of the companies are violating laws, not paying money to the banks, violating labour laws, and even manipulating balance-sheets. In some cases they are showing less production in order to avoid excise duty. After so many years, the Bill is sought to be passed, it is full of loopholes providing every opportunity for the corporate to become delinquent. Common man seems to be overlooking the basic issue in question, private corporate governance, social responsibility and how to stop this delinquency.

Therefore, I put on record my dissent note.

1. <u>Failure to deposit statutory dues like PF, ESI etc.</u>

The Company's (Auditors Report) Order, 2003 mandates that the statutory auditor of a company should report whether the company is regular in depositing undisputed statutory dues. When the company fails to deposit such statutory dues, the auditor has an obligation to report the same to the shareholders of the company.

The Company's Bill 2011 provides for a secretarial audit report to be given by the Company Secretaries. The report should include compliance to laws applicable to the company.

Way Forward:

The Company's Bill may provide for submission of reports by statutory auditor and the Company Secretary on cases of failure to deposit undisputed statutory dues like PF and ESI to the authorities administering such funds/taxes/duties. Such reporting would facilitate the statutory authorities administering such funds/duties/taxes to take the immediate corrective action.

2. Decisions taken by the MD or the Board of Directors of a PSU which is not in the commercial interest of the company:

Audit has highlighted cases wherein certain commercial decisions taken by trading companies like STCL and MSTC resulting in huge outstandings in the companies. The outstandings LCs are even more than 20 times of the paid up capital plus free reserves. To put a stop to such indiscretion it may be advisable to put restrictions on the powers of the board to borrow monies including LCs.

Way Forward:

The existing Section 293 of the Companies Act 1956 puts a ceiling on borrowings which should not exceed the aggregate of the paid up capital and free reserves of the Company. The definitions of borrowings should be expanded to include Letters of Credit also with the ceiling limit duly arrived at.

The Companies Bill, 2011

1. Corporate Delinquency

The Bill fails to address squarely the festering issue of corporate delinquency. The promoters of companies should be held liable for acts of omission and commission by the company together with the senior management including the Board of Directors. Both Civil and criminal liabilities have to be fixed for acts of corporate delinquency. Whistle-blowers, who expose such acts, should be protected by law.

2. Corporate Social Responsibility (CSR)

It is a well-perpetuated fallacy that corporate are run on the promoters' or shareholders' funds alone. The fact of the matter is that most of the capital required by corporate – both long-term and medium-term is provided by the banking/financial system, which is operated out of the public funds. Therefore, if corporate are mandated to undertake CSR, it is very fair and logical and a natural corollary of the nature of capital invested in them. It need not be over-stated that the corporate owe it to the people and the society to pay them back in terms of social services and by building social capital for common good. This cannot be the sole responsibility of governments.

3. Accountability and Independence of Auditors

Accountability requires to be fixed for both individual Auditors and their firms. Auditors should be appointed from a panel to be maintained by an independent body, which will help ensure their independence from the management. Their removal should also be vetted by this independent body, so that they can function without any fear.

S/d-

(GURUDAS DASGUPTA)

MINUTES OF THE NINTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Tuesday, the 24th January, 2012 from 1130 hrs to 1430 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Gurudas Dasgupta
3. Shri Nishikant Dubey
4. Shri Chandrakant Khaire
5. Shri Bhartruhari Mahtab
6. Dr. Kavuru Sambasiva Rao
7. Shri Rayapati S. Rao
8. Shri Yashvir Singh
9. Shri Manicka Tagore

RAJYA SABHA

10. Shri S.S. Ahluwalia
11. Shri Moinul Hassan
12. Dr. Mahendra Prasad
13. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1.	Shri A.K. Singh	–	Joint Secretary
2.	Shri R.K. Jain	–	Director
3.	Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4.	Smt. Meenakshi Sharma	–	Deputy Secretary

WITNESSES

Ministry of Corporate Affairs

1. Shri Naved Masood - Secretary
2. Shri Sudhir Mital - Additional Secretary
3. Smt. Renuka Kumar - Joint Secretary
4. Shri U.C. Nahta - Director (Inspection & Investigation)
5. Shri Dhan Raj - Director (Inspection & Investigation)

2. The Secretary, Ministry of Corporate Affairs made a power point presentation to brief the Committee about the objectives behind introduction of the revised Companies Bill, 2011, extent to which the recommendations made by the Standing Committee on the previous Companies Bill, 2009 have been incorporated in the new Bill and rationale for introduction of 22 new clauses in the Bill. Members sought clarifications on the issues pertaining to the Bill which inter-alia included the rise in corporate delinquency and adequacy of proposals to check the same, steps for better corporate governance and corporate social responsibility, reasons for amending the proposals with regard to appointment of auditors, need for regulating the non-banking financial companies, issues relating to appointment of independent director, reasons for the proposal for having a woman Director, exemptions to the Companies from some provisions of the new legislation etc. The Chairman directed the representatives to furnish written replies to the points raised by the Members within two weeks.

A verbatim record of proceedings was kept.

The witnesses then withdrew.

MINUTES OF THE TWENTIETH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 18th May, 2012 from 1000 hrs to 1030 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Nishikant Dubey
4. Shri Prem Das Rai
5. Shri G.M. Siddeswara

RAJYA SABHA

6. Shri Naresh Agrawal
7. Smt. Renuka Chowdhury
8. Shri Ravi Shankar Prasad
9. Shri Piyush Goyal
10. Shri P. Rajeeve
11. Shri Satish Chandra Misra
12. Dr. Mahendra Prasad
13. Shri Yogendra P. Trivedi
14. Shri Naresh Agrawal

SECRETARIAT

1.	Shri A.K. Singh	–	Joint Secretary
2.	Shri R.K. Jain	–	Director
3.	Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4.	Smt. Meenakshi Sharma	–	Deputy Secretary

2. The Committee took up the following draft Reports for consideration and adoption:-

(i) The Companies Bill, 2011; and
(ii) The Benami Transactions (Prohibition) Bill, 2011.

3. As some Members desired more time to consider and formulate their views on the above draft reports, the Committee decided to postpone the adoption of the draft reports to 7 June, 2012.

The Committee then adjourned.

MINUTES OF THE TWENTY FIRST SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Thursday, the 7th June, 2012 from 1130 hrs to 1700 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Nishikant Dubey
3. Shri Bhartruhari Mahtab
4. Shri Prem Das Rai
5. Shri Sarvey Sathyanarayana
6. Shri Yashvir Singh
7. Shri R. Thamaraiselvan

RAJYA SABHA

8. Shri P. Rajeeve
9. Dr.K.V.P. Ramachandra Rao
10. Shri Vijay Jawaharlal Darda
11. Shri Ravi Shankar Prasad
12. Smt. Renuka Chowdhury
13. Shri Piyush Goyal

SECRETARIAT

1. Shri A.K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary

Part I

(1130 hrs. to 1330 hrs.)

2. The Committee took up the following draft Reports for consideration and adoption:-

(i) The Benami Transactions (Prohibition) Bill, 2011; and

(ii) The Companies Bill, 2011.

3. The Committee adopted the above draft reports with some minor modifications as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present the same to Hon'ble Speaker / Parliament.

Part II

(1500 hrs. to 1700 hrs.)

4. X X X X X X X X X X X X X X
X X X X X X X X X X X X X

A verbatim record of proceedings was kept.

The witnesses then withdrew.

The Committee then adjourned.