REPORT OF THE
COMPANY LAW COMMITTEE

Government of India

Ministry of Corporate Affairs

March 2022

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REPORT OF THE COMPANY LAW COMMITTEE (2022)

New Delhi, 21st March 2022

To,

Honourable Union Minister of Corporate Affairs

Madam,

1. We have the privilege and honour to present the third report (**"Report"**) of the Company Law Committee set up on 18th September 2019 to make recommendations to the Government *inter alia* on changes aimed at facilitating and promoting greater ease of doing business in India and effective implementation of the Companies Act, 2013, the Limited Liability Partnership Act, 2008 and the Rules made thereunder.

2. The Committee had the benefit of participation of representatives from industry chambers, professional institutes and the legal fraternity. Through detailed deliberations, the Committee endeavoured to make recommendations on issues expected to facilitate smooth conduct of business, given the COVID-19 pandemic. The Committee has sought to strengthen India's existing company law framework based on suggestions received from stakeholders.

3. This Report recommends various changes to the Companies Act, 2013 to recognise new concepts, expedite corporate processes, improve compliance requirements, and remove ambiguities from existing provisions. The Report also includes recommendations to enable producer organisations to incorporate under the Limited Liability Partnership Act, 2008.

4. We thank you for providing us with an opportunity to present our views on the issues concerning the regulatory approach and overall compliance of the provisions of the Companies Act, 2013 and matters related to it.

Yours sincerely,

(Shri Rajesh Verma)
Chairperson

(Shri Uday Kotak)
Member

(Shri Sidharth Birla)
Member

(Shri T.K. Viswanathan)
Member

(Shri Ajay Bahl)
Member

(Shri Shardul S. Shroff)
Member

(Shri Amarjit Chopra)
Member

(Ms. Preeti Malhotra)
Member

(Shri Rajib Sekhar Sahoo)
Member

(Shri G. Ramaswamy)
Member

(Shri K.V.R. Murty)
Member- Secretary

PREFACE

1. This Report is in pursuance and continuation of the avowed objective of the Central Government to promote greater ease of doing business for law-abiding corporates in the country. During its detailed discussions and analysis, the Committee also sought to streamline the operation of certain provisions of the Companies Act, 2013 through clarificatory amendments and other drafting changes.

2. The Report proposes amendments to bring Indian company law in tune with globally recognised best practices and improve ease of living for corporates and stakeholders.

3. The main recommendations of the Committee regarding the Companies Act, 2013, as included in Chapter I of the Report, are as follows:

   I. Allowing certain companies to revert to the financial year followed in India;
   II. Facilitating certain companies to communicate with their members in only electronic form;
   III. Recognising issuance and holding of fractional shares, Restricted Stock Units and Stock Appreciation Rights;
   IV. Easing the requirement of raising capital in distressed companies;
   V. Replacing the requirement of furnishing affidavits with the filing of self-certification/ declaration;
   VI. Clarifying the inclusion of ‘free reserves’ while determining the limit for buying back of a company's equity shares;
   VII. Prohibiting companies from recording trusts on their register of members;
   VIII. Allowing companies to hold general meetings in virtual, physical or hybrid modes;
   IX. Creating an electronic platform for maintenance of statutory registers by companies;
   X. Clarifying provisions relating to Investor Education and Protection Fund;
   XI. Strengthening the National Financial Reporting Authority;
   XII. Reviewing and strengthening the audit framework and introducing mechanisms to ensure the independence of auditors;
   XIII. Standardising the manner for auditors to provide qualifications;
   XIV. Recognising and providing an enabling framework for the constitution of Risk Management Committees;
   XV. Clarifying the tenure of independent directors;
   XVI. Revising provisions relating to the disqualification and vacation of the office of directors;
   XVII. Clarifying the procedure for the resignation of key managerial personnel;
   XVIII. Strengthening the provisions relating to mergers and amalgamations;

XIX. Easing the restoration of struck off companies by enabling the Regional Director to allow restoration of names of companies in certain instances;

XX. Recognising Special Purpose Acquisition Companies and allowing such companies, which are incorporated in India, to list on permitted exchanges;

XXI. Prohibiting the conversion of co-operative societies into a company;

XXII. Modernising enforcement and adjudication activities through electronic mode;

XXIII. Strengthening the incorporation and governance framework for Nidhis;

XXIV. Removing ambiguities from present provisions under the Companies Act, 2013 through changes of drafting & consequential nature.

4. In addition to the above, Chapter II of the Report recommends enabling the incorporation of Producer Limited Liability Partnerships under the Limited Liability Partnership Act, 2008 to ease incorporation and compliance requirements for producer organisations.

5. I am confident that the Committee's recommendations will further give a fillip to honest, law-abiding corporates and other stakeholders in the country whilst consolidating and strengthening the provisions of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

Shri Rajesh Verma

Secretary, Ministry of Corporate Affairs &

Chairman, Company Law Committee (2022)

New Delhi, 21st March 2022

ACKNOWLEDGEMENTS

The Committee takes this opportunity to thank all stakeholders who have contributed by way of their suggestions and have assisted the Committee in formulating its recommendations.

The Committee appreciates inputs from Shri Allwyn Noronha and Shri Gautam Varma of AZB & Partners, and Shri Rudra Kumar Pandey, Shri Vishal Nijhawan and Ms. Jyoti Gautam Tanwar of Shardul Amarchand Mangaldas & Co.

The Committee would also like to make a special mention of the efforts made by the officers of the Ministry of Corporate Affairs, namely Shri Narendra Dua, Shri Atma Sah, and Shri V.M. Prasanth - Joint Directors; Shri Pranay Chaturvedi, Shri Chandan Kumar, Ms. Anannya Saikia and Shri K.M. Shankar Narayanan - Deputy Directors, Shri Avinash Kaushik, Shri Krishan Paul Dutt – STAs, Ms. Sanjana Ramachandran, JTA and Shri K.G. Chawla, Consultant.

The Committee appreciates the support provided by the team from Vidhi Centre for Legal Policy comprising of Ms. Manjushree RM, Ms. Lakshita Handa, Mr. Karan Gulati, and Ms. Anuradha Bhattacharya, in terms of legal research and drafting of this report, which proved to be very useful to the Committee.

Shri K.V.R. Murty

Joint Secretary, Ministry of Corporate Affairs &

Member Secretary, Company Law Committee

New Delhi, 21st March 2022

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BACKGROUND

1. INTRODUCTION

1.1. Corporate laws constitute the edifice upon which the system of commercial regulation rests. At their core, corporate laws seek to ensure the welfare of all stakeholders associated with a corporate business structure by governing their formation and regulating their functioning. In light of a fast-growing economy and the resultant dynamism in today's business environment, India has witnessed a significant positive shift in its corporate governance and regulatory frameworks over the last many years.

1.2. The enactment of the Companies Act, 2013 ("**CA-13**") aimed to bring Indian company law in tune with global standards through significant changes relating to accountability, investor protection and disclosures. CA-13 and the subsequent amendments intend to promote accountability and transparency and ease companies' compliance burden.

1.3. The various committees formed by the Government play a pivotal role in steering legal reforms through their insight on industry and market practices. Several previous reforms in CA-13 have emanated from the recommendations and suggestions made by the Companies Law Committee of 2016 ("**CLC 2016**"), Committee to Review Offences Under CA-13 of 2018 ("**CLC 2018**") and the Company Law Committee of 2019 ("**CLC/Committee**"). These committees have helped develop applicable principles and practices best suited to the domestic needs of India.

1.4. The CLC was constituted by the Ministry of Corporate Affairs ("**MCA**") in September 2019 under the chairmanship of Secretary, MCA to make recommendations that are geared towards promoting greater ease of doing business for law-abiding corporates and further improving the operational efficiency of CA-13 and Limited Liability Partnership Act, 2008 ("**LLP Act, 2008**"). The order of constitution of the Committee, along with a list of its members, has been provided in *Annexure* I. The Committee was constituted on 18th September 2019 initially for one year and its tenure has been extended from time to time, with the present tenure being up to 16th September 2022.

1.5. The Committee has been constituted with a broad mandate, including the introduction of several novel concepts in CA-13 which have proven to be successful globally; updating regulatory mechanisms in light of the COVID-19 pandemic; improving existing procedures to reduce the burden on courts to expedite corporate processes in a streamlined manner; making requisite changes to the LLP Act, 2008 for the benefit of producer organisations; and introducing other clarificatory changes for removing ambiguities and strengthening the framework of CA-13.

1.6. During its deliberations, the Committee has reviewed the existing company law framework and analysed relevant international best practices. The Committee has also considered recommendations and suggestions put forth by many stakeholders.

2. WORKING PROCESS OF THE COMMITTEE

2.1. The Committee held its meetings on 6th December 2021, 15th December 2021, 23rd December 2021, 5th January 2022 and 18th January 2022. In these meetings, the Committee extensively deliberated on each issue discussed in this Report and endeavoured to reach a consensus. Consequently, suitable recommendations were made by the Committee to address a full range of contemporary concerns.

2.2. The Committee reviewed various provisions of CA-13 in light of the constraints posed by COVID-19 and agreed to recognise electronic communication and virtual meetings for the ease of doing business. Changes oriented around better technological integration, such as electronic maintenance of statutory registers and e-adjudication, were embraced by the Committee.

2.3. Whilst also drawing from ground realities based on stakeholder suggestions, the Committee sought to insert enabling provisions under CA-13 for expressly recognising various practices such as Stock Appreciation Rights ("**SAR**"), Restricted Stock Units ("**RSU**"), Special Purpose Acquisition Companies, etc. Further, the Committee also deliberated upon several proposals striving for structural changes to the framework under CA-13 and streamlining the process for audits, mergers and restoration of struck-off companies, amongst others.

2.4. Various clarificatory and drafting changes were also recommended to remove ambiguities from provisions in CA-13. These include a clarification on the number of equity shares that can be bought back under Section 68 (2) (c) of CA-13; Investor Education and Protection Fund ("**IEPF**") related changes in Section 124 and 125 of CA-13.

2.5. Additionally, the Committee deliberated on introducing a new concept of Producer LLP through an amendment to the LLP Act, 2008. It was agreed that such a concept would strengthen producer organisations and allow them to avail benefits of the light-touch regime under the LLP Act.

2.6. The MCA engaged Vidhi Centre for Legal Policy to assist the Committee in reaching informed decisions by carrying out legal research on the issues involved, corresponding international best practices and providing drafting assistance.

3. STRUCTURE OF THE REPORT

3.1. This Report is divided into two chapters. Chapter I deals with recommendations proposed for amendments to CA-13. Chapter II provides the Committee's recommendation for an amendment in the LLP Act, 2008.

3.2. A summary of recommendations discussed in Chapters I and II in the Report has been tabulated in *Annexure-II*. A list of defined terms as used throughout the Report has been attached at the end of the Report.

CHAPTER I: CHANGES PROPOSED TO CA-13

1. ALLOWING COMPANIES TO RE-ALIGN THEIR FINANCIAL YEAR

1.1 Section 2(41) of CA-13 clarifies that the financial year ("**FY**") of a company or body corporate shall be the period ending on 31st March of the following year, in case the company or body corporate has been incorporated on or after 1st January of the preceding year. Thus, the FY of a company or a body corporate is the period between 1st April of a given year and 31st March of the following year.

1.2 The requirement of a uniform FY for all companies was introduced under CA-13. It was prompted by Section 3 of the Income Tax Act, 1961, which provides for a uniform FY for assessees.[1] At present, various compliances under CA-13, particularly those relating to financial statements, are strongly tied to this stipulated definition of an FY unless a company elects to follow a different FY with the permission of the Central Government.[2]

1.3 Under the first *proviso* to Section 2(41) of CA-13, a company which is the holding company or a subsidiary or associate of a company incorporated outside India, and is required to follow a different FY for consolidation of its accounts outside India, may be allowed to follow such different FY upon making an application to the Central Government. The Committee noted that if such a company, or body corporate, ceases to be a holding, subsidiary or associate company of the foreign entity, CA-13 currently contains no provision allowing such company to revert to the FY required to be followed under CA-13. This hinders the company's or body corporate's ability to accurately measure its revenue and earnings in that FY, as per Indian laws.

1.4 The Committee received representations that when a company has to adopt and follow the FY under CA-13, it should not be required to obtain explicit approval of the Central Government and only an intimation/filing by such a company should be sufficient. However, the Committee was of the opinion that when a company reverts back to the FY mandated in CA-13, special dispensations would be required for the ongoing FY, which may be more or less than 12 months, as the case may be. The Committee remained cognizant that there would also be a need to verify the company's status and filing position. Thus, the requirement of obtaining an approval from Central Government should be incorporated.

1.5 **Therefore, to promote ease of doing business and simplifying compliance, the Committee proposed that such companies, which cease to be associated with a foreign**

[1] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol I, Lexis Nexis, 2020) p 159.
[2] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol I, Lexis Nexis, 2020) p 160.

entity, should be allowed to file a fresh application with the Central Government in a prescribed form to allow them to revert back to the FY followed under CA-13.

2. FACILITATING COMMUNICATION IN ELECTRONIC FORM

2.1 Section 20 of CA-13 outlines the different modes by which documents can be served on a company, its officers or the RoC. Section 20(2) stipulates that a document may be delivered to the RoC or any other member through registered post, speed post, courier or any other electronic mode as may be prescribed. While Section 20(2) expressly permits the service of documents in electronic form, the Committee deliberated whether the provision should be amended to mandate/enable certain class or classes of companies to serve documents to their members in electronic mode only.

2.2 Based on the representations received from stakeholders, the Committee noted that electronic communication is the most cost-effective and convenient mode for dispatching and delivering documents, especially in light of the restrictions imposed during the COVID-19 pandemic. However, the Committee remained cognizant that dispensing physical communication entirely may not be feasible, particularly in cases where members and shareholders have not provided their electronic mailing address or have not converted their securities in demat form, and this aspect can be kept in view when the Central Government prescribes a suitable framework.

2.3 The Committee took note of the relaxations put in place by several government bodies to mitigate the adverse effects of COVID-19 on businesses. Notably, on 5th May 2020, the MCA allowed companies to send their financial statements, including Board of Directors' ("**Board**") reports, auditors' reports, and other documents only through email.[3] Additionally, the MCA, through a General Circular dated 11th May 2020,[4] along with a Securities and Exchange Board of India ("**SEBI**") Circular dated 6th May 2020,[5] allowed listed companies intending to carry out a rights issue under Section 62 of CA-13, to send the required documents to all their shareholders through electronic mode only. The circulars also clarified that the inability to dispatch notice through postal or courier services would not amount to a violation under CA-13.

[3] Ministry of Corporate Affairs, Government of India, 'Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio-visual means (OAVM)' General Circular No. 20/2020 (2020) para 3 (A)(III) <https://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf> accessed 7 January 2022.

[4] Ministry of Corporate Affairs, Government of India, 'Clarification on dispatch of notice under section 62 (2) of Companies Act, 2013 by listed companies for rights issue opening up to 31 July 2020' General Circular No. 21/2020 (2020) <https://www.mca.gov.in/Ministry/pdf/Circular21_11052020.pdf> accessed 7 January 2022.

[5] SEBI, 'Relaxations relating to procedural matters –Issues and Listing' Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 (2020) <https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html> accessed 7 January 2022.

2.4 The aforementioned SEBI circular clarifies that in the case of shareholders who do not possess electronic mailing addresses, the abridged letter of offer, application form and other issue material may be published on the websites of the issuing company, the registrar, stock exchanges and the lead managers to the rights issue.[6] The SEBI circular also allows for alternate ways for shareholders without a demat account to participate in such a rights issue.[7] While both the MCA General Circular and the SEBI Circular clarified that the above-mentioned measures would be in place temporarily until 31st July 2020, they were extended multiple times[8] owing to the representations made by stakeholders.

2.5 Additionally, the Committee took note of Rule 11 of the Companies (Accounts) Rules, 2014, which stipulates the manner of delivery of financial statement for the prescribed classes of companies, namely for listed companies and public companies having a net worth of more than one crore rupees and turnover of more than ten crore rupees. **In light of the considerations above, the Committee recommended that Section 20 should be amended to introduce a specific provision enabling the Central Government to prescribe Rules, with suitable safeguards to protect the interest of investors, for such class or classes of companies for whom it shall be adequate to serve such documents as may be prescribed to all their members in electronic mode only for compliance with the provisions of the Act. However, where a member has requested the company to serve physical documents also, the company shall, as an investor friendly measure, also serve such documents in physical mode.**

2.6 It was also brought to the Committee's notice that the *proviso* to Section 20(2)[9] CA-13 allows a member to request the delivery of any document through a particular mode by bearing the fees associated with the same, which the company may determine in its annual general meeting ("**AGM**").

2.7 **The Committee felt that it may be onerous for companies to decide such fees only in an AGM since these meetings are convened only once every year[10] with the primary objective of discussing the company's financial reports, Board reports, auditor's**

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[6] SEBI, 'Relaxations relating to procedural matters –Issues and Listing' Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78(2020) para 1(i) <https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html> accessed 7 January 2022.

[7] Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78, SEBI, 'Relaxations relating to procedural matters –Issues and Listing' Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 (2020), para 1(iii) <https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html> accessed 7 January 2022.

[8] Press Trust of India, 'SEBI extends relaxations for compliance with rights issues till March 31' *Business Standard* (New Delhi, 19 January 2021) <https://www.business-standard.com/article/markets/sebi-extends-relaxations-for-compliance-with-rights-issues-till-march-31-121011901339_1.html > accessed 7 January 2022.

[9] *Proviso* to s 20 of CA-13 - "Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its general meeting."

[10] s 96(1) of CA-13 stipulates that the maximum time limit between two AGMs of a company should not exceed 15 months.

reports declaring dividends of that FY and discussing the appointment of directors and auditors for the forthcoming FY. As such, the Committee recommended that the *proviso* to Section 20(2) should be amended to allow companies to stipulate such fees in *<u>any</u>* general meeting.

3. RECOGNISING ISSUANCE AND HOLDING OF FRACTIONAL SHARES, RSUs AND SARs

Fractional shares

3.1 A fractional share refers to a portion of a share less than one share unit. Fractional shares may arise as a consequence of corporate actions like mergers, issue of bonuses, or rights issues. As per CA-13, holding of fractional shares is not permitted.

3.2 Section 4(1) of CA-13 lays down provisions concerning the memorandum of association ("**MoA**") of a company. In particular, Section 4(1)(e) provides the details in the MoA of a company having a share capital. This includes the number of shares to which the subscribers to the MoA agree to subscribe. Section 4(1)(e)(i) provides that the MoA shall state:

> *"the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe, which **shall not be less than one share.**"*

(Emphasis supplied)

3.3 In addition to Section 4(1)(e)(i), which restricts the ability of subscribers to hold fractional shares, para 4, Table F – Schedule I of CA-13 also provides restrictions to hold fractional shares.

> *"Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in **any fractional part of a share**, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder."*

(Emphasis supplied)

3.4 In practice, shareholders do not receive fractional shares when such shares are created.[11] Instead, the shares arising are held by a trustee appointed by the company's Board who disposes of the said shares in the market at the best available price in one or more lots and distributes such sale proceeds in proportion to the fractional entitlements.[12]

3.5 The Committee deliberated the enabling of holding and trading fractional shares given the increasing participation of retail investors in the market.[13] For example, in FY 2021, over 1.42 crore retail investors entered the market.[14] While retail investors may want to invest in certain companies, they may not have the purchasing power to buy a whole share due to the high price of a single unit. Allowing holding and trading fractional shares would enable them to invest precise and predetermined budgeted amounts in companies whose shares are otherwise inaccessible due to high prices.

3.6 The Committee was apprised of the domestic and international practices concerning fractional shares. The International Financial Services Centres Authority ("**IFSCA**") has recently permitted trading of fractional shares under its regulatory sandbox regime in India.[15] Similar global practices that allow holding and trading fractional shares may be observed in Canada, Japan, and the United States ("**USA**"). In Canada, Section 49(17) of the Canada Business Corporation Act, 1985, provides for the rights of fractional shareholders.[16] In Japan, Article 234 of the Companies Act, 2005 lays down how fractional shares are treated under Japanese law.[17] Similarly, the US Security and Exchange Commission has released a Bulletin in 2020 that expressly aims to inform investors of the availability, benefits, and other rights and obligations associated with fractional share investing and trading.[18]

3.7 **In light of the deliberations detailed above, the Committee felt that CA-13 should be amended to insert provisions that enable issuance, holding and transfer of fractional shares for a class or classes of companies, in such manner as may be prescribed. Such shares should only be issued in dematerialised form. For listed companies, such**

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[11] A Ramaiya, *Guide to the Companies Act* (19th ed., Vol I, Lexis Nexis, 2020) p 913.
[12] A Ramaiya, *Guide to the Companies Act* (19th ed., Vol I, Lexis Nexis, 2020) p 913.
[13] Dhiraj Relli, 'Is this the era of the retail investor?' *The Economic Times* (24 October 2021) <https://economictimes.indiatimes.com/markets/stocks/news/is-this-the-era-of-the-retail-investor/articleshow/87236474.cms> accessed 17 January 2022.
[14] State Bank of India, 'Rising retail participation in the Stock Market: Is it the beginning of a long-term behavioural change?' Ecowrap Issue No 23 (22 June 2021) <https://sbi.co.in/documents/13958/10990811/220621-Ecowrap_20210622.pdf/98268407-3a8a-bacf-085b-3daef4984292?t=1624355750351> accessed 17 January 2022.
[15] NSE International Exchange, 'NSE IFSC to introduce trading in US Stocks' (9 August 2021) <https://www.nseifsc.com/content/press_release/PR_cc_09082021_0.pdf> accessed on 17 January 2022.
[16] Canada Business Corporations Act 1985 (Canada), s 49 (17).
[17] Companies Act 2005 (Japan – translated version), s 234. <http://www.japaneselawtranslation.go.jp/law/detail/?id=2035&vm=02&re=02.> accessed 17th January 2022.
[18] Securities and Exchange Commission, 'Fractional Share Investing – Buying a Slice Instead of the Whole Share' (Office of Investor Education and Advocacy, 9 November 2020) <https://www.sec.gov/oiea/investor-alerts-and-bulletins/fractional-share-investing-buying-slice-instead-whole-share> accessed 17 January 2022.

prescriptions may be made in consultation with SEBI. It is also clarified that this recommendation only pertains to cases that would involve a fresh issue of fractional shares by the company and not to those cases where fractional shares get created for the time being on account of any corporate action.

Restricted Stock Units (RSUs) and Stock Appreciation Rights (SARs)

3.8 In addition to monetary remuneration, the compensation of a company's employees may be linked to its shares, aimed at granting such employees ownership rights in the company. Such schemes include RSUs and SARs that allow employees to subscribe to the company's equity capital.[19] While RSUs do not give the employee an option to purchase or subscribe to the share directly, they are a scheme under which the employee will be entitled to the shares at the end of the vesting period, so long as the restrictions concerning the duration of employment and performance parameters are met.[20] SARs, on the other hand, are a form of incentive or deferred compensation tied to the employing company's stock performance. They give employees the right to the monetary equivalent of the appreciation in the value of a specified number of shares over a specified period.[21] The settlement of the SARs may also be made by way of shares of the company.

3.9 Presently, SARs have been defined under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.[22] Notably, these regulations provide that no scheme, including SARs, shall be offered to employees unless the company's shareholders approve it by passing a special resolution in the general meeting.[23] Under these regulations, there shall be a minimum vesting period of one year.[24] Employees holding an SAR shall not have the right to receive dividends or vote or enjoy the benefits available to a shareholder in respect of an SAR.[25] Presently, there are no regulations in place for RSUs. The Committee observed that while other means of compensating employees' such as Employees' Stock Options ("**ESOPs**") and Sweat Equity Shares have been explicitly recognised by CA-13,[26] RSUs and SARs lack recognition under the same and that this may lead to regulatory gaps

[19] HM Revenue and Customs, 'HMRC Internal Manual: Employment-related Securities Manual' (May 2016) <https://www.gov.uk/hmrc-internal-manuals/employment-related-securities> accessed 6 February 2022.
[20] NASDAQ, 'Restricted Stock Unit's <https://www.nasdaq.com/glossary/r/restricted-stock-units>, accessed 6 February 2022.
[21] NASDAQ, 'Stock Appreciation Rights' <https://www.nasdaq.com/glossary/s/stock-appreciation-rights>, accessed 6 February 2022.
[22] SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, Regulation 2 (qq): A "Stock Appreciation Right or SAR" means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.
[23] SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, Regulation 6 (1).
[24] SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, Regulation 24.
[25] SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, Regulation 25.
[26] CA-13, s 2 (37) and 2 (88), respectively.

and arbitrage.

3.10 **The Committee was of the opinion that RSUs and SARs should be recognised under CA-13 through enabling provisions. If these schemes require the issue of further securities by the company, their issuance must be allowed only after approval of the shareholders through a special resolution. The provisions should also allow an annual omnibus approval by the shareholders of the company to ensure that fresh approvals should not be required at the time of each allotment of such schemes. However, where the settlement of such rights do not involve offer or conversion into securities, approval by shareholders need not be mandated.**

4. EASING THE REQUIREMENT OF RAISING CAPITAL IN DISTRESSED COMPANIES

4.1 Issuing shares at a discount refers to an issue at less than the nominal value or face value of the share, i.e., the value of a share as set out in the books of a company. Section 53(1) of CA-13 prohibits the issue of shares at a discount. Section 53(2) makes the issue of shares at a discounted price void, and Section 53(3) contains penal provisions if such shares are issued. The CLC 2016 had considered including an exception to the prohibition and allowing distressed companies to issue shares at a discount:

> *"It was noted that the Companies Act 1956 allowed companies to issue shares at a discount with the prior approval of the Company Law Board (CLB) though this facility was hardly used.* ***The Committee felt that to enable restructuring of a distressed company when the debt of such a company is converted into shares in accordance with any debt restructuring guidelines specified by Reserve Bank of India (Strategic Debt Restructuring Scheme issued by RBI vide Circular dated 8.06.2015), a company may issue shares at a discount to a creditor referred to in, and as per the guidelines.****"*[27]

4.2 As observed by the CLC 2016, shares were allowed to be issued at a discount under Section 79 of the Companies Act, 1956 (**"CA-1956"**). Section 79(2) prescribed the conditions for such an issue, wherein a company, after at least one year from commencement of business, could pass a resolution that specified the maximum discount rate for issuance of shares and thereafter make an application to the Central Government for approval. While there was a bar on issuing shares at more than a 10% discount, this requirement could be waived at the instance of the Central Government. Section 79(4) contained penal provisions to be applicable where such shares at a discount were issued without following the procedure

[27] Ministry of Corporate Affairs, Government of India, 'Report of the Companies Law Committee' (February 2016) p 29 <https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf> accessed 18 January 2022.

encoded in CA-1956.

4.3 While these provisions have not been carried forward to CA-13, the Companies (Amendment) Act, 2017 (**"CAA-17"**) however, upon the recommendations of the CLC 2016, amended Section 53 of CA-13 to permit companies to issue shares at a discount to their creditors when their debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme following guidelines, directions, or regulations specified by the Reserve Bank of India ("**RBI**").[28]

4.4 While taking note of the consequences of Section 53, the Committee observed that it might cause hardship to distressed companies where the market value of the shares becomes less than the nominal value, thereby leading to difficulties in raising fresh share capital for the revival of the company. This may be especially concerning due to the challenges faced by companies in light of the COVID-19 pandemic. Globally, governments have put in place similar relaxations to ensure businesses run smoothly. The Committee was also apprised that while similar provisions under Section 580 of the United Kingdom (**"UK"**) Companies Act, 2006 prohibit the issuance of shares at a discount,[29] Australian companies do not have authorised capital or par value for shares.[30] Further, the Committee also deliberated that enabling companies to issue shares at a price below the nominal value will allow the Central Government to inject capital into certain distressed companies in public interest by purchasing the shares of such a company at a discounted price.

4.5 The Committee thus discussed the possibility of (i) removing the concept of the nominal value of shares or (ii) relaxing the requirements under Section 53 of CA-13 to allow distressed companies to issue shares at a discount. However, the Committee felt that removing the concept of nominal value would have consequences in several other laws, which refer to the nominal value of shares.

4.6 **Therefore, the Committee recommended that distressed companies should be allowed to issue shares at a discount to the Central Government or State Government or to such class or classes of persons as may be prescribed, notwithstanding the prohibition under Section 53 of CA-13. It was stated that for this purpose, distressed companies may be categorised as such class or classes of companies that have cash losses (other than those arising out of depreciation or revaluation) for previous three consecutive years or more and fulfil such terms and conditions and issue shares at a discount in such manner as may be prescribed by the Central Government. To ensure further safeguards, the Committee recommended that the registered valuers should continue**

[28] CAA-17, s 12 (ii) – amending s 53 of CA-13.
[29] UK Companies Act, 2006, s 580.
[30] Australian Corporations Act, 2001, s 245C.

to value such issuances, failing which such issuances would be void.

5. REPLACING AFFIDAVITS WITH SELF-DECLARATION

5.1 An affidavit is a "*statement or declaration in writing on oath or affirmation before a person having authority to administer oath or affirmation*."[31] In practice, affidavits are affirmations or declarations printed on a stamp paper sworn before a magistrate or public notary.[32] CA-13 encompasses several provisions that lay down a requirement to furnish an affidavit before the Registrar of Companies ("**RoC**"), Regional Director (**"RD"**), the National Company Law Tribunal ("**NCLT**") and the National Company Law Appellate Tribunal (**"NCLAT"**).

5.2 Notably, over the last few years, it has been the avowed objective of the Central Government to promote a trust-based system by way of self-declaration in place of affidavits to promote the ease of doing business in India.[33] Several states such as Delhi,[34] Punjab,[35] and Himachal Pradesh[36] have already replaced affidavits with declarations, save those required by statutory provisions, to enable swifter delivery of public services to citizens. In this context, the Committee considered whether the requirement of furnishing a declaration in the form of an affidavit under CA-13 and Rules made thereunder could be replaced by self-declaration.

5.3 Self-declaration serves the same purpose as an affidavit without the formality of printing the declaration on a stamp paper and attestation on oath by a magistrate or public notary. In the context of CA-13, the replacement of affidavits with declarations does not detract from the severity of consequences, given that furnishing a false declaration attracts punishment under Section 448 of CA-13. Further, the punishments for giving false evidence on affidavits, as laid down under Section 193 of the Indian Penal Code, 1860 ("**IPC**"), are the same as the punishment for issuing or signing a false certificate or

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[31] P. Ramantha Aiyar, *Advanced Law Lexicon* (6th edn, Lexis Nexis, 2019).

[32] Punjab Governance Reforms Commission, 'Reforming Public Service Delivery Systems in India' (February 2016) p 1 < https://darpg.gov.in/sites/default/files/25.%20Rationalisation%20of%20Affidavits.pdf > accessed 4 January 2022.

[33] Press Information Bureau, Government of India, 'PM Encourages Self-certification in place of affidavits and attestations to benefit the common man' (*Prime Minister's Office*, 1 August 2014) < https://pib.gov.in/newsite/PrintRelease.aspx?relid=107872> accessed 4 January 2022.

[34] Department of Administrative Reforms, Government of National Capital Territory of Delhi, 'Abolition of affidavits/attestation and adoption of self-certification' (November 2015) < http://it.delhigovt.nic.in/writereaddata/Odr2016116.pdf > accessed 4 January 2022.

[35] Department of Personnel, Government of Punjab, 'Implementation of the recommendations of the Punjab Governance Reforms Commission' (March 2010) <https://pbforests.gov.in/Pdfs/new/closed.pdf > accessed 4 January 2022.

[36] Department of Administrative Reforms, Government of Himachal Pradesh, 'Abolition of Affidavits - Introducing Self-certification' (January 2015) < https://himachal.nic.in/WriteReadData/l892s/16_l892s/Scan_000026-76503220.pdf > accessed 4 January 2022.

declaration under Section 197 of the IPC. Section 197 of the IPC expressly provides that any person that issues or signs any certificate required by law, with knowledge or belief that such a certificate is false, is punishable in the same manner as if she gave false evidence. As such, the Committee believed that replacing affidavits with self-certification/declaration will not decrease deterrence. The Committee also took note of similar substitutions of affidavit with self-declaration that was carried out through the CAA-17 pursuant to the recommendations made by the CLC 2016.[37]

5.4 **Given the benefits of self-declaration, the Committee recommended that the requirement of furnishing an affidavit should be replaced with filing a declaration under the provisions of CA-13 and Rules made thereunder, except in those provisions that involve filing an affidavit in a judicial or quasi-judicial proceeding before the NCLT, the NCLAT, or the RD. *Table 1* contains the provisions of CA-13 and the Rules framed thereunder where the requirement of filing affidavits is sought to be replaced with a declaration.**

Table 1

S No.	Provision	Purpose of Affidavit
1.	Section 68(6) read with Rule 17(3), Companies (Share Capital and Debenture) Rules, 2014	Where a company proposes to buy-back its shares/ securities under this section, an affidavit is required to be filed by two directors before the RoC and SEBI to the effect that the company will not be rendered insolvent for one year.
2.	Section 374(c)	Company registering under Chapter XXI Part I is required to file an affidavit from all members/ partners that in the event of registration, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered.

[37] Ministry of Corporate Affairs, Government of India, 'Report of the Companies Law Committee' (February 2016) p 23 <https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf> accessed 4 January 2022.

3.	Rule 7(4)(i), Companies (Incorporation) Rules, 2014	A company applying to convert into a One Person Company must apply for the RoC in the prescribed form. Such an application is required to be accompanied by an affidavit from the company's directors confirming that all members and creditors of the company have given their consent for conversion.
4.	Rule 8A(1)(j), Companies (Incorporation) Rules, 2014	A name including the phrase 'Electoral Trust' may be allowed for registration of companies to be formed under Section 8 of CA-13 following the Electoral Trusts Scheme, 2013, notified by the Central Board of Direct Taxes. For this purpose, the name application is required to be accompanied by an affidavit to the effect that the name obtained shall be only for registration of companies under the said scheme.
5.	Rule 10(3)(b), Companies (Registration of Foreign Companies) Rules, 2014	Foreign companies must attach a translation of their documents, where such documents are not submitted to the RoC in English. Where the translation is done in India, it is required to be authenticated by an affidavit of a competent person, having adequate knowledge of both the original language and English, in the opinion of the RoC.
6.	Rule 4(3)(iii), The Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016	An application for removal of the name of a company under Section 248(2) of CA-13 made to the RoC is required to be accompanied by an affidavit, in the prescribed form, by every director of the company.

6. CLARIFYING PROVISIONS ON BUY-BACK OF SECURITIES

6.1 Section 68 of CA-13 empowers companies to buy-back their shares or other specified securities from members holding such shares or securities. While Section 68(1) lays down the general power of a company to carry out a buy-back, Section 68(2)(c) stipulates certain conditions on the number of shares or securities that can be bought back. It mandates that the buy-backs by a company, in a given FY, cannot exceed twenty-five per cent of the aggregate of paid-up capital and free reserves of the company. However, the *proviso* to Section 68(2)(c), which clarifies the manner in which such twenty-five per cent shall be construed in respect of buy-back of equity shares, omits a reference to 'free reserves' to calculate the twenty-five per cent limit. Section 68(2)(c) and its *proviso* are reproduced below:

> *"(c) the buy-back is twenty-five per cent or less of the* ***aggregate of paid-up capital and free reserves of the company:***
>
> ***Provided*** *that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to* ***its total paid-up equity capital in that financial year****."*[38]

(Emphasis supplied)

6.2 In this respect, the Committee deliberated whether 'free reserves' are to be included while calculating the threshold of twenty-five per cent in case of buy-back of equity shares.

6.3 The Committee noted the difference in the provision's language on buy-backs under Section 77A of CA- 1956 and Section 68 of CA-13. Section 77A(2)(c) provides that the buy-back shall be twenty-five per cent or less *"of the total paid-up capital and free reserves of the company"*. In contrast, Section 68(2)(c) stipulates that the buy-back shall be twenty-five per cent or less *"of the* ***aggregate*** *of paid-up capital and free reserves of the company"*.

6.4 The Committee took note of the deliberate inclusion of the word "aggregate" in Section 68(2)(c) of CA-13. It, therefore, opined that the twenty-five per cent limit in this section refers to the aggregate value of the sum of the total paid-up capital and free reserves of the company. Further, the Committee was also cognizant that the *proviso* under both the Acts is explanatory and seeks to clarify how 'paid-up share capital' is to be construed in the context of equity shares.

6.5 **As such, the Committee was of the opinion that 'free reserves' are to be included in the calculation of buy-back of equity shares, even if the term has not been specifically included in the *proviso*. For clarity, the Committee sought to include the reference to 'free reserves' in the *proviso* to Sec 68(2)(c).**

6.6 The Committee also discussed the need for clarity concerning the stage at which shares arising out of employee benefit schemes by companies that grant stock options (such as ESOPs) can be bought back. The Committee considered the provisions of Section 68 and the Rules made thereunder. It was agreed that only those shares concerning which the

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[38] CA-13, s 68(2)(c).

shareholders have exercised the stock options should be allowed to be bought back by the company.

6.7 **The Committee, therefore, recommended that the Explanation at the end of Section 68 should be amended and the words "which have been exercised" may be inserted after the words "stock option".**

7. SPECIFIC PROHIBITION ON THE INCLUSION OF TRUSTS ON THE REGISTER OF MEMBERS

7.1 Under Section 89(10) of CA-13 and the Companies (Significant Beneficial Owners) Rules, 2018, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to (i) exercise any or all of the rights attached to such share; or (ii) receive or participate in any dividend or other distribution in respect of such share. Such beneficial interest may be held through a trust whereby shares are held in a company by one party for the benefit of another.

7.2 Section 153 of the erstwhile CA-56 provided that the register of members or debenture holders shall not contain notice of any trust expressly, impliedly or constructively. The rationale behind this section was to relieve the company from taking notice of third-party rights regarding the shares registered in the names of any members.[39]

7.3 The Committee noted that there are no provisions corresponding to Section 153 of CA-56 in CA-13. However, Para 4, Table F- Schedule I of CA-13 currently prohibits a company from recognising a person holding any share upon a trust. The Committee agreed that the provision akin to Section 153 of CA-56 would provide further clarity on this issue.

7.4 **In light of the above, the Committee recommended the insertion of a provision corresponding to Section 153 of CA-56 in CA-13 that expressly prohibits companies from entering notice of any trust, express, implied, or constructive on their register of members or of debenture holders.**

8. HOLDING GENERAL MEETINGS THROUGH THE USE OF TECHNOLOGY

8.1 Section 96 of CA-13 stipulates that every company other than a one-person company must hold an AGM each year. Section 96(2) further specifies that such a meeting shall take place on any day that is not a national holiday, during business hours, and at the registered office of the company, or some other place in the city, town or village where the registered office

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[39] A. Ramaiya, *Guide to the Companies Act* (17th edn., Lexis Nexis, 2010) p 4 [s 153]; Peeyush Agarwal v. Sanjiv Bhavnani (2014) 5 HCC (Del) 198.

of the company is situated. Section 100 of CA-13 provides that the company's Board may arrange an Extraordinary General Meeting ("**EGM**") whenever it deems fit.

8.2 Notably, owing to the COVID-19 pandemic and the social distancing norms in place, the MCA had allowed EGMs to be convened through Video-Conferencing ("**VC**") or Other Audio-Visual Means ("**OAVM**"), vide its circulars dated 8th April 2020 and 13th April 2020.[40] Subsequently, in light of the representations made by various companies and shareholders, the MCA further extended these relaxations to apply to AGMs.[41] The MCA also permitted 'hybrid meetings', thereby allowing flexibility for members to attend meetings either physically or virtually.[42]

8.3 The Committee was apprised of the suggestions received from a gamut of stakeholders on allowing such flexibility of holding AGMs and EGMs, either fully or partially through VC or OAVM, by way of an enabling provision within CA-13. The stakeholders submitted that such flexibility was a welcome change as it is cost-effective, ensures members' wider participation, and is more convenient. Hence, stakeholders believed that these relaxations must remain operational irrespective of the restrictions ensuing from the pandemic.

8.4 The Committee was also briefed on similar relaxations introduced in other jurisdictions that have seamlessly allowed meetings to be conducted virtually and in hybrid mode. For instance, Singapore[43] and Australia[44] allowed companies to hold meetings virtually as long as the participants were given adequate notice. Additionally, the Committee also took note of existing regulatory practices in countries such as South Africa[45] and Japan[46] that allow

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[40] Ministry of Corporate Affairs, Government of India, 'Clarification on the passing of ordinary and special resolutions by companies under the Companies Act, 2013 and Rules made thereunder on account of the threat posed by COVID-19' General Circular No. 14/2020 (2020) <https://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf> accessed 11 January 2022: General Circular No. 17/2020, Ministry of Corporate Affairs, Government of India, 'Clarification on the passing of ordinary and special resolutions by companies under the Companies Act, 2013 and Rules made thereunder on account of the threat posed by COVID-19' General Circular No. 17/2020 (2020) <https://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf> accessed 11 January 2022.

[41] Ministry of Corporate Affairs, Government of India, 'Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio-visual means (OAVM)' General Circular No. 20/2020 (2020) <https://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf > accessed 11 January 2022.

[42] Ministry of Corporate Affairs, Government of India, 'Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio-visual means (OAVM)' General Circular No. 20/2020 (2020) Para 3 (A) (VI) <https://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf > accessed 11 January 2022.

[43] COVID-19 (TEMPORARY MEASURES) ACT 2020, pt. 4, s 27. <https://sso.agc.gov.sg/Act/COVID19TMA2020> accessed 11 January 2022.

[44] Treasury Laws Amendment (2021 Measures No. 1) Act 2021, ss 249R - 253Q- <https://www.legislation.gov.au/Details/C2021A00082> accessed 11 January 2022.

[45] Companies Act, 2008, s 63(2) and (3) <https://www.gov.za/sites/default/files/gcis_document/201409/321214210.pdf> accessed 11 January 2022.

[46] Ministry of Economy, Trade and Industry, 'Overview of the Guidelines on Approaches to Hybrid Virtual ShareholderMeetings'<https://www.meti.go.jp/english/press/2020/pdf/0226_002a.pdf> accessed 11 January 2022.

virtual and hybrid meetings even during ordinary circumstances irrespective of the restrictions stemming from the pandemic.

8.5 **Consequently, owing to the multifarious benefits of relaxing the requirement for physical meetings, the Committee recommended amending suitable provisions of CA-13 to enable the Central Government to prescribe the manner in which companies can hold AGMs and EGMs physically, virtually and in hybrid mode. It was also stated that where the meeting is for an EGM to be conducted entirely in electronic mode, the notice period for such meetings could be reduced to such period as may be prescribed by Central Government. The Committee proposed to empower the Central Government to prescribe detailed procedures and safeguards by way of Rules.**

9. MAINTAINING STATUTORY REGISTERS THROUGH AN ELECTRONIC PLATFORM

9.1 As per CA-13 and the Rules framed thereunder, companies are mandated to maintain records in the form of registers that contain particulars relating to their dealings, including information about the company's directors, shareholders, loans, etc. Presently, there are about fifteen statutory registers under CA-13 that companies are obligated to maintain. A complete list of the registers required under CA-13 is enclosed in *Table 2*.

9.2 The Committee took note of the compliance costs associated with the physical maintenance of statutory registers, particularly given that they require frequent updates. To ease this regulatory burden, the Committee deliberated creating an online platform for maintaining statutory registers under CA-13.

9.3 It was felt that creating such an electronic platform to maintain registers would make the process more secure and transparent, thereby avoiding duplication of effort for companies. It was further noted that a single consolidated platform would make sharing and viewing information stored in such registers easier for all stakeholders.

9.4 The Committee was apprised of emerging global regulatory practices that encourage maintaining statutory registers electronically through a platform operated and maintained by the Central Government. For instance, in Singapore, the Accounting and Corporate Regulatory Authority[47] provides an electronic platform and requires companies to maintain and update information in registers on such platform. Similarly, the Modernising Business Registers Program in Australia, implemented as a part of its Digital Business Plan between

[47] Accounting and Corporate Regulatory Authority, 'Updating Information of Companies and Company Officers' <https://www.acra.gov.sg/how-to-guides/updating-information-of-companies-and-company-officers > accessed 4 January 2022.

2021-2024, proposes establishing Australian Business Registry Services, which aims to streamline how companies register, view, share and maintain business information.[48]

9.5 **In light of these globally accepted practices and benefits of maintaining registers electronically, the Committee recommended that certain class or classes of companies, as may be prescribed, should be required to compulsorily maintain their registers on an electronic platform in such form and manner as may be prescribed by the Central Government. For this purpose, the Committee recommended that the Central Government may set up an electronic platform for such registers to be maintained, stored and periodically updated. Additionally, the requirement to include past records pertaining to statutory registers on the electronic platform should also be provided with adequate transitional period.**

9.6 **All data stored in these statutory registers would be deemed to be in the constructive possession of the company itself, which can share this information with its stakeholders electronically and mask any personal details, which need not be disclosed while sharing the information. No one, including the Central Government, would have access to such registers in the ordinary course. However, in the case of certain enforcement-related functions, Central Government may be allowed to direct the company to share the information held on the statutory registers.**

Table 2

S No.	Section under CA-13/ Corresponding Rule	Name of Register
1.	Section 42 of CA-13 r/w Rule 14(4) of Companies (Prospectus and Allotment of Securities) Rules, 2014	Record of private placement offers (PAS-5)
2.	Section 46(3) r/w Rule 6(3)(a) of Companies (Share Capital and Debentures) Rules, 2014	Register of renewed & duplicate share certificates (Form SH-2)

48 Australian Taxations Office, Australian Government, 'Modernising Business Registers' <https://www.ato.gov.au/general/gen/modernising-business-registers/> accessed 4 January 2022.

3.	Section 54 r/w Rule 8(14)(a) of Companies (Share Capital and Debentures) Rules, 2014	Register of sweat equity shares (Form SH-3)
4.	Section 62 r/w Rule 12(10)(a) of Companies (Share Capital and Debentures) Rules, 2014	Register of employee stock options (Form SH-6)
5.	Section 68(9) r/w Rule 17 (12) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of shares or securities bought back (Form SH-10)
6.	Section 73 r/w Rule 14(1), Companies (Acceptance of Deposits) Rules, 2014	Register of deposits
7.	Section 85(1) r/w Rule 10(1) of Companies (Registration of Charges) Rules, 2014	Register of charges (Form CHG-7)
8.	Section 88(1)(a) r/w Rule 3(1) of Companies (Management and Administration) Rules, 2014	Register of members (Form MGT-1)
9.	Section 88(1)(b) and (c) r/w Rule 4 of Companies (Management and Administration) Rules, 2014	Register of debenture holders and any other security holder (Form MGT-2)
10.	Section 88(3) of CA-13 r/w Section 11 of the Depositories Act, 1996	Register and index of the beneficial owner
11.	Section 88(4) r/w Rule 7(1), Companies (Management and Administration) Rules, 2014	Foreign register of members, debenture holders, other security holders or beneficial owners residing outside India (Form MGT-3)

12.	Section 90(2) r/w Rule 5(1) of the Companies (Significant Beneficial Owners Rules), 2018	Register of significant beneficial owners (Form BEN-3)
13.	Section 110 of CA-13 r/w Rule 22(10) of the Companies (Management and Administration) Rules, 2014	Register of Postal Ballot
14.	Section 170(1)	Register of directors and ("**KMP**") and their shareholding
15.	Section 186(9) r/w Rule 12(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of loans, guarantees, security and acquisition made by the company (Form MBP-2)
16.	Section 187(3) r/w Rule 14(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of investments made by a company and not held in its own name (Form MBP-3)
17.	Section 189(1) r/w Rule 16(1) of The Companies (Meetings of Board and its Powers) Rules, 2014	Register of contracts or arrangements in which directors are interested (Form MBP-4)

10. IEPF RELATED CHANGES IN SECTIONS 124 AND 125 OF CA-13

10.1 Section 125(1) of CA-13 establishes an IEPF to promote investor welfare through investors' education, awareness and protection. Section 125(2) lists the sources of monies for the fund. This includes the amount in the Unpaid Dividend Account of companies to be transferred to the IEPF under Section 124(5).[49] In particular, Section 124(5) provides that any money transferred to the Unpaid Dividend Account of a company that remains unpaid or unclaimed for seven years from the date of such transfer shall be transferred to the IEPF along with interest accrued, if any. While Section 124(5) includes the transfer of monies in the Unpaid Dividend Account, Section 124(6) prescribes that all shares in respect of which dividends have not been paid or claimed for seven consecutive years or more shall also be

[49] CA-13, s 125 (2) (c).

transferred by the company to the IEPF.

10.2 **It was brought to Committee's attention that there exist certain ambiguities in the present formulations of Sections 124 and 125. The Committee was of the opinion that Sections 124 and 125 of CA-13 need to be suitably amended as follows:**

(i) **In Section 124(5) concerning the transfer of money transferred to the Unpaid Dividend Account, after the words *"such transfer"*, the words *"or any dividend, which has not been paid or claimed in respect of securities transferred by the company under sub-section (6)"* should be inserted.**

The Committee was apprised that presently, at the time of transfer of shares to IEPF after seven years, the dividend of only the first year is being transferred along with the shares. The unclaimed dividend for the balance of six years continues to lie with the company, and the same gets transferred to IEPF over the next six years. Thus, the Committee believed that suitable amendments should be made to Section 124(5) to mandate the transfer of all unclaimed dividends in respect of shares at the time of transfer of shares by the company under Section 124(6). This is necessary to clarify that all pending or unclaimed dividends (irrespective of the year they pertain to) regarding securities being transferred to IEPF shall also be transferred to the fund.

(ii) **In Section 125(3)(a), which provides the purposes for which the fund may be utilised, after the words *"matured debentures"*, the words *"redemption amount towards unpaid or unclaimed preference shares"* should be inserted.**

The Committee was of the opinion that the inclusion of redemption amount towards unpaid or unclaimed preference shares would be in line with the aims of the Fund as well as the sources of monies transferred to it under Section 125(2)(m), which provides that there shall be credited to the fund *"redemption amount of preference shares remaining unpaid or unclaimed for seven or more years"*.

(iii) **After Section 125(11), the following sub-section should be inserted:**

"(12) The authority may, by general or special order in writing, delegate to any member, officer or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it deems necessary."

The Committee took note of the delegation powers in legislations such as Insolvency and Bankruptcy Code 2016 ("**IBC**"), which provides that the

Insolvency and Bankruptcy Board of India ("**IBBI**") may delegate powers and functions to any member or officer under the Code as it may deem necessary,[50] and the Pension Fund Regulatory and Development Authority Act 2013, which allows the Authority to delegate to any member or officer of the Authority such of its powers and functions as it may deem necessary.[51] In line with the same, the Committee believed that the IEPF Authority must also be similarly empowered to delegate its functions to ease administration.

(iv) **Amendment to enable monies that remain unclaimed for seven years or more in respect of shares/securities that have either been bought back or cancelled, to be transferred to IEPF**

The amount payable to shareholders after their shares/securities were bought back/cancelled under Section 68 of CA-13, which has remained unclaimed for seven years or more, should also be transferred to IEPF. Section 125(2) should be amended for this purpose. The consequential change in Section 125(3) to claim back such an amount may also be included.

11. STRENGTHENING THE NATIONAL FINANCIAL REPORTING AUTHORITY

11.1 Section 132(1) of CA-13 empowers the Central Government to constitute the National Financial Reporting Authority ("**NFRA**") for matters relating to accounting and auditing standards for companies.[52] NFRA seeks to protect public interest and the interests of investors, creditors and others associated with the companies or bodies corporate. It has powers to investigate misconduct committed by any member or firm of chartered accountants registered under the Chartered Accountants Act, 1949,[53] i.e., it aims to ensure oversight over professionals in their audit and accounting related services to companies.

11.2 Sub-sections (3), (3A) and (3B) of Section 132 further provide the composition and manner of appointment of chairperson and members of NFRA. Section 132(13) obligates NFRA to maintain books of accounts in the form prescribed by the Central Government in consultation with the Comptroller and Auditor General ("**CAG**") of India.

11.3 While taking note of the provisions concerning NFRA, the Committee deliberated upon the autonomy of NFRA and its powers under CA-13. In particular, this includes the NFRA's ability to take penal action against auditors, have a dedicated NFRA fund, and

[50] Insolvency and Bankruptcy Code 2016, s 230.
[51] Pension Fund Regulatory and Development Authority Act 2013, s 49.
[52] Twenty-first Report of the Standing Committee on Finance, Ministry of Corporate Affairs, Government of India, 'The Companies Bill 2009', Fifteenth Lok Sabha (August 2010) <https://eparlib.nic.in/bitstream/123456789/64114/1/15_Finance_21.pdf> accessed 17 January 2022.
[53] CA-13, s 132(4)(a).

make regulations.

Penal action against companies and auditors for matters other than professional or other misconduct

11.4 Section 132(4) of CA-13 provides that NFRA shall have the power to investigate matters of 'professional or other misconduct' committed by any member or firm of chartered accountants. When such misconduct is proved, it can impose a penalty or debar the member or the firm from being appointed as an auditor or internal auditor or valuer under CA-13 or from undertaking an audit, internal audit and valuation under the Act. The amount of penalty and period of debarment (both in the case of individuals and firms) has been provided under such provisions.

11.5 Professional or other misconduct has the same meaning assigned under Section 22 of the Chartered Accountants Act, 1949,[54] which reads as under:

> *"For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances."*[55]

11.6 The First and Second Schedules under the Chartered Accountants Act,1949, contain matters that would be considered "professional misconduct" about chartered accountants in practice, chartered accountants in service, members of the Institute of Chartered Accountants of India (**"ICAI"**) generally, and other misconduct about members of the ICAI generally.[56]

11.7 The Committee discussed that NFRA does not have the powers to take actions against individuals and firms for non-compliance with CA-13 and requirements thereunder, which do not qualify as 'professional or other misconduct'. In particular, it was informed that as per data with the MCA, approximately 11,000 auditors had not filed NFRA 2 – an annual return to be filed by auditors under Rule 5 of the NFRA Rules, 2018.

11.8 **The Committee was accordingly of the opinion that NFRA should be empowered to take appropriate action against other contraventions in addition to its existing powers to take action against 'professional or other misconduct'. There should also be specific provisions to enable NFRA to initiate appropriate penal action in case its orders are**

[54] CA-13, s 132(4)(c)(B).
[55] Chartered Accountants Act, 1949, s 22.
[56] Chartered Accountants Act, 1949, The First Schedule and The Second Schedule.

neither complied with nor any appeal against such an order has been filed in the NCLAT.

Constitution of a NFRA fund

11.9 Currently, NFRA receives its funding entirely from the Central Government. These funds are used for the (a) salaries and allowances etc., for Chairperson, Members and other officers and employees of NFRA; and (b) other expenses of NFRA connected with functions and purposes of NFRA under CA-13.

11.10 Given their specialised nature, regulatory authorities like NFRA require the necessary capabilities to discharge their functions.[57] The Committee deliberated the necessity for augmenting the degree of financial autonomy for NFRA.

11.11 The Committee was of the opinion that provisions concerning financial autonomy as is present for other regulatory bodies may also be incorporated for NFRA. For example, Section 222 of the IBC establishes the 'Board Fund', which is meant to meet the expenses of the IBBI. The Board Fund receives monies from all grants, fees received by the IBBI; all sums received from such other sources as decided by the Central Government; and such additional funds as may be specified by the IBBI or prescribed by the Central Government.[58]

11.12 Similarly, Section 51 of the Competition Act, 2002 establishes a Competition Fund, which receives monies from Central Government grants; fees received under the Act; and the interest accrued on the amounts received. It is used for the (a) salaries and allowances of the Chairperson, Members, and officers of the Competition Commission, and (b) other expenses of the Commission in connection with the discharge of its functions and purposes under the Act.[59]

11.13 **The Committee was of the opinion that suitable amendments be made to CA-13 for the constitution of a NFRA Fund.**

Enabling NFRA to make regulations and granting supervisory powers to the NFRA Chairperson

11.14 Section 132 of CA-13 enables the Central Government to make Rules for the functioning of NFRA. For example, the Government has prescribed the (i) NFRA (Manner of appointment & other terms and conditions of service of Chairperson and Members) Rules,

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[57] Dr KP Krishnan, 'Human Resource and Regulatory Autonomy', Business Standard (September 2021). <https://www.business-standard.com/article/opinion/human-resources-regulatory-autonomy-121092301711_1.html> accessed 17 January 2022.

[58] Insolvency and Bankruptcy Code 2016, s 222.

[59] Competition Act, 2002, s 51.

2018; (ii) NFRA Rules, 2018; (iii) NFRA (Meeting for Transaction of Business) Rules, 2019; and (iv) NFRA (Recruitment, Salary, Allowances and other Terms and Conditions of Service of Secretary, Officers and other Employees of Authority) Rules, 2019. Presently, NFRA does not have any regulation-making powers under CA-13.

11.15 The Committee received suggestions that Section 132 may be amended to include enabling powers for NFRA to make regulations concerning certain matters. In this light, the Committee deliberated that when Section 132 was notified, it did not include regulation-making powers. Any divergence would require due consideration. The Committee believed that certain regulation-making powers, sufficiently encumbered by checks and balances, may be given to NFRA.[60] As such, the Committee thought it may be prudent to enable NFRA to make regulations in specific instances that shall be outlined in CA-13. This includes instances where autonomy is required for smoother internal functioning and instances that necessitate subject-matter expertise and immediate requirement for regulation.

11.16 The Committee thought granting such powers to NFRA would require accountability and good governance. In this regard, the Committee was apprised of the regulation-making powers of other regulators. As particular examples, Section 52 of the Airports Economic Regulatory Authority of India Act, 2008, which enables the concerned regulator to make regulations,[61] is encumbered by Section 13 (4), which imposes checks and balances on the regulator by mandating consultations with all stakeholders and documenting and explaining all decisions.[62] Similarly, Section 240 of the IBC enables the IBBI to make regulations.[63] Given good governance practices, IBBI has enacted the IBBI (Mechanism for Issuing Regulations) Regulations, 2018, which govern its regulation-making process and ensure accountability.

11.17 Other regulators, particularly the RBI,[64] SEBI,[65] the Insurance Regulatory and Development Authority of India,[66] the Pension Fund Regulatory and Development Authority,[67] also have regulation-making powers under the parent statute, albeit, with adequate safeguards.

11.18 **Thus, the Committee recommended that NFRA should be enabled to make**

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[60] Shubho Roy, Ajay Shah, BN Srikrishna, and Somasekhar Sundaresan. 'Building State capacity for regulation in India.' National Institute of Public Finance and Policy (2018). <https://macrofinance.nipfp.org.in/PDF/RSSS_building-state-capacity.pdf> accessed 17 January 2022.
[61] Airports Economic Regulatory Authority of India Act, 2008, s 52.
[62] Airports Economic Regulatory Authority of India Act, 2008, s 13.
[63] Insolvency and Bankruptcy Code 2016, s 240.
[64] Reserve Bank of India Act 1934, s 58.
[65] Securities and Exchange Board of India Act 1992, s 30.
[66] Insurance Regulatory and Development Authority of India Act 1999, s 26.
[67] Pension Fund Regulatory and Development Authority Act 2013, s 52.

regulations for specific matters such as form and manner of filing information with NFRA, and place, timing, and procedure to be followed for meetings of the NFRA. However, it discussed that in accordance with principles of good governance and accountability followed by the Central Government, such powers should be sufficiently encumbered with safeguards.

11.19 In keeping with the need for operational autonomy of NFRA, the Committee also deliberated the need to specify that the Chairperson shall have the powers of general superintendence, direction and control regarding administrative matters of NFRA. Similar provisions are included in Section 13 of the Competition Act, 2002,[68] and Section 191 of the IBC.[69]

11.20 **It was thus of the opinion that Section 132 be suitably amended to provide the NFRA Chairperson with powers of general superintendence and direction within NFRA.**

12. STRENGTHENING THE AUDIT FRAMEWORK

12.1 Auditing is an independent review of a company's financial information by an 'auditor'. It is essential in detecting and preventing errors and fraud. Chapter X of CA-13, i.e., Sections 139 to 148, and the Companies (Audit and Auditors) Rules, 2014, govern the manner in which companies are audited under CA-13. This includes provisions on auditors' appointment,[70] removal and resignation,[71] and eligibility.[72] CA-13 also envisages penalties for non-compliance with the provisions relating to the discharge of the auditor's duties.[73] It provides for the power of NCLT to debar auditors if they act fraudulently or abet or collude in any fraud by, or relation to, the company or its directors or officers.

12.2 Given the importance of audits and their crucial role in corporate governance, the Committee deliberated mechanisms to strengthen audits laid down in CA-13. In particular, it discussed the ability to specify varying prohibited non-audit services for different classes of companies. The Committee also discussed the need for suitable amendments to Section 147 concerning punishment for contravention of CA-13, provisions concerning resignations and joint audits.

Non-Audit Services

12.3 Section 144 of CA-13 lists certain services that an auditor is prohibited from rendering. This includes services related to accounting, bookkeeping and actuarial services. In

[68] Competition Act, 2002, s 13.
[69] Insolvency and Bankruptcy Code 2016, s. 191.
[70] CA-13, s 139.
[71] CA-13, s 140.
[72] CA-13, s 141.
[73] CA-13, s 147.

addition to the list of prohibited services, it also empowers the Central Government to prescribe any additional service as a 'prohibited non-audit service'.[74] As per Section 147(2), if an auditor performs such services, she shall be punishable with a fine that is not less than twenty-five thousand rupees but may extend to five lakh rupees or four times the auditor's remuneration, whichever is less.

12.4 In 2018, the Committee of Experts on Regulating Audit Firms and their Networks had considered whether auditors, firms and networks should be prohibited from providing any non-audit services to their auditee companies. It took particular note of international practices concerning such services and observed that:

> *"While section 144 of the Companies Act, 2013 provides an exhaustive list of prohibited non-audit services, it also authorises the government to prescribe any other kind of services in this list. The COE has noted that there could be a case of self-review risk if certain services are allowed to be provided by the auditor. Therefore, there is a need to revisit the list keeping in view the various kind of services rendered by auditors, which can possibly result in conflict of interest."*[75]

12.5 The Committee deliberated that while Section 144 allows the Central Government to prescribe non-audit services for one or more companies, there is a strong need to formulate different lists for different classes of companies. It felt that companies that do not have a public interest may avail some of the currently prohibited non-audit services from their auditors. In contrast, companies, where the public interest is inherent, must only avail audit-related services from their auditors, and non-audit services of any kind, directly or indirectly, should be not be rendered by the statutory auditors to the company or its holding, subsidiary or associate company(ies).

12.6 In this regard, the Committee took note of the classes of companies for which NFRA has the jurisdiction under Section 132 of CA-13 read with NFRA Rules, 2018, which includes:

> *"(a) companies whose securities are listed on any stock exchange in India or outside India;*
>
> *(b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of*

[74] CA-13, s 144(i).

[75] Report of the Committee of Experts, Ministry of Corporate Affairs, Government of India, 'Findings and recommendations regulating audit firms and their networks' (October 2018) <http://www.mca.gov.in/Ministry/pdf/2018_CommitteeExperts_Report_08112018.pdf> accessed 17 January 2022.

not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;"

12.7 **In line with these deliberations, the Committee was of the opinion that differing classes of companies may be permitted to avail differing non-audit services from their auditors. Thus, it recommended that Section 144 of CA-13 may be amended to enable the Central Government to prescribe a differential list of prohibitions on availing non-audit services or total prohibition of the same for such class or classes of companies where public interest is inherent, as may be prescribed.**

Punishment under Section 143

12.8 Section 143 of CA-13 provides the powers and duties of auditors and auditing standards, including rights of access to books of account and making a report to the company members. In particular, under Section 143(12), if an auditor of a company has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, she needs to report the matter to the Central Government or committee constituted by the Board depending on the amount involved in the suspected fraud.

12.9 Section 143(15) provides the penalty if an auditor does not comply with the provisions of sub-section (12). Prior to the amendment of Section 143(15) in 2020, such a defaulting auditor was punishable with a fine, not less than one lakh rupees, but which may extend to twenty-five lakh rupees. However, upon the amendment in 2020, she shall be punishable with a penalty of five lakh rupees in the case of listed companies and one lakh rupees for any other company.[76]

12.10 Section 143(15) only provides the penalty for non-compliance of sub-section (12). Non-compliance of other sub-sections was earlier covered by Section 147, which provided that if an auditor contravened any of the provisions of Section 139, 143, 144, or 145, she / it would be punishable with a fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less. However, Section 147 was amended in 2020 and inadvertently omitted the entire Section 143 from the purview of punishments.[77]

[76] CAA-20, s 30 – amending s 143 of CA-13.
[77] CAA-20, s 31 – amending s 147 of CA-13.

12.11 **The Committee noted that after the amendment to Section 147 through the Companies (Amendment) Act, 2020 ("CAA-20"), auditors are not presently punishable for the contravention of Section 143, except for contravention of Section 143(12), which is covered by Section 143(15). To rectify this anomaly, it recommended that a suitable amendment may be made to Section 147 to cover penal consequences for contravention of Section 143 regarding sub-sections other than sub-section (12).**

Resignation by auditors

12.12 The third *proviso* to Section 139(2) of CA-13 allows auditors to resign from their position. Moreover, Section 140(2) provides the procedure for such resignation. An auditor that resigns from a company shall file a statement within 30 days with the company and the RoC indicating the reasons and other facts as may be relevant about her resignation. Rule 8 of the Companies (Audit and Auditors) Rules, 2014 refers to the form of such a statement, which shall include the 'reasons for resignation' and 'any other facts relevant to the resignation'.

12.13 CLC 2016 had deliberated on the provisions concerning the punishment if such a statement is not filed within the prescribed time. It observed:

> *"Section 140 (3) prescribes a minimum fine of Rupees fifty thousand in case the auditor does not file the statement with regard to his resignation. This fine was considered onerous for auditors of small companies. The Committee recommended that the minimum fine may be reduced to Rupees fifty thousand or the audit fees, whichever is lesser."*[78]

12.14 Presently, if an auditor does not comply with the provisions of Section 140(2), Section 140(3) specifies that she shall be liable to a penalty of fifty thousand rupees or an amount equal to her remuneration, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

12.15 The Committee received representations that there have been several instances of resignation by auditors despite the concerned provisions. In 2018, the Committee of Experts on Regulating Audit Firms and their Networks had also observed that:

> *"The year 2018 also witnessed the resignation of several statutory auditors of listed entities over a short period of time. MCA has already ordered investigation*

[78] Ministry of Corporate Affairs, Government of India, 'Report of the Companies Law Committee' (February 2016) p 77 <https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf> accessed 17 January 2022.

to ascertain the reasons behind these resignations."[79]

12.16 In this regard, attention may be drawn to the provision in the UK Companies Act, 2006 concerning the resignation of auditors. An auditor may resign from office on submitting a statement to the company concerning the circumstances of the resignation. An auditor must expressly state the matters which she considers necessary to be brought to the attention of members or creditors of the company. Failure to file such a statement makes the auditor liable to a statutory fine.[80] The company must either forward such a statement to the shareholders or approach the relevant adjudicatory body for appropriate directions for not sending such information. The Act also empowers the auditor to requisition a general meeting. She can give a notice to this effect to the company's Board.[81]

12.17 **Thus, the Committee was of the opinion that there is a need to review the provisions concerning the resignation of auditors. Particularly, it was felt that there is a need for a resigning auditor to assure the shareholders and other stakeholders that, in her opinion, there is nothing in the company's accounts which needs to be brought to their notice, and that her resignation is an independent decision. The auditor shall be under an explicit obligation to make detailed disclosures before resignation and should specifically mention whether such resignation is due to non-cooperation from the auditee company, fraud or severe non-compliance, or diversion of funds. Moreover, if such information comes to light after the resignation of an auditor but has not been disclosed in the resignation statement, suitable action may be taken against the resigning auditor. The Committee was of the clear view that similar obligations of a resigning auditor may be borrowed from the UK Companies Act, 2006.**

Mandatory joint audit for certain companies

12.18 Joint audit implies pooling together the resources and expertise of more than one audit firm to share responsibility and produce a single audit report.[82] Section 139(3) of CA-13 allows joint audits. It provides:

> *"Subject to the provisions of this Act, members of a company may resolve to provide that —*

[79] Report of the Committee of Experts, Ministry of Corporate Affairs, Government of India, 'Findings and recommendations regulating audit firms and their networks' (October 2018) <http://www.mca.gov.in/Ministry/pdf/2018_CommitteeExperts_Report_08112018.pdf> accessed 17 January 2022.
[80] UK Companies Act, 2006, s 519.
[81] UK Companies Act, 2006, s 518.
[82] International Federation of Accountants, 'Joint Audit: The Bottom Line – The Evidence is Unclear', New York <https://www.ifac.org/system/files/publications/files/IFAC-Joint-Audit-The-Bottom-Line.pdf> accessed on 8 February 2022.

*(a) ******

(b) the audit shall be conducted by more than one auditor. "

12.19 Discussions on mandating joint audits for a class of companies have surfaced previously. In 2003, an ICAI study group had considered whether there should be a joint audit system involving firms of different sizes.[83] The study recommended that a framework or a set of guidelines be issued to mandate that a single auditor would not audit companies beyond a particular size. However, noting the several implementation issues that may ensue, it suggested that such a mandate required further deliberation.[84]

12.20 Similarly, in 2021, the RBI released new guidelines for statutory auditors of financial entities to enhance independence and address concentration issues.[85] The guidelines require mandatory joint audits for entities having an asset size of Rs. 15,000 crore and above.

12.21 Currently, under CA-13, carrying out a joint audit is the prerogative of the company's members. The Committee deliberated the need for mandating joint audits for companies with a public interest. However, it was of the opinion that given the expenses associated with joint audits, the mandate should be restricted to a class or classes of companies as the Central Government may deem appropriate.

12.22 The Committee was of the opinion that if joint audits were to be made mandatory, this would also require an analysis of the liability of such joint auditors. In this regard, attention may be drawn to the ICAI Statement on Standard Auditing & Assurance Practices on the Responsibility of Joint Auditors.[86] According to the statement, each joint auditor will be liable only for the work allotted to her pursuant to mutual discussions with other auditor/s part-taking in the joint audit.

12.23 **Thus, given the growing corporate landscape of the country, the Committee was of the view that CA-13 be suitably amended to enable the Central Government to mandate joint audits for such class or class of companies as may be prescribed by the Central Government. In the case of a joint audit, the provisions concerning the extent**

[83] ICAI, 'Report of the Study Group on Section 25 of the Chartered Accountants Act, 1949' (2003) <https://ksaa.global/wp-content/uploads/2018/04/ICAI-2003-MAF-Gokhale-Committee-2003-final-report.pdf> accessed 17 January 2022.

[84] ICAI, 'Report of the Study Group on Section 25 of the Chartered Accountants Act, 1949' (2003) <https://ksaa.global/wp-content/uploads/2018/04/ICAI-2003-MAF-Gokhale-Committee-2003-final-report.pdf> accessed 17 January 2022.

[85] RBI, 'Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs)', RBI/2021-22/25 (27 April 2021) <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI258A67AD30976F44929FA2AB2B41DC805D.PDF> accessed on 9 February 2022.

[86] ICAI, 'AAS-12: Responsibility of Joint Auditors' (1996) <https://icai.org/post.html?post_id=466> accessed 17 January 2022.

of liability of individual auditors should also be accordingly provided in CA-13.

Auditor of holding company to comment on the true and fair view of each subsidiary company

12.24 Presently, proviso to Section 143(1) provides as under:

> *"Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies."*

12.25 The Committee discussed the issue of large number of cases of diversion of funds through subsidiary companies that are presently taking place and expressed the need for regulatory changes on this matter. In the case of holding companies while the auditor of the holding company has been given the right of access to the records of subsidiary companies, there is currently no statutory obligation or liability on the auditor of the holding company (principal auditor) to formally verify and confirm on the truthfulness and fairness of accounts of subsidiary companies. It was however noticed that SA 600 provides for such requirements.

12.26 **The Committee deliberated on this issue and viewed that since a holding company makes significant investment in its subsidiary companies, there should be proper oversight, especially on financial matters, of such subsidiary companies by the Board and the auditor of the holding company. The Committee was also informed about the existing auditing standards and practices. The Committee was of the view that suitable amendments may be required to ensure that the auditor of the holding company has been given assurance about the fairness of audit of each subsidiary company by the respective auditors. In addition, the auditor of the holding company may also be empowered to independently verify the accounts or part of accounts of any subsidiary company. The Committee was however of the view that suitable amendments concerning these matters may be introduced after further examination and public consultation.**

Forensic Audit

12.27 The Committee discussed the need to include the concept of 'Forensic Audit' in CA-13 for use in enforcement actions in case of serious non-compliances. It was noted that presently such audit is being conducted on the specific directions of regulators or on demand of creditors. A view was made that there should be clarity on the trigger event for ordering forensic audit and there should be uniformity on this across all regulators.

12.28 **The Committee recommended that forensic audit may be ordered during investigations, of such nature as may be prescribed, under Chapter XIV of CA-13. The Central Government should have the power to prescribe detailed Rules for this purpose through subordinate legislation.**

13. STANDARDISING QUALIFICATIONS BY AUDITORS

13.1 The purpose of an audit is to provide authentic information about a company's state of finances to those who possess a proprietary interest in the company or are involved in its management and control.[87] Accordingly, auditors are entrusted with the duty of preparing financial statements of the company, which depict a true and fair view of the company's affairs to the best of their knowledge.[88]

13.2 Sections 143(3)(f) and 143(3)(h) of CA-13 obligate the auditor to provide observations and comments on financial statements of the company and to provide qualifications, reservations or any adverse remarks, as the case may be, concerning the maintenance of accounts in that company.[89] As such, an auditor is required to express a qualified opinion or an adverse remark if the financial statements indicate certain material misstatements. In case of lack of sufficient evidence to demonstrate that the financial statements are entirely free from misstatements, the auditor is required to provide caution.[90] To formulate such an adverse opinion, the auditor must be convinced that such misstatement is of material importance.[91]

13.3 Further, given that the directors of a company occupy a fiduciary relationship vis-à-vis its shareholders, Section 134(3)(f) of CA-13 requires directors of a company to provide information and explanations on every reservation, qualification, adverse remark or disclaimer contained in the auditor's report and secretarial audit report on annual financial statements.[92] Where the adverse remark is likely to affect the financial statements or functioning of the company, its potential impact and corrective measures proposed to be taken should also be disclosed in the Board's report.[93] The Committee noted that while auditors' reports often highlight reservations or adverse remarks regarding a company's financial statements, such remarks do not sufficiently elaborate on the corresponding negative effect on the economic health or functioning of the company.

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[87] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 624.
[88] CA-13, s 143(2).
[89] CA-13, s 143(3)(h).
[90] ICAI 'Modifications to the Opinion in the Independent Auditor's Report' (2010) SA 705 p 4 <https://kb.icai.org/pdfs/PDFFile5b3b49b8bc2595.89675715.pdf> accessed 21 January 2022.
[91] ICAI 'Modifications to the Opinion in the Independent Auditor's Report' (2010) SA 705 p 5 <https://kb.icai.org/pdfs/PDFFile5b3b49b8bc2595.89675715.pdf> accessed 21 January 2022.
[92] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 248.
[93] CA-13, s 134(4).

13.4 **Therefore, to ensure greater clarity, disclosure and standardisation, the Committee proposed that an enabling provision be inserted in CA-13 to allow the Central Government to introduce a format for auditors that would enable them to state the impact of every qualification or adverse remark on the financial statements of the company for circulation to the Board before the same is passed on to shareholders.**

14. SETTING UP OF RISK MANAGEMENT COMMITTEES

14.1 In light of today's dynamic business environment and the myriad of risks faced by companies daily, risk management has emerged as an essential function of the Board. An active Risk Management Committee ("**RMC**") is imperative for identifying, mitigating, and resolving risks through an oversight function.[94]

14.2 Although CA-13 currently contains no provisions relating to the formation of an RMC, Section 134(3)(n) requires the Board's report to contain a statement indicating the development and implementation of a risk management policy for the company, including identification of risks that may pose a threat to the existence of the company. Section 177(4)(vii) further places an obligation on the audit committee to evaluate the company's internal financial controls and risk management systems. Additionally, Schedule IV, Part II of CA-13 requires Independent Directors (**"IDs"**) of a company to bring an independent judgement to the Board's deliberations on risk management and satisfy themselves that such systems are robust and defensible.

14.3 Given the provisions above, the Committee noted that robust risk management allows every company to function efficiently and facilitates the development of corporations, particularly in unprecedented situations such as the ongoing COVID-19 pandemic. Accordingly, the Committee deliberated whether provisions on the constitution of RMC, as a separate committee of the Board, could be included in CA-13.

14.4 During its deliberations, the Committee was apprised of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (**"SEBI LODR Regulations"**), which require the top 1000 listed entities, determined based on market capitalisation, to set up an RMC of directors.[95] Under Part D of Schedule II of the SEBI LODR Regulations, RMCs have been entrusted with formulating a framework for identifying risks faced by the entity, suggesting measures for risk mitigation, overseeing the implementation of the risk management policy and evaluating the adequacy of existing risk management systems.

[94] SEBI, 'Report of the Committee on Corporate Governance' (October 2017) chapter III, p 42 <https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html > accessed 21 January 2022.

[95] SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, Regulation 21.

14.5 **Therefore, to strengthen the Board's power to overview and supervise risk management systems, the Committee recommended the inclusion of new provisions in CA-13 for the constitution of an RMC for such class or classes of companies, as may be prescribed by the Central Government.**

15. CLARIFYING THE TENURE OF AN INDEPENDENT DIRECTOR

15.1 The concept of an ID was introduced in Section 149 of CA-13 to primarily strengthen the governance framework for public listed and large unlisted public companies. An ID is required to be free from the influence of promoters of the company and is appointed to balance the interests of shareholders with the company's financial health.[96] Given the nature of the role of the ID and the responsibilities she is entrusted with, it is pivotal that such directors should be in a position to demonstrate their independence. The Committee discussed the following in respect of the directorship of an ID under CA-13:

Tenure of IDs

15.2 To ensure that IDs perform their duties objectively, the tenure for which an ID may hold office has been capped under CA-13. Section 149(10) provides that an ID may hold office for a term not exceeding five consecutive years but shall be eligible for re-appointment if the company passes a special resolution and such appointment is disclosed in the Board's reports. Section 149(11) further clarifies that an ID shall not be permitted to hold office beyond two consecutive terms and will be eligible for re-appointment only after the expiry of the requisite cooling-off period of three years.

15.3 The practice of the Board of directors appointing a person as an additional director in the capacity of ID, subject to approval by shareholders in the next meeting, was discussed in the Committee. The Committee deliberated whether the period intervening between the ID's initial appointment as an additional director and the regular appointment in a subsequent general meeting should be included while computing the total tenure of five years as provided under Section 149(10).

15.4 The Committee was also apprised of the clarification issued by the MCA in this context,[97] which further elucidates that the appointment of an ID for a term of five years or less is to be treated as one term. Therefore, the appointment of an ID for a term of less than five

[96] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 604.
[97] Ministry of Corporate Affairs, Government of India, 'Clarifications on Rules prescribed under the Companies Act, 2013 - Matters relating to appointment and qualification of directors and Independent Directors - reg' General Circular No. 14/ 2014 (June 2014) <https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM3ODg=&docCategory=NotificationandCirculars&type=open > accessed 21 January 2022.

years may be permissible. Even where two consecutive terms are held for a total period of less than ten years, the cooling-off specified under Section 149(11) will apply.

15.5 The Committee agreed that strictly enforcing a fixed tenure would allow IDs to fulfil their role more efficiently since more extended periods of association may cause the ID to become aligned and entrenched with promoters or other Board members, thereby hindering their ability to act objectively.

15.6 **In light of the above, the Committee noted that five years, as prescribed under Section 149(10), commences from the date the Board initially appoints the ID as an additional director. Therefore, the period during which the ID functioned as an additional director before regularisation cannot be excluded while computing the total tenure of the ID. The Committee further agreed that the total tenure should not exceed the prescribed five years for a single term or ten years for two consecutive terms, as the case may be, under any circumstances and is inclusive of any tenure as additional director.**

Effect of the resignation of IDs on their tenure

15.7 During its deliberations, it was noted by the Committee that IDs may seek to circumvent the provisions laid down under Sections 149(10) and 149(11) by resigning for a brief period and then seeking a fresh appointment in the same company for a new term.

15.8 **To effectively remedy this issue, the Committee reiterated that the total tenure of an ID should be capped at five years for a single term and ten years where she is reappointed after the first term, irrespective of any resignation before the expiry of the term for which she was appointed as an ID. No individual can be appointed for more than two successive terms by any company under any circumstances. Therefore, to hold office beyond this period, the ID would be required to serve the stipulated cooling-off period of three years.**

Harmonising Sections 149(6) and 149(11)

15.9 Section 149(6)(e)(ii)(B) of CA-13 provides that no person shall be appointed as an ID of a company if she or any of her relatives are or have been an employee, partner or proprietor of any legal or consulting firm, that has or had any transaction with the company or group of companies in the immediately preceding financial year, amounting to ten per cent or more of the gross turnover of such firm.

15.10 The *proviso* to Section 149(11) further provides that during the three-year cooling-off period, the ID of a company shall not be appointed in or associated with the company in any other capacity directly or indirectly.

15.11 The Committee noted that a combined reading of the above provisions led to a conclusion wherein a person who is an employee, proprietor or partner of a legal or consulting firm, transacting with the company, could be appointed as an ID in such company provided that such transaction amounted to less than ten per cent of the gross turnover of that firm. However, pursuant to use of words "directly or indirectly" in section 149(11), there is a view/practice that upon ceasing to hold office after two consecutive terms, the person would not be allowed to be associated with the company in any capacity thereby resulting in a blanket prohibition of functioning as a legal or consulting firm regardless of the threshold of ten per cent.

15.12 **To harmonise the above two provisions, the Committee recommended that Section 149(11) should be amended to allow the relevant legal or consulting firm referred above to continue to render its services as per thresholds provided in Section 149(6)(e)(ii)(B). It was further recommended that the threshold of ten per cent referred to in Section 149(6)(e)(ii)(B) should be reduced to five per cent to increase transparency and reduce the pecuniary relationship of persons appointed as IDs as well as legal advisors or consultants.**

16. REVISING PROVISIONS ON DISQUALIFICATION AND VACATION OF DIRECTORS' OFFICE

16.1 Section 164 and Section 167 of CA-13 lay down provisions relating to the disqualification and vacation of office of directors, respectively. Section 164 identifies certain specific circumstances wherein a person shall not be eligible for appointment as the director of a company. Section 164(1) covers cases where disqualification arises from personal incapacity such as unsoundness of mind, insolvency, conviction by a court, etc. On the other hand, Section 164(2) deals with the disqualification of directors on account of lapses made by a company in filing its annual returns and financial statements or default in repayment of deposits or debentures.

16.2 Further, Section 167 provides for the grounds and circumstances under which the office of a director shall become vacant. Section 167(1)(a) states explicitly that such vacancy shall arise if the director incurs any of the disqualifications specified in Section 164.

16.3 While taking note of the allied issues arising from the interplay of these two provisions, the Committee deliberated upon the challenges posed by the automatic vacation of office in all companies where a director holds office due to the operation of Section 167(1)(a), and the *proviso* laid down herein below:

> *"167. Vacation of Office of Director*
>
> *(1) The office of a director shall become vacant in case—*

(a) he incurs any of the disqualifications specified in section 164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."[98]

16.4 It was felt that this provision leads to the vacation of directorship in otherwise compliant companies if a director commits default under Section 164(2) in another company. The Committee further noted the representations made by SEBI wherein it was put forth that such automatic vacation of office adversely implicates nominee directors appointed pursuant to the nomination by debenture trustees registered with SEBI, for disqualification under Section 164(2)(b).

16.5 In addition to the above matters, the Committee also sought to review the six-month grace period granted to a newly appointed director of a defaulting company, under the *proviso* to Section 164(2), in so far as its application to Section 164(2)(b) is concerned, to make good such company's defaults.

Vacation of office as a result of disqualification under Section 164(2)

16.6 The Committee noted that the provision relating to the vacation of directors' office under Section 167(1)(a), on account of disqualification incurred under Section 164, required a review since the same results in the automatic vacation of directorship even from companies that are fully compliant with the provisions above. Additionally, the immediate vacation of a director from the company where a default under Section 164(2) occurs does not allow the defaulting director to continue taking responsibility and rectifying her defaults. In this regard, CLC 2016 had recommended that:

"Vacancy of an office should be triggered only where a disqualification is incurred in a personal capacity, and therefore, the scope of Section 167(1)(a) should be limited to only disqualifications under Section 164 (1)."[99]

16.7 While the above recommendation of the CLC was not reflected in its entirety in the CAA, 2017, a *proviso* was however inserted in Section 167(1)(a) to clarify that the vacation in respect of Section 164(2) would only operate in all those companies where the director held office, other than the company which defaulted under Section 164(2). This implied that on account of defaults made under Section 164(2)(a) and Section 164(2)(b), the directors of the company would stand disqualified from an appointment or re-appointment in all

[98] CA-13, s 167(1)(a).

[99] Ministry of Corporate Affairs, Government of India, 'Report of the Companies Law Committee' (February 2016) p 55 <https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf> accessed 17 January 2022.

companies, but their office would not get vacated in the company where the default was committed. This provision was made to ensure that defaulting directors are given the opportunity to take remedial steps to rectify the company's defaults.

16.8 In light of the newly inserted *proviso*, it was felt that it may be onerous to extend the provision of vacation of directorship to companies where there is no default, merely to punish the director concerned for the default made in another company. Such a provision may have a spiralling effect on a substantial number of companies' business activities, given that this would mandate them to re-appoint directors to replace such defaulting directors.

16.9 **Therefore, the Committee recommended that the vacation of directorship under Section 167(1)(a) should be limited only to disqualifications triggered by reasons of personal incapacity under Section 164(1) and not those incurred under Section 164(2). However, the proposed amendment shall not apply retrospectively. As such, any vacation of directorship that has arisen under Section 164(2) shall not be affected by the proposed amendment.**

Modifying the six-month time period for new directors

16.10 With regard to the immediate vacation of office on account of default under Section 164(2), the CLC 2016 had acknowledged that:

> *"this section created a paradoxical situation, as the office of all the directors in a Board would become vacant where they are disqualified under Section 164(2), and a new person could not be appointed as a director as they would also attract such a disqualification."*[100]

16.11 Thereafter, a *proviso* was inserted in Section 164(2), through the CAA-17, to safeguard all directors freshly appointed after the default in such companies from similar disqualification for a period of six months. By virtue of this *proviso*, a newly appointed director was granted a period of six months from the date of her appointment to make good the company's default.

16.12 The Committee felt that such a six-month period may not be adequate for a new director to make the company compliant in all cases. Additionally, it was noted that such a short duration of time serves as a disincentive for any person willing to get appointed in a company that has committed a default, where remedying such defaults comprehensively may require more time. As such, the Committee further deliberated that it may be prudent

[100] Ministry of Corporate Affairs, Government of India, 'Report of the Companies Law Committee' (February 2016) p 55 <https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf> accessed 17 January 2022.

to allow such six months only for defaults ensuing from Section 164(2)(a) such as failure to file annual returns/ financial statements, which may be satisfactorily remedied in six months. Insofar as defaults enlisted in Section 164(2)(b) are concerned, the Committee felt that it would be difficult for new directors to join a company that has defaulted in repayment of its deposits, redemption of debentures, or payment of dividends if the impending threat of disqualification after six-months is present.

16.13 **In pursuance of the same, the Committee recommended that the relaxation be extended to a period of two years, from the date of appointment, for new directors insofar as obligations under Section 164(2)(b) are concerned. If the defaults under Section 164(2)(b) are not satisfactorily remedied, the newly appointed directors would be liable for automatic disqualification upon the completion of two years.**

Safeguarding rights of nominee directors

16.14 Debenture trustees registered with the SEBI may appoint nominee directors on the Board of a company under Regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993 in the event of the following lapses by the company:

> *"(i) two consecutive defaults in payment of interest to the debenture holders; or*
>
> *(ii) default in creation of security for debentures; or*
>
> *(iii) default in redemption of debentures;"*[101]

16.15 In accordance with the scheme of CA-13, a nominee director may be considered a non-executive and non-independent director of the company in which she is appointed.[102] Notably, the nominee director is required to represent the interests of the appointing financial institution and may not be actively involved in the day-to-day affairs or decisions of the company.

16.16 However, Sections 164 and 167 currently make no distinction between nominee directors and other directors of the company insofar as the disqualification and vacation of directorship are concerned. Therefore, under Section 164(2), all directors, including nominee directors, get disqualified regardless of their limited role in guiding a company's operations.

16.17 **Based on representations received from SEBI, the Committee recommended that a new *proviso* be inserted in Section 164(2) to the effect that the disqualification as**

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[101] SEBI (Debenture Trustees) Regulations, 1993, Regulation 15(1)(m).

[102] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 1038.

referred to in clause (b) shall not apply to the nominee directors appointed pursuant to nomination by the debenture trustees registered with SEBI.

16.18 **The Committee also recommended that since provisions of Section 164 and 167 are proposed to be extended to LLPs soon, through a notification under Section 67 of the LLP Act, 2008, the above changes may also be considered suitably for LLPs.**

17. COOLING-OFF PERIOD BEFORE AUDITORS BECOME DIRECTORS

17.1 Audit of a company's annual accounts is an indispensable part of an incorporated business.[103] As a part of the auditing process, auditors are entrusted with the duty of inspecting the financial statements and accounts of a company to ensure that the company's books and internal financial control systems conform with prescribed standards. The auditors' reports are relied upon by a host of stakeholders such as shareholders, prospective investors, bankers, government agencies, etc. Auditors, being independent experts, assure the shareholders about the accounts of the company are true and fair.

17.2 Given auditors' critical role, their independence is a pre-condition to good corporate governance. For the auditor's reports to be credible, the auditor must not have any personal prejudice or self-interest affecting their objectivity. Pertinently, a conflict of interest may arise where the auditor could potentially benefit from a financial interest in an audit client, particularly by way of future employment in the same company.

17.3 This principle has been incorporated in Section 141 of CA-13, which lays down auditors' eligibility, qualifications and disqualifications. Similarly, Section 149(6)(e)(ii) of CA-13 prohibits a person from being appointed as an ID of a company if she or any of her relatives has been an employee, proprietor or partner of a firm of auditors or company secretaries or cost auditors in such company or group of companies, in any of the three financial years preceding the year in which employment is to take place.

17.4 The Committee noted that while there is a restriction on auditors from holding an independent directorship, CA-13 currently contains no provision prohibiting an auditor from becoming a non-executive director ("**NED**"), managing director ("**MD**") or whole-time director ("**WTD**") in the same company or group of companies. To serve their role with utmost professional integrity, auditors ought to be free from all economic, financial and other inducements that tie them to the company. Hence, the Committee deliberated whether an appropriate restriction, in the form of a cooling-off period, could be inserted in CA-13 to address the situation above.

[103] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 550.

17.5 **To uphold the independence of auditors, the Committee recommended the insertion of a mandatory one-year cooling-off period, from the date of cessation of office, only after which an auditor of a company may be permitted to hold the position of a NED, MD, WTD in the same company or its holding company, subsidiary company(ies), fellow subsidiary(ies) or associate company(ies). The Committee also additionally recommended that in case of an audit firm structured as a partnership/LLP, such a restriction would operate only concerning the partner that audited the company.**

18. COOLING-OFF PERIOD BEFORE AN ID BECOMES A MANAGERIAL PERSONNEL

18.1 IDs play a crucial role in promoting corporate governance since their presence serves as a deterrent to fraud and mismanagement in a company. To ensure the objectivity of the ID, it is of crucial importance that the ID should not be eligible to hold any office or place of profit within the company. This sentiment is echoed in Section 149(6)(e)(i) of CA-13, which provides that a person shall not be appointed as an ID of a company if such a person currently holds or used to hold the position of a KMP or an employee in the same company or group of companies during any of the three financial years immediately preceding the financial year in which employment is to take place.

18.2 However, the Committee noted that there was currently no restriction on an ID for becoming a managerial person, i.e., an MD, WTD or manager, in the same company or group of companies after ceasing to be an ID of such company. Accordingly, the Committee deliberated whether some restriction may be inserted in CA-13 to prevent an ID from immediately holding a managerial position in the same company or group of companies to ensure that the ID's functions remain sacrosanct.

18.3 During its discussions, the Committee noted that Regulation 25(11) of the newly amended SEBI LODR Regulations provides that no ID who resigns from a listed entity shall be appointed as an executive director or WTD on the board of the company, its holding, subsidiary, associate company or any other company belonging to its promoter group before the lapse of a period of one year from the date of resignation as an ID.

18.4 The Committee suggested that a similar cooling-off period be integrated under CA-13 to ensure the ID's objectivity and independence. It was felt that when an ID knows that they may move to a more significant role in the company, their interests may compromise independence. The possibility of a future affiliation may also prejudice the judgement of an ID and prevent the ID from acting without fear or favour.

18.5 **Therefore, in the interest of greater transparency and accountability, the Committee recommended the insertion of a mandatory one-year cooling-off period, from the date of cessation of office, only after which an ID may be permitted to hold the position of**

an MD, WTD, or manager in the same company or its holding company, subsidiary company(ies), fellow subsidiary(ies) or associate company(ies).

19. CLARIFYING THE MANNER OF RESIGNATION OF CERTAIN KMPs

19.1 Section 168 of CA-13 lays down provisions relating to the resignation of directors. Section 168(1) allows a director to resign from their office by providing notice to the company in writing. Upon receiving such resignation, the Board must take note thereof and intimate the RoC under Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The *proviso* to Section 168(1) further provides that directors may forward a copy of their resignation, along with detailed reasons, to the RoC, within thirty days of their resignation. Section 168(2) stipulates that the resignation tendered by the director shall be effective from the date of receipt of the notice by the company or any date specified by the director in the notice, whichever is later.

19.2 As reflected in the above provision, directors have been empowered to directly file their resignation with the RoC since there is no requirement on the company's part to formally accept a director's resignation for it to become effective. Resignation is treated as a choice to be exercised by the director, and proof of delivery of such information with the company is sufficient to discharge the director of all liabilities in this regard.[104]

19.3 In light of the same, the Committee deliberated whether similar provisions should be introduced in CA-13 for mandating filing of resignation tendered by certain KMPs, other than directors, who are entrusted with the company's day-to-day functioning and whose appointment intimations were filed with the Registry.[105] As such, the Committee felt that the resignation of such a KMP has a significant impact on the company and must therefore be suitably recorded with the RoC.

19.4 **As such, in line with Section 168 of CA-13 that outlines the procedure for the resignation of directors, the Committee suggested that the initial obligation to notify the RoC of resignations tendered by certain KMPs should be placed on the company. The Committee further recommended that in cases where the company fails to intimate the RoC within 30 days, the KMPs, whose appointment intimation was filed with the ROC, should be allowed to file their resignations directly with the RoC.**

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[104] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 1237.

[105] s 2(51), CA-13 defines "key managerial personnel", in relation to a company, as —

"(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*;* *****[22]*(omitted)*

[(v) such other officer, not more than one level below the Directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer *as may be* prescribed*"*

Similarly, the Committee also recommended that the date on which resignation of such KMPs shall come into effect may be harmonised with Section 168.

20. REVIEWING PROVISIONS ON MERGER AND AMALGAMATION

20.1 Chapter XV (Sections 230 to 240) of CA-13 lays down provisions relating to compromises, arrangements and amalgamations. The Committee sought to review the framework pertaining to mergers and amalgamations to streamline extant procedures as embodied in this chapter.

Applicability of Section 230 to Liquidators appointed under IBC

20.2 Section 230 of CA-13 provides companies with the power to compromise or make arrangements with their creditors and members. Section 230(1) specifically states that where a compromise or arrangement is proposed between: (i) a company and its creditors or any class of them, or (ii) between a company and its members or any class of them, the NCLT may order a meeting of the creditors or members, as the case may be, upon receipt of application from such creditors or members. In the case of a company being wound up, a liquidator appointed under either CA-13 or IBC may also apply to the NCLT for ordering such a meeting.

20.3 Section 230(6) of CA-13 further outlines requirements for a compromise or arrangement concerning a company being wound up, to be binding on the liquidator appointed under CA-13 or IBC, as the case may be. For this purpose, the arrangement must be approved by a majority of persons representing three-fourths in value of creditors or members present at the meeting conducted in pursuance of Section 230(1). It must be sanctioned by an order of the NCLT.

20.4 The Committee deliberated on whether the reference to liquidators appointed under the IBC may be omitted from Sections 230(1) and 230(6) to only limit the same to those liquidators appointed under CA-13. However, it was noted that such omission may pose challenges since liquidators under CA-13 and the IBC have been actively using this provision.

20.5 **In light of the above, the Committee recommended that these words should not be omitted from the provision.**

Extinguishment of Treasury Shares

20.6 Treasury shares refer to the own shares of a company and are categorised as assets of the company.[106] Such treasury stock may arise on an amalgamation or merger where the transferee company receives its own shares pursuant to merger of transferor company with itself.

20.7 The *proviso* to Section 232(3)(b) of CA-13 specifically prohibits treasury shares as laid down hereunder:

> *"Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished."*[107]

20.8 The same restriction has also been spelt out in Section 233(10) of CA-13. While both these provisions state that any treasury shares arising as a result of a compromise or arrangement shall be cancelled and extinguished, CA-13 contains no provision for cancelling or extinguishing treasury stock that existed before the notification of the provisions of the Act.

20.9 Treasury shares are viewed as undesirable from the perspective of corporate governance since the voting rights in such shares may be used by the directors/ promoters of a company to exercise control over the company indirectly, thereby potentially thwarting the interests of minority shareholders.[108] While noting a similar issue arising from the exercise of voting rights in respect of shares held by employee benefit/ employee welfare trusts, the Committee on Corporate Governance recommended a three-year sunset period requiring all existing treasury stock in listed entities to not carry voting rights after such period,[109] to avoid misuse of such voting rights.

20.10 The Committee felt that long-term holding of treasury stock is opposed to the principles of shareholder democracy as the same may enable promoters to hold a larger number of shares and thereby exercise control over the company's Board. Therefore, the Committee sought to deliberate on the process of extinguishing such stock held by companies.

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106 SEBI, 'Report on the Committee on Corporate Governance' (October 2017) p 94 <https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html> accessed 17 January 2022.

107 CA-13, s 232(3)(b).

108 SEBI, 'Report on the Committee on Corporate Governance' (October 2017) p 94 <https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html> accessed 17 January 2022.

109 SEBI, 'Report on the Committee on Corporate Governance' (October 2017) p 94 <https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html> accessed 17 January 2022.

20.11 **The Committee recommended that each company holding treasury stock should report such shares to the Central Government through a declaration in a prescribed form. Thereafter, companies holding treasury stock will be required to completely dispose of such stock within a period of three years and report back to the Central Government. Such disposal may take place through sale or reduction of capital without invoking provisions of Section 66 of CA-13, considering the peculiarity of the situation and the fact that there would be no outflow of funds from the company. The Committee further noted that where a company fails to dispose of its treasury stock within the prescribed timeline, the said shares shall stand cancelled and the share capital of the company shall be accordingly reduced in such manner as may be prescribed. Appropriate penal action may also be initiated against such a company.**

Fast-Track Mergers

20.12 Section 233 of CA-13 provides for a fast-track merger or amalgamation that may be entered into by two or more small companies, between a holding company and its wholly-owned subsidiary (**"WOS"**), or a prescribed class of companies. As per the section, the scheme is to be approved by shareholders holding at least ninety per cent of the total number of shares of the company.

20.13 The threshold of approval by persons holding ninety per cent of total share capital has been considered onerous by stakeholders since the section requires approval by the persons holding ninety per cent of the company's total share capital and not ninety per cent of shareholders present and voting in the meeting. This threshold is particularly difficult to achieve in listed companies. Therefore, the consent threshold significantly delays the approval process, defeating the section's essence that seeks to expedite mergers.

20.14 Further, such a threshold requirement also means that if the shareholders present at the meeting hold at least ninety per cent of the share capital, irrespective of the majority by number voting against the scheme, it would still be approved.[110] Hence, the interests of minority shareholders have not been adequately protected within this framework.

20.15 **To make the fast-track merger approval process under Section 233 more robust and simultaneously continue to protect minority shareholder interests, the Committee recommended a modified twin test requiring approval by (i) majority of persons present and voting at the meeting accounting for seventy-five per cent, in value, of the shareholding of persons present and voting; and (ii) representing more than fifty per cent, in value, of the total number of shares of the company. The Committee also expressed that Section 233 of CA-13 should be amended to also permit fast track mergers between a holding company and its subsidiary company or companies (other**

[110] A. Ramaiya, *Guide to the Companies Act* (19th edn., Vol II, Lexis Nexis, 2020) p 14 [s.233].

than WOSs) if such companies are not listed and meet such other conditions as may be prescribed.

Empowering the Central Government to make Rules for other compromises and arrangements

20.16 In accordance with Section 233(12) of CA-13, the provisions of Section 233 can be invoked not only for amalgamation between entities but may also be used *mutatis mutandis* for any scheme of compromise or arrangement under Section 230(1) or division or transfer of a company referred in Section 232(1)(b).

20.17 **To allow flexibility for the Central Government to prescribe the manner in which Section 233 may be invoked for such class or classes of companies as are referred to or prescribed under sub-section (1) thereof in respect of compromise or arrangements under Section 230(1) and Section 232(1)(b), the Committee recommended that Section 233(12) should be amended to empower the Central Government to make Rules for this purpose.**

Special Benches of the NCLT

20.18 Section 419 of CA-13 provides for the constitution of benches for exercising powers and functions by NCLT under CA-13 and IBC-2016. It was informed to the Committee that suggestions have been received for enabling provisions to be included in this section to allow the constitution of Benches/special Benches, which may deal with only specific powers and functions of the NCLT under CA-13 or IBC-2016 (e.g., mergers or amalgamations).

20.19 **The Committee discussed this suggestion and believed that since Section 419 (1) presently vests the Central Government with the power to constitute such number of Benches of the NCLT as may be specified by it by way of notification, therefore, enabling provisions may be included in Section 419 to enable the competent authority to constitute specialised Benches that may deal with matters of economic importance such as mergers, amalgamations or corporate restructuring, and specialised IBC cases or cases involving public interest.**

21. EASING RESTORATION OF STRUCK OFF COMPANIES

21.1 The ‘striking off’ process has been laid out under Section 248 of CA-13. Under this provision, the RoC has been empowered to remove the name of a company from the register of companies after due compliance with the procedure laid down under such section and the Companies (Removal of Names of Companies from the Register of

Companies) Rules, 2016.[111] Hence, the name of a company may be struck off from the register of companies if the RoC is convinced that:

> *"(a) a company has failed to commence its business within one year of its incorporation; or*
>
> *(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455; or*
>
> *(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under subsection (1) of section 10A; or*
>
> *(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12."*[112]

21.2 The provisions relating to restoring names of struck off companies have been laid down under Section 252 of CA-13. Section 252(1) provides that any person aggrieved by an order notifying a company as dissolved, as passed by the RoC, can file an appeal before the NCLT to restore the company's name in the register of companies within three years. The NCLT may order restoration of the company's name upon satisfaction that the name was struck off without any justified cause or in the absence of a valid ground.

21.3 Section 252(3) of CA-13 further lays down that where the name of a company is struck off from the register of companies, the company's name may be restored by the NCLT on an application by the company, or any of its members or creditors before the expiry of twenty years. Accordingly, an order for restoration of the name may be passed to restore the company's name in the register of companies.

21.4 As reflected in the provisions above, an order for the restoration of the name of a struck off company may only be passed by the NCLT. The Committee noted that the NCLT, as constituted under Section 408 of CA-13, hears matters both under CA-13 and the IBC and is reported to be overburdened. [113]

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[111] MC Bhandari, *Guide to Company Law Procedures* (24th edn., Vol I, Lexis Nexis, 2018) p 307.
[112] CA-13, s 248(1).
[113] Thirty-second Report of the Standing Committee on Finance, Ministry of Corporate Affairs, Government of India, 'Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions' Seventeenth Lok Sabha (August 2021) p 7 <https://www.ibbi.gov.in/uploads/whatsnew/fc8fd95f0816acc5b6ab9e64c0a892ac.pdf > accessed 5 January

21.5 In this context, the Committee took note of the representations made by stakeholders, which drew attention to the fact that owing to this overburdening, the NCLT may not be able to expediently dispose of all the applications for restoration of companies under Section 252. It was also brought to the Committee's attention that despite an early hearing, it takes a minimum period of nine months to receive an order of restoration of name.

21.6 **In light of the above, the Committee recommended that in cases where aggrieved persons apply for restoration within three years under Section 252(1), the application should be filed before the RD, and the RD may pass an order of restoration of name upon her satisfaction. It is felt that this proposed manner of restoration of companies will ensure that the process is carried out in a seamless and time-bound manner and de-burden the NCLT of such routine matters.**

21.7 **However, the Committee additionally noted that where the application is filed after three years but before the expiry of twenty years, under Section 252(3), the power of restoration should continue to rest with the NCLT so that it can exercise adequate discretion and scrutiny before the name of the company is restored in the register of companies. This provision should continue without any change since the company has not come forward within a reasonable period for its restoration.**

22. RECOGNISING SPECIAL PURPOSE ACQUISITION COMPANIES

22.1 A Special Purpose Acquisition Companies ("**SPAC**") is a type of company that does not have an operating business and has been formed with the specific objective of acquiring a target company.[114] This concept allows a shell company to issue an Initial Public Offering ("**IPO**") without any commercial activity. After listing, the SPAC merges with or acquires a company, i.e., the target, thereby allowing the target company to benefit from such listing without going through the formalities and rigours of an IPO.

22.2 As a general practice, the SPAC begins searching for a target company after being listed. The business combination is required to be completed within a stipulated time frame, failing which the SPAC has to be liquidated. Despite this, the concept of SPAC has gained considerable global traction as seasoned investors and management professionals are

2022: Nikhil Shah, Khushboo Vaish and Kavya Ramanathan, 'NCLT Readiness' Alvarez & Marsal India (2017) < https://www.alvarezandmarsal.com/sites/default/files/restructingindia_nclt.pdf > accessed 5 January 2022: Rajeev Jayaswal, 'Government plans steps to speed up disposal of cases under IBC' *The Hindustan Times* (New Delhi, 19 February 2021) < https://www.hindustantimes.com/business/govt-plans-steps-to-speed-up-disposal-of-cases-under-ibc-101613669470253.html > accessed 5 January 2022: 'Over 21,250 cases pending before NCLT at end of December 2020' *The Economic Times* (New Delhi, 8 February 2021) < https://economictimes.indiatimes.com/news/economy/policy/over-21250-cases-pending-before-nclt-at-end-of-december-2020/articleshow/80754041.cms > accessed 5 January 2022.

[114] IFSCA (Issuance and Listing of Securities) Regulations, 2021.

turning to SPACs to mitigate the risks associated with an IPO.[115]

22.3 Indirect listing of the target company through a SPAC offers many benefits. It allows a target company to get listed without undertaking the expensive and time-consuming process of an IPO.

22.4 The Committee was apprised of the modalities adopted by M/s Renew Power Private Limited, an Indian renewable energy company, on NASDAQ through an internationally incorporated SPAC in August 2021.[116] The Committee felt that this is a clear indicator of the desirability of Indian companies to list on overseas exchanges through the SPAC route. Such a route may be particularly profitable for Indian companies in cases where overseas investors possess a keener awareness of the company's potential than their domestic counterparts.[117]

22.5 The Committee also noted that IFSCA has already provided regulatory clarity on listing SPACs in International Financial Services Centres (**"IFSCs"**).[118] The IFSCA (Issuance and Listing of Securities) Regulations, 2021, recognise the listing of SPACs in IFSCs and lay down a detailed set of regulations governing SPAC eligibility, offer timing, initial disclosures on the offer document, underwriting and other SPAC specific obligations.[119]

22.6 Further, it was brought to the Committee's attention that SPACs are currently regulated and recognised across multiple jurisdictions such as the UK, USA, Canada, Singapore and Malaysia.[120] Therefore, the Committee felt that enabling the listing of India incorporated SPACs on global exchanges would open up avenues for Indian companies to operate and carry out business in such jurisdictions.

22.7 During its deliberations, the Committee remained aware that a provision relating to the domestic listing of SPACs will require consultation with the SEBI. However, it was also

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[115] Deloitte, 'Private-Company CFO Considerations for SPAC Transactions' (September 2020) <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-private-company-CFO-considerations-for-SPAC-transactions.pdf> accessed 18 January 2022.

[116] 'ReNew Power Lists in US via SPAC, m-cap hits $ 4.5 billion' *The Times of India* (Delhi, 25 August 2021) <https://timesofindia.indiatimes.com/business/india-business/renew-power-lists-in-us-via-spac-mcap-hits-4-5bn/articleshow/85607683.cms> accessed 18 January 2022.

[117] Biman Mukherji, Yvonne Lau, 'ReNew Power's $1 billion SPAC deal may blaze a trail to Wall Street for Indian unicorns' *Fortune* (India, 23 August 2021) <https://fortune.com/2021/08/23/renew-power-india-spac-deal-unicorns-nasdaq/ > accessed 18 January 2022.

[118] IFSCA (Issuance and Listing of Securities) Regulations, 2021.

[119] IFSCA (Issuance and Listing of Securities) Regulations, 2021, Chapter VI.

[120] UK Financial Conduct Authority, 'Investor Protection Measures for Special Purpose Acquisition Companies: Changes to Listing Rules' PS21/10 (July 2021) < https://www.fca.org.uk/publication/policy/ps21-10.pdf > accessed 19 January 2022: Phil Mackintosh, 'A Record Pace for SPACs in 2021' (2022) NASDAQ <https://www.nasdaq.com/articles/a-record-pace-for-spacs-in-2021 > accessed 19 January 2022: 'SGX introduces SPAC listing framework' *Singapore Exchange* (2 September 2021) <https://www.sgx.com/media-centre/20210902-sgx-introduces-spac-listing-framework > accessed 19 January 2022.

noted that the Primary Market Advisory Committee of the SEBI has already been vested with the task as SEBI is actively examining the possibility of introducing a framework for regulating SPACs in India,[121] particularly in laying down detailed listing regulations for such companies.

22.8 **Based on the preceding considerations, the Committee recommended introducing an enabling provision to recognise SPACs under CA-13 and allow entrepreneurs to list a SPAC incorporated in India on domestic and global exchanges. The Committee further recommended that provisions on relaxing the requirement to carry out businesses before being struck off and providing exit options to the dissenting shareholders of a SPAC if they disagree with the choice of the target company identified must be laid down in CA-13. The Committee also opined that for a foreign listing of Indian incorporated SPACs to become a reality, the commencement of Section 23(3) and 23(4) of CA-13 is a necessary pre-condition.**

23. PROHIBITING CONVERSION OF A CO-OPERATIVE SOCIETY INTO A COMPANY

23.1 A co-operative society is an economic institution formed based on co-operative principles and not primarily motivated by the earning of profits.[122] Co-operative societies are set up in pursuance of achieving a common goal or objective and function as an autonomous association of persons.

23.2 Notably, Section 2(11) of CA-13 expressly excludes a co-operative society registered under any law relating to co-operative societies from the definition of a body corporate. However, Section 366 of CA-13 enables entities duly registered under other Acts, including co-operative societies, to register themselves as companies under CA-13. Accordingly, Section 366(1) states that any partnership firm, limited liability partnership, co-operative society, society or other business entity can apply for registration under CA-13. Section 366(2) further clarifies that the conversion of such an entity into a company will take place on a 'like-for-like' basis. Presently, there are no rules that govern the manner of such conversion.

[121] 'SEBI exploring a framework for SPACs in India, says chairman Tyagi' *The Economic Times* (28 July 2021) <https://economictimes.indiatimes.com/markets/stocks/news/sebi-exploring-framework-for-spacs-in-india-says-chairman-tyagi/articleshow/84820599.cms?from=mdr> accessed 18 January 2022 : 'Expert panel examining feasibility to introduce SPACs in India: Ajay Tyagi' *The Hindu Business Line* (28 July 2021) <https://www.thehindubusinessline.com/economy/policy/expert-panel-examining-feasibility-to-introduce-spacs-in-india-ajay-tyagi/article35579241.ece> accessed 18 January 2022.

[122] Tika Ramji v. State of UP 1956 SCR 393.

23.3 Further, the Committee also took note of the RBI's scheme on Voluntary Transition of Primary (Urban) Co-operative Banks ("**UCBs**") into Small Finance Banks ("**SFB**")[123] wherein UCB's with a good track record have been made eligible to voluntarily transition into an SFB, after the completion of due diligence required by the RBI. As per the modalities of the scheme, the promoters of the proposed SFB have been enabled to incorporate a public limited company under CA-13, having the word 'bank' in its name, after receiving in-principal approval from the RBI.[124] Such a newly incorporated company will then agree with the UCB to transfer assets and liabilities to be executed after issuing an SFB license by the RBI.

23.4 The Committee specifically observed that the RBI's scheme permits the transition of a UCB into an SFB only by incorporating a fresh company under CA-13 since the license of the UCB is not directly converted into that of an SFB. Instead, the banking licence is transferred after RBI's approval to the SFB which is a newly incorporated company. However, under CA-13, Section 366 currently allows co-operative societies to convert to a company without fresh incorporation. Accordingly, it was felt that this is an opportune moment to revisit this provision and bring it in tune with the RBI's policy.

23.5 Based on the preceding considerations, the Committee recommended that it would be expedient to amend Section 366 of CA-13 and expressly prohibit the conversion of co-operative societies into a company.

24. FACILITATING E-ENFORCEMENT AND E-ADJUDICATION

24.1 Section 398 of CA-13 deals with the power of the Central Government to prescribe Rules regarding the filing of applications, documents, inspection, etc., in electronic form. The Explanation appended to Section 398(1) states that:

> *"For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor."*[125]

24.2 The operation of this Explanation acts as a roadblock in carrying out certain adjudication related activities in electronic mode. Hence, in light of the difficulties posed by the COVID-19 pandemic and the ensuing shift to electronic conduct of activities, the Committee

[123] RBI Circular, 'Voluntary Transition of Primary (Urban) Co-operative Banks (UCB's) into Small Finance Banks' (September 2018) <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11381&Mode=0 > accessed 6 January 2022.

[124] RBI Circular, 'Voluntary Transition of Primary (Urban) Co-operative Banks (UCB's) into Small Finance Banks' (September 2018) <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11381&Mode=0 > accessed 6 January 2022.

[125] CA-13, s 398(1).

deliberated on the need to omit the Explanation to Section 398(1) to strengthen e-enforcement and e-adjudication.

24.3 The Committee noted that the COVID-19 pandemic and existing social distancing norms had paved the way for courts to conduct proceedings virtually. In this regard, the Committee drew reference to the main objectives of the e-Courts Project, visualised under the 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary'. This project seeks to make the judiciary more efficient and construct an easily accessible and cost-effective system of delivering justice.[126] Notably, the most recent phase of the project envisages the creation of an open, interoperable digital infrastructure for enabling dispute resolution by the judiciary and building a strongly rooted governance framework for the same.[127] Therefore, the Committee felt that the Explanation under Section 398 of CA-13 was currently not in line with the spirit of the e-Courts Project.

24.4 The Committee also opined that removing the Explanation would not entirely impede physical enforcement or adjudication since Section 400 of CA-13 empowers the Central Government to specify whether Rules framed under Section 398 are exclusively for electronic purposes or as an alternate/ in addition to physical form. Further, Rule 3(5) of the Companies (Adjudication of Penalties) Rules, 2014 provides for the option of a physical hearing where the same is a preferred mode of adjudication either by the adjudicating officer or the parties involved.

24.5 **In light of the considerations above, the Committee proposed to remove the Explanation under Section 398 of CA-13 to enable the Central Government to make Rules, for conducting enforcement-related actions in a transparent and non-discretionary manner with a proper trail through an electronic platform, under the Act.**

25. STRICTER REGULATION OF NIDHIS

25.1 A Nidhi is a company is incorporated to receive deposits from and lend to its members for their mutual benefit.[128] While CA-13 does not define a 'Nidhi', Section 406 empowers the Central Government to designate certain companies as Nidhis[129] and modify the

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[126] E-Committee, Supreme Court of India, 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary' (August 2005) <https://main.sci.gov.in/pdf/ecommittee/action-plan-ecourt.pdf> accessed 21 January 2022.

[127] E-Committee, Supreme Court of India, 'Digital Courts Vision & Roadmap: Phase III of the e-Courts Project' (April 2021) <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2021/04/2021040344.pdf> accessed 21 January 2022.

[128] Nidhi Rules, 2014, Rule 4(4); Ministry of Corporate Affairs, Government of India, 'Notification on Nidhi Companies' <https://www.mca.gov.in/Ministry/pdf/Nidhi_19032020.pdf> accessed 25 January 2022.

[129] CA-13, s 406(1).

applicability of CA-13 to such companies.[130] The Committee noted that while Nidhis have played a pivotal role in the past for helping middle and lower-middle-income groups by facilitating access to quick financial services with minimum formalities, the regulation and management of Nidhis has also posed several challenges due to their non-compliance with certain legal provisions.

25.2 The Committee additionally noted that Section 406 of CA-13 mirrors Section 620A of CA-56, which similarly empowered the Central Government to regulate Nidhis. It was also brought to the Committee's attention that nearly ten thousand Nidhi companies exist in the country now instead of less than one thousand under CA-56. The Committee gathered that CA-56 was drafted when India's regulatory ecosystem for Non-Banking Financial Companies (**"NBFCs"**) was not sufficiently established. Therefore, it was essential to regulate Nidhis under CA-56. However, given that RBI has developed a robust ecosystem for NBFCs[131] over the years and given the proliferation of branches of banks across the country, the Committee deliberated whether incorporation of new Nidhis should be allowed, and the need for strengthening regulatory supervision for existing Nidhis under CA-13.

25.3 During the administration of Section 406 in the last couple of years by the MCA, companies incorporated as Nidhis have committed violations of numerous provisions of CA-13 and the applicable Rules. It was brought to the Committee's notice that the violations are repetitive and that many such companies have been incorporated after demonetisation. The Committee also noted that the growth of Nidhis has been unbalanced across the country and that some states have extraordinarily high number of Nidhis, thus raising doubts regarding the intention of promoters in setting up such Nidhis. As such, the Committee deliberated that there should be increased oversight on incorporation of Nidhis so that only those promoters who can conduct the affairs of the Nidhis diligently are allowed to incorporate Nidhis in accordance with the law. The Committee was also of the opinion that examination at the stage of declaration also needs to be more robust and time bound.

25.4 **In light of the preceding considerations, the Committee felt that there is a need for more stringent regulation of Nidhis. The Committee recommended that the provisions of Section 406 should be amended to ensure that higher due diligence takes place at the incorporation stage. Additionally, the Committee recommended the following:**

(i) the Central Government shall have the power to prescribe Rules pursuant

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[130] CA-13, s 406(2).

[131] RBI, 'Revised Regulatory Framework for NBFC' DNBR (PD) CC.No. 002/03.10.001/2014-15, RBI/2014-15/299 (2014) <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9327&Mode=0> accessed 17 January 2022 : RBI, 'Revised Regulatory Framework for NBFCs' DNBR (PD) CC.No. 024/ 03.10.001/ 2014-15, RBI/2014-15/520 <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9623&Mode=0> accessed 17 January 2022.

to which only those companies that fulfil certain financial and non-financial criteria, as may be prescribed, shall become eligible to be declared as Nidhis;

(ii) **the declaration notification, for each Nidhi, may also specify additional restrictions or conditions as may be considered necessary and reasonable by the Central Government, and in case of non-compliance by such Nidhi, the Central Government should have the power to withdraw or revoke the declaration;**

(iii) **the declaration granting the status of Nidhi should be valid for a specified period (approximately five years). Upon the expiry of such period, Nidhis may apply for renewal of their status, and such renewal should be subject to the Nidhi's compliance with the provisions of CA-13 and the Rules framed thereunder, and the conditions or restrictions, as the case may be, as specified in its declaration notification;**

(iv) **the Central Government shall have the power to formulate schemes for restructuring (merger, amalgamation or takeover) of Nidhis which are either sick, financially weak or have been mis-managed. Additionally, Nidhis which are found to not be financially viable should be wound up through summary liquidation provisions;**

(v) **existing Nidhis should be mandated to comply with new requirements within a reasonable transitional period (approximately two-three years).**

26. DRAFTING AND CLARIFICATORY CHANGES

26.1 The Committee was apprised of suggestions concerning certain inconsistencies in CA-13, which may be addressed via suitable amendments. In particular, the Committee recommended that:

(vi) **In Section 24(2) of CA-13, concerning the power of the Securities and Exchange Board to regulate the issue and transfer of securities, the words *"and the matters delegated to it under proviso to sub-section (1) of Section 458"* shall be omitted.**

The relevant reference in Section 458 of CA-13 concerning delegation of powers to the Securities and Exchange Board was omitted in 2017. The reference to the proviso of Section 458(1) in Section 24(2) is presently redundant and requires deletion.

(vii) **In the first proviso to Section 136(1) concerning sending copies of audited**

financial statements to members, separate schemes may be provided for (i) AGMs and (ii) any other general meetings.

Section 136 of CA- 13 provides a company's members with the right to get copies of audited financial statements for all general meetings. While the proviso to Section 136(1) provides that such copies may be sent to members in a shorter time, it does not distinguish between AGMs and other general meetings as has been provided under Section 100. The Committee received suggestions to amend the first proviso to Section 136(1) to allow sending of copies of relevant documents at a shorter notice, both in case of AGM and other general meetings.

(viii) 'Penalty in relation to Section 188' shall be included as a ground for disqualification under Section 164(1)(g)

Section 164 of CA-13 provides for the disqualification for the appointment of directors. In particular, Section 164(1)(g) disqualifies a director who has been convicted of an offence dealing with related party transactions under Section 188 at any time during the last preceding five years. Pursuant to the recommendations of CLC 2019,[132] Section 188 was decriminalised in 2020 and presently only attracts a penalty.[133] As such, the Committee recommended the inclusion of such penalties attracted under Section 188 also as a ground for disqualification under Section 164(1)(g) of CA-13.

(ix) In the *proviso* to Section 187 (1) concerning investments by a company, for the words *"subsidiary company"*, the words *"subsidiary company or joint venture"* shall be substituted. Additionally, an amendment to allow a holding company to be the only member in its WOS should be carried out in Section 187. Similar relaxations may also be given in the case of a WOS in which the entire shareholding is held by the holding company along with one or more of its WOSs.

Section 187 of CA-13 provides that a company's investments shall be held in its own name. However, the *proviso* to Section 187(1) provides an exception in the case of shares held by nominees of holding company in the subsidiary company. Since the nominees of investing companies also hold shares on behalf of their respective investing companies in a joint venture, such an exception may also be provided in the case of joint ventures.

[132] Ministry of Corporate Affairs, Government of India, 'Report of the Company Law Committee' (November 2019) <https://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf> accessed 21 January 2022.
[133] CAA-20, s 39 – amending s 188 of CA-13.

Additionally, the Committee discussed that in the case of a WOS (whether public or private), the holding company (whether public or private) should be allowed to be the only member. This should also be permitted in case of a WOS in which the entire shareholding is held by the holding company along with one or more of its WOSs. The requirement to meet the minimum membership conditions of two or seven members for private and public companies, respectively, may be waived off. The Committee also recommended that notwithstanding the aforementioned waving off, the WOS should not be considered a 'One Person Company' under CA-13 just because it has only one member. The Committee viewed that such a provision would facilitate ease of doing business. The Committee was also of the view that consequential changes would be required with regard to matters such as the manner in which shareholder meetings and approvals are to be completed.

(x) In Section 248(6) concerning removing the name of a company from the register of companies, for the words *"before passing an order under sub-section (5)"*, the words *"before publishing the notice under sub-section (5)"* needs to be substituted.

Section 248(5) of CA-13 provides the details concerning striking off the name of a company from the register of companies by the RoC. Upon striking off, the RoC must publish a notice in the Official Gazette. On publication of such a notice, the company shall stand dissolved. Section 248(5) refers to a 'notice' and not an 'order'. Consequently, the reference to Section 248(5) in Section 248(6) needs to be amended to suitably refer to such notice. Alternatively, the issue could also be examined, from the feasibility aspects, for being addressed through the relevant rules instead.

(xi) In Section 446B concerning lesser penalties for certain companies, for the words *"which shall not be more than"*, the word *"of"* should be substituted.

Section 446B of CA-13 provides lesser penalties for one-person, small, start-up, and producer companies. In such cases, as per the current provision, the penalty shall not be more than one-half of the penalty provided for other companies. The Committee felt that there is a need to remove the extant discretion of the adjudicator and stipulate that the penalty shall be equal to precisely one-half of that provided for other companies.

(xii) Quorum requirements for general meetings of Producer Companies in CA-13 may be relaxed

Presently, Sections 378Y and 378ZA(9) of CA-13 require at least one-fourth of the total members of a producer company to be the quorum in the general meeting. Representations have been made to MCA to review this provision given the hardships caused to Producer Companies to hold general meetings, particularly during the ongoing COVID-19 pandemic. Therefore, the Committee was of the view that this provision should be modified to allow a Producer Company to have a quorum of at least one-fourth of the total members or one hundred members, whichever is less.

CHAPTER II: CHANGES PROPOSED TO THE LLP ACT, 2008

1. NEW CONCEPT OF PRODUCER LLPs

1.1. A producer has been defined as any person engaged in any activity connected with or relatable to primary produce, such as farmers and persons engaged in handloom, handicraft or other cottage industries.[134] Producer organisations play a pivotal role in reducing transaction costs and provide a forum for members to share mutually beneficial information, coordinate activities and make collective decisions.[135] It has been further noted that such an institutional support mechanism makes small producer agriculture more viable and can increase producers' income.[136]

1.2. While producer institutions have traditionally been organised in the form of co-operative societies, the concept of Producer Companies was introduced in CA-56 through the Companies (Amendment) Act, 2002. The amendment above sought to include mutual assistance and co-operative principles within the regulatory framework of company law, with suitable modifications. Under Section 378C of CA-13, a producer company may be incorporated where the objects of such company include matters relating to production, harvesting, procurement of primary produce; processing and packaging of produce; manufacture, sale or supply of machinery or equipment to members; providing education on mutual assistance principles to members; and rendering technical consultancy services, training and development for the promotion of interests of its members.[137]

1.3. In light of the benefits associated with producer institutions and the comparative advantages of LLPs vis-à-vis companies, particularly concerning reduced compliance burden, the Committee deliberated whether Producer LLP's may be incorporated within the LLP Act, 2008.

1.4. The Committee noted that Producer LLPs would serve as a more desirable option for small producers since LLPs have been provided with a range of relaxations in the conduct of their affairs. For instance, an LLP is not required to get its accounts audited unless its turnover exceeds Rs. 40 lakhs or its capital contribution exceeds Rs. 25 lakhs.[138] The Committee felt that Producer LLPs are expected to function on a threshold lower than this stipulated limit

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134 CA-13, s 378A.

135 National Institute of Agricultural Extension Management, 'Farmer Producer Companies- Issues and Challenges' (2018) 1(3) <https://www.manage.gov.in/publications/edigest/jun2018.pdf> accessed 12 January 2022.

136 R. Cherukuri, A. Reddy, 'Producer Organisations in Indian Agriculture: Their Role in Improving Services and Intermediation' (2014) 34(1) SAR <https://www.researchgate.net/publication/269223312_Producer_Organisations_in_Indian_Agriculture_Their_Role_in_Improving_Services_and_Intermediation> accessed 12 January 2022.

137 CA-13, s 378C.

138 LLP Rules, 2009, Rule 24(8).

and agreed that incorporating Producer LLPs would significantly reduce compliance costs for producers. Similarly, the LLP model offers ease of formation, business management, taxation and flexible regulatory compliances, which may be particularly beneficial for producers.

1.5. **Therefore, to enable producer institutions to take advantage of the light touch regime under the LLP Act, 2008, the Committee recommended enabling the incorporation of Producer LLPs by an amendment to the Act. The Committee further underscored the importance of an LLP Agreement to guide the decisions of the Producer LLP and ensure its smooth functioning. Accordingly, it was recommended that a model agreement be inserted under the LLP Act, 2008 for ready use by Producer LLPs.**

ANNEXURE-I: CONSTITUTION OF THE COMMITTEE

F. No. 2/1/2018-CL-V
Government of India
Ministry of Corporate Affairs
'A' Wing, 5th Floor, Shastri Bhawan,
New Delhi-110001

Dated: 18th September, 2019

ORDER

Subject: Constitution of the Company Law Committee

A Committee to review the offences under the Companies Act, 2013 was constituted vide order No. 2/1/2018-CL-V dated 13.07.2018. The report of the Committee was submitted to the Hon'ble Corporate Affairs Minister on 27.08.2018. The report, *inter alia,* made recommendations for re-categorizing of certain offences into 'civil wrongs', de-clogging the NCLT and also touched upon certain essential elements of corporate governance. On the basis of recommendations made by such Committee and passage of the Companies (Amendment) Act, 2019, relevant changes have been made to the Companies Act, 2013.

2. In line with the Government's objective of promoting Ease of Living in the country by providing Ease of Doing Business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and also to address emerging issues having impact on the working of corporates in the country, it has been decided to constitute a Company Law Committee for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

3. Accordingly, the Government hereby constitutes the Company Law Committee consisting of the following members:-

S. No.	Name of Person/ Institution	- Position
1.	Secretary, MCA	- Chairman
2.	Shri T. K. Viswanathan, Ex- Secretary General, Lok Sabha	- Member
3.	Shri Uday Kotak, MD, Kotak Mahindra Bank	- Member
4.	Shri Shardul S Shroff, Executive Chairman, Shardul Amarchand Mangaldas & Co.	- Member
5.	Shri Amarjit Chopra, Senior Partner, GSA Associates, New Delhi	- Member

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6.	Shri Rajib Sekhar Sahoo, Principal Partner, SRB & Associates, Chartered Accountants, Bhubaneshwar	- Member
7.	Shri Ajay Bahl, Founder and Managing Partner, AZB & Partners, Advocates & Solicitors	- Member
8.	Shri G. Ramaswamy, Partner, G. Ramaswamy & Co. Chartered Accountants, Coimbatore	- Member
9.	Shri Sidharth Birla, Chairman, Xpro India Limited	- Member
10.	Ms. Preeti Malhotra, Group President, Corporate Affairs & Governance, Smart Group	- Member
11.	Joint Secretary (Policy)	- Member Secretary

4. The terms of reference of the Committee would be as follows:-

i. Analyze the nature of the offences (compoundable and non-compoundable) and submit its recommendation as to whether any of the offences could be re-categorized as 'civil wrongs' along with measures to optimize the compliance requirements under the Companies Act, 2013 and concomitant measures to provide further Ease of Doing Business;

ii. Examine the feasibility of introducing settlement mechanism, deferred prosecution agreement, etc., within the fold of the Companies Act, 2013;

iii. Study the existing framework under the Limited Liability Partnership Act, 2008 and suggest measures to plug the gaps, if any, while at the same time enhancing the Ease of Doing Business;

iv. Propose measures to further de-clog and improve the functioning of the NCLT;

v. Suggest measures for removing any bottlenecks in the overall functioning of the statutory bodies like SFIO, IEPFA, NFRA, etc. under the Act ;

vi. Identify specific provisions under the Companies Act, 2013 and the Limited Liability Partnership Act, 2008 which are required to be amended to bring about greater Ease of Living for the corporate stakeholders, including but not restricted to review of Forms under the two Acts;

vii. Any other relevant recommendation as it may deem necessary.

5. The Chairperson of the Committee may also invite or co-opt any other practitioners, experts (subject specific) who have knowledge or experience in the field of corporate law and representatives from other Ministries or regulators. The Committee may also consult other stakeholders as part of its deliberations. M/s Vidhi Centre for Legal Policy, which is a not-for-profit organization, shall provide legal research assistance to the Committee.

6. The non-official members of the Committee shall be eligible for travelling, conveyance and other allowances as per extant government instructions, as may be decided by Chairperson of the Committee.

7. The Committee shall submit its recommendations in phases and subject-wise to the Government from time to time as may be decided by the Chairperson of the Committee.

8. The Committee shall initially have a tenure of one year from the date of its first meeting.

9. This issues with the approval of Competent Authority.

(Pranay Chaturvedi)
Deputy Director
011-23071190

To
All members
Copy to- PS to CAM
PS to MoS, CA
PPS to Secretary, MCA

F. No. 2/1/2018-CL-V
Government of India
Ministry of Corporate Affairs
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi- 110001

Dated: 17th September, 2020

ORDER

Subject:- Constitution of the Company Law Committee

In continuation of the Order of even no. dated 18.09.2019 (annexed herewith), the tenure of the Company Law Committee is hereby extended upto two years from the date of that order i.e. upto 17.09.2021.

2. This issues with the approval of the competent authority.

(Pranay Chaturvedi)
Deputy Director
Tel: - 23071190

Encl: As above

To

All members

Copy to-PS to CAM

PS to MoS, CA

PPS to Secretary, MCA

PPS to JS(K)

F. No. 2/1/2018-CL-V
Government of India
Ministry of Corporate Affairs
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi- 110001

Dated: 23rd September, 2021

ORDER

Subject:- Constitution of the Company Law Committee

In continuation of the Order of even no. dated 18.09.2019 and order of even no. dated 17.09.2020 (annexed herewith), the tenure of the Company Law Committee is hereby further extended by one year from the date of expiry of the last order i.e. till 16.09.2022.

2. This issues with the approval of the competent authority.

(Pranay Chaturvedi)
Deputy Director
Tel: - 23071190

Encl: As above

To

All members

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PS to MoS, CA

PPS to Secretary, MCA

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ANNEXURE-II: SUMMARY OF RECOMMENDATIONS

Changes to CA-13

S No	Issue	Observations and Recommendations of the Committee	Proposed amendments to CA-13[139]
1	Allowing companies to re-align their FY	Companies that cease to be associated with a foreign entity should be empowered to file a fresh application with the Central Government in a prescribed form to allow them to revert to the FY followed in India.	• Amendment to Section 2(41) to permit companies to re-align their FY where they cease to be associated with a foreign entity subject to an application to the Central Government.
2	Facilitating communication in electronic form	Certain companies should be mandated to serve certain documents in electronic mode only. The fees borne by a company's members while requesting such documents may be determined at any general meeting of the company. Postal delivery of documents should remain available where members have specifically requested to receive such documents also in physical form.	• Amendment to Section 20 to introduce an overriding provision enabling the Central Government to prescribe rules for classes of companies mandatorily required to serve certain documents in electronic mode only. • Amendment to the proviso to Section 20 (2) to allow companies to stipulate the concerned fees at any general meeting.
3	Recognising issuance and holding of	CA-13 should be amended to enable issuance, holding, transfer of fractional shares, in dematerialised form, for	• Insertion of a section in Chapter IV to permit issuance, holding, transfer of equity shares less than one

[139] This column only reflects the primary amendments proposed to be carried out in pursuance of the recommendations of the Committee. In addition to these provisions, consequential amendments to attendant provisions in the CA-13 and the Rules framed thereunder may be suitably evaluated.

	fractional shares, RSUs and SARs	prescribed classes of companies in consultation with SEBI (for listed companies), as may be required. RSUs and SARs should be recognised under CA-13, and their issuance should be sufficiently encumbered.	unit for prescribed classes of companies. • Amendment to Section 62 (1) to allow additional employee compensation schemes linked to the value of the share capital of a company.
4	Easing the requirement of raising capital in distressed companies	Distressed companies should be allowed to issue shares at a discount, notwithstanding the prohibition under Section 53 of CA-13. For this purpose, distressed companies may be categorised as such class or classes of companies as prescribed by the Central Government.	• Amendment to Section 53 (2A) to permit distressed companies to issue shares at a discount in such manner as may be prescribed, notwithstanding the prohibition under Section 53 (1).
5	Replacing affidavits with self-declaration	The requirement of furnishing affidavits should be replaced with filing declarations under the provisions of CA-13 and Rules made thereunder, except for those provisions involving filing affidavits before the NCLT, NCLAT and RD. The Central Government may prescribe the format for filing such declarations.	• Amendment to Section 68 (6) to permit a company to file a self-declaration in place of an affidavit when purchasing its own shares. • Amendment to Section 374 (c) to permit a company to file a self-declaration in place of an affidavit when seeking registration under Part I of Chapter XXI.
6	Clarifying provisions on buy-back of securities	‘Free reserves’ should be explicitly included in calculating the buy-back of equity shares.	• Amendment to the proviso to Section 68 (2) to explicitly include ‘free reserves’ while calculating the threshold of twenty-five per cent in case of

		For companies that grant stock options (such as ESOPs), only those options, which the shareholders have exercised, can be bought back by the company.	buy-back of equity shares. • Amendment to the Explanation to Section 68 clarifying that only those stock options which have been exercised can be bought back by the company.
7	Specific prohibition on the inclusion of trusts on the register of members	CA-13 should include a provision that expressly prohibits companies from entering notice of any trust, express, implied, or constructive on their register of members.	• Insertion of a new Section in Chapter VII to expressly prohibit companies from entering notice of any trust, express, implied, or constructive on their register of members.
8	Holding general meetings through the use of technology	CA-13 should enable companies to hold general meetings, i.e., AGMs and EGMs physically, virtually, and in hybrid mode. Where the meeting is to be conducted entirely in electronic mode, the notice period for such meetings should be reduced to such period as may be prescribed by the Central Government.	• Amendment to Section 96 to enable companies to hold AGMs in electronic mode in such manner as may be prescribed. • Amendment to Section 100 to enable companies to hold EGMs in electronic mode in such manner as may be prescribed. • Insertion of a *proviso* in Section 101 to provide that a general meeting held in electronic mode may be called by giving such notice as may be prescribed.
9	Maintaining statutory registers through an	Certain companies should be required to mandatorily maintain their registers on an electronic	• Amendment to Section 120 to mandate that prescribed class or classes of companies

	electronic platform	platform in the manner laid down by the Central Government. For this purpose, the Central Government may set up an electronic facility. The Central Government may direct the company to share the information held on such statutory registers pursuant to certain enforcement-related functions.	maintain registers on an electronic facility provided by the Central Government. • Central Government may be allowed to direct the company to share information held on the statutory registers in certain enforcement-related functions.
10	IEPF related changes in sections 124 and 125 of CA-13	In Section 124(5), after the words "*such transfer*", the words "*along with any dividend, which has not been paid or claimed*" should be inserted to clarify that unclaimed dividend and interest, if any, concerning the shares referred to in sub-section (6) must also be transferred to the IEPF in a timely manner. In Section 125(3)(a), after the words "*matured debentures*," the words "*redemption amount towards unpaid or unclaimed preference shares*" should be inserted. In line with the practice followed by other Indian regulators, the IEPF Authority should also be empowered to delegate its functions to its member, officer, or any other person to ease administration. Amount owed to shareholders who did not claim such amount	• Amendment to Section 124(5) to include a reference to dividends and interest accrued upon such dividend, in respect of the shares referred to sub-section (6). • Amendment to Section 125(3)(a) to include "*redemption amount towards unpaid or unclaimed preference shares*" as a purpose for which the fund may be utilised. • Amendment to Section 125 empowering the IEPF authority to delegate functions to its member, officer, or any other person, subject to such conditions, if any, as may be specified. • Suitable amendments to Sections 125(2) and 125(3) to allow unclaimed amounts with respect to shares bought

		paid to them after their shares and securities were bought back or cancelled by companies under Section 68 for seven years or more should be allowed to be transferred to the IEPF.	back/cancelled to be transferred to the IEPF.
11	Strengthening NFRA	NFRA should be empowered to take appropriate action against the auditor for non-compliance with CA-13 and requirements thereunder that do not qualify as 'professional or other misconduct'. NFRA should also be empowered to take appropriate penal action if its orders are not complied with. Suitable amendments should be made to CA-13 for the constitution of a NFRA Fund. The accounts of the proposed NFRA Fund should be maintained in such form as prescribed by the Central Government in consultation with the CAG. The accounts of the proposed NFRA Fund should also be audited by the CAG and laid before each House of Parliament. NFRA should be empowered to make regulations for specific matters that should be outlined in CA-13. In accordance with principles of good governance and accountability by the Central Government, such powers should	Amendment of Section 132 to: • Provide that the NFRA Chairperson shall have the powers of general superintendence, direction, and control regarding all administrative matters of the Authority. • Empower NFRA to take action against the auditor for non-compliance with CA-13 and requirements thereunder that do not qualify as 'professional or other misconduct'. Additionally, to empower NFRA to take appropriate penal action if its orders are not complied with. • The constitution of the NFRA Fund and the administration of such a fund. • Empower NFRA to make regulations concerning specific matters consistent with CA-13 and the Rules made thereunder.

		be sufficiently encumbered with safeguards. Section 132 of CA-13 should be amended to provide the NFRA Chairperson with general superintendence and direction powers.	
12	Strengthening the audit framework	CA-13 should enable the Central Government to prescribe a differential list of prohibitions on availing non-audit services for certain classes of companies. Section 147 of CA-13 should be amended to cover penal consequences for contravention of sub-sections of Section 143 other than sub-section (12). A resigning auditor should be under an explicit obligation to make detailed disclosures before resignation and should specifically mention whether such resignation is due to non-cooperation from the client company, fraud or severe non-compliance, or diversion of funds. Moreover, if such information comes to light after the resignation of an auditor but has not been disclosed in the resignation statement, suitable action may be taken against the resigning auditor. Additionally, the auditor should be mandated to provide assurance about the company's accounts and	• Amendment to Section 139 to empower the Central Government to mandate joint audits for such companies as may be prescribed. • Amendment of Section 140 to provide that a resigning auditor make disclosures concerning non-cooperation from the client company, fraud or severe non-compliance, or diversion of funds, as well as her assurance on the company's accounts and her decision to resign. The amendment should also provide a penalty if she fails to make such disclosures. • Amendment to Section 144 to restrict certain companies from availing any non-audit services. • Amendment to Section 147 to cover penal consequences for contravention of sub-sections of Section 143 other than sub-section (12). • Amendment to Chapter XIV

		independence of her decision to resign. CA-13 should enable the Central Government to mandate joint audits for such classes of companies as it may deem necessary. CA-13 should enable the Central Government to order forensic audits in cases of investigation under Chapter XIV in such manner as may be prescribed.	to recognise the concept of forensic audit in such cases, and subject to such Rules, as may be prescribed by the Central Government.
13	Standardising qualifications by auditors	There should be a format for auditors to provide the impact of every qualification or adverse remark on the company's financial statements for circulation to the Board before the same is passed on to shareholders.	• Amendment to Section 143 enabling an auditor to prepare an impact statement for each qualification, reservation or adverse remark on the company's financial statements.
14	Setting up of RMCs	As may be prescribed by the Central Government, certain classes of companies should be mandated to establish RMCs.	• Insertion of a Section in Chapter XII to mandate certain companies to establish an RMC and provide for the composition and function of such an RMC.
15	Clarifying the tenure of an ID	The period during which the ID functioned as an additional director before her regularisation should be included while computing the total tenure of the ID. The total tenure should not exceed the prescribed five years for a single term or ten years for	• Amendment to Section 149 to provide that an ID's total tenure would include her tenure as an additional director immediately preceding her regularisation as an ID.

		two consecutive terms, as the case may be, under any circumstances. The threshold laid down in Section 149(6)(e)(ii)(B) concerning association with a company should be imported to Section 149(11). Further, the threshold of ten per cent should be brought down to five per cent to promote flexibility and ease of doing business for concerned stakeholders.	• Amendments to Section 149 (6) and Section 149 (11) to introduce a five per cent threshold to cap the maximum revenue that may be generated by a legal or a consulting firm in certain circumstances.
16	Revising provisions on disqualification and vacation of directors' office	Under Section 167(1)(a), the vacation of directorship should be limited to disqualifications triggered due to personal incapacity. The relaxation period for new directors under Section 164(2)(b) should be extended to two years from the date of appointment. A new proviso should be inserted in Section 164(2) to provide that the disqualification referred to in clause (b) should not apply to the nominee directors appointed by debenture trustees registered with SEBI. Similar changes should be extended to LLPs through a notification under Section 67 of the LLP Act, 2008.	• Deletion of the reference to Section 164(2), which relates to disqualification triggered on the grounds of default by companies where the director holds her position, from Section 167(1)(a). • Deletion of the *proviso* to Section 167(1)(a) concerning disqualification under Section 164(2). • Amendment to the *proviso* to Section 164(2) to relax the disqualification trigger from six months to two years for freshly appointed directors of companies that are in default of Section 164(2)(b) • Amendment to Section 164(2) to clarify that the grounds of disqualifications do not apply to nominee directors

			appointed by debenture trustees registered with SEBI. • Amendment to the LLP Act, 2008 through a notification under Section 67 of the LLP Act.
17	Cooling-off period before auditors become directors	There should be a mandatory one-year cooling-off period, from the date of cessation of office, after which an auditor of a company may be permitted to hold the position of director in the same company or group of companies. In the case of an audit firm structured as a partnership/LLP, such a restriction should only operate concerning the partner that audited the company.	• Amendment to Section 164(1) to provide that a person shall not be eligible to become a company's director if she has been the auditor of the company in the last one year. The amendment shall also provide that such a restriction will only apply to the auditing partner in the case of an audit firm structured as a partnership/LLP.
18	Cooling-off period before an ID becomes a managerial person	There should be a mandatory one-year cooling-off period, from the date of cessation of office, after which an ID may be permitted to hold the position of an MD, WTD, or manager in the same company or group of companies.	• Amendment to Section 196(3) to provide that a person shall not be eligible to become a company's MD, WTD, or manager if she has been an ID of the company in the last one year.
19	Clarifying the manner of the resignation of certain KMPs	Companies should be obligated to notify the RoC of resignations tendered by certain KMPs whose appointment intimation was filed with the RoC. In cases where the company fails to intimate the RoC within 30 days, the KMPs should be allowed to file their	• Insertion of a Section in Chapter XIII to provide the procedure of resignation by certain KMPs.

		resignations directly with the RoC. The date on which such resignation of KMPs should come into effect may be harmonised with Section 168 concerning resignation by directors.	
20	Reviewing provisions on merger and amalgamation	Each company holding treasury stock should report such shares through a declaration. Such companies shall dispose of their entire treasury stock within three years. The disposal of such shares may take place in any mechanism devised by the company without the intervention of the NCLT. Appropriate penal action may be initiated when a company fails to dispose of their treasury stock within the prescribed timeline. A twin test requiring approval by (i) majority of persons present and voting at the meeting accounting for seventy-five per cent, in value, of the shareholding of persons present and voting; and (ii) representing more than fifty per cent, in value, of the total number of shares of the company, should be mandated for approval of fast-track mergers under Section 233. Section 233(12) should be amended to empower the Central Government to make Rules concerning the invocation of	• Insertion of a *proviso* to Section 232 to provide that treasury stock held before the commencement of CA-13 should be dealt with and extinguished in such manner as may be prescribed. • Amendment to Section 233 to include a twin test requiring approval by (i) majority of persons present and voting at the meeting accounting for seventy-five per cent, in value, of the shareholding of persons present and voting; and (ii) representing more than fifty per cent, in value, of the total number of shares of the company for approval of fast-track mergers. • Amendment to Section 233 to provide the Central Government Rule-making powers for matters related to the invocation of the Section in certain circumstances. • Amendment to Section 419 to enable the Central Government to constitute

		Section 233 for compromise or arrangements under Section 230(1) and division or transfer under Section 232(1)(b). Special Benches of the NCLT should be allowed to be constituted by the Central Government to deal with matters of economic importance relating to mergers and amalgamation or corporate restructuring or specialised IBC cases.	special Benches of the NCLT, which may deal with specific powers and functions of the NCLT, as may be prescribed.
21	Easing restoration of struck off companies	In cases where aggrieved persons apply for restoration within three years under Section 252(1), the application should be filed before the RD.	• Amendment to Section 252 to provide that a person aggrieved by the striking-off of a company may appeal, within a period of three years, to the RD instead of the NCLT.
22	Recognising SPACs	There should be an enabling provision under CA-13 to recognise SPACs and allow entrepreneurs to list a SPAC incorporated in India on domestic and global exchanges. Provisions on relaxing the requirement to carry out businesses before being struck off and providing exit options to the dissenting shareholders of a SPAC if they disagree with the choice of the target company identified must also be laid down in CA-13.	• Insertion of a new chapter for the recognition and regulation of SPACs.
23	Prohibiting conversion of a	Section 366 of CA-13 should not permit the conversion of co-	• Deletion of a reference to co-operative societies in Section

	cooperative society into a company	operative societies into a company.	366 concerning companies capable of being registered.
24	Facilitating e-enforcement and e-adjudication	The Explanation under Section 398 of CA-13 should be omitted to enable the Central Government to make Rules for electronically imposing fines, penalties, and payment of fees.	• Deletion of the Explanation to Section 398 to further facilitate e-enforcement and e-adjudication.
25	Stricter regulation of Nidhis henceforth	Provisions on Nidhis should be revised to regulate incorporation and functioning of Nidhis more stringently.	• Chapter XXVI to be amended to include more stringent and robust provisions for incorporating and regulating Nidhis.
26	Drafting and clarificatory changes	In Section 24(2) of CA-13, concerning the power of the Securities and Exchange Board to regulate the issue and transfer of securities, the words "*and the matters delegated to it under proviso to sub-section (1) of section 458*" should be omitted. In the first proviso to Section 136(1) concerning sending copies of audited financial statements to members, separate schemes may be provided for (i) AGMs and (ii) any other general meetings. "*Penalty in relation to Section 188*" should be included as a ground for disqualification under Section 164(1)(g).	• Amendment to Section 24(2) to omit the reference to Section 458. • Amendment to the first *proviso* to Section 136(1) to provide separate schemes when sending copies of audited financial statements for (i) AGMs and (ii) any other general meetings. • Amendment to Section 164(1)(g) to clarify the position concerning related party transactions as a ground for disqualification of directors. • Amendment to Section 187(1) concerning holding assets to include joint

		In the proviso to Section 187(1) concerning investments by a company, for the words "*subsidiary company*", the words "*subsidiary company or joint venture*" should be substituted. Additionally, there should be an amendment to allow a holding company to be the only member in its WOS should be carried out in Section 187. Similar relaxations may also be given in the case of a WOS in which the entire shareholding is held by the holding company along with one or more of its WOSs. In Section 248(6) concerning removing the name of a company from the register of companies, for the words "*before passing an order under sub-section (5)*", the words "*before publishing the notice under sub-section (5)*" needs to be substituted. In Section 446B concerning lesser penalties for certain companies, for the words "*which shall not be more than*", the word "*of*" should be substituted. The quorum requirements for general meetings of Producer Companies should be relaxed.	ventures and to allow holding companies to be the only member in its WOS and providing similar relaxations in the case of a WOS in which the entire shareholding is held by the holding company along with one or more of its WOSs. • Amendment to Section 248(6) to include publishing of notice of striking-off by the RoC. • Amendment to Section 446B to clarify penalties for one-person, small, start-ups, and Producer Companies. • Amendment to Section 378Y and 378ZA(9), which presently lays down the quorum requirement for general meetings of Producer Companies as one-fourth of the total members. The threshold is sought to be relaxed to one-fourth of the members or one hundred members, whichever is lesser.

Changes to the LLP Act, 2008

S. No.	Issue	Observations and Recommendations of the Committee	Proposed amendments to the LLP Act, 2008
1.	New concept of producer LLPs	To enable producer institutions to take advantage of the light touch regime under the LLP Act, 2008, Producer LLPs should be allowed to be incorporated under such Act. This should be supported by a model LLP Agreement for guiding the decisions of the Producer LLP and ensuring smooth functioning.	• A new chapter is proposed to be inserted in the LLP Act, 2008.

LIST OF DEFINED TERMS

Annual General Meeting	AGM
Board of Directors	Board
Companies Act, 1956	CA-1956
Companies Act, 2013	CA-13
Companies (Amendment) Act, 2017	CAA-17
Companies (Amendment) Act, 2020	CAA-20
Companies Law Committee of 2016	CLC 2016
Committee to Review Offences Under CA-13 of 2018	CLC 2018
Company Law Committee of 2019	CLC 2019
Comptroller and Auditor General	CAG
Employees’ Stock Options	ESOPs
Extraordinary General Meeting	EGM
Financial Year	FY
Independent Director	ID
Indian Penal Code, 1860	IPC

Initial Public Offering	IPO
Insolvency and Bankruptcy Board of India	IBBI
Insolvency and Bankruptcy Code 2016	IBC
Institute of Chartered Accountants of India	ICAI
International Financial Services Centres	IFSC
International Financial Services Centres Authority	IFSCA
Investor Education and Protection Fund	IEPF
Key Managerial Personnel	KMP
Limited Liability Partnership Act, 2008	LLP Act, 2008
Memorandum of Association	MoA
Ministry of Corporate Affairs	MCA
Managing Director	MD
National Company Law Tribunal	NCLT
National Company Law Appellate Tribunal	NCLAT
Non-Executive Director	NED
National Financial Reporting Authority	NFRA

Other Audio-Visual Means	OAVM
Registrar of Companies	RoC
Regional Director	RD
Reserve Bank of India	RBI
Risk Management Committee	RMC
Restricted Stock Units	RSU
Securities and Exchange Board of India	SEBI
SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015	SEBI LODR Regulations
Small Finance Bank	SFB
Special Purpose Acquisition Company	SPAC
Stock Appreciation Rights	SAR
Primary (Urban) Co-operative Bank	UCB
United Kingdom	UK
United States of America	USA
Video-Conferencing	VC

Whole-Time Director	WTD
Wholly Owned Subsidiary	WOS