

Suggestions for Expert committee to examine the possibility of replacing multiple prior permissions with pre-existing regulatory mechanism and to prepare draft legislation, invites views/suggestions on the proposed legislation						
SI No.	Related to	Issues	Existing Govt. Regulations (Give Exact regulation/clause etc)	Specific Suggestions	Check Points	Enablers
1	Setting up of new business	Multiple Authorities' Clearances		To eliminate Points of Bureucracy, Corruption, Labour, Regional Sentiments, Grey market and counterfeiting and Social Capitals, an effective implementaton of Single Window Clearance system and the Registration Process can facilitate obtaining Approvals and Clearances. The following STATUTORY CLEARANCES SHOULD BE PROVIDED ON: SINGLE WINDOW CLEARANCE SYSTEM -- 1 (1).NOCs (2). SERVICE TAX LICENSE (3) TRADE LICENSE (4) SITE PLAN APPROVAL (5) CONSENT TO ESTABLISH (6) VAT REGN & TAX EXEMPTION (7) EXCISE LICENSE (8) WATER SUPPLY (9) DRUG LICENSE (10) SEWERAGE (11) NEW POWER CONNECTION (12) FIRE SAFETY CLEARANCE (13) FACTORY LIC. (14) CONSENT TO OPERATE (15) HAZARDOUS WASTE MANAGEMENT (16) CST REGN. (17) SHOPS & ESTABLISHMENT REGN. (18) BOILERS REGN. (19) MSME REGN.	•Time-bound faster clearances	•Through Technology & making an Enabling Regulatory / Policy
2				SINGLE WINDOW --2 FOR THE FOLLWOING SERVICES: 1.Industrial Lincese 2 Industrial Entrepreneurs Memorandum 3. Employer Registration with ESIC 4) Employer Registration with EPFO . 5. Company name availability 6. Allotmen of Directors' Identification Number (DIN) 7. Certificate of company's incorporation 8. Declaration of commencement of business 9. RBI's Foreign Collaboration- General Permission Route 10. Advance Foreign Remittance 11. Permanent Account Number (PAN) .12 Tax deduction Account Number 1TAN) 13. Issue of Explosive licence (PESO) 14 Importer exporter code (IEC) 15. Memorandum and Aricles of Association	•Common application form	
3				•There should be a provision of deemed approvals in certain cases, if the competent authority fails to communicate the decision within the set time period.	•Deemed clearances	
4				•To introduce E-stamping as the computer-based stamping of registration documents where a record-keeping agency maintains the database electronically instead of physical stamping of documents, which can be forged or duplicated. It is a computer based application and a secured electronic way of stamping documents.	•Curb revenue and time loss by preventing the circulation of fake stamp papers	
5				•To introduce a three-tier approval mechanism to expedite clearances to industrial projects based on the level of investment	• Investment based priority Clearances.	

6				<ul style="list-style-type: none"> •To established a single nodal agency to handle all applications / permissions of an entrepreneur and forward them to the concerned departments 	<ul style="list-style-type: none"> •Dedicated Relationship Managers 	
7				<ul style="list-style-type: none"> •To introduce an internet-based online registration, filing, and information retrieval system that enables individuals to register businesses on their own 	<ul style="list-style-type: none"> •Online monitoring of the application's status 	
8				<ul style="list-style-type: none"> •For cases requiring approval from other government agencies, the Single Window should be capable to send an email notifying the Agencies of a pending application. The agency then logs on to Single Window to retrieve the online application and provide its comments, thus saving time and effort 	<ul style="list-style-type: none"> •Information is updated within 30 minutes of a successful filing instead of 14-21 days 	
9				<ul style="list-style-type: none"> •To simplify the process, the Single Window should pre-populates forms with information already available in the database. The customer doesn't need to re-enter the information but can make changes if needed 	<ul style="list-style-type: none"> •Time to register is reduced from 24 hours to just 15 minutes 	
10				<ul style="list-style-type: none"> •To help ensure accuracy and integrity, Single Window validates and verifies the data entered. 	<ul style="list-style-type: none"> •Time to incorporate a company decreases from five days to 15 minutes 	
11						
12	Companies Act 2013					
13	Section 7	Non refundable amount if company not registered	Filing of INC 29 with full fees and if the name is rejected even with two chances, refund of amount is not made	When for reasons, the name is not available and at the end if it is not registered the amount paid should be returned forthwith to the Bank of the applicant.	Refund to take place within 72 hours	Technology/Policy.
14	Section 39 (STAMP DUTY)	It is to be paid separately to the collector of stamps. Whereas, at the time of incorporation of a company or further raise of capital the duty is paid with Registrar of Companies. Paying duty at the time of allotment separately causes hardship to companies.	On allotment of Securities, Stamp duty on the allotment of securities to be paid to Collector of Stamps	Similarly paying stamp duty at the time of incorporation or to raise capital for allotment of securities to Collector of Stamps. This would minimise the time, and litigation with Collector of Stamps.	Stamp Duty payment	Policy
15	Section 42 and 62(FORMS)	Company have to fill a lengthy form which runs into several pages.	The forms and the formats for Private Placement and Rights Issue of Shares is very lengthy and cumbersome	Unlisted companies, more particularly for private limited companies the formats may be simplified. Volume of paper work needs to be brought down	Ease of raising financial resources	Policy

16		Maintenance of 30% of deposit payment reserves .	Depositing such sum which shall not be less than 15 per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank account to be called as deposit repayment reserve account.	Earlier the deposit was only for the current year (15%) against 30% (15% per year for 2 years) as per the new act. Recommended to restore the same 15% as per the earlier provisions.		
17	Section 92	Return of Allotment M	MGT 7 is the prescribed format. It runs into several pages.	Need to bring down to 8 pages.Earlier return was not more than 12 to 16 p	Reducing Operationg Costs for the Companies Simplyfy MGT 7.	Policy Change Technology/Policy
18	Section 92 and section 134	MGT 9 is the prescribed format.It is totally duplication and waste of time and energy	Directors Report to have additional attachment of extract of annual return	To remove the attachment of extract of annual return from directors report (MGT 9)	Avoid duplication	Technology/Policy
19	Section 96 read with 2(76)	99% companies are unlisted companies are family owned business and members of the family.Almost everyone is related to each other.To circumvent the law companies have to involve outsiders as members of the board	Voting rights of the related party in the AGM is restricted in the AGM.	Related party voting rights should be given for board meetings but certainly NOT for Annual general meetings. No other country has such a strict ruling for the voting rights of the related parties.	Related party Voting Rights.	Policy
20	Section 135	There is no tax incentive for spends over and above 2% of PAT on CSR	Spend 2% of average net profits of the company over the 3 immediate preceeding FYs	C Any spent on CSR above 2% should be totally exempt from Tax.	Incentivize CSR	Policy
21	Section 135	Doing away with the CSR Committee	CSR committee is a Must	CSR committee be dispensed with.The activities which the Committee performs can be carried out by the board so that entire board will be aware of CSR activities. It will also save money to the company from paying additional sitting fees to the directors.	Reduce cost for companies.	
22	Section 178	It is an additional burden for unlisted companies to have Nomination and Remuneration Committee. No purpose is solved except for higher cost in terms of sitting fees and extra paper work.	Nomination and Remuneration Committee is a Must	To leave it to the Board to take a call on the whether to constitute the NR	Reducing costs for unlisted companies.	Policy

23	Foreign Company - Section 2(42)	therefore, implies that a company which is incorporated outside India can be considered as a foreign company if it has a place of business in India, can have an office through electronic mode. The term "electronic mode" being a new concept which has also wider	Foreign company" means any company or body corporate incorporated outside India which –has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.	The definition mentioned through electronic mode is very wide. It should specify specific modes.	Define 'Electronic Mode' for foreign companies	Policy
24	Associate Company - Section 2(6)	Joint Venture being included under the definition of Associate Company	"Associate company" in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.	The definition should be in line with the accounting standards and the term "joint venture" should be excluded from the definition of associate.	Definition of Associate Company	Policy

25		Associate Company Vs Accounting Standard 18	Associate Company includes Joint v	Accounting Standards being mandatory for a direction of financial statements will have a different connotation whereas in compliance with the other requirements of the Act it will have a different connotation. Accounting Standard 18 requires disclosure of transactions with associate enterprises. The said disclosure, therefore, may not be in line with the requirements other than provisions contained in the Act, for example, consolidation of accounts, disclosure of directors' interest, etc. It is noticed that the term "joint venture" has also been included as a part of the associate company by the Act whereas Accounting Standard 18 excludes the joint venture of an associated enterprises. This issue will also have repercussion on the disclosure as well as with regard to the compliance of the provisions of the Act.	Accounting Standard 18 Vs Associate Company	Policy
26	Holding Company - Section 2(46)	Body Corporate has not been recongnised as a Holding Company as per the definition sof the latter	"Holding company" in relation to one or more other companies, means a company of which such companies are subsidiary companies.	The definition should also include body corporate, like it was under section 4(5) of the Companies Act, 1956.	Definition Change of Holding Company	Policy

27		<p>Should be included in the definition of Holding Company. If only Indian companies qualify as holding companies then many transactions under the new Act will fall outside the scope of the provisions of the new Act. For instance, a related party transaction between an Indian subsidiary and foreign holding company will not qualify as related party under Section 2(76), directors having pecuniary relationship with foreign holding companies will still qualify as independent directors under Section 149(6),</p>	<p>“Holding company” in relation to one or more other companies, means a company of which such companies are subsidiary companies.</p>	<p>The definition should also include body corporate, like it was under section 4(5) of the Companies Act, 1956.</p>	<p>Definition Change of Holding Company</p>	<p>Policy</p>
28	<p>Listed Company – Section 2(52)</p>	<p>Under the Companies Act, 1956, it was specifically provided that listed companies mean “public listed companies”. However Section 2(52) of the new Act provides for “a company” which will mean all kinds of companies – public and private limited companies. As a consequence of this, public or private companies whose certain securities are listed but not through</p>	<p>“Listed company” means a company which has any of its securities listed on any recognised stock exchange</p>	<p>The definition should cover only public listed companies as was the case under the Companies Act, 1956.</p>	<p>Definition of Listed Company: Listing of securities</p>	<p>Policy</p>

29	Interested Director - Section 2(49)	The above definition should be in consonance with that given in Section 184(2) of the Act to be considered for the purpose of disclosure of interest by directors in any contract or arrangement proposed to be incorporated into by company. Further, the above definition also provides that the interest of a director is also to be taken into consideration through any of its relatives. Definition of term "relative" is wide enough to cover the relatives that may not be dependent on	"Interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;	In the case of interested director, the disclosure should be with reference to director, his dependents and not the interest of relative in any firm or company.	Definition of the term relative in context with interested director	Policy
30	Public Company - Section 2(71)	A subsidiary private company to a public listed company being considered as a deemed public company	"Public company" means a company which is not a private company; has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed.	The above section provides that a private company which is a subsidiary of a public company shall be deemed to be public company. It is not clear that what should such private company do, does it has to convert into a public company or it can retain the basic features of a private company in its Articles.	Private Company as a deemed Public Company	Policy
31			Provided that a company which is a subsidiary of a company not being a private company shall be deemed to be public company for the purpose of this Act even where such subsidiary company continues to be a private company in its Article.			
32	Subsidiary Company Section 2(87)		"Subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company –	A clarification is required whether the layers are horizontal or vertical or both.		

33			(i) controls the composition of the Board of Directors; or			
34			(ii) exercises or controls more than one-half of the total share capital either as its own or together with one or more of its subsidiary companies.			
35			Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.			
36						
37	Independent Director – Section 2(47)		“Independent director” means an independent director referred to in sub-section (6) of Section 149.	In sub-section (6) of Clause (d) of Section 49, the definition of “independent director”, the term “relative” should include only spouse and dependent children and corresponding amendments be made in Section 174, 184 and its Rules and Forms		
38						
39	CHAPTER 3 – PROSPECTUS AND ALLOTMENT OF SECURITIES					
40						
41	Rule 14 – Private Placement	(1) It requires issuance of such shares of the face value of not less than Rs 20,000/-. The limit of face value can lead to problematic situation for a company intending to	Rule 14(2)(a) : The proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the offers or Invitations:	(1) It is suggested to delete this clause, so as to avoid a situation which is described here.		
42			Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:			

43			Provided further that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the comp any passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.			
44						
45			Rule 14(2)(b) : Such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year.			
46			Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of subsection (1) section 62 shall not be considered while calculating the limit of two hundred persons.			
47						
48		2) The rule does not expressly envisage a situation where shares are allotted for a consideration other than cash and no money is received from the bank account of the applicant.	Rule 14(2)(c) : The value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of face value of the securities.	(2) It is suggested to provide for the above expressly		
49						
50			Rule 14(2)(d) : The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payment for subscriptions have been received:			

51			Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.			
52						
53	CHAPTER 4 – SHARE CAPITAL AND DEBENTURES					
54	Section 43 (a)(ii) read with Explanation Rule 4(6)	Where there is agreement before 1st April 2014 for conversion but CCPs/CCD are issued after 1st April 2014 whether the old	Section 43(a)(ii) – With differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;	Convertible instruments (CCPs/CCD) issued prior to 1st April 2014 with a right to get DVRs after 1st April 2014 should continue to be governed by the Companies Act, 1956.		
55			Rule 4(6) : Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.			
56			Explanation – For the purpose of this rule, it is hereby clarified that differential rights attached to such shares issued by any company under the provisions of Companies Act, 1956, and Rules made thereunder, shall continue to be regulated under such provisions and Rules.			
57						

58	Section 55 read with Rule 9 – Issue and Redemption of Preference Shares		Section 55 specifically deals with issue and redemption of preference shares. Rule 9 also provides for the conditions to be fulfilled by a company w.r.t. issue and redemption of preference shares. However, as per Section 23(2), a private company may issue securities (which include preference shares) by rights issue, bonus issue or private placement. Extensive guidelines are provided in the Rules of Chapter III for issue of securities through private placement and in Chapter IV for preferential allotment. So, does this imply that a company issuing preference shares need to follow both the preference shares issue guidelines as well as private placement / preferential allotment guidelines.	The Rules providing guidelines for issue of preference shares should explicitly state that the company need not follow private placement / preferential allotment guidelines		
59						
60	Section 62 – Further Issue of Capital		With respect to the further issue of shares by a private company on a preferential basis:	Where an agreement is made before 1st April 2014, the old law relating to Differential voting rights should be applicable.		
61			(i) In case of convertible securities, is the price required to be predetermined; can the price be determined based on future projections or based on a formula;			
62			(ii) Can we take a view that the convertible securities, existing prior to April 1, 2014, will not be governed by instant rules?			
63						

64	Section 62 – Further Issue of Capital & Section 23 – Public Offer and Private Placement	The subscribed capital includes preference as well as equity capital. So does this imply that even if the company intends to increase its subscribed capital by issue of preference shares, such shares shall be offered to equity shareholders rather than preference shareholders.	Section 62 read with Section 23 - As per opening lines of Section 62(1), “where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered holders of equity shares”.	The word “shares” should be replaced with the word “securities” in Section 62		
65		Moreover, the word “shares” has been used u/s 62(1)(a) dealing with rights issue, while the term “securities” has been used in Section 23, enabling companies to issue securities through rights issue. The term “securities” has very wide meaning as compared to shares.				
66						
67	Rule 13 – Issue of shares on preferential basis			The language of the section seems to suggest that the only way to allot shares is by way of private placement. There are other modes available to an unlisted company e.g. allotment through application, preferential allotment on a limited basis etc. These modes provide flexibility to unlisted companies in accessing capital. They were available under the earlier act and should be restored.		
68						

69	Rule 13(2)(h)	<p>This Rule states that the price of convertible securities offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of valuation report of a registered valuer. It may be noted that FEMA/ FDI permits a pricing formula in this regard with a condition that pricing at the time of conversion will not be less than at the time of issue. Similar provision should be provided here in case preferential issue is to a non-resident.</p>	<p>Where convertible securities are offered on a preferential basis, with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of valuation report of a registered value and also complied with the provisions of Section 62 of the Act.</p>	<p>The concept should be in line with FDI/FEMA.</p>		
70						
71	Rule 13(2)(d)(v)	<p>What is the significance and meaning of "relevant date" is case of an unlisted company. Either this should be deleted or clarified.</p>	<p>Relevant date with reference to which the price has been arrived at.</p>	<p>Clarity is required that the law as applicable at the date of agreement or whether at the date of conversion, will be applicable.</p>		
72						

73	Rule 13 (1)(ii)	This defines "shares or other securities" to mean equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date. What will happen if loan is raised (but for which no securities are issued which will be converted into equity if the terms of the financing agreement provide for such a conversion) and that loan is converted into equity shares in terms of the financing agreement. It should be clarified that this will also be covered.		This should be clarified.		
74						
75	Rule 17 – Buy-back of shares or other securities	This deals with the minimum period of offer of 15 days. This can be relaxed and provide that the period of 15 days can be shortened if all the shares holders of the company give their consent. In practice, it is seen in private companies with 2 shareholders that the consent is obtained on the first day of the offer.	Rule 17 (5): The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer.	Hence keeping the offer open for 15 days makes little sense. Similarly, Rule 17(7) should say unless consent of all the shareholders for shorter period is obtained.		

76			<p>Rule 17 (7): The company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty one days from the date of closure of the offer.</p>			
77						
78	Rule 18 – Debentures	<p>This Rule states that secured debentures shall be secured by creation of charge on the properties or assets of the company – does this mean that group company or parent company of the borrower company cannot provide security on the group company's or parent company's properties and assets? This will adversely affect the financing transactions. Similarly Rule 18(1)(d) states a similar provision.</p>	<p>Rule 18(1)(b) : Such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.</p>	This needs to be allowed as per old Act.		
79						
80	CHAPTER 7 – MANAGEMENT AND ADMINISTRATION					
81						

	Section 107 - Voting by show of Hands	In reality because of this provision of Section 107 read with Rule 20 which requires certain companies to have voting by electronic means, passing of resolutions by show of hands will never be possible because all these companies to begin with will be required to give an option to vote by electronic means. Therefore, in reality the demand of poll as provided in Section 109 will really be applicable to only those companies which are not covered by Rule 20, for instance, all private companies.	Sub-Section 107(1) : At any general meeting, a resolution put to the vote of the meeting shall unless poll is demanded under Section 109 or the voting is carried out electronically, be decided on a show of hands.	Section 107 will require amendment to delete "or the voting is carried out electronically" and be replaced by expression which provides that if a poll is not demanded at the physical meeting, then each shareholder's vote through electronic means will have one vote each and if a poll is demanded at the physical meeting, each shareholder who has voted by electronic means will have vote in proportion to the share capital held in the company.		
82		This is because the				
83						

	Section 110 - Postal Ballot	<p>Section 110 is the real section and question which has been discussed in the Bombay High Court judgment in the case of Wadala Commodities Limited with Godrej Industries Ltd. The real question is whether physical meetings have to take place or not in cases when a matter is to be passed by postal ballot. The language of Section 110 is clear (as was the language of Section 192A of the Companies Act, 1956) that matters which are passed by postal ballots do not require the physical meetings of the shareholders. This is very clear from the use of expression "instead of transaction such business at a general meeting". Therefore</p>			
84					
85					

		<p>In any case the language of Rule 22 is confusing. If it was clear that Section 110 does not require a physical meeting of the shareholders if an item of business is transacted through postal ballot, then what is the need to have Rule 22 (14) which says that – “the resolution shall be deemed to be passed on the date of at a meeting convened in that behalf.” Interestingly, such a language was also there in the Postal Ballot Rules of 2001 and created some ambiguities even under those Rules.</p>				
86						
87						

88		Another issue that will arise in the case of unlisted public companies is the different threshold for the applicability of voting by electronic means and voting through postal ballot. While Rule 20 provides that companies having more than 1000 shareholders will require to provide facility of electronic voting but Rule 22 (proviso at the end of the Rule) provides applicability of postal ballot for companies having more than 200 members. So in effect if a company has more than 200 members but less than 1000 members (for example 500 members) which does its business through postal ballots, in any case it				
89						
90	CHAPTER 8 – DECLARATION & PAYMENT OF DIVIDEND					
91						
92	Rule 3 - Declaration of dividend out of reserves	There is a typographical error		The word in the first line should be “inadequacy” and not “adequacy”.		
93						
94	CHAPTER 9 – ACCOUNTS OF COMPANIES					
95						

96	Section 128 – Books of account, etc. to be kept by company	Sub-Section (2) of Section 128 allows a company having branch office in India and outside India to keep proper books of account relating to the transaction effected at branch office are kept at that office provided summarized returns are sent by the branch office to the company at its registered office at quarterly intervals or at any other place where the books of account have been kept by the company.	Section 128(2) : Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).	The term "final information" be defined or clarified.		
97		Sub-section (3) of the said section allows for the inspection of such books of account by any Director during business hours. The sub-section also provides that in case "financial information", if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any Director subject to such conditions as may be prescribed.	Section 128(3) : The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed.			
98						

99	Rule 4 - Conditions regarding maintenance and inspection of certain financial information by directors:-	In the Sub-Rule (2) (3) and (4) of Rule 4 deal with conditions relating to maintenance and inspection of certain financial information by Directors. Rule 4 does not define the term "financial information". Sub-Rule (2) of Rule 4 however provides that where any other financial information is required by the Director apart from that contained in summarized returns, the Director shall furnish a request to the company setting out the full details of the financial information sought and the period for which information is	Rule 4(2) : Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought.			
100			Rule 4(3) : The company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.			
101			Rule 4(4) : The financial information required under sub-rules (2) and (3) shall be sought for the director himself and not by or through his power of attorney holder or agent or representative.			
102						

103	Section 129 – Financial Statement	In Sub-Section (1) of Section 129 1st proviso mentions that items contained in financial statement to be in accordance with Accounting Standards. This statement needs clarity. The Accounting Standards do not deal with the items which are of the part of the financial statement but also require disclosure in the manner required by the standard.	Section 129(1) : The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III	The language in the Section, therefore, requires a change.		
104		The consolidation is to take place in respect of associate and joint venture companies. It may be added that Accounting Standard 21 does not provide for this type of consolidation of accounts of association and joint ventures companies unless there is a subsidiary in existence.	Section 129(3) : Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section(2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).	The consolidation process should be in accordance with Accounting Standard 21.		
105						
106		Sub-Section (4) of Section 129 : If no subsidiary but Associates and /or Joint Venture whether consolidation required. How to comply with section 129(4).	Section 129(4) : The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).			
107						

108	Section 132 – Constitution of National Financial Reporting Authority	Companies Act, 1956 required that chairperson of a National Advisory Committee on Accounting Standards shall be a person of eminence well-versed in accountancy, finance, business administration, business law, economics or similar discipline. As against this, chairperson of National Financial Reporting Authority provides for a Chairman for expertise in accountancy, auditing, finance or law. As would be evident, the qualifications of the chairperson have been curtailed so as to exclude the qualifications which had been provided for Chairman of the		The definition should be in line with the definition of the Companies Act, 1956.		
109						
110		Section 132 (4)(c)(B) - The debarring of firm from partners is not warranted as it will lead to a situation whereas those partners who are not involve in the conduct of audit would also be punished.		Therefore, sub-section provides that National Financial Reporting Authority shall have powers to debarring the member or the firm from engaging himself or itself from partner as member of The Institute of the Chartered Accountants of India.		
111						

112	Corporate Social Responsibility [U/s 135(1)]	The requirement of an independent director under this section is contradictory of Section 149(4). Under section 149(4) an Independent Director is required for every listed public company	Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least director shall be an independent director.	Remove this section for unlisted / closely held / private companies in which public is not the shareholder.		
113						
114	Section 134(5) - Directors' Responsibility Statement : Internal Financial Controls	There is an elaborate definition of internal financial controls given in section explanation to 134 (5) (e). The board of directors of listed companies have to give a confirmation in this regard. In rule 8 (5) (viii), the board report is also required to capture details in respect of adequacy of internal financial controls with reference to the financial statements.		It should be clarified whether the requirement of rule 8 (5) are applicable to all companies or only to listed companies and other public companies with a paid up capital of 25 crores or more.		
115						
116	Section 143 (3) (i) – Powers and Duties of Auditors & Auditing Standards	Statutory Auditors have to report whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.		Statutory Auditors are chartered accountants in practice and do not have the capability or visibility w.r.t. operating and business controls. Therefore, the definition of internal financial controls should be clearly limited to financial controls for the purpose of section 143 (3) (i). The elaborate definition of internal financial controls given in section 134 (5) (e) should not be made applicable here for the purpose of reporting by statutory auditors.		
117						

118	Secretarial Audit – Form MR 3	<p>Secretarial audit is to be done a practising company secretary who is well versed in company law and other corporate laws. However, secretarial audit, as envisaged under section 204 (1) read with form MR-3, also covers other applicable laws like telecom laws, Oil & Gas laws, other industry specific laws. Currently, practising company secretaries are in no position to identify such kind of laws. Significant capacity building along with tie up with other professions would be needed to embark upon this exercise.</p>	<p>Secretarial audit is to be done a practising company secretary who is well versed in company law and other corporate laws. However, secretarial audit, as envisaged under section 204 (1) read with form MR-3, also covers other applicable laws like telecom laws, Oil & Gas laws, other industry specific laws. Currently, practising company secretaries are in no position to identify such kind of laws. Significant capacity building along with tie up with other professions would be needed to embark upon this exercise.</p>		
119					
120	Rule 13 – Companies required to appoint internal auditor	<p>The word 'firm' used in Rule 13 (1) is creating an impression that only partnership firms can be appointed as internal auditor.</p>	<p>In view of liberalization made in the rule w.r.t. removal of requirement of Certificate of Practice for a chartered accountant, it does not seem to be the intention to give a restricted meaning to the term 'firm' and it seems to be out of sync with the intention of the government. Under the new company law, the Board has been given power and freedom to appoint an internal auditor. Moreover, Internal audit as envisaged by the government is a holistic exercise which goes beyond financial and accounting controls. Internal Audit requires multiple and diverse skill sets – Engineering experts, Accounting and Finance Experts, Process Experts, Industry experts (Telecom, Oil & Gas, Healthcare, Infrastructure etc). Such diverse professional experience is generally not employed by partnership firms. In light of this, the word 'firm' should Either be removed or replaced by another broader term like company /entity / organization etc.</p>		
121					
122	AND QUALIFICATIONS OF DIRECTORS				
123					

124	Section 149 – Company to have Board of Directors	In Sub-Section (3) of Section 149 amendment required to provide an exception for foreign director, in the case of newly incorporated company, due to the practical problems for incorporating company by foreign investors.	Section 149(3) : Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eight-two days in the previous calendar year.	Remove the appointment of Independent director under this section for unlisted / closely held / private companies in which public is not the shareholder.		
125		Difficult to find independent directors.	Section 149(4) : Every listed public company shall have at least one – third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.			
126			Rules:			
127			The following class or classes of companies shall have at least two independent directors-			
128			(1) The public companies having paid up share capital of ten crore rupees or more; or			
129			(2) The public companies having turnover of one hundred crore rupees or more; or			
130			The public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.			
131		In sub-section 149(5), correction to be made by inserting both the sub-sections (3) and (4) of Section 149.	Section 149(5) : Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).	It is suggested that since foreign companies are outside the jurisdiction of Indian Law, they should be specifically excluded.		

132		In Sub-Section (6)(d) of Section 149, the expression pecuniary relationship should be defined. It should also be clarified whether pecuniary relationship with holding / subsidiary company also cover foreign holding / subsidiary company.	Section 149(6) (d): none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two percent, or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during current financial year.	The Rule should be suitably amended, so as to bring authority to small shareholders.		
133						
134	Section 150 and 151 read with Rule 7	Both the Sections and this Rule uses the word "may" which should be substituted by the word "shall"	Section 150 – Manner of selection of independent directors and maintenance of databank of independent directors			
135			Director elected by small Shareholders			
136			director			
137						
138	Section 161 read with Schedule IV (vi)(2) - Appointment of additional director, alternate director and nominee director	Sub-Section (4) of Section 161 requires clarification whether casual vacancy of independent director can be filled by board in terms of this sub-section	Schedule IV (VI)(2) – Resignation or Removal - An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.			
139						
140	Section 164 – Disqualifications for Appointment of Director	Sub-Section (2) of Section 164 has a retrospective application even in case of private company, therefore this section requires a re-look because it will lead to the vacation of office by all the directors, if they have not complied with the clause (a) & (b) of sub-section (2).	Section 164(2) (a)&(b) : No person who is or has been a director of a company which– (a) has not filed financial statements or annual returns for any continuous period of three financial years; or			

141			(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.			
142						
143	Section 170 - Register of directors and key managerial personnel and their shareholding & Section 196 (chapter 13) – Appointment of Managing Director, whole-time director or manager	In Sub-Section (2) of Section 170 and Sub-Section (4) of Section 196 the form required for appointment or change of director (Form No. DIR-12 and MR-1) is under both sections, which is overlapping.				
144						
145						
146	CHAPTER 12 – MEETINGS OF BOARD AND ITS POWERS					

147	Section 173 – Meetings of Board	The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.	Section 173 (2) read with Rule 4 : The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.	In sub-section (2) of Section 173 a director should be allowed to participate in Board Meeting through video conferencing with respect to items mentioned in Rule 4 but his presence would not be counted for quorum, but his suggestion on the subject may be considered at the meeting.		
148			Rule 4 : The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means:			
149						
150			(i) the approval of the annual financial statements;			
151			(ii) the approval of the Board's report;			
152			(iii) the approval of the prospectus;			
153			(iv) the Audit Committee Meetings for consideration of accounts; and			
154			(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.			
155						
156	Section 173(3)		A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.	In Sub-Section (3) of Section 173 the word "courier" should be inserted		
157						

158	Section 177 - Audit Committee	Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include.	Section 177 (4) (iii) : examination of the financial statement and the auditors' thereon.	In Sub-section (4)(iii) the term "examination" should be replaced by "review" and the point with regard to examination of auditor's report should be removed as the auditors report is not placed before the audit committee, because such report is issued by the Board after approval of final statement of Board.		
159			Section 177 (4)(iv) : approval or any subsequent modification of transactions of the company with related parties.	Sub-Section (4)(iv) - Approval and subsequent modification of transaction of companies with related parties should be amended so as to provide the noting of such transactions as existing in clause 49 of Listing Agreement.		
160						
161	Section 177 (7) read with Section 177(3) & 177(4)	In sub-section (7) of Section 177 the auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.	Section 177(7) : The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the report but shall not have the right to vote.	The term "Auditor's Report should be deleted. It can be amended to cover Auditor's observation.		
162						
163	Section 179 – Powers of Board read with Rule 8 Rule 8 - Powers of Board			Drafting error in Rule 8 should be rectified with reference to Section 179 (3)(R).		
164						
165	Section 180	In the explanation (i) and (ii) of Sub-Section (1) of Clause (a) of Section 180 the definition of the term "undertaking" and "substantially the whole of undertaking" requires clarification	Restrictions on Powers of Board			
166						

167	Section 184	Sub-section (2)(b) of Section 184 - With a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.	Disclosure of interest by director	The participation of Interested Director should be prohibited only in the interest of concerned items in sub-section 2(b) of this Section.		
168						
169	Section 185 - Loan to directors	The wastage of time & energy of the directors to take the loan & advances from other lenders. Due to this reason the business of the company may be suffered.	Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person	Remove this section for unlisted/closely held/private companies in which public is not the shareholder. This Section on the base of literal interpretation gives an indication that advancing of loan to any person is prohibited. It is, therefore, suggested that the provision of this section be bought in line with reference to Section 295 of the Companies Act, 1956 except with requirement of Government approval which can be through a special resolution. Further, the granting of loans to and by private companies and subsidiaries should be exempted.		
170						
171		Clarification regarding the meaning of "Save as otherwise provided in this Act" as used in Section 185(1) – Because of the use of this expression does Section 186 override Section 185?	Section 185 (1): Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.			

172		The expression "ordinary course of business" as under in Section 185(1) should be clarified- Does this mean the principal business of the company carried as per the objects clause of MOA or carried in the usual course of its business dealings. Any firm in which any such director or relative is a partner.	Section 185 (1)(b) : A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.	The expression "ordinary course of business" should be clarified.		
173		Clarity needed it all subsidiaries fall within the meaning of the clause (e) under Explanation to Section 185. Does it mean that a company by virtue of the fact that it is a subsidiary should fall within the meaning of clause (e) under Explanation to Section 185?	Clause (e) of Section 185(1)(b) : Any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.			
174		This Rule should be modified to extend the exemption to all kinds of subsidiary and not only wholly owned subsidiary.	Rule 10 : Loans to Director etc under Section 185	Private companies should be exempted from the requirement of Section 185		
175						
176	Section 186- Loan and Investment by Company	The criteria for determining infrastructure business should be clarified.		Currently, Section 186 seems to cover loans given to any person which would include employee loans as well. Loans to employees should be specifically exempted		

177		Because of the use of the word "person" – does it mean even loans to individual employees will not be possible now without complying with Section 186. Specific exemption should be carved out for loans to employees.				
178						
179	Rule 11 - Loans and Investment by Companies read with Section 186 of the Act	Rule 11 (1) - Only exempts the requirement of sub-section (3) of Section 186 i.e. only the requirement of seeking shareholders' approval. Therefore, the other parts of Section 186 will apply. This is harsh. For cases falling under Rule 11(1), the entire Section 186 should be exempted. For instance, imagine a situation if the entire section is not exempted, then the lending rate for loan from a holding to subsidiary will have to be charged not lower than the rate provided in Section 186(7).				

180		This provision prohibits use of Closely held / family business company's money in their sister company or MSME. The sister companies and MSME will find difficult to use own resources.				
181			Section 186(2) : No Company Shall directly or indirectly –	Remove this section for unlisted / closely held / private companies in which public is not the shareholder.		
182			(a) give any loan to any person or other body corporate;			
183			(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and			
184			(c) acquiring by way of subscription, purchase or otherwise, the securities of any other body corporate,			
185			Exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more.			
186						

187	Section 188 – Related Party Transactions	<p>Third provision of Sub-Section (1) of Section 188 exempts transactions in ordinary course of business at arm's length. The mechanism of determining and reporting at arm's length should be specified. Since giving of loans and guarantees is specifically given in Sections 185 and 186, these be specifically excluded from the provision of this Section.</p>	<p>Section 188 (1)(g) – Proviso 3 : Underwriting the subscription of any securities or derivatives thereof, of the company: Provided that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.</p>	<p>Under this rule, the said criteria for the shareholders approval should be Share capital or Transaction value.</p>		
188		<p>Prior approval of the shareholders is required for contract or arrangement which is not on arm's length and / or not on ordinary course of business. The rules prescribed two criteria i.e. share capital OR transaction value.</p>	<p>Section 188 Read with Rule 15 (3) : In Rule 15(3) for the purposes of first proviso to sub-section (1) of Section 188, except with the prior approval of the company by a special resolution.</p>	<p>This should be clarified</p>		
189		<p>The Rules only clarify how voting will happen in the a holding company and wholly owned subsidiary situation. There are other situations which require clarification, for instance, where there are two shareholders and two directors and both are interested.</p>				

190		It is not clear if shared services contracts between related parties are also covered or not, for instance, a common employee being used by two or more related party entities.				
191		The SEBI Circular of April 17, 2014 which has amended Clause 49 and will be effective from October 1, 2014. There are some provisions in the amended Clause 49 which are lenient on listed companies as compared to Section 188 read with the Rules.		It should be clarified that listed companies should be governed by the listing agreement.		
192	Section 194 – Prohibition on Forward dealings in securities of Company by director or key managerial personnel	Clarity is required on the complete meaning and purpose of this section. The entire section is ambiguous.				
193						
194	Section 195 – Prohibition on Insider Trading of Securities	Clarity is required on the complete meaning and purpose of this section. The entire section is				
195		Further, why should this be extended to private limited and unlisted public companies – there is no market for such				
196						
197	CHAPTER 13 – APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL					
198						

199	Section 196 – Appointment of Managing Director, Whole-time Director or Manager	Does this apply to private companies also? If yes, then does Schedule V also apply to private limited companies both for the Part on Appointments and the Part on Remuneration? Clarity should be provided and private companies should be exempted.				
200	Section 197 – Overall maximum managerial remuneration and Managerial remuneration in case of absence or inadequacy of profits	Does sub-section (3) apply to private companies as well in case of absence of profit or inadequate profit. The intention appears not to apply on private companies. Therefore, clarity is required on this aspect.	Section 197(3) : Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manger, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.			
201						
202	Section 203 – Appointment of Key Managerial Personnel	Can a same individual be appointed as CFO and CS? Clarity is needed. If the answer is no, it could affect professionals with dual qualifications. Further, can a same individual be appointed as a CFO, CS and Director?				
203						
204						

205			Applicability of stringent extensive Company Act , 2013 regulations make it difficult for SME's. It is very difficult for SME's to carry on business with the quantum of regulation and restrictions. Simplification, removal of difficulties and reduction of compliances and processes is vital to enable companies to work efficiently without too much requirement of compliance resource and costs. The time spent on uncalled for compliances that too for closely held private companies would be better used in doing business and thus contributing to the economy and employment apart from other benefits to all stakeholders. This is particularly when such efficiencies and reduction in uncalled for statutory processes would have no adverse affect in context of reasonable monitoring of the companies involved.		
206			Various forms need to be simplified.		
207			Difficulties for foreign owned or controlled companies to hold EGM & AGM in India. Certain relaxations need to be provided.		
208			Relaxation need to be provided in adoption of Memorandum as per New Companies Act in case of alternation of any object or commencement of activities mentioned under other objects clause in companies formed under Old Companies Act.		
209			Much time is lost in the field through details required and clerical difficulties and conflicting views adopted while complying with uncalled for formalities and approvals required in the Companies Act.		
210			There are needless restrictions and limitations on the choice of the promoters in formation of companies such as extensive restrictions on choice of name, delay in approvals of name, limitations of choice of business activity that may be included in objects etc. Companies are only permitted now to have main objects and are not permitted now to have other objects or incidental or ancillary objects. Many developed countries form companies within three days and do not have restrictions on the business that may be carried on provided it is legal business.		

