Suggestions for Expert committee to examine the possibility of replacing multiple prior permissions with pre-existing regulatory mechanism. Part I(b): Companies Act 2013

Sl No.	Related to	Issues	Existing Govt. Regulations (Give Exact regulation/clause etc)	Specific Suggestions	Check Points	Enablers
			Companies Act 2013			
1	Associate Company - Section 2(6)	Joint Venture being included under the definition of Associate Company	"Associate company" in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.	The definition should be in line with the accounting standards and the term "joint venture" should be excluded from the definition of associate. Accounting Standards being mandatory for a direction of financial statements will have a different connotation whereas in compliance with the other requirements of the Act it will have a different connotation. Accounting Standard 18 requires disclosure of transactions with associate enterprises. The said disclosure, therefore, may not be in line with the requirements other than provisions contained in the Act, for example, consolidation of accounts, disclosure of directors' interest, etc. It is noticed that the term "joint venture" has also been included as a part of the associate company by the Act whereas Accounting Standard 18 excludes the joint venture of an associated enterprises. This issue will also have repercussion on the disclosure as well as with regard to the compliance of the provisions of the Act.	Definition of Associate Company	Policy
2	Foreign Company - Section 2(42)	The definition, therefore, implies that a company which is incorporated outside India can be considered as a foreign company if it has a place of business in India, can have an office through electronic mode. The term "electronic mode" being a new concept which has also wider implication, should be clarified as to how such a company would be considered as having an office in India. It means the clarification should indicate what are the intentions of law in this respect. It may be through an explanation to a section or in any other manner	Foreign company" means any company or body corporate incorporated outside India which –has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.	The definition mentioned through electronic mode is very wide. It should specify specific modes.	Define 'Electronic Mode' for foreign companies	Policy

3	**Free Reserves - Section - 2(43)**	Credit balance in P&L A/c to be inlcuded in the definition of " Free Reserves" **Justification** There is ambiguity in the definition as to whether surplus in the P & L Account should be taken as free reserves for the purpose of calculating the borrowing limit u/s 180 of the Act and `net worth' in other sections. As the proviso (ii) of the said Section mandates exclusion of surplus in P & L Account on measurement of the asset or the liability at fair value, it can be implied that the surplus other than the surplus arising out of revaluation in the P & L Account will be free reserves. However, there is ambiguity and difference in views and therefore, the definition needs to be amended as suggested above.	Clause 43 of Section 2 defines “free reserves” as under: “free reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend; Provided that - (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;	The opening paragraph of the definition needs to be amended as follows so as to explicitly include surplus in profit and loss account in free reserves: “free reserves” means such reserves and surplus in profit and loss account which, as per the latest audited balance sheet of a company, are available for distribution as dividend;		
4	**Holding Company - Section 2(46)**	Body Corporate has not been recongnised as a Holding Company as per the definition sof the latter			The opening paragraph of the definition needs to be amended as follows so as to explicitly include surplus in profit and loss account in free reserves:	Policy
5	**Independent Director – Section 2(47)**	The definition of “independent director”, the term “relative” should include only spouse and dependent children				

6	**Interested Director - Section 2(49)**	The above definition should be in consonance with that given in Section 184(2) of the Act to be considered for the purpose on disclosure of interest by directors in any contract or arrangement proposed to be incorporated into by company. Further, the above definition also provides that the interest of a director is also to be taken into consideration through any of its relatives. Definition of term ""relative" is wide enough to cover the relatives that may not be dependent on the concerned director. It is, therefore, suggested that the definition of term "relative" for the above purpose should cover only the dependent			*"free reserves" means such reserves* ***and surplus in profit and loss account*** *which, as per the latest audited balance sheet of a company, are available for distribution as dividend;*	Policy
7	**Key Manageial Personnel - Section 2(51)**	Removal of contradiction in definition and provision in Section 203	Clause 51 of Section 2 defines "Key Managerial Personnel" as under: "Key managerial personnel", in relation to a company, means - (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed;	Suggestion The sub-clause (i) to be modified as under: "(i) the Chief Executive Officer or the managing director or the manger and in their absence, a whole-time director."		

8	**Listed Company – Section 2(52)**	Under the Companies Act, 1956, it was specifically provided that listed companies mean "public listed companies". However Section 2(52) of the new Act provides for "a company" which will mean all kinds of companies – public and private limited companies. As a consequence of this, public or private companies whose certain securities are listed but not through the process of IPO, for instance a listing of non-convertible debentures will also qualify as listed companies requiring them to comply with all the provisions applicable to listed companies under the new Act, for instance appointment of independent directors, secretarial audit and many other provisions.			Definition of Listed Company: Listing of securities	Policy
9	**Net worth - Section 2(57)**	Justification As the definition specifically provides for deduction of the aggregate value of accumulated losses for arriving at "net worth", it is implied that the surplus in the P & L Account would be deemed to be reserves created out of profits, for computing the net worth. However, in the absence of a clear mention in the definition there is avoidable ambiguity and the same needs to be removed by making the change suggested above.	*Suggestion* *The definition needs to be amended by including surplus in the P & L Account as part of "net worth".*			
10	**Public Company - Section 2(71)**	A subsidiary private company to a public listed company being considered as a deemed public company		*(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or*	Private Company as a deemed Public Company	Policy

11	**Subsidiary Company Section 2(87)**	Clarification on Subsidiary Company **Justification** Sub-section (3) of Section 129 provides that where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with laying off its financial statements under sub-section (2). The Explanation to the section states that for the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture. The inconsistency in the definition of subsidiary in the Act and the AS, leads to	*The section defines "subsidiary company" or "subsidiary" in relation to any other company to mean a company in which the holding company -* *(i) controls the composition of the Board of Directors, or* *(ii) exercises or controls more than one half of the total share capital either at its own or together with one or more of its subsidiary companies;* *The term "paid up share capital' has been defined as aggregate amount of money credited as paid up capital in respect of the shares in the company.* *In view of these definitions, in order to decide whether a company is a subsidiary the equity and preference capital have to be taken into account, whereas under AS 21, one of the criteria to be a subsidiary is control of more than 50% of the "voting rights".*	Suggestion The inconsistency is to be addressed by amending the respective Accounting Standards. Or the definition u/s 2(87) of the Act.	Clarification/Changes in the Act	Policy
12	**Section 7**	Non refundable amount if company not registered		*(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,*	Refund to take place within 72 hours	Technology/Policy.
13	**Section 20 - Service of documents**	Listed companies have large shareholder base running into several lacs in many cases. Cost of printing and mailing of documents by registered post/ speed post/ courier is extremely high. As per requirements under Listing Agreement such communications are to be put on the web-sites of the company and stock exchanges and are therefore, easily accessible. The suggestion is in line with the Green initiative of MCA and also address environmental concerns.	Sub-section 2 of Section 20 provides that a document can be filed with ROC or served on a member by post or by registered post or by speed post or by courier or by delivering at his office or address or by such electronic or other mode as may be prescribed. Sub-Rule (3) (i) of Rule 20 of Companies (Management and Administration) Rules, 2014 under Chapter VII (dealing with notice for e-voting) provides that the Notices of the meeting shall be sent either through registered post or speed post or electronic means or through courier service.	*The facility of sending documents under `certificate of posting' is no more available. Companies therefore, should have the option to send documents other than valuable documents by post as permitted u/s 20 of the Act, after obtaining receipt from the postal department for having received the document for transmission on which postage has been duly paid, which can be proof of mailing, but sub-rule (3) of Rule 20, referred to above lays down very costly means of delivery.* *In fact it is in the public interest that the requirement of printing and dispatch of Annual Reports is dispensed with and instead make them available in public domain at more locations to facilitate access by interested members. The availability of the documents on web-sites can be notified through public notice in widely circulated newspapers or an abridged accounts can be published in newspapers. Those who are unable to access the same for any reason can approach the companies for hard copies. The notice of the meeting along with explanatory statement can be mailed and also put on the web-site. A gist of the notice can be published as at present.*		
14	**Section 39 (STAMP DUTY)**	It is to be paid separately to the collector of stamps.Whereas, at the time of incorporation of a company or further raise of capital the duty is paid with Registrar of Companies. Paying duty at the time of allotment separately causes hardship to companies.			Stamp Duty payment	Policy

15	**Rule 14 of Companies (Prospectus of Securities) Rules 2014 – Private Placement**	(1) It requires issuance of such shares of the face value of not less than Rs 20,000/-. The limit of face value can lead to problematic situation for a company intending to issue shares at a premium because of its value.		*shall not be treated as free reserves;*	Clarification/Changes in the Act	Policy
16		2) The rule does not expressly envisage a situation where shares are allotted for a consideration other than cash and no money is received from the bank account of the applicant.	Rule 14(2)(c) : The value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of face value of the securities.	(2) It is suggested to provide for the above expressly	Clarification/Changes in the Act	Policy
17	**Section 42 and 62(FORMS)**	Company has to fill a lengthy form which runs into several pages.	The forms and the formats for Private Placement and Rights Issue of Shares is very lengthy and cumbersome	Unlisted companies, more particularly for private limited companies the formats may be simplified.Volume of paper work needs to be brought down	Ease of raising financial resources	Policy
18	**Section 43 (a)(ii) read with Explanation Rule 4(6) of Companies (Share Capital and Debentures) Rules 2014**	Clarification on Convertible Instruments isuued prior to 1st April 2014	Section 43(a)(ii) – With differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; Rule 4(6) : Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders. Explanation – For the purpose of this rule, it is hereby clarified that differential rights attached to such shares issued by any company under the provisions of Companies Act, 1956, and Rules made thereunder, shall continue to be regulated under such provisions and Rules.	Convertible instruments (CCPs/CCD) issued prior to 1st April 2014 with a right to get DVRs after 1st April 2014 should continue to be governed by the Companies Act, 1956.	Clarification/Changes in the Act	Policy

19	**Section 55 read with Rule 9 – Issue and Redemption of Preference Shares**	Clarification on Issue of Preference Shares	Section 55 specifically deals with issue and redemption of preference shares. Rule 9 also provides for the conditions to be fulfilled by a company w.r.t. issue and redemption of preference shares. However, as per Section 23(2), a private company may issue securities (which include preference shares) by rights issue, bonus issue or private placement. Extensive guidelines are provided in the Rules of Chapter III for issue of securities through private placement and in Chapter IV for preferential allotment. So, does this imply that a company issuing preference shares need to follow both the preference shares issue guidelines as well as private placement / preferential allotment guidelines.	The Rules providing guidelines for issue of preference shares should explicitly state that the company need not follow private placement / preferential allotment guidelines	Clarification/Changes in the Act	Policy
20	**Section 62 – Further Issue of Capital**	Clarification related to Differential Voting Rights	With respect to the further issue of shares by a private company on a preferential basis: (i) In case of convertible securities, is the price required to be predetermined; can the price be determined based on future projections or based on a formula; (ii) Can we take a view that the convertible securities, existing prior to April 1, 2014, will not be governed by instant rules?	Where an agreement is made before 1st April 2014, the old law relating to Differential voting rights should be applicable.	Clarification/Changes in the Act	Policy
21	**Section 62 – Further Issue of Capital & Section 23 – Public Offer and Private Placement**	The subscribed capital includes preference as well as equity capital. So does this imply that even if the company intends to increase its subscribed capital by issue of preference shares, such shares shall be offered to equity shareholders rather than preference shareholders. Moreover, the word “shares” has been used u/s 62(1)(a) dealing with rights issue, while the term “securities” has been used in Section 23, enabling companies to issue securities through rights issue. The term “securities” has very wide meaning as compared to shares.	Section 62 read with Section 23 - As per opening lines of Section 62(1), “where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered holders of equity shares”.	The word “shares” should be replaced with the word “securities” in Section 62	Clarification/Changes in the Act	Policy

22	**Rule 13 of Companies (Share Capital and Debentures) Rules 2014 – Issue of shares on preferential basis**	Clarification of Allotment of Shares	For the pupose of Clause C of Subsection (1) of section 62, if authorized by a special resolution passed in a general meeting ---------- ---------- such issue on preferential basis should also complywith conditions laid down in section 42 of the Act	The language of the section seems to suggest that the only way to allot shares is by way of private placement. There are other modes available to an unlisted company e.g. allotment through application, preferential allotment on a limited basis etc. These modes provide flexibility to unlisted companies in accessing capital. They were available under the earlier act and should be restored.	Clarification/Changes in the Act	Policy
23	**Rule 13 (1)(ii) of Companies (Share Capital and Debentures) Rules 2014**	This defines “shares or other securities” to mean equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date. What will happen if loan is raised (but for which no securities are issued which will be converted into equity if the terms of the financing agreement provide for such a conversion) and that loan is converted into equity shares in terms of the financing agreement. It should be clarified that this will also be covered.	"the expression shares or other securities means equity shares fully convertible …… at a later date"	This should be clarified.	Clarification/Changes in the Act	Policy
24	**Rule 13(2)(d)(v) of Companies (Share Capital and Debentures) Rules 2014**	What is the significance and meaning of “relevant date” is case of an unlisted company. Either this should be deleted or clarified.	Relevant date with reference to which the price has been arrived at.	Clarity is required that the law as applicable at the date of agreement or whether at the date of conversion, will be applicable.	Clarification/Changes in the Act	Policy
25	**Rule 13(2)(h) of Companies (Share Capital and Debentures) Rules 2014**	This Rule states that the price of convertible securities offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares be determined before hand on the basis of a valuation report of a registered valuer. It may be noted that FEMA/ FDI permits a pricing formula in this regard with a condition that pricing at the time of conversion will not be less than at the time of issue. Similar provision should be provided here in case preferential issue is to a non-resident.	Where convertible securities are offered on a preferential basis, with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of valuation report of a registered value and also complied with the provisions of Section 62 of the Act.	The concept should be in line with FDI/FEMA.	Clarification/Changes in the Act	Policy

26	**Rule 17 of Companies (Share Capital and Debentures) Rules 2014 – Buy-back of shares or other securities**	This deals with the minimum period of offer of 15 days. This can be relaxed and provide that the period of 15 days can be shortened if all the shares holders of the company give their consent. In practice, it is seen in private companies with 2 shareholders that the consent is obtained on the first day of the offer.	Rule 17 (5): The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer. Rule 17 (7): The company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty one days from the date of closure of the offer.	Hence keeping the offer open for 15 days makes little sense. Similarly, Rule 17(7) should say unless consent of all the shareholders for shorter period is obtained.	Clarification/Changes in the Act	Policy
27	**Rule 18 of Companies (Share Capital and Debentures) Rules 2014 – Debentures**	This Rule states that secured debentures shall be secured by creation of charge on the properties or assets of the company – does this mean that group company or parent company of the borrower company cannot provide security on the group company's or parent company's properties and assets? This will adversely affect the financing transactions. Similarly Rule 18(1)(d) states a similar provision.	Rule 18(1)(b) : Such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.	This needs to be allowed as per old Act.	Clarification/Changes in the Act	Policy
28	**Section 73 (2) c**	Maintenance of 30% of deposit payment reserves .	Depositing such sum which shall not be less than 15 per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank account to be called as deposit repayment reserve account.	Earlier the deposit was only for the current year (15%) against 30% (15% per year for 2 years) as per the new act. Recommended to restore the same 15% as per the earlier provisions.	Reducing Operationg Costs for the Companies	Policy Change

29	**Section 73 (2) e**	These changes will make the requirements more practicable and also in consonance with Section 180, which deals with the powers of the Board. Further rules cannot change the provisions of the Act.	The sub-section provides that a company may accept deposits from its members inter alia, subject to passing of a resolution in general meeting and subject to such Rules as may be prescribed..... Rule 2(e) of the Companies (Acceptance of Deposits) Rules, 2014 while defining "eligible company" states that such a company should take consent of the shareholders by special resolution before making any invitation to the public for acceptance of deposits. The proviso to the Rule provides that an eligible company, which accepts deposits within the limits specified under Clause (c) of Sub-section (1) of Section 180 may accept deposits by means of an ordinary resolution.	The Rule needs to be revised by replacing the words "special resolution" by the words "ordinary resolution". The proviso needs to be amended to the effect that consent of shareholders shall not be required for an eligible company to accept deposits within the limits specified u/s 180(1)(c).		
30	**Section 73 (2) e**	This clause of the sub-section is too harsh on companies, which might have defaulted due to compulsion of industry conditions at some point of time in the past, and repaid such deposits with earnest efforts as soon as possible. As per the Deposit Rules under the Act of 1956, in such cases there was a requirement of disclosure of any such default in the deposit form/ advertisement inviting deposits so that the prospective depositors could take an informed decision. This provision was fair and reasonable. Putting a life long ban on acceptance of deposits for a default anytime in the past in repayment of deposits for valid reasons, is unjustified.	One of the conditions to be fulfilled for accepting deposits from members u/s 73 and also from public by eligible companies u/s 76 reads as under: "certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and "	This sub-section needs to be amended as follows: "certifying that the company has not committed any default during the preceding three years in the repayment of deposits accepted either before or after commencement of this Act or payment of interest on such deposits; and."		

31	**Section 82 - Satisfaction of charge**	Often even after payment of the dues, the communication confirming the payment is received much later due to administrative delays on the side of the lender. This results in the company requiring to file a petition before the concerned Regional Director, MCA after fulfilling so many formalities. It is in the interest of the Company to file the satisfaction and get the same recorded and no other person is concerned or interested in it.	This Section read with Rule 8 of the Companies (Registration of Charges) Rules, 2014 require companies to file Form CHG 4 within 30 days of payment or satisfaction in full of any charge along with the requisite fees. Rule 12 dealing with condonation of delay and rectification of register of charges requires the approval of Central Govt. if Form CHG-4 is not filed within 30 days. In case of registration of charge the Rules provide for condonation of delay up to 300 days by payment of additional fees.	In case of Form CHG-4 also there should be provision for filing of Form CHG-4 even after 30 days by payment of additional fees.		
32	**Section 92**	Return of Allotment Money	MGT 7 is the prescribed format. It runs into several pages.			Technology/Policy
33	**Section 92 and section 134**	MGT 9 is the prescribed format.It is totally duplication and waste of time and energy	Directors Report to have additional attachment of extract of annual return		The proviso needs to be amended to the effect that consent of shareholders shall not be required for an eligible company to accept deposits within the limits specified u/s 180(1)(c).	Technology/Policy
34	**Section 93 - Change in shareholding**	Because of the ambiguity in the Rules, some companies are required to file the data every week even for minor changes in shareholding of promoters/ top ten shareholders. This is tedious and purposeless.	The Section requires every listed company to file in the prescribed form with the ROC the change in the no. of shares held by promoters and top ten shareholders of such company within 15 days of such change. Rule 13 of the Companies (Management and Administration) Rules, 2014 prescribes that either increase or decrease of 2% in the shareholding of promoters and top ten shareholders to be filed pursuant to the above section with ROC.	Since the details of the shareholding pattern / change in shareholding of promoters etc. are periodically submitted to the stock exchange/s and are available in the public domain this requirement is redundant and therefore needs to be deleted. Alternatively, the information to be furnished should be same as furnished to stock exchange, every quarter.		
35	**Section 96 read with 2(76)**	99% companies are unlisted companies are family owned business and members of the family.Almost everyone is related to each other.To circumvent the law companies have to involve outsiders as members of the board	Voting rights of the related party in the AGM is restricted in the AGM.	Related party voting rights should be given for board meetings but certainly NOT for Annual general meetings. **No other country has such a strict ruling for the voting rights of the related parties.**	Related party Voting Rights.	Policy

36	**Section 107 - Voting by show of Hands**	In reality because of this provision of Section 107 read with Rule 20 which requires certain companies to have voting by electronic means, passing of resolutions by show of hands will never be possible because all these companies to begin with will be required to give an option to vote by electronic means. Therefore, in reality the demand of poll as provided in Section 109 will really be applicable to only those companies which are not covered by Rule 20, for instance, all private companies. This is because the moment voting takes place by electronic means for companies covered by Rule 20, by default the voting will be as by poll and not by show of hands. To that extent Section 109 will have a very limited use.	Sub-Section 107(1) : At any general meeting, a resolution put to the vote of the meeting shall unless poll is demanded under Section 109 or the voting is carried out electronically, be decided on a show of hands.	Section 107 will require amendment to delete "or the voting is carried out electronically" and be replaced by expression which provides that if a poll is not demanded at the physical meeting, then each shareholder's vote through electronic means will have one vote each and if a poll is demanded at the physical meeting, each shareholder who has voted by electronic means will have vote in proportion to the share capital held in the company.	Clarification/Changes in the Act	Policy
37	**Section 108 - E-voting**	Unlisted companies' share accounting work is normally done in-house and requiring such companies to provide e-voting facility will compel such companies to appoint registrars, get the shares dematerialized etc. requiring to incur avoidable cost without serving any purpose. Therefore, unlisted companies should be exempted from the requirement. Even in case of listed companies experience shows that very few shareholders avail of the facility. There are cases wherein nearly 200 shareholders out of 1 lac shareholders (about 0.2%) avail such facility, whereas the Company has to incur huge expenses in tying up the arrangements for e-voting. The provision, therefore, appears pompous and needs to be reviewed by MCA and SEBI for its worth and purpose.	The Section empowers Central Govt. to prescribe the class or classes of companies and manner in which a member may exercise his right to vote by electronic means. The Central Govt. notified the class of companies and manner of exercising right to vote by electronic means under Companies (Management and Administration) Rules, 2014. All listed companies and companies having 1000 and above shareholders are mandatorily required to provide for remote e-voting. Listed companies in any case are required to provide for remote e-voting under the Listing Agreement.	Unlisted companies irrespective of the no. of shares should be exempted from the requirement.		

38	**Rule 3 of Companies (Declaration of Dividend) Rules 2014 - Declaration of dividend out of reserves**	There is a typographical error	In the event of inadequacy or absence of profits in any year…….immediately preceding that year"	The word in the first line should be “inadequacy” and not “adequacy”.	Clarification/Changes in the Act	Policy
39	**Section 117 - Resolutions and Agreements to be filed**	Sub-clause (e) is superfluous as all special resolutions are required to be filed under MGT 14 as per sub-clause (a). The resolutions under Section 180(1)(c), being special resolutions in any case is would be filed under sub-clause (a). To borrow monies for working capital and invest surplus funds for short term periods are part of day to day management and therefore should not be required to report to ROC in Form MGT 14.	Sub-section 3 (e) requires inter alia, resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under Clauses (a) and (c) of sub-section (1) of Section 180 to be filed with ROC in Form MGT 14. Sub-clause (g) requires resolutions passed in pursuance of sub-section (3) of Section 179 also to be filed with ROC in Form MGT 14.	Sub-clause (e) needs to be deleted. Sub-clause (g) of Section 117 to be amended to exempt filing of resolution of the Board under sub-clauses (d) `to borrow monies' and (e) `to invest the funds of the company u/s 179 (3).		
40	**Section 118(10) - Secretarial Standards**	SS-1 and SS-2 contradict the provisions of the Act on several counts and give undue emphasis on clerical work and record keeping. In a way the Company Secretary has been reduced to a record keeper rather than a KMP, who is supposed to be part of the management. The Standards should be kept in abeyance and notified after a thorough revision and pruning to make it purposeful and sensible.	Sub-section 10 of Section 118 provides that every company shall observe secretarial standards with respect to general and board meetings specified by the Institute of Company Secretaries of India and approved by the Central Govt. The Central Govt. has recently notified Secretarial Standards on Board meetings (SS-1) and general meetings (SS-2).	SS-1 and SS-2 contradict the provisions of the Act on several counts and give undue emphasis on clerical work and record keeping. In a way the Company Secretary has been reduced to a record keeper rather than a KMP, who is supposed to be part of the management. The Standards should be kept in abeyance and notified after a thorough revision and pruning to make it purposeful and sensible.		
41	**Section 128 – Books of account, etc. to be kept by company**	Sub-Section (2) of Section 128 allows a company having branch office in India and outside India to keep proper books of account relating to the transaction effected at branch office are kept at that office provided summarized returns are sent by the branch office to the company at its registered office at quarterly intervals or at any other place where the books of account have been kept by the company.	Section 128(2) : Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).	The term “final information” be defined or clarified.	Clarification/Changes in the Act	Policy

42	**Section 129 – Financial Statement**	In Sub-Section (1) of Section 129 1st proviso mentions that items contained in financial statement to be in accordance with Accounting Standards. This statement needs clarity. The Accounting Standards do not deal with the items which are of the part of the financial statement but also require disclosure in the manner required by the standard.	Section 129(1) : The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III	The language in the Section, therefore, requires a change.	Clarification/Changes in the Act	Policy
43		The consolidation is to take place in respect of associate and joint venture companies. It may be added that Accounting Standard 21 does not provide for this type of consolidation of accounts of association and joint ventures companies unless there is a subsidiary in existence.	Section 129(3) : Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section(2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).	The consolidation process should be in accordance with Accounting Standard 21.	Clarification/Changes in the Act	Policy
44		Sub-Section (4) of Section 129 : If no subsidiary but Associates and /or Joint Venture whether consolidation required. How to comply with section 129(4).	Section 129(4) : The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).	A clarification to be issued on Section 129 (4)	Clarification/Changes in the Act	Policy

45	**Section 132 – Constitution of National Financial Reporting Authority**	Section 210A of the Companies Act, 1956 required that chairperson of a National Advisory Committee on Accounting Standards shall be a person of eminence well-versed in accountancy, finance, business administration, business law, economics or similar discipline. As against this, chairperson of National Financial Reporting Authority provides for a Chairman for expertise in accountancy, auditing, finance or law. As would be evident, the qualifications of the chairperson have been curtailed so as to exclude the qualifications which had been provided for Chairman of the National Advisory Committee on Accounting Standards.	The Central Government may, by notification, constitute a National Financial Reporting Authortiy ……to be laid before each House of Parliament"	The definition should be in line with the definition of the Companies Act, 1956.	Clarification/Changes in the Act	Policy
46		Section 132 (4)(c)(B) - The debarring of firm from partners is not warranted as it will lead to a situation whereas those partners who are not involve in the conduct of audit would also be punished.	"debarring the members or the firm from engaging himself or itself ……..as decided by the National Financial Reporting Authority"	Therefore, sub-section provides that National Financial Reporting Authority shall have powers to debarring the member or the firm from engaging himself or itself from partner as member of The Institute of the Chartered Accountants of India.	Clarification/Changes in the Act	Policy
47	**Section 134(3) - Financial statement, Board reports, etc**	The above information are irrelevant for the stakeholders and make the Directors' Report too voluminous. In order to make the Directors' Report relevant and purposeful, it should be brief and to the point. The information pertaining to annual return etc., can be put on the web-site of the company (public domain) after filing with the ROC. Details of managerial remuneration form part of the Corporate Governance Report to be annexed to Directors' Report under the Listing Agreement, as such also there is duplication.	Section 134 (3) provides a list of items to be included in the Directors' Report. In addition, matters as may be prescribed may also be included. Rule 8 of Companies (Accounts) Rules, 2014 prescribes another list of information to be included in the Directors' Report. Apart from these, various other Sections/ Rules also provide for information to be included in the Directors' Report. All these together make the Directors' Report a very voluminous document that not only losses its importance but also the importance of the financial statements diluted in the melee. Moreover in case of listed companies, a number of data required to be included in the Directors' Report are also covered under Corporate Governance Report under the Listing Agreement, to be annexed with Directors' Report.	The requirement of inclusion of the following information in the Directors' Report call for to be dispensed with: □ Clause (a) of Sub-section (3) of Section 134 the extract of annual return in Form MGT 9. □ Clause (b) Number of meetings of the Board (listed companies) as the information is given in Corporate Governance Report. □ Sub-rule (1) of Rule 8 requiring to give in a separate section a report on the performance and financial position of each subsidiaries, associates and joint ventures as this information is given in Form AOC-1, which is part of the annual financial statements. □ Sub-Rule (1) of Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requiring disclosure of a host of data with regard to remuneration of employees, comparison with the remuneration of managerial personnel, performance of the company, etc.		

48	**Section 134(5) - Directors' Responsibility Statement : Internal Financial Controls**	There is an elaborate definition of internal financial controls given in section explanation to 134 (5) (e). The board of directors of listed companies have to give a confirmation in this regard. In rule 8 (5) (viii), the board report is also required to capture details in respect of adequacy of internal financial controls with reference to the financial statements.	"The Director's Responsibility Statement referred to in clause c of subsection 3 shall state that…… "	It should be clarified whether the requirement of rule 8 (5) are applicable to all companies or only to listed companies and other public companies with a paid up capital of 25 crores or more.	Clarification/Changes in the Act	Policy
49	**Corporate Social Responsibility [U/s 135(1)]**	The requirement of an independent director under this section is contradictory of Section 149(4). Under section 149(4) an Independent Director is required for every listed public company	Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least director shall be an independent director.	Remove this section for unlisted / closely held / private companies in which public is not the shareholder.	Clarification/Changes in the Act	Policy
50		There is no tax incentive for spends over and above 2% of PAT on CSR	Spend 2% of average net profits of the company over the 3 immediate preceeding FYs	C Any spent on CSR above 2% should be totally exempt from Tax.	Incentivize CSR	Policy
51		Doing away with the CSR Committee	CSR committee is a Must	CSR committee be dispensed with.The activities which the Committee performs can be carried out by the board so that entire board will be aware of CSR activities. It will also save money to the company from paying additional sitting fees to the directors.	Reduce cost for companies.	
52	**Rule 4 of Companies (Account) Rules 2014 - Conditions regarding maintenance and inspection of certain financial information by directors:-**	In the Sub-Rule (2) (3) and (4) of Rule 4 deal with conditions relating to maintenance and inspection of certain financial information by Directors. Rule 4 does not define the term "financial information". Sub-Rule (2) of Rule 4 however provides that where any other financial information is required by the Director apart from that contained in summarized returns, the Director shall furnish a request to the company setting out the full details of the financial information sought and the period for which information is sought. This sub-rule gives an indication that the financial information referred to in the section is something more than that contained in the summarized returns. It may be added that this Rule does not provide that the summarized returns can be sent to the other place where books of account of the company have been kept	Rule 4(2) : Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought. Rule 4(3) : The company shall produce such financial information to the director within fifteen days of the date of receipt of the written request. Rule 4(4) : The financial information required under sub-rules (2) and (3) shall be sought for the director himself and not by or through his power of attorney holder or agent or representative.	Clarification to be issue in respect of Financial Information by Directors under this Rule	Clarification/Changes in the Act	Policy

53	**Rule 13 of Companies (Account) Rules, 2014 – Companies required to appoint internal auditor**	The word 'firm' used in Rule 13 (1) is creating an impression that only partnership firms can be appointed as internal auditor.	"The following class of companies shall be required to appoint an internal auditor or……"	In view of liberalization made in the rule w.r.t. removal of requirement of Certificate of Practice for a chartered accountant, it does not seem to be the intention to give a restricted meaning to the term 'firm' and it seems to be out of sync with the intention of the government. Under the new company law, the Board has been given power and freedom to appoint an internal auditor. Moreover, Internal audit as envisaged by the government is a holistic exercise which goes beyond financial and accounting controls. Internal Audit requires multiple and diverse skill sets – Engineering experts, Accounting and Finance Experts, Process Experts, Industry experts (Telecom, Oil & Gas, Healthcare, Infrastructure etc). Such diverse professional experience is generally not employed by partnership firms. In light of this, the word 'firm' should Either be removed or replaced by another broader term like company /entity / organization etc.	Clarification/Changes in the Act	Policy
54	**Section 143 (3) (a) – Powers and Duties of Auditors & Auditing Standards**	Statutory Auditors have to report whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.	"The auditor's report shall also state - ----------"	Statutory Auditors are chartered accountants in practice and do not have the capability or visibility w.r.t. operating and business controls. Therefore, the definition of internal financial controls should be clearly limited to financial controls for the purpose of section 143 (3) (i). The elaborate definition of internal financial controls given in section 134 (5) (e) should not be made applicable here for the purpose of reporting by statutory auditors.	Clarification/Changes in the Act	Policy
55	**Secretarial Audit – Form MR 3**	Secretarial audit is to be done a practising company secretary who is well versed in company law and other corporate laws. However, secretarial audit, as envisaged under section 204 (1) read with form MR-3, also covers other applicable laws like telecom laws, Oil & Gas laws, other industry specific laws. Currently, practising company secretaries are in no position to identify such kind of laws. Significant capacity building along with tie up with other professions would be needed to embark upon this exercise.	Please refer to Form MR-3	Secretarial audit is to be done a practising company secretary who is well versed in company law and other corporate laws. However, secretarial audit, as envisaged under section 204 (1) read with form MR-3, also covers other applicable laws like telecom laws, Oil & Gas laws, other industry specific laws. Currently, practising company secretaries are in no position to identify such kind of laws. Significant capacity building along with tie up with other professions would be needed to embark upon this exercise.	Clarification/Changes in the Act	Policy
56		In Sub-Section (3) of Section 149 amendment required to provide an exception for foreign director, in the case of newly incorporated company, due to the practical problems for incorporating company by foreign investors.	Section 149(3) : Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eight-two days in the previous calendar year.	Remove the appointment of Independent director under this section for unlisted / closely held / private companies in which public is not the shareholder.	Clarification/Changes in the Act	Policy

57	**Section 149 – Company to have Board of Directors**	Difficult to find independent directors.	Section 149(4) : Every listed public company shall have at least one – third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Rule 4 of Companies (Appointment of Directors) Rules, 2014 : The following class or classes of companies shall have at least two independent directors- (1) The public companies having paid up share capital of ten crore rupees or more; or (2) The public companies having turnover of one hundred crore rupees or more; or The public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.	Ease the regulation for appointing Independent Directors	Clarification/Changes in the Act	Policy
58		In sub-section 149(5), correction to be made by inserting both the sub-sections (3) and (4) of Section 149.	Section 149(5) : Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).	It is suggested that since foreign companies are outside the jurisdiction of Indian Law, they should be specifically excluded.	Clarification/Changes in the Act	Policy
59		In Sub-Section (6)(d) of Section 149, the expression pecuniary relationship should be defined. It should also be clarified whether pecuniary relationship with holding / subsidiary company also cover foreign holding / subsidiary company.	Section 149(6) (d): none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two percent, or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during current financial year.	The Rule should be suitably amended, so as to bring authority to small shareholders.	Clarification/Changes in the Act	Policy
60	**Section 150 and 151 read with Rule 7 of Companies (Appointment of Directors) Rules 2014**	Both the Sections and this Rule uses the word “may” which should be substituted by the word “shall”.	Section 150 – Manner of selection of independent directors and maintenance of databank of independent directors Section 151 - Appointment of Director elected by small Shareholders Rule 7 : Small shareholders’ director	Clarification required as per the issue mentioned	Clarification/Changes in the Act	Policy
61	**Section 161 read with Schedule IV (vi)(2) - Appointment of additional director, alternate director and nominee director**	Sub-Section (4) of Section 161 requires clarification whether casual vacancy of independent director can be filled by board in terms of this sub-section	Schedule IV (VI)(2) – Resignation or Removal - An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.	Clarification required as per the issue mentioned	Clarification/Changes in the Act	Policy

62	**Section 164 – Disqualifications for Appointment of Director**	Sub-Section (2) of Section 164 has a retrospective application even in case of private company, therefore this section requires a re-look because it will lead to the vacation of office by all the directors, if they have not complied with the clause (a) & (b) of sub-section (2).	Section 164(2) (a)&(b) : No person who is or has been a director of a company which– (a) has not filed financial statements or annual returns for any continuous period of three financial years; or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to the re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.	Reconsideration of this Section as per the issue mentioned	Clarification/Changes in the Act	Policy
63	**Section 170 - Register of directors and key managerial personnel and their shareholding & Section 196 (chapter 13) – Appointment of Managing Director, whole-time director or manager**	In Sub-Section (2) of Section 170 and Sub-Section (4) of Section 196 the form required for appointment or change of director (Form No. DIR-12 and MR-1) is under both sections, which is overlapping.	Section 170 (2) - A return containing such particulars and docoments as may be precribed……..…taking place" Section 196 (4) - Subject to the provisions of Section 197 and Schedule V…….specified in that Schedule"	Delete the requirement of the Form DIR-12 under any one section	Reducing extra paper work	Policy
64	**Section 173 – Meetings of Board**	The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.	Section 173 (2) read with Rule 4 : The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Rule 4 : The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means: (i) the approval of the annual financial statements; (ii) the approval of the Board's report; (iii) the approval of the prospectus; (iv) the Audit Committee Meetings for consideration of accounts; and (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.	In sub-section (2) of Section 173 a director should be allowed to participate in Board Meeting through video conferencing with respect to items mentioned in Rule 4 but his presence would not be counted for quorum, but his suggestion on the subject may be considered at the meeting.	Clarification/Changes in the Act	Policy
65	**Section 173(3)**	Clarification on using the word "courier" in this Section	A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.	In Sub-Section (3) of Section 173 the word "courier" should be inserted	Clarification/Changes in the Act	Policy
66	**Section 177 - Audit Committee**	Every Audit Committee shall act in accordance with the terms of reference specified in	Section 177 (4) (iii) : examination of the financial statement and the auditors' thereon.	In Sub-section (4)(iii) the term "examination" should be replaced by "review" and the point with regard to examination of auditor's report should be removed as the auditors report is not placed before the audit committee, because such report is issued by the Board after approval of final statement of Board.	Clarification/Changes in the Act	Policy

67	**Committee**	writing by the Board which shall, inter alia, include.	Section 177 (4)(iv) : approval or any subsequent modification of transactions of the company with related parties.	Sub-Section (4)(iv) - Approval and subsequent modification of transaction of companies with related parties should be amended so as to provide the noting of such transactions as existing in clause 49 of Listing Agreement.	Clarification/Changes in the Act	Policy
68	**Section 177 (7) read with Section 177(3) & 177(4)**	In sub-section (7) of Section 177 the auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.	Section 177(7) : The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the report but shall not have the right to vote.	The term "Auditor's Report should be deleted. It can be amended to cover Auditor's observation.	Clarification/Changes in the Act	Policy
69	**Section 178**	It is an additional burden for unlisted companies to have Nomination and Remuneration Committee. No purpose is solved except for higher cost in terms of sitting fees and extra paper work.	Nomination and Remuneration Committee is a Must	To leave it to the Board to take a call on the whether to constitute the NR Committee.	Reducing costs for unlisted companies.	Policy
70	**Section 180**	In the explanation (i) and (ii) of Sub-Section (1) of Clause (a) of Section 180 the definition of the term "undertaking" and "substantially the whole of undertaking" requires clarification	"The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution……"	Clarification on the issue mentioned	Clarification/Changes in the Act	Policy
71	**Section 180**	a) Borrowing and creation of charge are part of the day-to-day working of any company. The Board of Directors are authorized to exercise the power u/s 179 of the Act and therefore, the above change will bring clarity and remove an irritant in the way of 'ease to do business'. b) "Security premium" is quasi capital as there are restrictions with regard to its use for other than issue of bonus shares. Therefore, there is no justification to exclude security premium for the purpose of borrowing limit u/s 180(1)(c). In fact, it should be taken into account for the purpose of arriving at limits for accepting deposits under Chapter V of the Act also. Under the previous Act of 1956 `share premium' was part of `free reserves' as per definition of `net worth' under Clause 29A of Section 2. This position	Certain powers which the Board could exercise only with the consent of the shareholders by ordinary resolutions u/s 293 of the Act of 1956, now require the consent of shareholders by special resolution u/s 180 of the Companies Act, 2013. Such powers deem to include power to mortgage/ create charge to secure borrowings and borrowing funds for the business of the Company, which form part of the day-to-day business and are also covered under Section 179, dealing with powers of the Board.	a) Status-co ante to be restored by providing for consent of shareholders for exercising such powers by ordinary resolution as creation of charge to secure borrowings is in the normal course of business and the Board is empowered u/s 179(3)(f) of the Act of 2013. The wording under Section 180(1)(a) that "to sell, lease or otherwise dispose of " lead to confusion and assumed to include normal creation of equitable mortgage. Alternatively, a third explanation may be added to the Clause (1)(a) of Section 180 excluding creation of charge other than `usufructuary mortgage' from the ambit of Section 180(1)(a) on the following lines: "Explanation – iii) Creation of mortgage/ charge other than usufructuary mortgage to secure borrowings from banks and financial institutions shall not require approval of the shareholders under this clause." b) Clause (c) of sub-section (1) of Section of 180 may be amended by substituting the words "aggregate of its paid up share capital and free reserves" with the words "aggregate of its paid up share capital, free reserves and security premium account". c) Resolutions passed u/s 293(1)(a) & (d) of the Act of 1956 should be valid so long as the limits laid down under the said resolutions have not been exhausted. Fresh resolutions u/s 180(1)(a) & (c) should be required only in case of change in the limits laid down under the resolutions under the Act of 1956. The clarification no.4/2014 dated 25.3.2014 needs to be withdrawn.		

72	**Section 184**	Sub-section (2)(b) of Section 184 - With a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.	"Every Director shall at the first meeting of the Board ……."	The participation of Interested Director should be prohibited only in the interest of concerned items in sub-section 2(b) of this Section.	Clarification/Changes in the Act	Policy
73	**Section 185 - Loan to directors**	The wastage of time & energy of the directors to take the loan & advances from other lenders. Due to this reason the business of the company may be suffered.	Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person	Remove this section for unlisted/closely held/private companies in which public is not the shareholder. This Section on the base of literal interpretation gives an indication that advancing of loan to any person is prohibited. It is, therefore, suggested that the provision of this section be bought in line with reference to Section 295 of the Companies Act, 1956 except with requirement of Government approval which can be through a special resolution. Further, the granting of loans to and by private companies and subsidiaries should be exempted.	Clarification/Changes in the Act	Policy
74		Clarification regarding the meaning of "Save as otherwise provided in this Act" as used in Section 185(1) – Because of the use of this expression does Section 186 override Section 185?	Section 185 (1): Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.	Clarification sought as per the issue	Clarification/Changes in the Act	Policy
75		The expression "ordinary course of business" as under in Section 185(1) should be clarified- Does this mean the principal business of the company carried as per the objects clause of MOA or carried in the usual course of its business dealings. Any firm in which any such director or relative is a partner.	Section 185 (1)(b) : A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.	The expression "ordinary course of business" should be clarified.	Clarification/Changes in the Act	Policy
76		Clarity needed it all subsidiaries fall within the meaning of the clause (e) under Explanation to Section 185. Does it mean that a company by virtue of the fact that it is a subsidiary should fall within the meaning of clause (e) under Explanation to Section 185?	Clause (e) of Section 185(1)(b) : Any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.	Clarification sought as per the issue	Clarification/Changes in the Act	Policy

77		This Rule should be modified to extend the exemption to all kinds of subsidiary and not only wholly owned subsidiary.	Rule 10 : Loans to Director etc under Section 185	Private companies should be exempted from the requirement of Section 185	Clarification/Changes in the Act	Policy
78	**Section 186– Loan and Investment by Company**	The criteria for determining infrastructure business should be clarified. Because of the use of the word "person" – does it mean even loans to individual employees will not be possible now without complying with Section 186. Specific exemption should be carved out for loans to employees.	"Without prejudice to the provions contained in this Act, a company shall unless otherwise prescribed, make investment through……."	Currently, Section 186 seems to cover loans given to any person which would include employee loans as well. Loans to employees should be specifically exempted	Clarification/Changes in the Act	Policy
79	**Section 186(2)**	Stringent provisions for Unlisted/ Closely Held/ Private Companies on Loans and Investment	Section 186(2) : No Company Shall directly or indirectly – (a) give any loan to any person or other body corporate; (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) acquiring by way of subscription, purchase or otherwise, the securities of any other body corporate, Exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more.	Remove this section for unlisted / closely held / private companies in which public is not the shareholder.	Clarification/Changes in the Act	Policy
80		Third provision of Sub-Section (1) of Section 188 exempts transactions in ordinary course of business at arm's length. The mechanism of determining and reporting at arm's length should be specified. Since giving of loans and guarantees is specifically given in Sections 185 and 186, these be specifically excluded from the provision of this Section.	Section 188 (1)(g) – Proviso 3 : Underwriting the subscription of any securities or derivatives thereof, of the company: Provided that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.	Under this rule, the said criteria for the shareholders approval should be Share capital or Transaction value.	Clarification/Changes in the Act	Policy

81	**Section 188 – Related Party Transactions**	Prior approval of the shareholders is required for contract or arrangement which is not on arm's length and / or not on ordinary course of business. The rules prescribed two criteria i.e. share capital OR transaction value. The Rules only clarify how voting will happen in the a holding company and wholly owned subsidiary situation. There are other situations which require clarification, for instance, where there are two shareholders and two directors and both are interested. It is not clear if shared services contracts between related parties are also covered or not, for instance, a common employee being used by two or more related party entities.	Section 188 Read with Rule 15 (3) : In Rule 15(3) for the purposes of first proviso to sub-section (1) of Section 188, except with the prior approval of the company by a special resolution.	This should be clarified	Clarification/Changes in the Act	Policy
82		The SEBI Circular of April 17, 2014 which has amended Clause 49 and will be effective from October 1, 2014. There are some provisions in the amended Clause 49 which are lenient on listed companies as compared to Section 188 read with the Rules.	Refer to SEBI Circular dated 17 April 2014	It should be clarified that listed companies should be governed by the listing agreement.	Clarification/Changes in the Act	Policy
83	**Section 194 – Prohibition on Forward dealings in securities of Company by director or key managerial personnel**	Clarity is required on the complete meaning and purpose of this section. The entire section is ambiguous.	"No Director of a Company or any of its Key Managerial Personnel shall buy in a company……."		Clarification/Changes in the Act	Policy
84	**Section 195 – Prohibition on Insider Trading of Securities**	Clarity is required on the complete meaning and purpose of this section. The entire section is ambiguous. Why to have overlap with SEBI Insider Trading Regulations? Further, why should this be extended to private limited and unlisted public companies – there is no market for such companies for price discovery. Private limited and unlisted public companies should therefore be exempted.	"No person including any Director or Key Mnagerial Personnel of a company shall enter into insider trading……."		Clarification/Changes in the Act	Policy

85	**Rule 11 of Companies (Meetings of Board and its Power) Rules, 2014 - Loans and Investment by Companies read with Section 186 of the Act**	Rule 11 (1) - Only exempts the requirement of sub-section (3) of Section 186 i.e. only the requirement of seeking shareholders' approval. Therefore, the other parts of Section 186 will apply. This is harsh..	"Where a loan or guarantee is given or where a security has been provided by a company ……"	For cases falling under Rule 11(1), the entire Section 186 should be exempted. For instance, imagine a situation if the entire section is not exempted, then the lending rate for loan from a holding to subsidiary will have to be charged not lower than the rate provided in Section 186(7). This provision prohibits use of Closely held / family business company's money in their sister company or MSME. The sister companies and MSME will find difficult to use own resources	Clarification/Changes in the Act	Policy
86	**Section 196 – Appointment of Managing Director,Whole-time Director or Manager**	Does this apply to private companies also? If yes, then does Schedule V also apply to private limited companies both for the Part on Appointments and the Part on Remuneration? Clarity should be provided and private companies should be exempted.	"No company shall appoint or employ at the same time a Managing Director and a Manager……"	The Section requires a clarification as per the issue mentioned. Also, private companies should be exempted from complying with this Section	Clarification/Changes in the Act	Policy
87	**Section 197 – Overall maximum managerial remuneration and Managerial remuneration in case of absence or inadequacy of profits**	Does sub-section (3) apply to private companies as well in case of absence of profit or inadequate profit. The intention appears not to apply on private companies. Therefore, clarity is required on this aspect.	Section 197(3) : Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manger, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.	Clarification required whether this Section applies to private companies also or not	Clarification/Changes in the Act	Policy
88	**Section -203 - Appointment of KMP**	Many such companies may not have the resources to engage KMP as required under the Section / Rules or there may not be adequate work for them. It should suffice if the holding company takes care of the compliance requirements or engage part time professionals to carry out the functions.	Every public company having paid up capital of Rs.10 cr or more have to have KMP as per the Section read with Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.	Subsidiaries or unlisted public companies having no regular operations should not be required to have KMP. Alternatively, apart from paid up capital criteria, turn-over criteria should also be provided for appointment of KMP.		

89	**Section 203 (1) - Appointment of KMP**	a) Under Clause 49 of the Listing Agreement the requirement is optional whereas under the Companies Act it is mandatory. The decision whether to combine the office of Chairman and Managing Director/ CEO should be optional and left to the decision of the Board of Directors. b) In case the provision is persisted with, the words "paid up capital and turnover" may be substituted with "net worth or turnover" as many companies have small capital base with larger net worth / turnover.	First proviso to Sub-section (1) of Section 203 requires the office of Chairman and Managing Director or CEO to be separated. The second proviso provides that in case of companies having multiple operations with separate CEO for such operations, the requirement shall not apply in case the company falls under the criteria prescribed. As per the criteria prescribed by notification dated 25.07.2014 public companies having paid up capital of Rs.100 cr or more and annual turnover of Rs.1000 cr or more which are engaged in multiple businesses and appointed CEO for each such businesses have been exempted from the requirement of separation of office of Chairman and MD or CEO.	a) The first proviso mentioned above, interferes with the authority of the Board of Directors, who should decide the management set up of the company. Therefore, the provision may be made optional as in the case of Clause 49 of the Listing Agreement. b) The criteria of "paid up capital and `turnover" as laid down in notification dated 25.7.2014 should be changed to "net worth or turnover".		
90	**General Issues pertaining to the Act**			Applicability of stringent extensive Company Act , 2013 regulations make it difficult for SME's. It is very difficult for SME's to carry on business with the quantum of regulation and restrictions. Simplification, removal of difficulties and reduction of compliances and processes is vital to enable companies to work efficiently without too much requirement of compliance resource and costs. The time spent on uncalled for compliances that too for closely held private companies would be better used in doing business and thus contributing to the economy and employment apart from other benefits to all stakeholders. This is particularly when such efficiencies and reduction in uncalled for statutory processes would have no adverse affect in context of reasonable monitoring of the companies involved.		
91				Various forms need to be simplified.		
92				Difficulties for foreign owned or controlled companies to hold EGM & AGM in India. Certain relaxations need to be provided.		
93				Relaxation need to be provided in adoption of Memorandum as per New Companies Act in case of alternation of any object or commencement of activities mentioned under other objects clause in companies formed under Old Companies Act.		
94				Much time is lost in the field through details required and clerical difficulties and conflicting views adopted while complying with uncalled for formalities and approvals required in the Companies Act.		

95				There are needless restrictions and limitations on the choice of the promoters in formation of companies such as extensive restrictions on choice of name, delay in approvals of name, limitations of choice of business activity that may be included in objects etc. Companies are only permitted now to have main objects and are not permitted now to have other objects or incidental or ancillary objects. Many developed countries form companies within three days and do not have restrictions on the business that may be carried on provided it is legal business.		