



SAS PARTNERS
CORPORATE ADVISORS

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RC KNOWLEDGE SERIES

INTERNAL REFERENCE HANDBOOK

Corporate Laws (Amendment) Bill, 2026

Joint Parliamentary Committee
Report & Selected Provisions

UNDERSTAND

INTERPRET

APPLY

COMPANIES ACT, 2013

LIMITED LIABILITY
PARTNERSHIP ACT, 2008

PEOPLE
PROVISION
PERSPECTIVE
PROGRESS

STRONGER
GOVERNANCE
FOR A BRIGHTER
TOMORROW

SEPTEMBER 2026

Foreword

FOREWORD

MESSAGE FROM THE SENIOR PARTNER

BUILDING A CULTURE OF PROFESSIONAL INQUIRY

At SAS Partners, we have always believed that the strength of a professional organisation is built not only on the services it delivers, but on the knowledge, curiosity and professional judgement of its people. In a regulatory environment that is constantly evolving, technical competence must be accompanied by the ability to think critically, understand context and anticipate what developments in the law mean for business and professional practice.

The RC Roundtable Series has been conceived with this objective — to create a continuing platform within the Regulatory team for research, discussion, questioning and collective learning. It is intended to encourage our professionals to move beyond simply knowing the provisions of law and to develop the habit of asking deeper questions: Why does the law say what it says? How does it work in practice? What are the challenges and different perspectives? And what does a change in the law mean for those whom we advise?

The first Roundtable, “Decoding Corporate Laws Reform”, provided an ideal starting point. Through a structured examination of the Companies Act, 2013, the proposed amendments and the deliberations of the Joint Parliamentary Committee, our teams were encouraged to examine not only the law and the proposed changes, but also their practical implications and relevance to professional practice.

What makes initiatives such as this meaningful is the culture they create over time. When professionals research deeply, question freely and share their perspectives, individual knowledge becomes organisational knowledge.

I am pleased to see the enthusiasm and commitment with which the team has embraced this first edition. I hope the Roundtable Series continues to evolve into a sustained forum for professional inquiry and becomes an integral part of how we learn, think and grow as an organisation.

I congratulate all the contributors to this first edition and look forward to many more such conversations in the years ahead.

Soy Joseph
Senior Partner



Foreword

FOREWORD

A NOTE FROM THE KNOWLEDGE INITIATIVE LEAD

FROM RESEARCH TO PROFESSIONAL THINKING

The first RC Roundtable was built around a simple premise: professional knowledge is strengthened when we do more than read and understand — when we research, question, discuss and form our own professional perspectives.

The theme of the inaugural Roundtable, “Decoding Corporate Laws Reform,” gave us an opportunity to put this approach into practice. The teams were asked to look at their respective areas of the Companies Act, 2013 through multiple lenses — the existing legal framework, legislative intent, practical challenges, proposed amendments, stakeholder perspectives, the Joint Parliamentary Committee's consideration and recommendations, and finally, the implications for professional practice.

Importantly, the exercise was not intended to end with reporting what the law, the Government, stakeholders or the JPC had said. The teams were encouraged to ask: “What do we think?” and to consider what would change for companies, professionals and our own practice if the proposed amendments were to take effect.

The Roundtable first edition demonstrated the value of this approach. The presentations reflected substantial research, but equally importantly, they reflected thought, interpretation and discussion. The questions raised and the conversations that followed were as valuable as the presentations themselves.

This handbook brings together that collective effort. It is not intended merely as a record of the programme, but as a reflection of the professional thinking that went into it and as a resource that can continue to be referred to beyond the Roundtable itself.

The first edition is therefore both an outcome and a beginning. We hope that the RC Roundtable Series will continue to create opportunities for our professionals to explore complex issues together, challenge conventional thinking and build knowledge that is shared across the organisation.

Iyshwarya Ragukumar
Associate Partner



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CHAPTER 1

Securities — Enhanced Legal Recognition

Sections 42 & 62, Companies Act, 2013

SECTIONS 42 & 62, COMPANIES ACT, 2013

A practical corporate-law analysis of Sections 42 and 62 of the Companies Act, 2013, the Corporate Laws (Amendment) Bill, 2026, and the treatment of Clauses 26 and 28 by the Joint Parliamentary Committee:

FRAMING

Sections 42 and 62 are Routes, not Instruments

Sections 42 and 62 do not create instruments — they regulate the manner in which existing instruments are offered and allotted. Confusing the two is the single most common source of structuring error.

What Section 42 Regulates	What Section 62 Regulates
The MODE of offer — an offer made to a select group of “identified persons”, not exceeding the prescribed number	The DIRECTION of a further issue: A company having share capital can offer fresh shares— to its existing shareholders (rights), employees (ESOP/value-linked schemes), or others (preferential allotment).

FOUNDATIONAL DISTINCTION

“Shares” and “Securities” Are Not the Same Word

“SHARE” — Section 2(84), Companies Act, 2013 A share in the share capital of a company, including stock. It represents a unit of ownership (equity or preference) and carries membership rights.	“SECURITIES” — Section 2(81), Companies Act, 2013 Securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956, but excludes shares/interests referred to in Section 6 of that Act.
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Section 42 — Private Placement

Why the private-placement route exists, what problem it was built to solve, and how the JPC Report has treated its narrow 2026 amendment.

COMPANIES ACT, 1956 POSITION

There Was No “Section 42” in the Companies Act, 1956

The Companies Act, 1956 had no dedicated private-placement code. The relevant discipline was scattered and comparatively thin — which is precisely what let the Sahara structure exploit the gaps.

Section 81(1A)	Section 67(3)	Section 60B
Enabling provision for a company to issue further shares to “any persons” (not necessarily existing shareholders) by special resolution — the basis for what we today call preferential allotment / private placement of shares. It said nothing about a cap on offerees, use of a separate bank account, timelines for allotment, or the manner of the offer.	The only real check: an offer/invitation to subscribe shares or debentures made to 50 or more persons was deemed a public offer, triggering the full prospectus, listing and disclosure regime under the Companies Act and SEBI law.	Governed the (separate) mechanism of an Information Memorandum / Red Herring Prospectus for public issues — relevant because Sahara used an Information Memorandum while claiming a private placement.

CASE LAW · THE DISPUTE

Sahara v. SEBI — Raising ₹24,000 Crore as a “Private Placement”

₹24,000+ cr.
raised through OFCDs

~3 crore
investors subscribed

Two Sahara group companies — SIRECL and SHICL — chose to raise very large sums not through an ordinary public share issue, but through Optionally Fully Convertible Debentures (OFCDs): debentures that could later convert into shares.

Sahara's position: this was a private placement to identified persons, not a public issue. The distinction mattered enormously — a private placement carries a lighter regulatory footprint (limited investors, different requirements), while a public issue triggers full SEBI oversight: disclosure, a prospectus, and listing.

Section 67 of the Companies Act, 1956 deemed certain offers to be offers “to the public”; sub-section (3) carved out an exception for offers that were genuinely private in nature.

An amendment made in 2000 added a decisive proviso: once an offer reached 50 or more persons, the private-placement exception under S.67(3) could not be relied upon at all — whatever the issuer chose to call it.

CASE LAW · JUDGMENT, 31 AUGUST 2012

Substance Over Form — the Supreme Court's Verdict**Sahara's three defences**

1. SEBI lacked jurisdiction over the issue
2. OFCDs were hybrid instruments, outside ordinary securities regulation
3. This was, in fact, a genuine private placement

SEBI's response: substance over form. What a transaction is called does not matter — what matters is its actual scale and structure. ~3 crore investors is irreconcilable with a genuinely private, identified-persons offer.

The Supreme Court held

- The OFCDs were securities, and SEBI had regulatory jurisdiction over the issue.
- Given the actual scale of the offer is far beyond the 50-person threshold, it could not be shielded as a private placement.
- Full public-issue requirements applied, including Section 73's stock-exchange listing obligations — Sahara could not avoid them merely by declining to list.
- The money raised had to be refunded to investors, with interest, through the mechanism the Court laid down.

Important distinction: the Court did not hold private placement to be illegal — only that this particular fundraising, given its true scale, could not be characterised as one. This is the precedent Section 42 was drafted to codify, turning the 50-person threshold (now 200-person) and the substance-over-form principle into an enforceable statutory framework.

LEGISLATIVE RATIONALE

The Regulatory Concerns Section 42 Was Built to Address

- 1. Disguised public offers:** Preventing issuers from using a “private” label to reach public-scale investor bases while avoiding prospectus, listing and disclosure discipline (the Sahara fact pattern).
- 2. Investor money at risk pre-allotment:** Ring-fencing subscription monies in a separate account, barring their use before allotment, and forcing prompt refund if allotment fails.
- 3. Opacity of the offeree list:** Requiring a Board-approved, named list of “identified persons” circulated only to them — removing ambiguity about who was actually offered securities.
- 4. Serial/overlapping placements:** Barring a fresh private-placement offer while an earlier one is pending, and capping offerees per financial year — preventing an issuer from taking placements past the public-offer threshold in instalments.
- 5. Weak consequences for breach:** Attaching a monetary penalty and personal liability of promoters and directors, not just the company.

LEGISLATIVE DRAFTING CHOICE

Why “Securities” — and Not “Shares” — in Section 42

The Sahara instrument was a debenture (OFCD), not a share. A framework confined to “shares” would not have reached it — or reach any private debt or hybrid placement today. Three consequences follow from the wider word:

Point	Explanation
Scope	Sec 42 captures every instrument within the SCRA definition of “securities” — equity, preference, debentures, bonds, and hybrids alike — whenever offered otherwise than by public issue or rights issue.
Consistency	It closes the precise loophole Sahara exploited: labelling a debt-hybrid offer as a private placement to escape public-issue discipline no longer turns on the instrument’s form.
The 2026 Bill’s correction	Section 42’s marginal heading still read “Issue of Shares on Private Placement” — a drafting relic from before the section’s scope was widened. Clause 26 of the 2026 Bill corrects the heading to “Securities”, aligning it with the substantive text, which has said “securities” throughout since 2013.

THE BILL

Proposed Amendments to Section 42

	Provision	Proposed change	Purpose / effect
a	Marginal heading	“Shares” → “Securities”	Corrects a drafting relic — aligns the heading with text that has read “securities” since 2013
b	Sub-section (2)	Insert “or such other scheme linked to the value of the share capital of a company” after “employees stock option”	Recognises RSUs and SARs, alongside ESOPs, as executive compensation issuable with shareholder approval — the Bill’s only substantive change to S.42.

	Provision	Proposed change	Purpose / effect
c	Sub-section (10)	"which may extend to" → "equivalent to"	Converts a discretionary penalty ceiling into a fixed/determinate penalty — for transparency in levy, per the Ministry's stated rationale.

Note the scale: this is a narrow, targeted amendment — not a re-engineering of the private-placement framework.

THE JOINT COMMITTEE'S VIEW

JPC's Treatment — Accepted Without Modification

ACCEPTED IN ENTIRETY

Stakeholder concerns raised

- The "securities" heading correction is unnecessary — the term already appears in the operative text
- The sub-section (10) penalty is disproportionate for technical/procedural defaults (e.g. delayed PAS-3 filing)
- "Scheme linked to value of share capital" needs a statutory definition — at least four operative provisions now use the undefined phrase
- Cash-settled SARs (no share issuance, no dilution) should be expressly carved out of S.42/S.62 — they impose no allotment-related compliance burden
- Confirm RSU/SAR eligibility is not confined to listed companies; align with the 10-year founder-ESOP relaxation for startups

Committee's Reasoning

- Heading change: a drafting alignment, not a substantive shift — S.42 already governs all securities, not just shares - Retained.
- Penalty strictness: Ministry's position — obligations under sub-sections (1)-(6) (separate bank account, allotment timelines, offeree limits) are "fundamental to preserving the integrity of the private placement framework" and not merely technical - Retained.
- Scope of "linked schemes" and cash-settled SAR carve-out: left entirely to subordinate legislation — the Ministry repeatedly stated eligibility, definitions and safeguards "will be addressed in the relevant Rules."
- The Committee accepted the proposed amendment "in entirety, without any modification" — while , directing timely comprehensive rule-making to resolve the scope questions stakeholders raised.

PART III

Section 62 — Further Issue of Share Capital

The statutory hierarchy that governs who gets first call on a company's fresh equity — and how the 2026 Bill extends its employee-compensation limb.

THE BILL & THE COMMITTEE

The 2026 Bill — and the JPC's Treatment

Proposed text: in S.62(1)(b), after "under a scheme of employees' stock option", insert "or under such other scheme linked to the value of the share capital of the company." A verbatim mirror of Clause 26(b)'s amendment to S.42(2) — ensuring the offer route (S.62) and the offer-mechanism safeguard (S.42) recognise the same expanded set of schemes in parallel.

ACCEPTED WITHOUT MODIFICATION

Key stakeholder ask

- Exclude cash-settled SARs (no share issuance) from S.62's special-resolution requirement
- Extend recognition to ESPS and GEBS (other SEBI SBEB-regulated schemes), not just RSU/SAR
- Define "value of share capital" to avoid disputes over equity- vs. cash-settlement

Committee's disposition

- Ministry: the amendment is “an enabling provision”; cash-settled-SAR treatment “may be dealt with through the Rules” — not the Bill
- Ministry: scope of covered schemes and eligibility criteria “will be addressed in the relevant Rules”
- Committee accepted “as the proposed amendment without any modification”

PART IV

How Sections 42 and 62 Work Together

A practical decision framework for structuring any issue of securities — and four worked examples spanning the instruments discussed in Part I.

WHEN DOES WHICH SECTION APPLY?

The Decision Framework

Ask two questions in sequence: (1) Is this an offer of SHARES, and to whom? — this is a Section 62 question. (2) Is the offer being made otherwise than as a rights issue or public issue? — if yes, Section 42's mechanism applies IN ADDITION, whatever the instrument.

Scenario	Section(s)	How it works
Rights issue to existing shareholders	S.62(1)(a) ONLY	Not a private placement — offerees are already members, offered pro-rata. S.42 is expressly excluded.
ESOP / RSU / SAR to employees	S.62(1)(b) ONLY	Employees receiving options/units under an approved scheme are excluded from S.42's identified-persons count (S.42(2) proviso) — and from S.42 generally.
Preferential allotment of shares to new investors	S.62(1)(c) + S.42 BOTH	A share allotment to non-members, not by rights — 62(1)(c)'s pricing/valuation safeguards AND S.42's offer-mechanism safeguards apply cumulatively.
Private placement of debentures/NCDs/bonds	S.42 ONLY	Not “shares” — S.62 (which governs share capital) is not engaged at all. S.42's wider “securities” language does the entire job.

EMPLOYEE INCENTIVE PLANS

Beyond ESOP: Employee Incentive Plans

Alongside the conventional ESOP, companies use a wider family of employee incentive instruments — collectively the “schemes linked to the value of share capital” that Clauses 26 and 28 of the 2026 Bill bring within Sections 42 and 62. These are already recognised under the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021; the Bill now gives them an express anchor in the Companies Act.

Stock Appreciation Rights (SARs)

A SAR gives an employee a financial bonus equal to the increase in the company's share price over a set baseline — the appreciation in value can be paid out in equity or in cash. For example,.

₹500 Base price per SAR	₹800 Share value at settlement	₹300 Appreciation — the employee's benefit
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The employee's benefit is based on the ₹300 increase per SAR, subject to the terms of the scheme.

Equity-Settled	Cash-Settled ("Phantom Stock")
It is paid out in shares and hence, there is a dilution in shares. This is the route the Bill's "scheme linked to the value of share capital" language is aimed at recognising under S.62(1)(b)/S.42(2).	Paid out in cash, tracking share-price movement with no shares actually issued. Since there is no dilution, it is not recognised as a share-capital instrument.

Restricted Stock Units (RSUs) & the Companies Act Anchors

An RSU entitles an employee to receive shares once specified conditions are met. Example, to be in employment a period, performance targets etc. Unlike an option, an RSU ordinarily requires no exercise price;

Upon vesting it is settled either through newly issued or existing shares.

Existing Companies Act anchors

Section 54 — Sweat Equity Equity shares issued to directors or employees at a discount, or for consideration other than cash, for providing know-how or making available IP rights or value additions, by whatever name called.	Section 62(1)(b) — ESOP Gives directors, officers or employees the benefit or right to purchase, or subscribe the for, shares of the company at a future date at a pre-determined price.
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The ESOP lifecycle

1→ Grant letters shall be distributed to eligible employees	2→ Accepted by employees within the stipulated period	3→ Vesting period runs	4→ Exercise period opens — employee exercises the option to subscribe	5 Shares allotted to the exercising employee
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Matching Objective to Instrument

Each employee incentive instrument tends to serve a distinct compensation objective. This mapping is a starting point for scheme design

Objective	Instruments commonly associated with the objective
Long-term employee retention	ESOPs
Share-price-linked incentive without direct ownership	Phantom shares/ cash-settled SARs
With ownership	Equity settled.
Reward for intellectual contribution	Sweat equity
Performance-linked remuneration	Performance RSU

Note: Several of these instruments (phantom shares, performance RSUs) are market-practice labels layered on top of the base SAR/RSU/ESOP structures, it is — not separate statutory categories.

Additional Clause Notes

Three further rectification and decriminalisation amendments under the 2026 Bill — Sections 24, 26 and 40 of the Companies Act, 2013.

CLAUSE 23 · RECTIFICATION

Section 24 — SEBI's power over Issue & Transfer of Securities

Section 24 empowers SEBI to administer the issue and transfer of securities, and non-payment of dividend under sub-section (1), for listed companies and companies intending to list on a recognised stock exchange in India.

Clause 23

Clause 23: In sub-section (2) of Section 24, omit the words, brackets and figures “and the matters delegated to it under proviso to sub-section (1) of section 458.”

Why this is only a rectification

- The proviso to Sec 458(1) delegated enforcement of Sections 194 and 195 (forward dealing and insider trading) to SEBI for listed companies.
- Both that proviso and Sections 194–195 themselves were already omitted from the Act in 2017.
- The cross-reference in Sec 24(2) has since been redundant — Clause 23 simply removes dead statutory text; it changes no substantive right, duty or power.

CLAUSE 24 · DECRIMINALISATION + RECTIFICATION

Section 26 — Matters to Be Stated in a Prospectus

Sub-section (9) governs the consequence of issuing a prospectus in contravention of Section 26. Clause 24 replaces a discretionary criminal fine with a fixed civil penalty as mentioned below:

	Before (fine, criminal)	After Clause 24 (penalty, civil)
Company	₹50,000 – ₹3,00,000	₹2,00,000 (fixed)
Every Person Knowingly a Party	₹50,000 – ₹3,00,000	₹2,00,000 (fixed)

A separate, unrelated rectification: the proviso to sub-section (1) repeated the word “financial” in error (“...such financial information or reports on financial information”). The Bill corrects this drafting duplication — flagged by the Committee during clause-by-clause examination as inconsistent with the wording used elsewhere in the clause.

CLAUSE 25 · SELECTIVE DECRIMINALISATION

Section 40 — Securities dealt with on Stock Exchanges

Section 40(3) requires that all monies received on application from the public be dealt with in a specified manner (e.g. pending listing). Clause 25 splits the consequence of default: it decriminalises defaults under every sub-section except sub-section (3), which keeps its original criminal fine.

Default Under Any Other Sub-section	Default Under Sub-section (3)
UNCHANGED — It remains a Criminal Fine	New Sub-section (5A) is inserted as Civil Penalty
• Company: ₹5,00,000 – ₹50,00,000 • Officer in default: ₹50,000 – ₹3,00,000	• Company: ₹25,00,000 (fixed) • Officer in default: ₹2,00,000 (fixed)

CHAPTER 2

Buy-Back of Securities

Section 68, Companies Act, 2013 — Clause 29

Legislative evolution · Regulatory framework · Tax impact · Analysis

Evolution of Buy-back in India

Period	Theme	Key developments
1913–1956	Prohibited	Companies Act, 1913: own-share purchase generally barred, except via court-sanctioned capital reduction Companies Act, 1956: prohibition continued under Section 77 Core concern: grounded in the doctrine of capital maintenance and creditor protection
1999	Recognized	Section 77A inserted in the 1956 Act Buy-back expressly permitted, with statutory limits and safeguards Funded from free reserves, securities premium and other specified sources
2013–Present	Mainstreamed	Companies Act, 2013: Sections 68–70 consolidate the framework Recognised for capital restructuring
2026	Realigned	Corporate Laws Amendment Bill, 2026 proposes more flexibility by reposing higher buy-back limits for prescribed classes of companies, decriminalization of certain non-compliances, procedural simplification, permitting two buy-back offers within a financial year instead of one, and extending the framework to securities such as RSUs and SARs

Recommendation ≠ enacted law. The 2026 proposals remain subject to Parliament.

The commercial rationale for a buy-back is varied: it may be used to distribute genuinely surplus cash, signal confidence in an undervalued share price, rebalance capital structure, improve per-share metrics, or offset dilution from employee share schemes. Caution is warranted, however, where a buy-back is pursued chiefly to engineer an improvement in EPS or ROE, or where it alters the relative ownership of non-participating shareholders—such gains are not, by themselves, evidence of improved operating performance and may arise purely from a smaller denominator.

WHY?

BUY-BACK OF SECURITIES - KEY DR

Why Companies Undertake Buy-Backs

1. EPS Management

- Fewer shares outstanding
- Higher EPS even if profit is flat
- Improves per-share metrics

2. Undervaluation Signal

- Management sees shares as undervalued
- Deploying own cash signals confidence
- “Shares worth more than traded price”

3. Dividend Substitute

- Alternative route for surplus cash
- Avoids a recurring-payout expectation
- Shareholders opt in by tendering

4. Capital Structure Discipline

- Deploys cash instead of idle funds
- Rebalances debt, equity, accruals
- Smaller equity base may lift ROE/RoCE

5. ESOP Pool Absorption

- Option exercises dilute holders
- Buy-back offsets that dilution
- Preserves per-share economics

6. Takeover / Control

- Reduced free float shifts dynamics
- Non-tendering promoters gain %
- Read with takeover & MPS norms

Buy-back and capital reduction are frequently, and mistakenly, treated as interchangeable routes to the same end; in truth, the choice between them is fundamentally one of objective. Capital reduction under Section 66 is a broader restructuring tool, addressing accumulated losses, lost or unrepresented capital, or genuine excess capital. Buy-back under Section 68, by contrast, is purpose-built for the purchase and extinguishment of securities, particularly suited to returning surplus cash and optimising the capital base. The two are not substitutes but distinct instruments for distinct situations

Buy-Back vs. Capital Reduction: Choosing the Right Route

Aspect	Buy-back	Capital reduction
Nature	Company purchases its own shares/securities and extinguishes them.	Company reduces its share capital in a manner permitted by law.
Typical situations	Surplus cash, capital allocation, reduction of share count, managing dilution.	Accumulated losses, lost/unrepresented capital, excess capital, reduction of unpaid liability, restructuring.
Statutory ceiling	≤25% of paid-up capital + free reserves; equity sub-cap; debt ≤2x capital+reserves; fully paid-up shares; time-bound; solvency declaration	No fixed % ceiling — Tribunal tests fairness, legality, creditor/member protection instead
Shareholder choice	Holders elect to tender or stay; continuing holders gain stake	No election; every holder is affected proportionately

BOTTOM LINE

When the goal is shareholder returns rather than repairing the balance sheet, a buy-back is the more flexible and better-signalled tool.

The 4Rs: what each tool is for

Capital reduction is about clean-up and restructuring; buy-back is about capital allocation.

Buy-back	Capital reduction
1. Return — Surplus cash goes back to shareholders	1. Relieve — Shareholders freed from liability on unpaid share capital

Buy-back	Capital reduction
2. Reward — Value distributed through the buy-back	2. Remove — Capital that is lost or not represented by assets
3. Reassure — Signals confidence in capital allocation	3. Return — Excess capital handed back to shareholders
4. Rebalance — Adjusts the capital structure	4. Restructure — Selective or other reductions the statute permits

“Return” appears in both: the choice turns on the objective and the legal route, not on the outcome alone.

HOW?

SECTION 68

Approval Route: Board vs. Shareholders

Board approval	Shareholder approval
Value ≤10% of paid-up equity capital + free reserves	Value ≤25% of paid-up capital + free reserves

Paid-up Capital = Equity Capital + Preference Share Capital

Free Reserves: General Reserves + Profit & Loss Account + Any reserve for Dividend + Securities premium

25% Overall Ceiling: Clarification

- Equity sub-cap applies — up to 25% of paid-up equity capital alone
- Preference — up to 25% of overall paid-up capital and free reserves

Current Provision vs. Bill/JPC Direction: Secretarial Impact

Area	Current Section 68	Bill / JPC Direction	Secretarial Impact
Sec. 68(2)(g) limits	Shareholders: 25% of paid-up capital and free reserves	Proposed to increase to higher limits for the prescribed class of companies	Prescribed class of Companies can buy-back shares upto the revised limits.
Sec. 68(2)(g) — frequency	No offer within one year from closure of preceding offer.	Prescribed classes may make up to two offers within one year. One-year period reckoned from the commencement of the first offer. No buy-back earlier than six months from the closure of the preceding offer.	Compliance calendar must track: eligibility for the two-offer window; the one-year period running from the first offer's start date, not its closure; the minimum six-month gap before the second offer. Buy-back filings effectively double within the same reckoning year for eligible companies.
Sec. 68(5)(c) — share-linked schemes	It includes ESOP/sweat equity securities.	Coverage extended to securities linked to the value of share capital — modern instruments such as RSUs (Restricted Stock Unit) and SARs (Stock Appreciation Rights).	Scheme documents should align with the proposed Section 62 amendment for consistency.
Sec. 68(11) — decriminalised	Fine-based offence structure.	Moves toward a civil-penalty framework. Company liable to a penalty of ₹25 lakh (listed company) or ₹2 lakh (any other company). Officer in default liable to a penalty of ₹5 lakh (listed company), or ₹2 lakh (any other company).	Do not equate decriminalisation with no compliance risk; monetary exposure remains. Criminal-prosecution risk is removed, but penalty quantum is higher for listed companies — this should stay a high-priority compliance area.

TAX IMPLICATION

TAX IMPACT

A Major Shift in Buy-Back Taxation

Three regimes apply, depending on when the buy-back takes place

Period	Regime	Treatment
UNTIL 30 SEP 2024	Old Section 115QA Regime	Company paid buy-back tax under Sec. 115QA; proceeds largely tax-free in shareholders' hands.
1 OCT 2024 – 31 MAR 2026	Deemed Dividend Regime	Finance (No.2) Act, 2024: entire consideration taxed as dividend for the shareholder, with no cost deduction; acquisition cost could give a separate capital loss.
FROM 1 APR 2026	Capital Gains Regime	Income-tax Act, 2025 / Finance Act, 2026: proceeds taxed as capital gains; cost of acquisition is deductible.

THE CAPITAL GAINS REGIME IN DETAIL (FROM 1 APRIL 2026)

General shareholders

- Proceeds treated as capital gains, not dividend income
- Cost of acquisition is deductible
- Normal short-term / long-term rules apply; tax falls on the gain, not the entire receipt

Promoter shareholders

An additional tax applies on top of normal capital-gains tax.

- 22% Effective rate: domestic-company promoters
- 30% Effective rate: other promoters

CONSOLIDATED VIEW

Overall Financial + Tax Comparison

Impact of a buy-back on the company and on its shareholders

Company & Financial Ratios	Impact of buy-back
Company cash	↓ Decreases
Outstanding shares	↓ Decreases
EPS	↑ Usually increases
ROE	↑ May increase
Net worth	↓ Decreases
Debt-equity ratio	May ↑
Promoter ownership %	May ↑ if promoter doesn't participate proportionately

Shareholders & Tax	Impact
Shareholder cash	↑ Receives buy-back proceeds
Shareholder tax	Capital-gains taxation (current regime)

Shareholders & Tax	Impact
Acquisition cost deduction	Yes, under the current regime
Promoter tax	Additional tax: effective 22% for domestic-company promoters

Note: the EPS and ROE boost is mechanical, not a change in underlying profit.

KEY TAKEAWAYS

- 1. Financially** EPS and ROE rise in the short term, but cash and future flexibility are traded away; underlying profit is unchanged.
- 2. Strategically** Research links buy-backs most strongly to EPS growth and EVA improvement, making them a favoured tool for signalling and performance.
- 3. On tax** From company-level tax, to shareholder deemed dividend, to shareholder capital gains from 1 April 2026, with an additional tax for promoters.
- 4. For advisory** Timing matters: the regime depends on the buy-back date, so flag it early in every structuring discussion.

Ultimately, the merits of a buy-back depend on its purpose, funding, route, stakeholder impact, and the governance and tax framework surrounding it. A genuine return of surplus cash, without compromising productive investment, is fundamentally different from a transaction aimed primarily at supporting market price or facilitating an insider exit. The key consideration is whether the buy-back represents a responsible and value-conscious deployment of capital.

CHAPTER 3

Dividend and the Investor Education and Protection Fund

Sections 123–127 & 125, Companies Act, 2013

THE CONCEPT

What is a dividend?

In plain terms A shareholder derives returns in two ways: price appreciation, and dividends Dividend is simply a distribution of a company's profits to its members Once declared (final dividend), it becomes a debt owed by the company to shareholders An interim dividend resolution, however, can be modified or rescinded by the Board before payment — it is not yet a debt (J. Dalmia v. CIT)	Statutory definition S.2(35), Companies Act 2013: 'dividend' includes any interim dividend Regulation balances two interests — fair shareholder return vs. protecting creditors, employees & future operations
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THE CONCEPT

Why is dividend regulated — and why so strictly?

A company is a separate legal person; shareholders can't simply withdraw its funds. So the Act determines:

When profits can be distributed When profits can be distributed Who may recommend & declare it The source and time-limit for payment How unpaid/unclaimed amounts must be protected	Why so stringent? Protects small & minority investors Prevents dividend without real distributable profit Stops company funds being misused once payable Creates an audit trail for unpaid dividend Prevents indefinite retention in the ordinary account Ensures dormant money ultimately serves investor protection
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THE LINK

Dividend → Unpaid Dividend Account → IEPF

Governed mainly by Sections 124 & 125 of the Companies Act, 2013 — IEPF is the final statutory destination for dividend left unpaid/unclaimed for a long period.

1→ Dividend Declared Must be paid within 30 days of declaration	2→ Unpaid Dividend Account Unclaimed amount moved here within 7 more days — preserves the claim & improves accountability	3 Investor Education & Protection Fund Unclaimed for 7 years from UDA → IEPF (money + underlying shares)
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INVESTOR PROTECTION

IEPF — origin, need and purpose

First introduced via the Companies (Amendment) Act, 1999 (S.205C in the 1956 Act); re-established under Section 125 of the Companies Act, 2013.

Why it was needed Pool of idle funds: crores lay unclaimed as dividends, refunds, matured deposits & debentures Left unchecked, this money sat idle or risked misuse Government needed a channel to fund investor protection & financial literacy amid growing retail participation	What it does Consolidates long-unclaimed investor money in one statutory fund Prevents permanent loss just because a claim wasn't made in time Funds investor-awareness & education initiatives Transfer does NOT extinguish entitlement — claimant can apply for refund/restoration
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LEGISLATIVE EVOLUTION

1956 → 2013 → 2026 Bill, at a glance

1956 Act → 2013 Act	Proposed Amendment — 2013 Act → Bill, 2026
Transfer to reserves: mandatory % → board's discretion Dividend from reserves: any accumulated reserves → 'free reserves' only Interim dividend: informal practice → explicit statutory definition (S.2(35), S.123(3))	S.124(5) & (6): Only dividend that has itself completed 7 unclaimed years currently moves to IEPF with the shares. The Bill adds 'along with any dividend which has not been paid or claimed' — so once shares transfer under S.124(6), ALL unpaid dividend on them (1, 3 or 7 years old) moves together, in one event. S.125(2) — new clause (ma): The Fund's corpus does not presently cover buy-back money. New clause (ma) brings unpaid/unclaimed consideration for shares bought back & extinguished (7+ years) into the Fund, closing this coverage gap. S.125(3)(a): Consolidates the refund head to cover unclaimed dividends AND all amounts under clauses (h)-(n) of sub-section (2) in one place, removing duplication with sub-section (2). S.125(4): Claim procedure moves from a fixed statutory reference to 'authority under sub-section (5)' to being prescribed by Rules — allowing the process to be updated without a fresh amendment each time. S.125(12) — new sub-section: Empowers the IEPF Authority to delegate, by notification, its powers/functions to any member, officer or other person — enabling faster, decentralised claim processing.

PRACTICAL FAQs

Can dividend be waived, or declared at an EGM?**Q1. Can a shareholder waive the right to receive dividend?**

- Not addressed by the Companies Act or SEBI Regulations — governed instead by the company's AOA, which may prescribe the mode/timing of a waiver form
- Waiver is generally submitted before declaration; some AOAs also allow it after declaration but before the payment date, letting the company transfer that amount back from the dividend bank account
- Once waived, the shareholder cannot lift the waiver

Q2. Can a final dividend be declared at an EGM (Table F, Cl. 80)?

- No. S.102(2)(a)(ii) treats 'declaration of dividend' as ordinary business at an AGM; SS-3 (cl. 2.2, 2.3) confirms dividend is declared only at an AGM, after adopting the financial statements
- Confirmed in *Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd.* — an AOA clause allowing EGM declaration was held ultra vires the Act

PRACTICAL FAQs & CONCLUSION

Does the IEPF Authority become the registered owner?**Q3. On transfer under S.124(6), does the IEPF Authority become the registered owner of the shares?**

- Yes — the IEPF Authority is entered as registered/legal owner in the Register of Members and depository records, holding the shares as custodian/trustee for the original shareholder
- The original shareholder can reclaim the shares anytime via Form IEPF-5; associated benefits (bonus, splits) are credited to the IEPF account meanwhile
- Voting rights on such shares remain frozen until the rightful owner reclaims them

Conclusion

Every layer — UDA, IEPF, the 2026 Bill's tighter transfer rules — exists to protect the shareholder's underlying right without ever taking it away; the mechanics get stricter, the entitlement never lapses.

CHAPTER 4

Corporate Social Responsibility

Section 135, Companies Act, 2013

Section 135: Recalibrating the Corporate Social Responsibility Mandate

An analytical reading of the JPC Report on Section 135 of the Companies Act, 2013

WHAT	WHY	HOW
changes under Section 135?	the government moved now?	the JPC ruled on it based on the recommendations of the stakeholders?

The Legal Trail

Period	Development
The Companies Act, 1956	No provision - Pure Unreported Philanthropy
2005	Irani Committee - No recommendation / mandate on CSR
The Company Law Bill, 2011	Concept of CSR introduced
The Companies Act, 2013	Parliament made it mandatory in 2013 - First country to mandate CSR
2013-2025	Series of amendments to Section 135
2026	Corporate Amendment Bill

Key Changes Proposed in the Bill

Provision	Earlier	Proposed	Intent
Net profit threshold for CSR applicability	₹5 crore	₹10 crore	Targeted coverage; eases burden on smaller companies
Transfer of unspent CSR amount (Sec. 135(6))	30 days	90 days	Operational flexibility
CSR Committee required where obligation exceeds	₹50 lakh	₹1 crore	Relaxes governance structure only, not the spending obligation

The Bill also enables exemption of prescribed classes of companies (e.g. small companies) from the CSR mandate to reduce compliance burden.

Justification given by the Ministry of Corporate Affairs

1. Proposes to exempt prescribed classes of companies, (like, small companies), from the mandatory corporate social responsibility (CSR) obligations to reduce compliance burden.
2. Ease the compliance by providing additional time to transfer of unspent CSR amount to special account

Stakeholders' Feedback and Ministry's Response

No.	Stakeholders' Feedback	Ministry's Response
1	Companies that cease to fall within mandatory CSR applicability because of the higher threshold should still provide basic ESG/sustainability disclosures.	CSR and ESG are distinct regulatory concepts.
2	Transition period of two financial years, or honour existing multi-year CSR commitments, to facilitate an orderly phaseout.	Transitional period will be considered at the time of subordinate legislation
3	Suggests deleting the proposed clause (10) proposed to Section 135 entirely as this may lead to excessive delegation of authority without any requirement for Parliamentary oversight or scrutiny.	The use of "class or classes" is a well-established legislative device in corporate law, enabling dynamic calibration without frequent statutory amendments.

Section 8 Companies: Exempt or Within the Net?

Suggestions from the Stakeholders

- Exempt Section 8 companies from Section 135 CSR mandate or apply a higher monetary threshold for such Section 8 companies.

Ministry's Submissions:

- Section 8 companies have been incorporated for a specific purpose which may not align with Schedule VII.
- Exempting them purely because they are Section 8-incorporated would let profit-making entities avoid the specific redistributive obligation.

What the JPC recommends?

SEC. 135 (CLAUSE 43)

JPC recommends	JPC's rationale
• Accepts the clause with respect to the relaxed thresholds and timelines • Recommends Consistency in the timeline for transfer of unspent CSR amount under the ongoing Projects. • Recommends - Government to examine — permitting CSR contributions in kind, with valuation, verification, disclosure and monitoring safeguards.	• Greater operational flexibility and simplify compliance processes • To prevent misuse/overvaluation while preserving the objectives and integrity of the CSR framework, if in-kind contributions are ever permitted.
• Contribution made to an entity included in a duly notified negative list – Not Qualify as CSR contribution • Criteria for inclusion of any entity in such a negative list - Objective, transparent and statutory in nature backed by orders passed by a competent authority • Restriction should operate only for the period; Appropriate statutory mechanism be provided for removal of an entity from the negative list	• To preserve the objectives and integrity of the CSR framework

Key Takeaway

The recalibration narrows CSR coverage to companies with greater financial capacity and eases procedural requirements, while the JPC adds safeguards to preserve the objectives and integrity of the CSR framework.

CHAPTER 5

The Auditor at the Governance Table

Sections 139, 141, 144 & 147, Companies Act, 2013

JPC Recommendations on Auditors

Statutory audit relief | Auditor eligibility | Auditor independence | Accountability

The Auditor Framework in 4 Questions

Section	Question	Focus
139	WHO NEEDS AN AUDITOR?	Exemption from statutory audit
141	WHO CAN BE AN AUDITOR?	Eligibility & constitution of audit firms
144	WHAT ELSE CAN AN AUDITOR DO?	Non-audit services & independence
147	WHAT HAPPENS ON A VIOLATION?	Penalties & consequences

Necessity → Eligibility & Structure → Independence → Accountability

SECTION 139

Do We Need an Auditor?

Central Government power → Prescribed class of companies → Prescribed conditions → Possible audit exemption

BILL PROPOSAL

- Central Government may exempt prescribed classes of companies from the requirement to appoint a statutory auditor
- Exemption is subject to prescribed conditions
- Objective: reduce compliance burden/cost for specified small or low-risk companies

JPC RECOMMENDATION

- Exemption to be limited to prescribed classes of private companies
- Emphasises that audit relief remains subject to prescribed conditions

Not an automatic exemption for every small private company

Source: JPC Report on the Corporate Laws (Amendment) Bill, 2026 — Section 139, Companies Act, 2013

SECTION 141

Who Can Be a Partner?

BILL PROPOSAL

Every partner of an audit firm required to be registered with a statutory body/institute under Indian law

STAKEHOLDER VIEW

Blanket rule could restrict multidisciplinary firms; specialist partners (IT, forensics, management) may lack Indian statutory registration

JPC VIEW

Existing law already requires the majority of practising partners to be qualified CAs; only CA partners can sign as auditors

JPC RECOMMENDATION

Omit the proposed requirement that every partner hold Indian statutory registration

141 = Every partner → Indian statutory registration? Not accepted.

Source: JPC Report on the Corporate Laws (Amendment) Bill, 2026 — Section 141, Companies Act, 2013

SECTION 144

The Independence Question

What else can an auditor do?

1. Non-Audit Services (NAS)
2. Potential Conflict of Interest
3. Auditor Independence

Source: Corporate Laws (Amendment) Bill, 2026 — proposed amendment to Section 144, Companies Act, 2013

SECTION 144

Why Does the Cooling-Off Period Matter?

Years 1–10: Auditor A — Statutory Audit

ROTATION

Years 11–13 (Bill): 3-yr NAS restriction

“10 + 3 = 13 years” — representation made by stakeholders to illustrate cumulative restriction

JPC Recommendation

3 years → 1 year

Note: the “10 + 3 = 13” framing is a stakeholder representation, not a statutory formula. Source: JPC Report, 2026.

SECTION 147

What Happens on Violation?

Type of default	Consequence
Technical / Procedural Default	Monetary penalty
Serious / Wilful Misconduct / Fraud	Criminal consequences, where applicable

	Base Penalty	Continuing	Maximum
Company	₹1 lakh	₹500/day	₹5 lakh
Officer in Default	₹25,000	₹200/day	₹1 lakh

JPC RECOMMENDATION

Clause 47 accepted without amendment

Source: Corporate Laws (Amendment) Bill, 2026 — proposed Section 147; JPC Report, Clause 47

SECTION 147

MCA's Position on Auditor Penalties

Category	MCA view
Minor / Technical	Civil / monetary penalties
Serious / Wilful / Fraud	Criminal consequences
Specified smaller entities	Reduced penalties under Section 446B

- Existing Companies Act framework already distinguishes minor/technical defaults from serious/wilful misconduct and fraud
- Certain smaller entities already benefit from reduced penalties under Section 446B

- MCA position: the existing enforcement framework is already calibrated and proportionate — the provision may be retained without change

Source: MCA submissions before the JPC on the Corporate Laws (Amendment) Bill, 2026

Key Takeaways

1. Section 139 introduces a possible audit-exemption framework for prescribed private companies, subject to conditions — not automatic.
2. Section 141 removes the proposed blanket Indian statutory registration requirement for every audit-firm partner.
3. Section 144 shifts to a targeted, rule-based, risk-oriented approach to NAS restrictions, and reduces cooling-off from 3 years to 1 year.
4. Section 147 retains the proposed treatment of specified technical/procedural defaults; serious misconduct remains subject to serious consequences.
5. Overall, the JPC recommendations seek to balance auditor independence, proportionality, and compliance burden.

Section 139 in Practice

Case Studies & Interpretive Issues on Auditor Appointment, Rotation & Vacancy

139(2) Rotation | 139(4) Manner of Rotation | 139(8) Casual Vacancy | 139(10) Continuance | 139(11) Audit Committee

Each case follows Facts → Issue → Law → Analysis → Conclusion, and is tagged as an adjudicated position or an unsettled interpretive gap.

SECTION 139(2) | CASE STUDY

Does Rotation Apply the Moment the Threshold Is Crossed?

FACTS	ISSUE
Facts: XYZ Pvt. Ltd. appointed ABC & Co. as auditor for a 5-year term when paid-up capital was Rs. 15 crore (below the Rs. 20 crore rotation threshold). In year 3, capital rose to Rs. 30 crore, bringing the company within the rotation-mandated.	Whether mandatory rotation applies immediately upon crossing the prescribed threshold mid-tenure, or only from the auditor's next appointment cycle.
LAW	ANALYSIS
Section 139(2) bars re-appointment beyond one term (individual) or two terms (firm) for prescribed classes; Section 139(4) leaves the "manner" of rotation to Rules; Rule 5 sets the capital/borrowing thresholds.	In practice, companies often let the incumbent auditor complete the full original term rather than triggering immediate rotation — an interpretation gap that delays the rotation mandate's effect by years, since no adjudicated authority has definitively closed this loophole.

UNSETTLED / INTERPRETIVE GAP

In practice, companies often let the incumbent auditor complete the full original term rather than triggering immediate rotation — delaying the rotation mandate's effect by years, since no adjudicated authority has definitively closed this loophole.

Source: Illustrative case study on Section 139(2), Companies Act, 2013 and Rule 5, Companies (Audit and Auditors) Rules, 2014

SECTION 139(4) | CASE STUDY

Compliance on Paper, Continuity Underneath

FACTS	ISSUE
A listed company stated that it complied with the rotation rules by rotating the named engagement partner within the same firm periodically, while the same senior manager and audit team below partner level continued on the engagement after the two terms of five consecutive years.	Does procedural compliance with the “manner of rotation” rules under 139(4) achieve the substantive goal of genuine independence?
LAW	ANALYSIS
Section 139(4) empowers the Central Government to prescribe, by Rules, the manner of rotation under 139(2); the Rules govern rotation at the level of the individual auditor/firm, not the underlying working team.	Rotating only the named partner within the same firm does not satisfy the manner-of-rotation rules under Section 139(4), which implement the firm-level limit in Section 139(2). Because the same firm and team continued beyond two five-year terms, the familiarity threat remained, so the claim of compliance fails in substance and likely in law. Partner or team rotation under Section 139(3) is voluntary and cannot cure a breach of firm rotation.

UNSETTLED / INTERPRETIVE GAP

“Compliance without substance”: technical satisfaction of 139(4) can coexist with the erosion of the independence rationale that rotation was meant to serve.

Source: Illustrative case study on Section 139(4), Companies Act, 2013

SECTION 139(8) | CASE STUDY

Can a Board Recommendation Alone Complete a Casual-Vacancy Appointment?

FACTS	ISSUE
An audit firm resigned mid-term. Subsequently, the Board passed a resolution recommending the appointment of a replacement audit firm. The shareholders’ approval for the appointment was obtained at the AGM held within three months of the Board’s recommendation, by way of ratification of the appointment.	Whether a Board recommendation alone, with the timely shareholder’s ratification, validly completes an appointment to fill a casual vacancy under 139(8).
LAW	ANALYSIS
Section 139(8)(i) requires the Board to fill a casual vacancy within 30 days; appointments arising from resignation require member approval at a general meeting convened within three months of the Board’s recommendation.	Considering that the shareholders’ meeting was held within the period of three months as prescribed under the applicable provisions of the Act, the appointment of the new audit firm, as approved by the members by way of ratification, may be construed as valid.

ADJUDICATED POSITION

The appointment was held defective for not following the complete two-step statutory process, reinforcing that 139(8) is not a unilateral Board power.

Source: Illustrative case study on Section 139(8), Companies Act, 2013 (NCLAT)

SECTION 139(10) | CASE STUDY

Can Governance Gridlock Trigger the Default-Continuance Rule?

FACTS	ISSUE
A Company’s audit committee and Board disagreed over auditor remuneration and scope terms, with the disagreement unresolved past the AGM date, since no timeline is prescribed for resolving such deadlocks under Rule 3 (linked to Section 139(11)).	Whether Section 139(10)’s default rule (existing auditor continues if no new appointment is made) can be triggered by internal governance gridlock rather than a genuine AGM-level appointment failure.

LAW	ANALYSIS
Section 139(10) provides that where no auditor is appointed or re-appointed at an AGM, the existing auditor continues in office.	Section 139(10) looks to the outcome, not the cause. If the AGM ends with no auditor appointed or re-appointed, the existing auditor continues, whether the reason is a genuine AGM-level failure or an internal deadlock between the audit committee and the Board. The provision exists to prevent an audit vacuum, and reading a "genuine failure" requirement into it would add words the section does not contain.

UNSETTLED / INTERPRETIVE GAP

No case law tests this directly, but the practical effect shows how 139(10)'s "safety net" can be triggered by an unrelated procedural gap elsewhere in the appointment framework.

Source: Illustrative case study on Section 139(10) and Rule 3, Companies (Audit and Auditors) Rules, 2014

SECTION 139(11) | CASE STUDY**Must an Overridden Audit-Committee View Be Disclosed?**

FACTS	ISSUE
An audit committee recommended Firm A for appointment due to independence concerns about the incumbent, but the Board, under promoter influence, proposed Firm B to shareholders instead, without disclosing the committee's original recommendation or reasons.	Whether the provisions requires disclosure of the audit committee's original recommendation and reasons to shareholders when the Board overrides it.
LAW	ANALYSIS
Section 139(11) requires appointments to be made after taking into account audit committee recommendations; Rule 3 lets the Board refer disagreement back to the committee or place its own view before members, but does not mandate disclosing the committee's original view.	The Board may override the audit committee, but it may do so openly, recording its reasons and putting the committee's recommendation before shareholders. Silent substitution is non-compliant. Section 177(8) requires it to disclose the non-acceptance, with reasons, in the Board's report, which anyway reaches to the members.

UNSETTLED / INTERPRETIVE GAP

No case law has yet tested this gap, but it represents a significant, unaddressed loophole in the transparency intended by Section 139(11)'s committee-recommendation requirement.

Source: Illustrative case study on Section 139(11) and Rule 3, Companies (Audit and Auditors) Rules, 2014

Section 139 Case Studies | What They Reveal

- Timing and threshold gaps: the Act and Rules often don't address mid-tenure or mid-cycle changes (139(2), 139(10)).
- "Form vs substance" risk: procedural compliance (rotating a named partner) can coexist with little real change in independence (139(4)).
- Tribunals enforce process over convenience: casual-vacancy shortcuts have twice been struck down for skipping ratification or a hearing (139(8)).
- Disclosure gaps persist: an audit committee's view can be overridden without shareholders ever learning of it (139(11)).
- Several of these points remain untested by any court or tribunal — they are flagged as interpretive gaps, not settled law.

CLAUSES 48 & 87

Internal & Cost Audit — What the JPC Recommends

CLAUSE 48 SECTION 148 — COST AUDIT	CLAUSE 87 SECTION 378ZF — INTERNAL AUDIT
BILL PROPOSAL • Central Government may prescribe cost accounting standards. • Cost-auditor appointment may be made in the firm's own name. • Penalties are rationalised with differentiated monetary consequences.	BILL PROPOSAL • Producer Companies with average annual turnover > ₹5 crore for 3 consecutive years must conduct internal audit. • Internal auditor: CA, Cost Accountant or such other professional as decided by the Board.
JPC RECOMMENDATION • Retain cost records & cost audit framework. • Allow flexibility for emerging sectors.	JPC RECOMMENDATION • Expressly include Company Secretary as an eligible internal auditor. • Section 138 should be amended correspondingly.

JPC position: retain the core audit framework, while expanding professional eligibility and flexibility for emerging sectors.

Source: JPC Report on the Corporate Laws (Amendment) Bill, 2026 — Clauses 48 & 87

"The JPC's approach is not to dilute auditor independence, but to calibrate the regulatory framework according to risk, nature of service, and seriousness of non-compliance."

Summary of JPC recommendations — Corporate Laws (Amendment) Bill, 2026

CHAPTER 6

Independent Directors, Director Governance, DIN Framework & KMP Resignation

Sections 149, 152, 154, 155, 161, 164, 165, 167 & 203A

CORPORATE LAWS (AMENDMENT) BILL, 2026

A JPC Report Analysis — Sections 149, 152, 154, 155, 161, 164, 165, 167 & 203A

Clauses 49 – 51, 51A, 53 – 55, 57, 62A & 63 of the Bill

PART A · INDEPENDENT DIRECTORS · SEC 149

Legislative Intent: Evolution of the Independent Directors Framework

Year / period	Development
1998	CII Code — voluntary, no statutory force
1999-2000	Birla Committee — SEBI Clause 49, 1/3 or 1/2 by chairman type
2003	Narayana Murthy Committee — sharper independence definition
2005	J.J. Irani Committee — recommends statutory footing
2013	Sec 149 enacted — IDs on statutory footing for the first time
2026	Bill & JPC — appointment-based → continuous independence

PART A · INDEPENDENT DIRECTORS · SEC 149

Independence: Now With Fine Print

Provision	Existing	New Amendment
Sec 149(6)(e)(i)-(ii)	Independence tested vs. preceding financial year only	Add “or during the current financial year”
Sec 149(6)(e)(ii)(A)	“Company secretaries in practice”	Replaced with “Secretarial auditors”
Sec 149(6)(e)(ii)(B)	Fixed 10% pecuniary-materiality threshold	“Ten per cent. or such lower per cent.” as prescribed
New Sec 149(6A)	No corresponding provision	ID must continuously fulfil Sec 149(6) conditions through tenure
Sec 149(11) proviso	Cooling-off restriction applies to “the company” only	Extended to holding, subsidiary or associate company
New Sec 149(11) further proviso	No corresponding provision	ID may continue with legal/consulting firm if dealings < 10% (or lower %) of firm turnover
New Explanation 2 to Sec 149(11)	No corresponding provision	Tenure served as additional director counts toward ID tenure

PART A · INDEPENDENT DIRECTORS

Stakeholder Suggestion, Ministry's Response

Stakeholder Suggestion	Ministry's Response
Let an Independent Director complete current term in group companies before group-wide cooling-off applies	Rejected — “would counter the intended proposal under Clause 49”

Stakeholder Suggestion	Ministry's Response
Drop the adjustable (sub-10%) threshold power entirely	Clarified — 10% unchanged now; only enables a lower % later via Rules
Remove the group-wide cooling-off restriction altogether	Rejected — would dilute cooling-off effectiveness given close group linkages
Amend Sec 161 / Schedule IV for consequential alignment	Rejected as unnecessary — Sec 161 already permits appointing “any person” as additional director
Mandate IFSCA-entity IDs to have blockchain/fintech expertise	Rejected — skill mandates “may not be appropriate” across varying business needs
Let the Sec 149(7) declaration double as the 6A compliance check	Deferred — “will be considered during rule making stage”
Retain the “current financial year” & tenure-counting fixes as drafted	Endorsed by Ministry as closing genuine circumvention routes

Final JPC Position: Clause 49 accepted WITHOUT amendment — every softening request was declined or deferred to Rules.

PART B · DIN FRAMEWORK

Provision, Existing Law & New Amendment

Clause	Existing Law	New Amendment
Cl. 50 (Sec 152)	Valid DIN needed only at appointment; no continuation requirement	“...or shall continue to function” + DIN must not be deactivated/cancelled
Cl. 51 (Sec 154)	One-line provision — no verification duty, no deactivation/cancellation grounds, no hearing right	Full framework: periodic verification, defined deactivation/cancellation grounds, bar on fresh DIN while deactivated, hearing right before cancellation
Cl. 51A (Sec 155)	Flat prohibition on holding multiple DINs; no statutory surrender mechanism	New proviso mandating surrender of every additional DIN, in prescribed manner/time

PART B · DIN FRAMEWORK

Stakeholder View, Ministry's Response & JPC Observation

Clause	Stakeholder View	Ministry's Response	JPC Observation
Cl. 50 (Sec 152)	Foreign directors struggle with DIR-3 KYC (OTP/portal issues) — automatic ouster with no hearing or grace period	Deferred KYC relief to Rules; ultimately WITHDREW the amendment mid-review, folding the objective into Sec 154	Recommended omission of Clause 50 from the Bill
Cl. 51 (Sec 154)	Discretion too loose — want enumerated grounds; want a hearing before any adverse action, not just cancellation	Agreed discretion was too loose and revised its own draft; deferred wider hearing-right scope to Rules	Accepted with modification — Committee substantively rewrote the clause and supplied full redrafted text

PART B · DIN FRAMEWORK

Relevant Case Law

One 2019 judgment reshaped the DIN deactivation and cancellation framework.

- Mukut Pathak v. Union of India, 2019 SCC OnLine Del 10868 (Delhi HC) — held that a director's DIN status and directorship status are conceptually separate; disqualification does not automatically require the DIN itself to be cancelled

PART C · DIRECTORS FRAMEWORK

Provision, Existing Law & New Amendment

Clause	Existing Law	New Amendment
Cl. 53 (Sec 161)	Additional Director holds office till next AGM; Casual Vacancy Director subject to approval at next general meeting	Both hold office only up to next general meeting or 3 months, whichever is earlier; a person not approved or whose appointment was not considered by members cannot be re-appointed by the Board without prior approval
Cl. 54 (Sec 164)	Disqualification for RPT conviction (Sec 188); 3-year non-filing default threshold; no professional cooling-off; no "fit and proper" test	Widened clause (g) to any Sec 188 "penalty for default"; new 3-year cooling-off for auditors/valuers/insolvency professionals (clause j); new "fit and proper person" test (clause k); default threshold 3→2 years

Clause	Existing Law	New Amendment
Cl. 55 (Sec 165)	Fixed ceiling: max 20 companies, of which not more than 10 public companies	New proviso: Central Government may notify a LOWER ceiling for classes of companies/directors; Explanation II reworded to cover multiple future ceilings
Cl. 57 (Sec 167)	Office vacates in all companies except the defaulting one; criminal fine for functioning post-vacancy	Uniform 6-month vacation incl. the defaulting company;

Stakeholder View, Ministry's Response & JPC Observation

Clause	Stakeholder View	Ministry's Response	JPC Observation
Cl. 53 (Sec 161)	Allow continuation till next AGM; exempt smaller companies; extend to 6 months; permit postal ballot/e-voting instead of a meeting	Rejected all four — dilutes shareholder oversight; virtual meetings already reduce the cost/logistics burden	Accepted without modification — no 6-month extension, no exemption, no continuation till AGM
Cl. 54 (Sec 164)	Penalty ≠ serious misconduct; Sec 188 vs SEBI Reg 23 conflict; "fit/proper" vague & open to misuse against nominee directors; excessive delegation; valuers' one-off assignments don't justify 3-yr cooling-off	Defended clause (g) as necessary post-decriminalisation; supported fit-and-proper for director quality; supported cooling-off generally	Accepted with modification — clause (g) widening deleted; clause (k) "fit and proper" omitted entirely; cooling-off cut to 2 years; 2-year non-filing threshold retained
Cl. 55 (Sec 165)	Floor of 10 for public companies; 1-year transition protection before vacation risk; separate, lower ceiling (5) for listed companies	Floor & transition period can be handled via Rules; on listed-company ceiling — "SEBI wants to bring it down"	Accepted without modification — but JPC demanded Rules provide a compliance transition window and SEBI/stakeholder consultation before any lower ceiling is notified
Cl. 57 (Sec 167)	7 points seeking to soften the 6-month rule (limit to WTD/promoter, retain status quo, allow retention if rectified, oppose grace period)	Rejected all 7 — non-filing too grave a default to treat unevenly; 6 months already balances accountability with transition	Accepted with modification (duplicate DIN cross-reference to Sec 154 deleted); 6-month rule held firm

Section 164 Deep-Dive: Stakeholder Concerns & JPC Ruling

Stakeholder Concern	Ministry's Response	JPC's Final Ruling
Clause (g): a civil penalty is not "serious misconduct" — Sec 188 was decriminalised in 2020, so penalty-triggered disqualification undoes that reform	Since Sec 188 itself was decriminalised, disqualification language needed updating to remain effective	REJECTED the Ministry's position — "subjected to penalty for default" deleted; technical civil-penalty defaults will not trigger disqualification
Sec 188 vs SEBI LODR Reg. 23 conflict — differing definitions of "related party" could make one-regime-compliant transactions non-compliant under the other	No specific response recorded beyond general defence of the clause	Concern noted; resolved indirectly by deletion of the clause (g) widening itself
Clause (k): "fit and proper person" is vague, entirely rules-deferred, and could be misused by majority directors against nominee/minority/dissenting directors	Supported retaining the provision to improve overall quality of directors	REJECTED — clause (k) omitted ENTIRELY as vague, subjective, excessively delegated, and incompatible with the diversity of director categories the Act recognises

Stakeholder Concern	Ministry's Response	JPC's Final Ruling
Excessive delegation — disqualification affects reputation, profession and governance rights; such matters must be decided by Parliament, not Rules	Not separately addressed — subsumed in the fit-and-proper rejection	Addressed via the clause (k) deletion
Registered valuers: their one-off, assignment-based engagement doesn't justify the same 3-year cooling-off as continuously-engaged auditors	Supported professional cooling-off generally, to preserve independence	PARTIALLY ACCEPTED — cooling-off period reduced from 3 years to 2 years across all listed professional categories

Net effect: JPC preserved objective, transparent disqualification grounds (2-yr filing default, 2-yr cooling-off) while rejecting subjective or decriminalisation-inconsistent triggers.

PART D · KMP & MANAGERIAL PERSONNEL

Provision, Existing Law & New Amendment

Clause	Existing Law	New Amendment
Cl. 62A (Sec 196)	A person cannot be appointed as Managing Director, Whole-time Director or Manager if below 21 years or above 70 years, unless a special resolution is passed	No amendment in the proposed Bill
Cl. 63 (New Sec 203A)	No provision existed for resignation of a whole-time KMP who is not a director	Introduces Section 203A enabling KMP resignation, ROC filing by company/KMP, and continuing liability for past defaults

PART D · KMP & MANAGERIAL PERSONNEL

Stakeholder View, Ministry's Response & JPC Observation

Clause	Stakeholder View	Ministry's Response	JPC Observation
Cl. 62A (Sec 196)	Retain minimum age 21 but increase upper age from 70 → 75, and remove the special resolution and Central Government approval requirement for persons above 70	No response recorded in Bill text — proposal originated from stakeholders during Committee deliberations	JPC accepted the proposal made by the stakeholders
Cl. 63 (New Sec 203A)	Sought: (i) alignment with SEBI timelines, (ii) clarity on applicability, (iii) preservation of contractual notice periods, (iv) limitation on post-resignation liability, (v) inclusion of director-KMPs, (vi) deletion over employment-contract conflict	Preserved liability for tenure-period defaults; declined a fixed post-resignation liability cap	Accepted with modification. JPC redrafted Sec. 203A(2) to preserve employment contract notice periods/mutual agreement and recommended alignment with SEBI timelines

CHAPTER 7

The Law of Corporate Restructuring in India

Sections 230–236, Companies Act, 2013 — Clauses 67–70

THE FRAMEWORK TODAY

Companies Act, 2013 — Chapter XV

Section	Role
S. 230	Power to Compromises or make arrangements with creditors and members
S. 232	Mergers & amalgamations of Companies
S. 233	Merger or amalgamation of certain companies
S. 235	Power to acquire shares of dissenting shareholders from a scheme or contract approved by majority
S. 236	Purchase of minority shareholding

ALSO IN THIS CHAPTER, IN BRIEF

Section	Role
S. 231	Power of Tribunal to enforce compromise or arrangement
S. 234	Merger or amalgamation of Company with Foreign Company
S. 237	Government-directed amalgamation
S. 238	Registration of offer of schemes involving share-transfer
S. 239	Preservation of books & papers
S. 240	Officer liability for pre-merger offences

THE REGULATORY LANDSCAPE

How Compromises & Arrangements Are Regulated in India

No single authority runs the whole process — judicial sanction, administrative approval and regulatory oversight each play a distinct role.

NCLT The primary adjudicating authority — sanctions schemes under Sections 230 and 232	Regional Director An MCA administrative authority — the alternate route for fast-track mergers under Section 233
RoC & Official Liquidator RoC handles filing; the Official Liquidator reports on the transferor's affairs before sanction	Sectoral Regulators SEBI, RBI, CCI and Income Tax — notified of every scheme, with a statutory window to object

THE GOVERNING FRAMEWORK

Companies Act, 2013 — Chapter XV (Sections 230–240) Compromises, Arrangements and Amalgamations Rules, 2016 NCLT Rules, 2016 — procedure before the Tribunal

Authority	Route
NCLT	Judicial route — Sections 230, 232
RD	Administrative route — Section 233 only

Every scheme is legally sanctioned by one forum — but practically shaped by several

GETTING ORIENTED

Three Routes, One Chapter — Sections 230, 232 & 233

All three sit in Chapter XV of the Companies Act, 2013 — but they answer different questions.

Compromise or Arrangement The procedural gateway. Applies to any restructuring of rights between a company and its creditors or members — merger or not.	Merger & Amalgamation The substantive mechanics — engaged only when the Section 230 scheme is itself a merger: vesting of assets, dissolution without winding-up, share allotment.	Fast-Track Merger An alternate, lighter route to the Regional Director — available only for specific, low-risk mergers.
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THE 2013 CODE

Section 230 vs Section 232 — What's the Difference?

Every merger runs through both sections — but they are doing two different jobs.

Section 230 — Compromise or Arrangement The procedural gateway. Applies to any restructuring of rights between a company and its creditors or members — including but not limited to a merger. Needs NCLT sanction and a 75%-in-value majority of each class.	Section 232 — Merger & Amalgamation The substantive mechanics for mergers specifically. Engaged only when the Section 230 scheme IS a merger — governs vesting of assets/liabilities, dissolution of the transferor without winding-up, and allotment of shares.
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Every merger needs both — practitioners simply call it “a Section 230–232 scheme.” A pure debt or capital restructuring needs only Section 230.

THE CURRENT PROCESS · PART I

From Board Approval to Members' Meetings

Four steps before a scheme is even ready to be sanctioned.

- 1. Board Approval & Draft Scheme** Each company's Board approves the draft scheme; a registered valuer's report and an auditor's certificate on the accounting treatment are prepared.
- 2. Application to NCLT** Filed before the NCLT bench(es) with jurisdiction over each company's registered office, seeking directions to convene meetings — or dispensation, where 90%+ written consent already exists.
- 3. Notice & Disclosure** NCLT-directed notice — with the scheme, valuation report and effect statement — goes to members, creditors, RD, RoC, the Official Liquidator and sectoral regulators, with a statutory 30-day window to respond.
- 4. Meetings & Voting** Separate meetings of each class of members and creditors are held; approval needs a majority in number holding 3/4th in value of each class, present and voting.

THE CURRENT PROCESS · PART II

From Petition to Sanction

The remaining steps — where scrutiny and sign-off actually happen.

- 5. Petition for Sanction** A second petition is filed before the NCLT, annexing the meeting results and any regulatory responses received during the notice window.
- 6. Official Liquidator's Report** Where a transferor company will be dissolved, the OL reports on the conduct of its affairs — confirming nothing prejudicial to members or the public interest.
- 7. NCLT Hearing** The Tribunal hears objections — restricted to members holding 10%+ of shares or creditors holding 5%+ of total debt — and tests the scheme for lawfulness, fairness and reasonableness.
- 8. Sanction, Filing & Effect** NCLT sanctions the scheme; a certified copy is filed with the RoC, and the scheme takes effect from the appointed date.

TWO FORUMS

Two Authorities, Two Tracks — Why NCLT and RD Both Exist

Section 233 doesn't replace the NCLT route — it runs alongside it, for a narrower class of mergers.

NCLT — the Judicial Route	Regional Director — the Administrative Route
Handles Sections 230 and 232. A quasi-judicial tribunal that hears objections, weighs fairness, and can decline a scheme it isn't satisfied with — used wherever outside creditors, public shareholders or third parties could be affected.	Handles Section 233 fast-track mergers only. An MCA administrative authority with no hearing — approval follows once the statutory thresholds and objection window are satisfied, reserved for low-risk, intra-group mergers.

The split matches scrutiny to risk: full judicial review where outside interests are at stake, a lighter administrative sign-off where they typically aren't — and the RD can still refer a scheme to the NCLT if it isn't satisfied the fast-track route serves the public or creditors' interest.

Two forums, one principle: the level of scrutiny should match the risk of the transaction

THE 2013 CODE

Section 233 — Fast-Track Mergers

A genuinely new provision — no equivalent existed in 1956. It lets specified mergers bypass NCLT entirely, going instead to the Regional Director.

ELIGIBLE MERGERS

Small Companies Two or more small companies merging with each other	Holding ↔ Subsidiary Holding company and its wholly-owned subsidiary — listed or unlisted combinations, including fellow subsidiaries of the same holding company
Start-Ups Two or more start-up companies, or a start-up merging with a small company	Other Unlisted Companies Unlisted companies (not Sec. 8) with combined loans, debentures & deposits ≤ ₹200 crore, and no repayment default

Approval Thresholds (current)	
Members	90% of total shares
Creditors	90% (9/10th) in value

WHY IT WAS INTRODUCED

Recognises that a holding-subsidary merger raises no third-party fairness question worth a full NCLT hearing
Cuts cost and time for small companies for whom NCLT litigation costs were disproportionate

THE 2013 CODE

Section 233 — The Fast-Track Process

Section 233 read with Rule 25, Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — the Regional Director, not the NCLT, confirms the scheme.

- 1. Board approval & eligibility:** The board of each company approves the draft scheme, after confirming both fall within a class eligible under Rule 25.
- 2. Notice inviting objections:** Notice in Form CAA-9 to the ROC, Official Liquidator and sectoral regulators (stock exchanges where listed). 30 days to respond.
- 3. Declaration of solvency:** Directors of each company file a declaration of solvency (Form CAA-10) with the ROC before the meetings are held.
- 4. Member & creditor approval:** Members holding at least 90% of total shares (meeting on 21 days' notice). Creditors holding 9/10th in value, by meeting or written consent.
- 5. File with Regional Director:** Within 15 days of the meetings, the transferee company files the scheme with the RD (Form CAA-11); copies go to the ROC and the OL.
- 6. Regional Director decides:** No sustained objection: confirmation order (Form CAA-12). Objection or public-interest concern: RD applies to the NCLT within 60 days (Form CAA-13) and the scheme moves to the Section 232 route.
- 7. Registration & effect:** Confirmation order is filed with the ROC. The transferor is dissolved without winding up and its undertaking vests in the transferee.

PRACTICAL REALITY

Sections 230–233 in Practice: The Friction Points

- 1. Multi-bench delay persists:** Companies in a single scheme registered in different states still often need separate NCLT bench filings — the 1956-era multiplicity problem re-emerged in a new form.
- 2. Regulatory sign-off bottlenecks:** ROC, OL, tax authorities, FEMA/RBI, CCI, SEBI and sectoral regulators may have separate requirements. NCLT/RD approval therefore does not necessarily provide regulatory finality.
- 3. No Clock on NCLT:** The NCLT route does not provide a comprehensive statutory outer limit for disposal. Hearing schedules, adjournments and regulatory observations can therefore extend the transaction timeline.
- 4. The 90% Bottleneck:** Section 233's 90% shareholder and creditor thresholds are potentially onerous and capable of delaying fast-track mergers.
- 5. Fast Track, then NCLT:** A scheme can travel from a simplified route to a full Tribunal process after regulatory objections, creating duplication and delay.
- 6. Legal effectiveness vs administrative completion:** Section 232 gives the NCLT's order comprehensive legal effect, including transfer of undertaking, property and liabilities. However, the Act does not create a uniform mechanism requiring external authorities and counterparties to automatically update their records pursuant to the sanctioned scheme.
- 7. Deemed No-Objection ≠ Regulatory Finality:** The statutory mechanism creates a deemed-no-objection position, but it does not necessarily give the company complete substantive certainty that the relevant regulatory issue can never arise again under the regulator's legislation.
- 8. Modifications → Fresh Consent Loop:** Modified schemes have required further shareholder consent/affidavits. For example, in *One World Center v. FIM Holdco*, the NCLT directed the applicants to obtain shareholder consent to modifications to the scheme. That creates a potential loop

THE CORPORATE LAWS (AMENDMENT) BILL, 2026

What Changes for Sections 230–233

Provision	Current Position	Proposed Change (2026 Bill)
Single NCLT bench	Multiple benches, one per registered office	All applications under Ss. 230–232 filed before the single bench with jurisdiction over the transferee/resultant company
Fast-track member approval	90% of total issued shares	Majority of members present & voting, holding $\geq 75\%$ in value
Fast-track creditor approval	90% (9/10th) in value	75% in value of creditors
Exit- Mechanism for dissenting shareholders	No exit mechanism	JPC recommends an exit mechanism for dissenting shareholders
IBC cross-reference in Sec. 230(1)	Referenced as an alternative restructuring route	Deleted — compromise-with-creditors route delinked from IBC references

STAKEHOLDER IMPACT · THE 2026 BILL

Who Gains — and Who Loses a Layer of Protection?

Stakeholder	How they benefit	What changes practically
Companies / Promoters	Less procedural duplication	A multi-state merger is heard by a single NCLT bench, cutting parallel proceedings and coordination between benches.
Companies using Section 233	Fast-track route becomes more workable	Approval hurdle falls from 90% to 75%, so a small group of non-participating members or creditors is less able to hold up the deal.
Shareholders	Weight shifts to those who actually vote	Denominator moves from total shares to shares held by members present and voting. Flip side: a minority holder cannot stop a scheme merely by staying away.
Creditors	Consensual restructuring gets easier	Creditor approval under Section 233 drops from 90% to 75% in value — easier for uncomplicated group restructurings.
NCLT	Reduced jurisdictional duplication	One bench handles the scheme for all companies involved, potentially avoiding parallel hearings and inconsistent directions.
Employees / operational stakeholders	Potentially quicker certainty (indirect)	Faster completion brings earlier clarity on the surviving entity, employment structure, contracts and operations. No employee-specific amendment.
Regulators / Official Liquidator	More focused involvement	Procedural requirements reduced in certain demergers; OL filing retained only in specified cases of transfer/division of an undertaking.
Advisers / transaction teams	Simpler execution and documentation	Teams coordinate around the transferee/resultant company's NCLT jurisdiction instead of managing multiple proceedings.

LOOKING AHEAD

If Passed: Practical Challenges to Watch

- 1. Diluted scrutiny for minority stakes:** Expanding fast-track eligibility to partly-owned subsidiaries and fellow subsidiaries removes ex-ante NCLT fairness review precisely where minority interests are most exposed — a concern raised by several commentators during JPC consultations.
- 2. Single-bench capacity strain:** Concentrating every multi-company scheme filing at one bench (the transferee's) may simply shift the multi-forum delay into a single-forum backlog unless bench strength scales with it.
- 3. Transition & pending matters:** A savings clause preserves pending applications under the pre-amendment regime — practitioners will need to track two parallel procedural tracks during the changeover.
- 4. 75% threshold under section 233:** The "fast-track" route may become easier to access but harder to challenge. A shareholder/creditor holding less than the threshold could lose the practical ability to block a scheme merely by withholding consent

THE 2013 CODE

Section 235 — Acquiring Dissenting Shareholders' Shares

Carried forward almost unchanged.

	The Trigger	The Threshold	The Effect	The Safeguard
Section 235	A scheme or contract for the transfer of shares (or a class of shares) from a transferor company to a transferee company	Approved by holders of not less than 9/10th in value of the shares whose transfer is involved	The transferee company may give notice to dissenting shareholders that it intends to acquire their shares on the same terms as approving shareholders	A dissenting shareholder may apply to the Tribunal within one month; the Tribunal can order otherwise if the terms are unfair

THE 2013 CODE

Section 236 — Purchase of Minority Shareholding

	1956 Act (Sec. 395)	2013 Act (Sec. 236)
Trigger	Only within an approved scheme/contract for share transfer	Standalone right — 90%+ holder can act any time, no scheme needed
Who can act	The "transferee company" only	Majority shareholder, or persons acting in concert, holding ≥90% equity
Valuation	No statutory guidance; frequent litigation	Mandatory registered-valuer report; price deposited in a separate bank account
Minority's right	Only to object to the Court	Reciprocal right — minority can also require the majority to buy them out

SUBSTANTIVE (1/2)

Substantive Amendments — I

Jurisdictional, threshold and liability-continuity changes

Section	Existing Provision	Amended / Proposed Provision	JPC Action & Modification
Section 230(1) & (6) (Compromise/Arrangement — jurisdiction)	Applications under Sections 230–233 could proceed before each company's respective NCLT bench; sub-sections (1) & (6) cross-refer to the IBC, 2016.	Single NCLT bench — of the transferee/resultant company — to hear and exercise powers for all companies in a scheme; pending applications continue under the old regime; IBC cross-references in (1) & (6) omitted.	Accepted, with a further proviso recommended to clarify that the amendment does not affect cross-border mergers under Section 234. Rejected suggestions for an inter-Bench transfer mechanism (sub judice before the Supreme Court) and for barring Section 230 applications during CIRP; recommended augmenting NCLT capacity.
Section 233(1)(b) & (d) (Fast-track mergers — approval threshold)	Scheme requires approval by members/creditors holding at least 90% of total shares/value.	Threshold reduced to a majority of members present & voting, holding at least 75% of the value of shares present & voting — aligned with the NCLT-route requirement.	Accepted the 75% threshold but recommended: (i) a statutory fair-value exit/buyout right for dissenting shareholders; (ii) aligning the creditor-approval wording in clause (d) to a "present and voting" basis; Rejected calls to retain 90%
Section 240 (Liability for pre-merger offences)	Section 240 fixes personal liability on an officer-in-default of the transferor company for pre-merger offences, but is silent on proceedings against the transferor company itself once it ceases to exist.	New provision (proposed by the Committee): proceedings for pre-merger offences pending against the transferor company shall continue against the transferee company.	Inserted on the Committee's own initiative — not part of the Bill as introduced — to close the gap on company-level (as opposed to officer-level) liability continuity after a merger.

SUBSTANTIVE (2/2)

Substantive Amendments — II

Institutional, threshold and appellate changes

Section	Existing Provision	Amended / Proposed Provision	JPC Action & Modification
Section 247 (Valuation Authority — institutional framework)	Valuers appointed by the audit committee/Board; no statutory regulator named; registration/standards governed by the Companies (Registered Valuers) Rules, 2017.	Designates IBBI as the statutory "Valuation Authority" empowered to register valuers/RVOs, recommend valuation standards, make regulations (subject to Central Government policy directions and parliamentary oversight), with NCLAT as the appellate forum.	Accepted the IBBI-as-Authority / NCLAT-as-appeal framework, rejecting calls for a separate independent body, an exclusive IBBI mandate across all statutes, exclusion of certain asset classes/net worth, and restricting registration to natural persons. Added new sub-section (9A) mandating public consultation on draft regulations and 3-yearly review.
Section 361(1) & (2) (Summary liquidation — scope)	Summary liquidation available only where book value of assets does not exceed ₹1 crore; only the Official Liquidator could be appointed.	Threshold raised and liquidator pool widened — Central Government may appoint the Official Liquidator or a registered Insolvency Professional as liquidator.	Accepted the Ministry's proposal to raise the threshold from ₹1 crore to ₹2 crore (or higher, as prescribed). Rejected a fixed 3–6 month outer timeline (existing Sections 361–365 timelines held adequate); urged prompt notification of Rules on IP appointment and MCA21 digitisation.

Section	Existing Provision	Amended / Proposed Provision	JPC Action & Modification
New Section 365A (Appeal against summary liquidation order)	No express statutory appeal existed against a Central Government order made under the summary liquidation process (Section 365).	New Section 365A: appeal lies to the NCLAT within 45 days of receipt of the order.	Accepted, with modification: added a proviso allowing NCLAT to condone delay beyond 45 days (for a further period not exceeding 45 days) on sufficient cause. Rejected the suggestion to confine appeals to the specific NCLAT bench that passed the original order, relying instead on the territorial jurisdiction already fixed under Section 410.

DRAFTING / TECHNICAL

Drafting & Technical Correction Amendments

Clauses limited to wording alignment, cross-reference fixes and clarificatory tightening — no change of substantive policy

Section	Existing Provision	Amended / Proposed Provision	JPC Action & Modification
Section 232(3)(b) (Merger/Amalgamation — cancellation of shares)	Shares held by a transferee company in its own name/trust after a scheme "shall be cancelled or extinguished."	Inserts words "on merger and amalgamation" to make clear the cancellation applies specifically in that context.	Accepted, with modification: word "automatically" to be inserted before "extinguished," so cancellation occurs without a separate scheme amendment or ROC filing.
Section 245(1) (Class Action)	Sub-section (1) cross-refers to "sub-section (2)" for the member/depositor threshold to file a class action.	Corrects the cross-reference to "sub-section (3)" — the sub-section that actually prescribes the threshold numbers.	Accepted as proposed, without modification. Committee finds it a purely technical drafting correction with no substantive effect.
Section 271(a) & (c) (Winding up by Tribunal)	Clause (a) contains redundant words "by the Tribunal"; clause (c) contains redundant words "by notification under this Act."	Omits the redundant phrases in both clauses to align terminology with the rest of the Act.	Accepted as proposed. Stakeholder concern that 271(c) overlaps with IBC addressed by Ministry's clarification that the two provisions serve distinct purposes — no change made.
Section 365(3) (Striking off after summary liquidation)	Registrar shall strike off the company's name and "publish a notification" to that effect.	Substitutes "notification" with "notice in the Official Gazette" for terminological consistency.	Accepted as proposed, without modification — a purely drafting change per the Ministry.

PENALTY / FINE

Amendments to Penalty & Fine Provisions

Clauses altering criminal liability, fines, or the enforcement/penalty architecture

Section	Existing Provision	Amended / Proposed Provision	JPC Action & Modification
Section 242(8) (Powers of Tribunal — non-compliance)	Contravention of an order under sub-section (5) attracts a company fine of ₹1 lakh–₹25 lakh and an officer-in-default fine of ₹25,000–₹1 lakh.	Omits sub-section (8) in entirety, removing the criminal fine — part of the Bill's broader decriminalisation exercise; enforcement to rest on the Tribunal's existing contempt power under Section 425.	Accepted without modification. Rejected both stakeholder suggestions — (i) a new civil-penalty/enforcement regime, and (ii) retention of the original criminal fine — as Section 425 contempt powers are held adequate.
Section 247(3)–(3E) (Penalty framework for Registered Valuers)	Flat penalty of ₹50,000 for contravention by a valuer; fraudulent intent draws imprisonment up to 1 year and fine of ₹1–5 lakh.	Graded regime: Valuation Authority (IBBI) may suspend/cancel registration (6 months–10 years) or impose penalty up to ₹10 lakh (valuer)/₹1 crore (organisation); fraudulent-intent offences draw imprisonment up to 1 year plus higher fines; appeal to NCLAT in 45 days; cognizance of offences restricted to authorised-officer complaints (new sub-section (3E)).	Accepted the enhanced penalty architecture without modification. Rejected stakeholder requests to reduce/calibrate the mandatory 6-month minimum suspension and to delete sub-section (3E), accepting the Ministry's reasoning that the range is fact-dependent and that (3E) mirrors the safeguard already in Section 439(2).

AUTHORS

S. No.	Chapters	Authors
1	Securities — Enhanced Legal Recognition	Managing Associate: Supriya G Lead Associate: Keerthana B Associate: Khubaib K Sr. Analysts/Analysts: Sanjai K, Santosh Kumar and Riya N
2	Buy-Back of Securities	Sr. Associate: Akila Arvind Associates/Jr. Associates: Devadharshni R K, Gowri V and Vignesh S Executives/Analysts: Balamurugan A, Malathi N, Pradeepaa R and Sneha Gilbert Masilan
3	Dividend and the Investor Education and Protection Fund	Associates: Naveen Sharma and Shri Hari S Sr. Analysts/Analysts: Hari Shankar, Anushika Jayanth and Gaius Shaji
4	Recalibrating the Corporate Social Responsibility Mandate	Sr. Associate: Jothikamali Vinayagam Lead Associate: Karishma Raaj Sr. Analysts/Analysts: Nithya Lakshmi V, Divya L and Akshaya S
5	The Auditor at the Governance Table	Sr. Associate: Narayani Hanumantha Rao Lead Associate: Mruthu Bhasini and Kusuma L Sr. Analysts/Analysts: Mohammed Ramees V R and Shashank S Katagar
6	Independent Directors, Director Governance, DIN Framework & KMP Resignation	Associate: Monikha P and Vijayalakshmi Janakiraman Sr. Analysts/Analysts: Nithya Lakshmi V, Jayashri Chandrasekar and Hiral J Shah
7	The Law of Corporate Restructuring in India	Sr. Associate: Poonam G Associate: Ronak N Chawla Sr. Analyst/ Analyst: Samyuktha Murali and Mahek B Khandor

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The Regulatory Compliance (RC) Team represents one of the core professional practices of SAS Partners, providing corporate secretarial, regulatory and corporate advisory services to Indian and international businesses.

The Team supports clients across the corporate lifecycle – from entity incorporation and India entry, corporate structuring and regulatory registrations to ongoing Companies Act, FEMA and corporate compliance requirements. Our work also extends to corporate restructuring, entity governance management and board advisory, private transactions, regulated transactions, cross-border regulatory matters and specialised areas including ESG, CSR, POSH and corporate advisory.

With a strong understanding of both the statutory framework and the realities of business operations, the Team seeks to go beyond a compliance-driven approach. Our professionals work closely with clients to understand the context behind a regulatory requirement, identify practical implications and provide solutions that are both legally sound and commercially relevant.

The Team also places significant emphasis on technical excellence and continuous knowledge development. Through structured research, internal discussions, training and knowledge initiatives such as the RC Roundtable Series, the team continuously engages with developments in law and regulation and their implications for professional practice.

Our professionals bring together legal knowledge, regulatory expertise and practical experience to support clients in navigating an increasingly complex corporate and regulatory environment.

Contact Details



Athasi Das
Associate Partner
athasi@saspartners.com
+ 91 9566299444



Jafeel Sikander
Associate Partner
jafeel@saspartners.com
+ 91 8939819935



Iyshwarya Ragukumar
Associate Partner
ir@saspartners.com
+ 91 8754581781

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Contact Details



Soy Joseph

Director - Regulatory Advisory
soy@saspartners.com
+ 91 9884212845



Alex T Koshy

Director - India Entry and M&A
alex@saspartners.com
+ 91 98849 04699



Sony George Mathew

Director - Regulatory Advisory
sony@saspartners.com
+ 91 98846 56382

Know where to find us

Headquartered:

No. 4 (Old No. 9), Avenue Road, Nungambakkam, Chennai, Tamil Nadu – 600 034, India

We are also present in **Bangalore** and **Hyderabad**, with a representative office in **Germany and France**, supporting clients across multiple regions through our local and international network.



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