Analysis of
The Companies Bill, 2012

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Brief History

- The amendments, to the Bill that has been in force since 1956, were first introduced in August 2008. However, it was withdrawn as the Lok Sabha was dissolved.
- It was again introduced in Parliament in 2009 and sent to the Standing Committee, which presented its report in August 2010. Notably, unlike most Bills, the Bill was referred to the Standing Committee twice.
- The revised Bill 2011 was again referred to the committee as certain new provisions were included. The current amendments to the Bill are in line with the suggestions put forward by a Parliamentary Standing Committee on Finance.

Key Highlights of The Companies Bill, 2012

Newly introduced Concepts

Corporate Social Responsibility (CSR) [Clause 135]

- Provisions pertaining to CSR are "Mandatory" for a company fulfilling either of the following criteria:
  - Net Worth - Rs. 500 crore or more
  - Turnover – Rs. 1,000 crore or more
  - Net Profit – Rs. 5 crore or more

- A company satisfying either of the aforesaid criteria shall constitute a "Corporate Social Responsibility Committee" (CSRC) of the Board comprising of three or more directors out of which at least one shall be an "Independent Director".

- CSRC shall –
  - Formulate a CSR Policy indicating the activities to be undertaken by the company;
  - Recommend the CSR expenditure and
  - Monitor CSR Policy from time to time.

- The Board of such company shall ensure that in every financial year, at least two percent of its average net profits of three immediately preceding financial years is spent on CSR activities.

- Preference shall be given to local areas and areas around where it operates for spending the amount earmarked for CSR activities.
- In case of failure on the part of the company to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.
- No specific consequences of default (viz. Penalty or Prosecution) have been laid down in the Bill.
- No provision for depositing the specified amount with Government in case of failure to spend the same within a specified period.

Class Action Suits [Clause 245]

- The Companies Bill, 2012 (hereinafter referred to as "Bill"), provides for recognition of "Class Action Suits" as a part of provisions pertaining to "Oppression and Mismanagement", whereby specified number of "Members or Depositors" can directly approach the "National Company Law Tribunal" (NCLT) for seeking all or any of the prescribed relief.
- Damages or Compensation for unlawful or wrongful acts can be claimed for or against the followings:
  - The Company
  - Directors
  - Auditors (Firm and Partners thereof)
  - Experts
  - Consultant or Advisors, etc

- Orders of NCLT shall be binding on the followings:
  - The Company
  - Members
  - Depositors
  - Directors
  - Auditors (Firm and Partners thereof)
  - Experts
  - Consultant or Advisors
  - Any other person associated with the company
- Non-compliance with the directions shall result into stringent penalties and imprisonment.

NCLT and NCLAT
[Clauses 407 to 434]

- With a view to streamline the process of litigation and also to put in place a single forum, Central Govt. (CG) has been empowered to constitute National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) consisting of combination of Technical and Judicial members.
- NCLT and NCLAT shall be granted requisite powers for speedy and efficient decision making.
- Any person aggrieved by an order of NCLT may prefer an appeal before NCLAT.
- NCLT and NCLAT shall endeavor to dispose off applications/petitions/appeals within three months from the date of presentation of the same before it.

Special Courts
[Clauses 435 to 446]

- CG has been empowered to establish or designate Special Courts for the purposes of providing speedy trial of offences.
- Such Special Courts shall try summary proceedings for offences punishable with imprisonment for a term not exceeding three years.
- Appeal against the judgments pronounced by the Special Courts shall lie before the Hon'ble High Court.
- CG shall also maintain a panel of experts to be called as "Mediation and Conciliation Panel" for mediation between the parties during pendency of any proceedings before NCLT or NCLAT.

Key Amendments to the Existing Provisions

Key Amendments

A) Provisions relating to Shareholders
B) Holding-subsidiary relationship
C) Fresh issue of Securities
D) Reduction of existing share capital
E) Sick Companies
F) Dividend
G) Board of Directors
H) Financial Statements
I) Audit
J) Related Party Transactions
K) Miscellaneous Provisions

(A)
Provisions relating to Shareholders

Maximum No. of Members in Private Company [Clause 2(68)]

- Clause 2(68) of the Bill contains the definition of "Private Company".

- As per The Companies Act, 1956 (hereinafter referred to as the "Act"), there can be maximum 50 members in a Private company.

- The said ceiling limit has now been increased to 200.

Entrenchment provisions in Articles [Clause 5]

- A specific provision has now been added stipulating that the articles of company may contain entrenchment provisions whereby specified provisions may be altered only if conditions or procedures that are more restrictive than those applicable to a special resolution, are complied with.
- Such entrenchment provisions shall be made only either on formation of a company or by an amendment in Articles agreed to by –
  - All members in case of a Private company
  - Special Resolution in case of Public company

Quorum for Shareholders meeting of a Public Company [Clause 103]

- As per the Act, 5 members personally present in case of a "Public company" shall be the quorum.

- As per the Bill, the requirements as to quorum are as follows:

No. of Members as on the date of meeting	**Members for quorum (To be present personally)**
Upto 1000	Five
>1000 but upto 5000	Fifteen
>5000	Thirty

Voting by Shareholders

- **Voting by Electronic means [Clause 108]:**

  - As per the Act, Electronic voting applies only to top 500 listed companies under Securities law.
  - The Bill empowers CG to prescribe *"Class or classes of companies"* and the *"Manner"* in which a member may exercise his right to vote by electronic means.

- **Postal Ballot voting [Clause 110]:**

  - As per the Act, Postal ballot is applicable only to *"Listed public companies"*.
  - The Bill provides for application of the same to *"All companies"* (Public and Private).

Prohibition on Insider Trading [Clause 195]

- The Bill has introduced provisions pertaining to Insider Trading of Securities which were not there in the Act.
- No person including any Director or Key Managerial Person of a company shall enter into insider trading.
- Contravention of the same shall be punishable with -
  - Imprisonment upto 5 years *OR*
  - Fine (Higher of the followings) –
    - 5 lac or 25 crore *OR*
    - Three times the amount of profits made out of insider trading.
- Such provision shall not apply to any communication required in the ordinary course of business or profession or employment or under any law.

(B)
Holding-subsidiary relationship

Subsidiary Company [Clause 2(87)]

- Clause 2(87) of the Bill defines the term "Subsidiary company" which has undergone a change as compared to with the definition provided by the Act.

- As per the Act, 50% or more of *"Equity share capital"* of a subsidiary company must be held by a holding company.

- As per the Bill, 50% or more of the *"Total share capital"* (i.e. both, Equity and Preference) of a subsidiary company must be held by a holding company.

Investment through Multiple Layers [Clause 186]

- The Bill provides that a company shall not make investment through more than two layers of investment companies.
- However, the aforesaid provision shall not affect –
  - A company acquiring any other company incorporated *overseas/abroad* if such other company has investment subsidiaries beyond two layers as per the laws of such country;
  - A subsidiary company from having any investment subsidiary for the purposes of meeting requirements under any law.
- No such provision exists in S.372A of the Act which deals with inter corporate loans and investments.

(C)
Fresh issue of Securities

Private Placement
[Clause 23]

- As per the Act, the mode of Private Placement was open only for the *"Public companies"*.
- As per the Bill, the mode of Private Placement is open for both, *"Public and Private companies"* subject to provisions of Part II of the Bill.
- Part II of the Bill has been introduced broadly with a view to ensure more transparency and accountability on part of the companies in private placement.
- Accordingly, the offer or invitation to subscribe securities on private placement can be made to such number of persons not exceeding fifty (50) or such higher number as may be prescribed (excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option*)* in a financial year and shall also satisfy such conditions (*including the form and manner of private placement*) as may be prescribed.

Variation in terms of Contract or Objects in Prospectus for Public Offer [Clause 27]

- As per the Act, such variation are possible after seeking prior approval of shareholders through "Ordinary Resolution".

- As per the Bill, such variation is permissible subject to fulfillment of the followings:
  - Approval by Shareholders in "General meeting" by "Special Resolution"

- Notice in respect of such resolution to shareholders is published in Newspapers (English as well as Vernacular language) in the city in which Regd. Office of the company is situated.
- Such funds shall not be used for buying, trading or otherwise dealing in equity shares of any other listed company.

- Dissenting shareholders shall be given an "Exit offer" by promoters or controlling stakeholders at such exit price and in such manner and conditions as may be specified by SEBI.

Issue of Shares at discount [Clause 53]

- As per the Act, shares can be issued at discount.

- As per the Bill, a company is prohibited from issuing shares *(except Sweat Equity shares)* at discount .
- Any share issued at a discounted price shall be void.
- In case a company contravenes the said provision –
  - Company shall be punishable with fine (Minimum Rs.1 lac and maximum Rs.5 lac) *and*
  - Every Officer in default shall be punishable with imprisonment upto six months *or* with fine (Minimum Rs.1 lac and maximum Rs.5 lac) *or* both.

Issue of Bonus shares [Clause 63]

- The Bill provides for certain additional conditions which need to be complied with prior to issuance of bonus shares:
  - Authorized by Articles
  - On recommendation of the Board, it must be authorized by shareholders
  - No default in payment of interest or principal in respect of FDs or debt securities issued by it
  - No default in payment of statutory dues of employees
  - Partly paid up shares on the date of allotment are made fully paid up.

(D)
Reduction of existing share capital

Redemption of Preference shares [Clause 55]

- As per the Act, Preference shares need to be redeemed within 20 years.

- As per the Bill, a company may issue preference shares for a *period exceeding 20 years* for *"Infrastructure projects"* subject to redemption of certain percentage of shares on annual basis at the option of such preferential shareholders.

- If a company is unable to redeem any preference shares or to pay dividend on such shares, it may issue fresh preference shares to redeem the same and pay dividend on such shares after getting approval from –
  - Holders of 3/4th preference shares (in Value terms) &
  - Tribunal

- The Tribunal shall, while granting approval, order redemption forthwith of preference shares held by dissenting preference shareholders.

Reduction of share capital [Clause 66]

- As per the proposed Bill, Capital reduction is not permissible if a company has not repaid any deposits accepted or interest payable thereon.
- Tribunal shall, on an application by a company, give notice of such application to-
  - Central Govt.
  - Registrar
  - SEBI (in case of listed companies) and
  - Creditors of the company
- The aforesaid parties may make their representations within 3 months from the date of receipt of such notice.

- Tribunal won't sanction such application unless Statutory Auditor's certificate to the effect that accounting treatment proposed by the company is in conformity with Accounting Standards as specified in Clause 133 of the Bill is filed.
- The Bill doesn't provide for any specific authorization in the Articles.
- The Bill also doesn't require a company to add the words "And Reduced" to its name.

- The existing Act contains specific provisions as regards capital reduction. Auditor's certificate and additional compliances as per Listing Agreement are applicable only to listed companies.

Prohibition on Buy back of shares [Clause 68]

- As per the Bill, buy back of shares is prohibited if a company makes default in –
  - Repayment of deposits or interest thereon or
  - Redemption of debentures or preference shares or
  - Payment of dividend to any shareholder or
  - Repayment of any term loan or interest thereon to any financial institution or banking company
- However, buy back is not prohibited if such default is remedied *and* three years have passed after such default ceased to subsist.
- As per the Act, buy back is prohibited if either of the aforesaid defaults is subsisting.

(E)
Sick Companies
[Clauses 253 to 269]

Eligibility Criteria

- As per the Act, only *"Industrial Companies"* were covered within the ambit of provisions of Sick industrial Companies Act.

- As per the Bill, *"any company"* is eligible for being declared as a Sick Company as against merely "Industrial companies".

Determination of Sickness of a company

- As per the Act, "Sick Industrial Company" means an "Industrial Company" which has –

  - *"Accumulated losses"* in any financial year equal to 50% or more of its average net worth during 4 years immediately preceding such financial year; OR

  - *"Failed to repay its debts"* within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company.

- As per the Bill, if a company, on demand by secured creditors representing 50% or more of its outstanding debt, *fails to pay its debt* within 30 days of service of notice of demand or to secure or compound the same, any secured creditor may file an application to the Tribunal for determination that such company be declared as a sick company.

- The criteria as to *Net worth (i.e. Accumulated losses being 50% or more of average net worth)* for determination of sick company as provided under the Act has been dispensed with.

Effect of SARFAESI Act, 2002

- As per the Act, if financial assets of a sick company have been acquired by a Securitisation company or Reconstruction company under the SARFAESI Act, 2002, such a company cannot move the Tribunal claiming to be sick company.

- As per the Bill, if financial assets of a sick company have been acquired by a Securitisation company or Reconstruction company under the SARFAESI Act, 2002, then also application for sickness can be moved after obtaining consent of such Securitisation company or Reconstruction company acquiring such assets.

(F)
Dividend

Transfer to Reserves [Clause 123]

- As per the Act, a company cannot declare or pay dividend unless it transfers to the reserves of the company such percentage of its profits for that year not exceeding 10% as prescribed vide Companies (Transfer of Profits to Reserves) Rules, 1975.

- As per the Bill, there is no mandatory requirement for transferring "specified" percentage of profits to reserves at the time of declaration of dividend. A company *may* transfer such percentage of its profits to the reserves of the company *as it may consider appropriate*.

Interim Dividend
[Clause 123]

- As per the Bill, in case a company has incurred loss during the current financial year upto the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.

- There is no specific provision as such in the Act.

Restrictions on declaration of dividend [Clause 123]

- As per the Bill, a company which fails to comply with the provisions of Clauses 73 and 74 of the Bill (i.e. "Prohibition on acceptance of deposits from public" and "Repayment of deposits, etc., accepted before the commencement of this Act/Bill") shall not declare any dividend on its equity shares so long as such failure continues.

- There is no specific provision as such in the Act.

(G)
Board of Directors

No. of Directors in a Company [Clause 149]

- As per the Act, a Public company can have maximum *12 directors*. For appointing more than 12 directors, a Public company requires *approval of the Central Govt.*
- The aforesaid provision is not applicable to Private Companies.
- There is no requirement as to appointment of a "Woman" director.

- As per the Bill, "Every company" can have maximum *15 directors*. However, a company can appoint more than 15 directors after passing a *Special Resolution* in its shareholders meeting. No need for any approval of CG.
- Certain class or classes of companies shall have *at least one Woman director*

Director's stay in India [Clause 149]

- As per the Bill, every company shall have at least one director who has stayed in India for *at least 182 days* in the previous calendar year.

- There is no provision as such in the Act.

Independent Directors [Clause 149]

- As per Bill, every listed public company shall have at least 1/3rd of total directors as Independent directors.
- CG may prescribe minimum no. of Independent directors for certain public companies.
- Independent director shall not be eligible for Stock Option.
- An Independent director shall hold office up to 5 consecutive years and shall be eligible for re-appointment on passing a Special Resolution.
- No Independent director shall hold office for more than two consecutive terms.
- However, such Independent director shall be eligible for appointment after cooling off period of 3 years.

- There is no provision as such in the Act.
- However, Listed companies are governed by Clause 49 of Listing Agreement which provides for the followings:
  - If Chairman is a non executive director, 1/3rd of Board should comprise of Independent directors.
  - If Chairman is an executive director, 1/2 of Board should comprise of Independent directors.
  - Independent Directors are allowed to hold stock options subject to resolution passed by shareholders.

Manner of Selection of Independent director [Clause 150]

- As per the Bill, an Independent director may be selected from a data bank containing names, addresses and qualifications of persons eligible and willing to act as an Independent director.
- Such data bank is maintained by any body, institution or association, as may be notified by CG, having expertise in creation and maintenance of such data bank.
- However, company making such appointment shall have the responsibility of exercising due diligence prior to selecting a person from such a data bank.

- There is no provision as such in the Act.

Number of Directorship [Clause 165]

- As per the Act, a person can hold office as a director in maximum *15 companies* at the same time.

- Directorship in following companies shall be excluded for the purpose of calculating no. of directorship:
  - Private company
  - Unlimited company
  - Non-profit making companies
  - A company in which such a person is merely an "Alternate director"

- As per the Bill, a person can hold office as a director *(including any alternate directorship)* in maximum *20 companies* at the same time.

- Further, a person cannot be a director in more than 10 "Public companies" (within the aforesaid limit).

- The Bill doesn't contain any provision for exclusion of certain types of directorship as provided for in the Act.

Board Meetings
[Clause 173]

- As per the Act, Board meeting must be held at least once in every three months (i.e. in every calendar quarter) and at least four meetings in every year. Accordingly, if one meeting is held in first month of a quarter and next is held in last month of succeeding quarter, then it shall considered as sufficient compliance. This ensures that there can be a time gap of almost 6 months between two consecutive Board meetings.

- As per the Bill, time gap between two consecutive Board meetings should not exceed 120 days.

Notice for Board Meetings [Clause 173]

- Minimum 7 days notice in writing must be sent to every director in India for any Board meeting.
- A meeting may be called at a shorter notice to transact urgent business provided at least one Independent director shall be present at the meeting.

- As per the Act, there is no specific provision as to notice period for convening a Board meeting.
- However, Listing Agreement requires listed companies to issue prior notice for certain matters.

Passing of resolution by Circulation [Clause 175]

- As per the Bill, if 1/3rd or more of total directors require that any resolution under circulation must be decided at a meeting, then the chairperson shall put the resolution to be decided at a Board meeting.

- Further, a resolution passed by circulation shall be noted at a subsequent Board or Committee meeting and made part of minutes of such meeting.

- The aforesaid aspects are absent in the provision of the Act dealing with circular resolution.

(H)
Financial Statements

Financial Year
[Clause 2(41)]

- As per the Act, a company can adopt any period as its financial year whether that period is an year or not.

- Such a period shall not exceed 15 months.

- However, the said period may be extended upto 18 months in case where special permission has been granted by Registrar.

- As per the Bill, financial year means the period ending on 31st March every year.

- However, the Tribunal may, on receiving an application from a holding company or subsidiary of a company incorporated outside India which is required to follow a different financial year for consolidation of its accounts outside India, allow such a company to adopt any period as its financial year, whether that period is an year or not.

- There is no provision w.r.t. extension of financial year.

Accounting and Auditing Standards [Clause 132]

- As per the Act, *"National Advisory Committee on Accounting Standards"* advises the CG on formulation and laying down Accounting Policies and Accounting Standards for adoption by companies.

- As per the Bill, CG shall constitute *"National Financial Reporting Authority"* (NFRA) to provide for matters relating to Accounting and Auditing standards. NFRA shall ensure compliance with Accounting and Auditing Standards.

(I)
Audit

Internal Audit
[Clause 138]

- The Act doesn't contain any specific provision for Internal Audit.

- As per the Bill, prescribed companies shall be required to appoint an Internal Auditor who shall be either –
  - Chartered Accountant or
  - Cost Accountant or
  - Such other professional as may be decided by Board.

- CG may prescribe, by rules, the manner and the intervals in which such Internal Audit shall be conducted and reported to Board.

Secretarial Audit
[Clause 204]

- As per the Bill, the following companies shall annex with its Board Report, a "Secretarial Audit Report" given by a Company Secretary [CS] in practice:
  - Every Listed company
  - Other prescribed companies

- The Board of Directors shall, in their report, explain in full any qualifications or observation or other remarks made by the CS in his report.

- Contravention of the said provision by company or any of its officer or CS shall be punishable with fine of not less than one lac which may extend upto five lac.

Rotation of Statutory Auditors [Clause 139]

- As per the Bill, "Listed companies" or other "Prescribed companies" shall not appoint or re-appoint –

  - An "Individual" as an auditor for more than *one term* of five consecutive years;

  - An "Audit Firm" as an auditor for more than *two term* of five consecutive years

- The Act doesn't contain any provision as such.

Compliance with Auditing Standards [Clause 143]

- As per the Bill, every auditor shall comply with the Auditing Standards.

- There is no provision as such in the Act.

Certain services not to be rendered by an Auditor [Clause 144]

- As per the Bill, an Auditor shall not render any of the following services directly or indirectly to the company or its holding or subsidiary company:
  - Accounting and Book keeping services
  - Internal Audit services
  - Design and implementation of financial information system
  - Actuarial services
  - Investment advisory services
  - Outsourced financial services
  - Management services
  - Any other kind of services as may be prescribed

- There is no provision as such in the Act.

Liability of Auditors [Clause 147]

- As per the Bill, if an Auditor contravenes with the provisions of clauses 139, 143, 144 & 145, then he shall be punishable with fine of not less than Rs.25,000/- but which may extend Rs.5,00,000/-.

- Further, if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with –
  - Imprisonment upto 1 year *and*
  - Fine [$\geq$ Rs.1,00,000/- but $\leq$ Rs.25,00,000/-]

- In case of an Audit firm, if it is proved that partner or partners has or have acted in a fraudulent manner or abetted or colluded in any fraud, the liability for such act shall be of the concerned partner or partners and of the firm jointly and severally .

- As against the same, the present Act provides for a nominal penalty and certain action by ICAI.

(J)
Related Party Transactions

Loan to Directors [Clause 185]

- As per the Act, the provision w.r.t loans to directors is applicable to only *"Public companies"*.
- Further, *"Prior approval of CG"* is required for advancing such loan to directors.

- As per the Bill, the said clause shall be applicable to both, *"Private and Public companies"*.
- *Prior consent of the shareholders* is required.
- There is no requirement to obtain approval of CG.

Loans and Investment by Company [Clause 186]

- As per the Act, loan and investment made by a company to a *"Body Corporate"* are only covered.
- Rate of interest on such loan and investment shall not be lower than prevailing *"Bank rate"*.

- As per the Bill, loan and investment made by a company to *"Any Person"* are covered.
- Rate of interest on such loan and investment shall not be lower than prevailing yield of *"Government Securities"* closet to the tenor of the loan or investment.

Related Party Transactions [Clause 188]

- As per the Act, *"Related Party Transactions"* covers only the following transactions:
  - Sale, purchase or supply of goods, material or services;
  - Underwriting the subscription of shares or debentures.

- Only the followings are the *"Related Parties"*:
  - Director of the company
  - Relative of a director
  - Firm in which director or relative is a partner
  - Any other partner in such firm
  - A Private co. in which director is a member or director

- Consent of Board by resolution at Board meeting is required.

- If paid-up capital of company is Rs.1 crore or more, prior approval of CG is also required.

- The aforesaid provisions are not applicable to transactions between “two public companies”.

- As per the Bill, *"Related Party Transactions"* covers the following transactions:
  - Sale, purchase or supply of any goods or materials;
  - Selling or otherwise disposing of, or buying, property of any kind;
  - Leasing of property of any kind;
  - Availing or rendering any services;
  - Appointment of any agent for purchase or sale of goods, materials, services or property;
  - Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company and
  - Underwriting the subscription of any securities or derivatives thereof of the company.

- The followings shall be treated as *"Related Parties"*:
  - Director or his relative
  - Key managerial person or his relative
  - Firm in which director, manager or his relative is partner
  - Private company in which director or member is a member or director
  - Public company in which director or manager is a director or holds along with his relatives more than 2% of its paid-up capital.
  - Any Body Corporate whose Board of Directors, Managing Director or Manager is accustomed to act in accordance with advice, directions or instructions of a director or manager

- Any person on whose advice, directions or instructions director/manager is accustomed to act.
- Any company which is (A) holding, subsidiary or associate co. of such co. or (B) a subsidiary of a holding co. to which it is also a subsidiary.
- Such other person as may be prescribed.

- Consent of Board by resolution at Board meeting is required.

- In the following cases, prior approval of the company by a Special Resolution is required:

  - Paid up capital exceeds prescribed amount;
  - Transactions exceeding prescribed amount.

- The aforesaid provision shall also apply to transactions between two public companies.

Restriction on non-cash transactions involving directors [Clause 192]

- As per the Bill, no company shall, unless prior approval of shareholders is obtained in general meeting, enter into an arrangement by which –

  - Director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is *to acquire assets* from the company for *non-cash consideration*; or
  - Company acquires or is to acquire assets for non-cash consideration from such director or person so connected.

- There is no provision as such in the Act.

(K)
Miscellaneous Provisions

- A company existing on the commencement of this act shall, within 2 years from such commencement align its financial year **[Clause 2(41)]**.

- New definition of "Key Managerial Person" in relation to a company has been introduced which means: **[Clause 2(51)]**
  - CEO or MD or Manager;
  - Company Secretary;
  - Whole time director;
  - Chief Financial Officer and
  - Such other person as may be prescribed

- The concept of “One Person Company” (i.e. a company having only one member) has been introduced **[Clause 2(62)]**.

- Memorandum of Association shall mention the “Object” for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. No bifurcation of objects between main, ancillary and other objects is required **[Clause 4]**.

- As a part of Incorporation process, “Subscribers to the Memorandum” and “First directors” are now required to provide an affidavit stating that: **[Clause 7]**

  - They are not convicted of any offence in connection with promotion, formation or management of any company;
  - They are not guilty of any fraud or misfeasance or breach of duty in relation to any company during preceding five years and
  - All the documents filed with Registrar for registration of company contain correct, complete and true information to the best of their knowledge and belief.

- For the purpose of commencement of business, prescribed declaration needs to be filed with 180 days. The requirement of "Certificate of Commencement of business" has been dispensed with **[Clause 11]**.

- Consolidation/Division of shares resulting in changes in the voting percentage of shareholders requires approval of the Tribunal **[Clause 61]**.

- Companies other than Banking company, Non-banking financial company and other prescribed companies are prohibited from accepting deposits from public unless they fulfill several conditions as specified **[Clause 73]**.

- In case of following companies, annual return must be certified by a "Company Secretary (CS) in practice" even if the same has been signed by CS in employment of the company: **[Clause 92]**
  - Listed company
  - Company having prescribed capital and turnover

- Annual return must contain substantial additional information of the company as follows: **[Clause 92]**

  - Principal business activities, particulars of its holding , subsidiary and associate companies;
  - Promoters, directors, key managerial persons (KMP) along with changes therein since the close of the previous financial year;
  - Meetings of members or class thereof, Board and its various Committees along with attendance details;
  - Remuneration of directors and KMP

- Penalty or punishment imposed on company, its directors or officers and details of compounding of offences and appeals made against the same;
- Matters relating to certification of compliances, disclosures as may be prescribed;
- Prescribed details in respect of shares held by or on behalf of Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- Such other matters as may be prescribed.

- Members of prescribed companies may exercise their right to vote by electronic means in the prescribed manner **[Clause 108]**.

- "Interim dividend" may be declared during any financial year out of surplus of profit and loss account and out of profits of relevant financial year **[Clause 123]**.

- Non-compliance of provisions pertaining to transfer of unpaid or unclaimed dividend to "Unpaid dividend account" and other requirements thereto shall be punishable with fine as follows: **[Clause 124]**

  - Company : ≥ Rs.5,00,000 but ≤ Rs.25,00,000
  - Officer in default : ≥ Rs.1,00,000 but ≤ Rs.5,00,000

- A company may keep its book of accounts or other relevant papers in electronic mode as may be prescribed **[Clause 128]**.
- Companies having subsidiaries are required to prepare consolidated financial statements of the company and all the subsidiaries and present the same at the AGM. Salient features of financial statement of its subsidiary shall also be attached. "Subsidiary", for this purpose, shall include "Associate company" and "Joint venture" **[Clause 129]**.
- The requirement of attaching "Annual Report" of subsidiaries as per S.212 of Companies Act has been dispensed with.

- A company shall be bound to **re-open** and **re-cast** its **financial statements** wherein pursuant to an application having been made by the CG, SEBI, IT authorities, any other statutory regulatory body or authority or any person concerned, an order has been passed by a court of competent jurisdiction or Tribunal to the effect that – **[Clause 130]**

  - Relevant earlier accounts were prepared in fraudulent manner ; or
  - Affairs of company were mismanaged during relevant period, casting a doubt on the reliability of financial statements.

- "Limited Liability Partnership" can be appointed as Auditor **[Clause 139]**.

- Members are at liberty to decide by passing a resolution that audit partner and the audit team be rotated every year **[Clause 139]**.

- Every existing company is required to comply with the provisions of Clause 139 (i.e. Appointment of auditors) within three years from commencement of this Act **[Clause 139]**.

- Certain new disqualifications for the Auditors have been prescribed including indebtedness to holding/subsidiary companies **[Clause 141]**.

- Maximum no. of companies in which a person may be appointed as auditor has been proposed as 20 companies **[Clause 141]**.

- A "Nominee director" i.e. a director nominated by any financial institution in pursuance of the provisions of any law or of any agreement or appointed by Govt. or any other person to represent its interest shall not be deemed to be an Independent director **[Clause 149]**.

- Every company shall comply with new provisions relating to composition of Board of Directors within one year from commencement of this Act **[Clause 149]**.

- Independent directors are not liable to retire by rotation **[Clause 149]**.

- An "Independent Director" shall not be entitled to any remuneration other than –
  - Sitting fees
  - Reimbursement of expenses for participation in the Board and other meetings
  - Profit related commission **[Clause 149]**

- No person shall be appointed as an "Alternate director for an Independent director" unless he is qualified to be appointed as an Independent director **[Clause 161]**.

- Duties of director have been specifically provided, including to act in good faith and in the best interest of the company, not to have any direct/indirect conflict of interest with the interest of the company and to exercise duties with diligence and reasonable care **[Clause 166]**.

- Provisions in relation to resignation of director including manner of tendering such resignation have been specifically provided **[Clause 168]**.

- Participation of directors at Board meetings may be through prescribed video conferencing or other audio visual means which are capable of recording and recognizing participation of directors and of recording and storing the proceedings of such meetings along with date and time **[Clause 173]**.

- Board of directors [B.O.D.] of every "Listed company" and "prescribed company" shall constitute an **"Audit Committee"** consisting of at least 3 directors with Independent directors forming majority. Majority of such members including Chairperson must be able to read and understand financial statement **[Clause 177]**.

- B.O.D. of every "Listed company" and "prescribed company" shall constitute **"Nomination and Remuneration Company"** consisting of at least 3 non-executive directors of which at least one-half shall be Independent directors **[Clause 178]**.

- B.O.D. of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a **"Stakeholders Relationship Committee"** consisting of a chairperson who shall be a non-executive director and other members as may be decided by the Board to consider and resolve grievances of security holders **[Clause 178]**.

- Directors and Key managerial persons are prohibited from entering into forward dealings in securities of company **[Clause 194]**.

- An Individual shall not be appointed as "Chairperson" as well as "MD or CEO" at the same time unless :
  - Articles provide otherwise *OR*
  - Company doesn't not carry multiple businesses

  The aforesaid provision shall not apply to companies engaged in multiple businesses if such companies have appointed one or more CEO for each such business **[Clause 203]**.

- CG shall establish "Serious Fraud Investigation Office" to investigate frauds relating to company **[Clause 211]**.

- An Inspector appointed to investigate into the affairs of a company may, if he considers it necessary, investigate the affairs of "Related companies" also **[Clause 219]**.

- The provisions pertaining to Inspection, inquiry and investigation applicable to "Indian company" shall also apply mutatis-mutandis to Inspection, inquiry and investigation of "Foreign companies" **[Clause 228]**.

- Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill, or any other assets or net worth or liability of company, it is mandatory for a company to appoint "Registered Valuer". Such registered valuer shall –

  - Make an impartial, true and fair valuation of assets;
  - Exercise due diligence;
  - Make valuation in accordance with prescribed rules;
  - Not undertake valuation of assets in which he has direct or indirect interest. **[Clause 247]**

- Registrar may struck off name of a company from the register of companies in case Registrar has reasonable cause to believe that :– **[Clause 248]**

  - Company has failed to commence its business within one year of its incorporation;
  - Subscribers to the memorandum have not paid subscription money within 180 days from the date of incorporation and prescribed declaration has not been filed within 180 days of its incorporation; or
  - Company is not carrying on any business for two immediately preceding financial years and has not made any application for obtaining the status of a dormant company.

- Where a company is formed and registered for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a "Dormant company" **[Clause 455]**.

COMPANIES ACT, 1956 vis-ā-vis COMPANIES BILL, 2012

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

ISSUES	COMPANIES ACT, 1956	COMPANIES BILL, 2012
Sections 390, 391 & 393 vis-ā-vis Section 230		
Approval Required	Approval by majority in number representing 3/4th in value of the creditors or members or class thereof present and voting either in person or by proxy.	Approval by majority in number representing 3/4th in value of the creditors or members or class thereof present and voting either in person or by proxy *or by postal ballot.*
Disclosures to be made vide an Affidavit at the time of filing an Application before the Court or NCLT	(i) All material facts relating to company, such as latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company u/s. 235 to 251, and the like.	(i) All material facts relating to company, such as latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation *or* proceedings *against the company*; (ii) Reduction of share capital of the company, if any, in the compromise or arrangement; iii) Any scheme of corporate debt restructuring consented by not less than 75% of secured creditors in value, including – ➢ a creditor's responsibility statement in the prescribed form; ➢ safeguards for the protection of other secured and unsecured creditors; ➢ report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates

		provided to them by the Board; ➢ where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and ➢ a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.
Valuation Report	No need to give Valuation Report to the shareholders / creditors along with the notice convening meeting.	Valuation Report to be given to the shareholders / creditors / debenture-holders along with the notice convening meeting.
Notice convening meeting	(i) Notice convening meeting to be sent to the shareholders / creditors and shall be given by advertisement. (ii) No specific provisions for serving of notice to Income Tax and other regulators.	(i) Notice convening meetings shall be sent to all shareholders / creditors / debenture-holders of the company individually at the address registered with the company. (ii) Notice to be served to the Central Govt., income tax authorities, RBI, SEBI, the Registrar, respective stock exchanges, Official Liquidator, Competition Commission of India, if necessary, and such other sectoral regulators or authorities. (iii) The notice and other documents shall also be placed on the website of the company, if any, and in case of listed company, these documents shall be sent to the Securities and Exchange Board and Stock Exchange where the securities of the companies are listed, for placing on their website and shall also be published in the newspapers in such manner as may be prescribed.
Objection to	Objection to compromise or arrangement can be made by any	Objection to compromise or arrangement can be made only by:

compromise or arrangement	shareholder or creditor, as the case may be, irrespective of their shareholding / outstanding debt.	➢ persons holding not less than 10% of the shareholding or ➢ having outstanding debt amounting to not less than 5% of the total outstanding debt as per latest audited financial statement
Order made by the Court / NCLT	No specific provisions with respect to the order made by the Court / NCLT	An order made by the Court / NCLT shall provide for all or any of the following matters: a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable; b) the protection of any class of creditors; c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48; d) if the compromise or arrangement is agreed to by the creditors, any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate; e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.
Certificate of	No specific provision with respect to filing of the certificate of	No compromise or arrangement shall be sanctioned unless a

Company's Auditor	the company's auditor.	certificate by the company's auditor has been filed with the Court / NCLT to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed by the Central Govt. as recommended by the Institute of Chartered Accountants of India u/s. 3 of Chartered Accountants Act, 1949 in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
Dispensation of the meeting	No specific provision for dispensation of the meeting.	Court / NCLT may dispense with calling of a meeting of the creditors having at least 90% value agree and confirm by way of affidavit.
Buy back of securities by scheme of compromise / arrangement	A scheme of compromise or arrangement can include any buyback of securities.	A scheme of compromise or arrangement can include any buyback of securities, provided it is in accordance with buy-back provisions.
Takeover Offer	A scheme of compromise or arrangement cannot include a "takeover offer".	A scheme of compromise or arrangement may include "takeover offer" in a prescribed manner. In the case of listed companies such takeover offer shall be as per the SEBI regulations.
Section 392 vis-ā-vis Section 231		
No major amendments have been made in the said Section.		
Section 394 vis-ā-vis Section 232		
Transfer of Listed Company with an	No specific provision for compromise / arrangement between a listed transferor company and an unlisted transferee company	In case of compromise / arrangement between a listed transferor company and an unlisted transferee company, Court / NCLT to provide that the transferee company shall remain unlisted

Unlisted Company		company until it becomes listed and exit option to be given to the shareholders of the transferor company wherein the exit price to be not less than the price under any SEBI Regulations.
Compliance	No specific provision for filing of statement by the company until completion of scheme indicating whether the scheme is being complied as per the orders of the Court / NCLT.	A company shall file a statement certified by a chartered accountant or a cost accountant or a company secretary indicating whether the scheme is being complied with in accordance with the orders of the Court / NCLT or not in the form and time as my be prescribed by the Registrar until the completion of the scheme.
Sections 394 & 394A vis-ā-vis Section 233		
Speedy Merger	No specific provisions for expediting merger.	Provisions made to facilitate merger between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed without moving the Court / NCLT. Approval required of : ➢ Registrar of Companies; ➢ Official Liquidator; ➢ Members or class of members holding at least 90% of total no. of shares; ➢ Majority of creditors or class of creditors representing 9/10th in value; ➢ Each of the companies involved in the merger shall file a declaration of solvency with the ROC.
Section 234		
Merger of Indian Company with	Indian Company cannot be merged with Foreign Company	Foreign Company, may with prior approval of Reserve Bank of India, merge into Indian Company or vice versa. The

Foreign Company		consideration for merger can be in the form of Cash and / or Depository Receipts. This would apply to Foreign Companies in jurisdictions as notified by the Central Government.
Section 395 vis-ā-vis Section 235		
No major amendments have been made in the said Section.		
Section 236		
Offer to sell by Minority shareholders to Majority shareholders	No specific provision for offer to sell by the minority shareholder to the majority shareholders.	The minority shareholders of the company may also offer to sell their shares to the majority shareholders at a price determined in accordance with the rules as may be prescribed.
Purchase of Minority shareholding by Majority shareholder/s	No specific provisions for acquisition of minority shareholders by majority shareholders.	➢ Acquirer and / or Person acting in concert with such acquirer or person / group of persons holding 90% or more of the issued equity share capital of the company by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, can purchase the remaining equity shares of the company from the minority shareholders at a price determined by registered valuer. ➢ Minority shareholders may also offer to the majority shareholders to purchase their equity shareholding in the company at a price determined by the registered valuer.
Section 396 vis-ā-vis Section 237		
No major amendments have been made in the said Section.		

Section 238		
Registration of offer of scheme involving transfer of shares	No specific provisions for registering the offer of scheme which involves transfer of shares or any class of shares in the transferor company to the transferee company.	The transferor and transferee company both have to register the circular which involves an offer of scheme with respect to transfer of shares or any class of shares with the registrar for registration before issuing the same.
Section 396A vis-ā-vis Section 239		
No amendment has been made in the said Section.		

WINDING UP

ISSUES	COMPANIES ACT, 1956	COMPANIES BILL, 2012
Chapter XX viz. Winding Up is divided into four parts – **Part I – Winding up by the Tribunal – Sections 271 to 303;** **Part II – Voluntary Winding up – Sections 304 to 323;** **Part III – Provisions applicable to every mode of winding up – Sections 324 to 358; And** **Part IV – Official Liquidators – Sections 359 to 365**		
Part I – Winding up by the Tribunal **Sections 433 & 434 vis-ā-vis Section 271 – Circumstances in which company may be wound up by Tribunal**		
Grounds for winding	Several criteria were provided for winding up of the company	Certain criteria for winding up by the Court / NCLT has been deleted like default in delivering statutory report, holding the

up reduced	by the Court / NCLT such as:- ➢ if the company has, by special resolution, resolved that the company be wound up; ➢ if default is made in delivering the statutory report to Registrar or in holding the statutory meeting; ➢ if company does not commence its business within 1 year from its incorporation, or suspends its business for a whole year; ➢ if number of members is reduced, in the case of a public company, below 7, and in the case of a private company below 2; ➢ if the company is unable to pay its debts; etc..	statutory meeting, non-commencement of business for 1 year, suspension of business for the whole year and minimum number of members falling below the prescribed limit in both private as well as public company. Additional ground provided for winding up : The Court / NCLT is of the opinion that:- ➢ the affairs of the company are conducted in a fraudulent manner; ➢ the company was formed for fraudulent and unlawful purpose; ➢ the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith.
Section 439 vis-ā-vis Section 272 – Petition for winding up		
Condition for admission and filing of the winding up petition before the Court / NCLT	No specific provision for admission of the winding up petition presented by the company before the Court / NCLT. No specific provision for filing a copy of the petition with the Registrar.	A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed. A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.
Section 443 vis-ā-vis Section 273 – Powers of Tribunal		
No major amendments have been made in the said Section.		

Section 439A, 446A & 454 vis-ā-vis Section 274 – Directions for filing statement of affairs		
Compliance with respect to Filing of Statement of Affairs	Both, the company which had filed the petition and the company which opposes the petition, are required to file the statement of affairs.	Where a petition for winding up is filed before the Court / NCLT *by any person other than the company*, the Court / NCLT shall, if satisfied that a *prima facie* case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed.
Deposition of Security for Costs	No specific provision with respect to depositing of the security for costs by the petitioner with the Court / NCLT for issuing directions to the company.	The Court / NCLT may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.
Failure in filing of statement of affairs	On the Court / NCLT passing the winding-up order or appoint the official liquidator as provisional liquidator, the respondent company viz. its officers, directors, manager, etc. shall file with the official liquidator / provisional liquidator a statement of affairs within 21 days from the relevant date, or within such extended time not exceeding 3 months from the date of appointment of the official liquidator. Any person who fails to comply with any of the requirements of sec. 454 shall be punishable with imprisonment for a term which may extend to 2 yrs. or with fine which may extend to one thousand rupees for every day during which default continues or with both.	A company which fails to file the statement of affairs shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
Sections 448, 449 & 450 vis-ā-vis Section 275 – Company Liquidators and their appointments		
Experience	No specific provision with respect to experience of the provisional liquidator or the company official liquidator before being appointed as the liquidator	The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government and having at least ten years' experience in company matters.

Remuneration	Then terms & conditions for the appointment of the official liquidator and the remuneration payable to him shall be:- ➢ a maximum remuneration of 5% of the value of debt recovered and realisation of sale of assets; ➢ approved by the central government for those appointed as either a whole-time or a part-time officer in accordance with the rules made by it in this behalf.	The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
Declaration	No provision for either the provisional liquidator or official liquidator to file declaration on appointment.	On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven (7) days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
Sections 448(6) vis-ā-vis Section 276 – Removal and replacement of liquidator		
Discharging the liquidator of his duties	The Court / NCLT may – ➢ transfer the work assigned from one official liquidator to another official liquidator for the reasons to be recorded in writing; ➢ remove the official liquidator on sufficient cause being shown; ➢ proceed against the official liquidator for professional misconduct.	The Court / NCLT may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:— ➢ misconduct; ➢ fraud or misfeasance; ➢ professional incompetence or failure to exercise due care and diligence in performance of the powers and functions; ➢ inability to act as provisional liquidator or as the case may be, Company Liquidator; ➢ conflict of interest or lack of independence during the term of

		his appointment that would justify removal.
Sections 444 & 445 vis-ā-vis 277 – Intimation to Company Liquidator, provisional liquidator and Registrar		
Intimation to Stock Exchange/s	No specific provision to intimate the order of appointment of provisional liquidator or the winding up order to the Stock Exchange/s in the case of listed company, where the securities of the company are listed.	Registrar shall intimate about the order of appointment of provisional liquidator or the winding up order to the stock exchange or exchanges where the securities of the company are listed.
Constitution of winding-up committee	No provision for constituting such winding up committee.	Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function which shall consist of:- ➢ Official Liquidator attached to the Tribunal; ➢ nominee of secured creditors; and ➢ a professional nominated by the Tribunal. The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in prescribed areas.
Section 447 vis-ā-vis Section 278 – Effect of winding up order		
Section 446 vis-ā-vis Section 279 & 280 – Stay of suit, etc., on winding up order & Jurisdiction of Tribunal		
No major amendments have been made in the above Sections.		
Section 455 vis-ā-vis Section 281 – Submission of report by Company Liquidator		
Curtailed time-limit	Official Liquidator shall submit report not later than 6 months	Company Liquidator shall submit report within 60 days from the

for submitting the report	from the date of the order or such extended period as may be allowed by the Court / NCLT.	date of the order passed by the Court / NCLT.
Section 282 – Directions of Tribunal on report of Company Liquidator		
Time-limit for completion of entire proceedings	No specific provision for concluding the winding up proceedings.	The Court / NCLT shall on consideration of the report by the Company Liquidator fix a time limit within which the entire proceedings shall be completed and the company be dissolved
Appointment of Sale Committee	No specific provision for appointment of sale committee to assist the Official Liquidator in sale.	The Court / NCLT if deem fit shall order appointment of sale committee comprising of creditors, promoters and officers of the company as the Court / Tribunal may decide to assist the Company Liquidator in sale.
Section 456 vis-ā-vis Section 283 – Custody of Company's Properties		
Application for company's properties	For enabling the liquidator / provisional liquidator to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator / provisional liquidator, may by writing request the Chief Presidency, Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof.	On an application by the Company Liquidator or otherwise, the Court / NCLT may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.
Section 284 – Promoters, directors, etc. to cooperate with the Company Liquidator		
Penalty for non-cooperation	No specific provision for penalty to promoters, directors, etc. in case of non-cooperation to the Company Liquidator in discharge of his functions and duties.	Promoters, directors, officers and employees employment of the company or acting or associated with the company shall extend full who are or have been in employment of the company or acting or associated with the company shall extend full

		cooperation to the Company Liquidator in discharge of his functions and duties and in case of failure he shall be punishable with imprisonment which may extend to 6 months or with fine which may extend to fifty thousand rupees, or with both.
Sections 426 & 467 vis-ā-vis Section 285 – Settlement of list of contributories and application of assets		
Two sections are merged and no major amendments have been made.		
Section 427 vis-ā-vis Section 286 – Obligations of directors and managers		
No amendment has been made in this section.		
Sections 410, 464 & 465 vis-ā-vis Section 287 – Advisory Committee		
The entire section has been summarised.		
Section 288 – Submission of periodical report to Tribunal		
Monitoring of the winding-up proceedings	No specific provision with respect to the monitoring the progress of the winding up of the company.	The Company Liquidator shall make periodical reports to the Court / NCLT and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.
Section 466 vis-ā-vis Section 289 – Power of Tribunal on application for stay of winding up		
Time limit for stay of proceedings	No specific time limit for stay of proceedings.	If the Court / NCLT think it fit on an application being made, makes an order for stay of proceedings for such time but not exceeding 180 days and on such terms and conditions as it thinks fit.
Furnishing of	No provision for furnishing security as to costs.	The Tribunal may, while passing the order for stay of proceedings require the applicant to furnish such security as to

Security		costs as it considers fit.
Sections 457 & 458 vis-ā-vis Section 290 – Powers and duties of Company Liquidator		
The entire section has been summarised.		
Section 459 vis-ā-vis Section 291 – Provision for professional assistance to Company Liquidator		
No major amendment has been made in this section.		
Section 460 vis-ā-vis Section 292 – Exercise and control of Company Liquidator's powers		
No major amendment has been made in this section except for curtailing the Company Liquidator's powers.		
Section 461 vis-ā-vis Section 293 – Books to be kept by Company Liquidator		
Section 462 vis-ā-vis Section 294 – Audit of Company Liquidator's accounts		
Section 469 vis-ā-vis Section 295 – Payment of debts by contributory and extent of set-off		
Section 470 vis-ā-vis Section 296 – Power of Tribunal to make calls		
Section 475 vis-ā-vis Section 297 – Adjustment of rights of contributories		
Section 476 vis-ā-vis Section 298 – Power to order costs		
Section 477 vis-ā-vis Section 299 – Power to summon persons suspected of having property of company, etc.		
Section 478 vis-ā-vis Section 300 – Power to order examination of promoters, directors, etc.		
Section 479 vis-ā-vis Section 301 – Arrest of person trying to leave India or abscond		
Section 481 vis-ā-vis Section 302 – Dissolution of company by Tribunal		
Section 483 vis-ā-vis Section 303 – Appeals form orders made before commencement of Act		

No amendment has been made in these sections.		
Part II – Voluntary winding up **Sections 304 to 323**		
Classification	Voluntary winding up could be at the instance of members or creditors of the Company.	No such provisions for voluntary winding up at the instance of members or shareholders exist.

Thank You