Concept Paper on Companies Bill 2004
CII's Views

The Companies Act, 1956, has been in force now for nearly five decades. The present Companies Act, 1956, has been amended in the past, for more than 20 times. The proliferation and diversity of amendments aggravated the complexities of the Law and its comprehensive review became inevitable.

The main objective of re-enacting the Companies Act is to facilitate a healthy growth of the Indian corporate sector under a liberalized, fast changing and highly competitive environment. An endeavor has been made to adopt a balanced approach that recognized an international trend, i.e., flexibility and greater self-regulation by companies, subject to better disclosure, more efficient enforcement of law, and prompt and deterrent punishment to those who violate the law.

Thus one of the core objectives of the bill is to provide effective protection to the different sections of society, leaving management free to direct its energies to the pursuit of the Company's objectives.

The Concept paper also is an attempt to simplify and rationalise the Companies Act, 1956. In the present Act, several provisions concerning a particular aspect which are scattered in different parts of the Act have now been grouped together in a logical sequence, one after the other, besides many redundant provisions have been done away with. Further, many procedural aspects have been de-linked from the substantive law.

The Concept Paper is prepared for the industry and corporate world to enable them to send suggestions and comments. This is for the first time in the legislative history of Companies Act; a new approach is adopted initiating a consultative process in the framing of the law.

Finally, in the present competitive environment, it is important that the government must have faith and trust in business leaders and enact laws which are simple, flexible, dynamic and user friendly with a thrust on transparency and self-regulation. This Bill seems to be a sincere attempt to attain these objectives.

On critical analysis of this concept paper, one concludes that there have been excessive delegation to rule making process and would prove as an impediment to overall rationalisation and simplification of the Companies Act, 1956. For meaningful discussion on concept paper, one would have wished that draft Rules should have been made available simultaneously for deliberations. We suggest, that Rules and the Act should be implemented simultaneously, and only after debate on Rules.

We have suggested in succeeding paragraphs that for important sections, which affect the day-to-day operations of the company, necessary provisions should be enacted in the main framework of the Companies Act, only procedural part should be left to Rule making process.

CII's Suggestions on Concept Paper

S.No.	Chapter Nos.	Clause No. with Provision on which the suggestions made.	Suggestions and comments.	Justification
1	Chapter I	Clause 2(2) Accounting Standards	In Clause 2(2), the words 'recommended by the Institute of Chartered Accountants of India' after the words 'standards of accounting' be inserted.	• At present, all the applicable Accounting Standards are recommend by the Institute of Chartered Accountants of India (ICAI). This is in accordance with the present Companies Act, 1956. Therefore reference to the ICAI in the new clause is imperative.
2	Chapter I	Clause 2(22) Deemed Director	Clause 2(22) be deleted.	• The definition is too wide and may bring several persons into the net that might have advised the Board in professional capacity.
3	Chapter I	Clause 2(30) Employees Stock Option	In Clause 2(30) after the words 'whole-time directors' the words 'non-executive directors' be inserted.	• The proposed definition of the Employee Stock Option does not cover the grant of options to the non-executive Directors of the company. • However, under the SEBI (Employees Stock Option and Employees Stock Purchase Scheme) Guidelines and the Guidelines issued by the Income Tax Department, options can be granted to the non-executive Directors of the Company. Hence it is proposed that non-executive directors should

				also be covered for the purpose of Employee Stock Options.
4	Chapter I	Clause 2(32) Financial Year	The following be inserted as second proviso in Clause 2(32):- Provided that in case of first year of incorporation, the profit and loss account may be made up for a period less than six months. The maximum limit on 15 months may be extended upto 18 months subject to approval by Registrar of Companies.	• This clause will lead to practical problems to the companies incorporated three to six months before the end of its financial year. Therefore for the start-up companies provisions should be suitably modified. • It is suggested that a proviso be included in Clause 2(32) making a specific provision for newly incorporated entities and in specific cases option should be given to industries to extend the accounting period beyond 15 months.
5	Chapter I	Clause 2(33) and 2 (53) Free Reserves and Net Worth	In the definition of the term 'Free Reserves' words 'balance to the credit of the securities premium account' shall be included. Consequentially, the definition of the term 'Net Worth' should also be streamlined accordingly.	• As securities premium amount is not in the nature of capital reserve, the same be included in the definition of the Free Reserves.
6	Chapter I	Clause 2 (38) Holding Company	The First Proviso to Clause 2 (38) be deleted	• The proposed proviso will curb second tier subsidiaries and would act as an impediment to the growth of the corporate sector. • The clause needs to be further reviewed because the definition of Holding Company in Accounting Standard 21 issued by The Institute of Chartered Accountants of India is different than that stated in the Concept Paper and in the

				Companies Act, 1956.
7	Chapter I	Clause 2 (44) Interested Directors	Definition needs to be reviewed in light of Clause 79 and extant Section 297	• As per Clause 2(44), a director of limited company will be deemed to be an interested director, by way of his holding a post of director in another company irrespective of the fact whether it is a private limited company or a public limited company. • By merely holding a place of director in a public company, especially in case of independent directors, one cannot be termed as interested director, unless he holds more than 2% of shareholding in the company. • This definition is also not in accordance with the existing Section 297 & 299 of the Companies Act, 1956.
8	Chapter I	Clause 2 (45) Independent Director	The definition of the term Independent Director as given in Clause 2(45) be substituted by the following:- 'Independent Directors' means a director who apart from receiving director's remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgment of the	• The proposed definition is same as given in clause 49. • It would be proper to leave the final decision to the judgment to the Board of Directors of the Company in respect of an independent director. The same also finds place in Clause 49 of the Listing Agreement and in the recommendation of Naresh Chandra Committee. • It would be difficult for the industry to have different definitions under different statute. • The prescription of attribute by Government would create unnecessary problems to industry in locating appropriate person to be

			board may affect independence of the director. Institutional directors on the boards of companies should be considered as independent directors whether the institution is an investing institution or a lending institution."	appointed as independent directors and accordingly, such judgment should be left to the Board of Directors.
9	Chapter I	Clause 2 (48) Managing Director	The following be added as proviso to Clause 2(48):- Provided that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management: Provided further that a managing director of a company shall exercise his powers subject to the	• The definition is required to be modified in accordance with the definition of the Managing Director as given in section 2(26) of the Companies Act, 1956, wherein certain administrative powers are not regarded as the substantial powers of management and they need to specifically delegated by the board. • It is also necessary to mention that the Managing Director will exercise his powers subject to superintendence, control and direction of the Board.

			superintendence, control and direction of its Board of directors;	
10	Chapter I	Clause 2(55) Officer	In Clause 2(55) the words 'or auditor' appearing after the words 'chief accounts officer' be deleted.	• An auditor appointed by the members cannot be termed as an officer of the Company. Auditor should be an independent person and therefore cannot be treated as officer of the Company.
11	Chapter I	Clause 2(56) Officer in Default	In Clause 2(56)(f) the term 'consent or' appearing after the words 'place with his' be deleted.	• It would be difficult to ascertain that the contravention of the provisions of the Act has taken place with the consent of the non-executive directors of the company. Consent word has wider meaning and sometimes includes implied consent also. • Therefore the term 'consent or' be deleted.
12	Chapter I	Clause 2 (67) Promoter	"Promoter" Definition to be in harmony with other statutes and regulatory bodies	• As per clause 2(67), meaning of word promoters has been introduced for the first time in the Companies Act. The same needs to be in harmony with the definition given in SEBI (Substantial Acquisition of Shares & Takeovers) Regulations 1997.
13	Chapter I	Clause 2 (69) Public Company	Definition needs to be reviewed and should give exemption to 100% owned private subsidiaries of a foreign company.	• The definition is in contrast with existing Section 4(7) of the Companies Act, 1956 that was permitting the status of 100% owned private subsidiary to be treated as private limited companies. The definition should allow foreign companies to set up 100% private limited companies.
14	Chapter II	Clause 8 Alteration of Articles	In Clause 8(2) the words 'and no alteration shall have any effect unless it has been duly registered'	• As per Clause 8(2), it is provided that any alteration to the Articles of Association shall be filed with the

			after the words 'be prescribed' be deleted.	Registrar and unless the articles are registered, no alteration will be effective. It is not clear from the clause that when the alteration will be effective i.e. issue date of certificate by the Registrar after re-registration or the date of resolution authorizing such alteration. • This provision is also in contradiction with the clause 8(1), which states that in case of a Private limited company, if it alters its articles, to change its constitution into a Limited Company, such alteration will be valid immediately on such alteration i.e. no registration is required in such cases. Contradiction as pointed hereinabove needs to be looked into. • It is also submitted that Articles of Association is purely a matter relating to internal management of the companies hence the requirement relating to re-registration of articles needs to be reviewed, as this will create undue hardship on companies.
15	Chapter II	Clause 10 Commencement of Business	Clause 10 to be redrafted with a clarity of the term 'any such business'	• The said provisions should be applicable, if the company is starting any business, which is stated in the other objects of the Memorandum. • It is suggested that the term 'any business' should be clarified in Clause 10 and it should mean only for the other business stated in the Memorandum.
16	Chapter II	Clause 11 Members and	Clause 11 should be redrafted to protect the interest of members and	• It is suggested that unlike directors or managers who are

		directors severally liable for debts in certain cases	directors	severally liable for the administration of the Company, a member should not be charged with the several liability. • In case of directors, it is suggested that the liabilities should not be unlimited and should be clearly defined.
17	Chapter II	Clause 12 Change of Name	In Clause 12, the following be inserted as sub-clause 6 after sub-clause 5:- 'The change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name'. And, consequently, sub-clause 6 be re-numbered as 7.	• The proposed Clause (similar to section 23(3) of the Companies Act, 1956,) provides for continuance of the legal proceedings in old name.
18	Chapter II	Clause 16 Authentication of Documents and Proceedings	In Clause 16 the words 'provided such authorisation is filed with the Registrar as may be prescribed' after the word company be deleted.	• In the normal course of business companies are required to authenticate several documents and it would be impractical to file authorizations from time to time with ROC. This would cause undue hardship on the companies. Further, it would not serve any purpose by requiring the companies to file such documents with the Registrar of Companies.

				• The office of Registrar will also be flooded with unnecessary papers.
19	Chapter III	Clause 28 Securities, Kinds, Voting rights & others	In proviso to Clause 28(1) the word 'shares' be substituted by the word 'securities'.	• The provision relating to the depository should apply to all securities of a company and not only to the shares.
20	Chapter III	Clause 30(9) Transfer and transmission of Securities	The word 'Company refuses' may be substituted by the word 'Private Company refuses'	• Shares of a Public Limited Company are freely transferable as per existing Section 111A(2) and Section 111(14) of the Companies Act, 1956. The existing Section 111 of the Companies Act, 1956 applies only to private limited companies. After amendment of Section 22 A of Securities Contract Regulation Act, there cannot be refusal to transfer of shares of a public company. SEBI guidelines would also prevail in these cases. • Thus this clause needs to be reviewed and suitably drafted for it to be applicable only for private limited companies.

21	Chapter V	Clause 34 Certain charges to be void against liquidator for creditors unless registered	The following be inserted as sub-clause 10 after sub-clause 9:- The Registrar shall cause to be kept a register in such form as may be prescribed and to enter therein particulars of the documents of charges filed and to sign or initial every page of such register. After entering the particulars of all the charges required to be registered under this section the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of this Part to the person filing it. The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee as may be prescribed for each inspection. The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars of the charges registered with him. And, consequently, sub- clauses 10, 11 and 12 be renumbered as 11,12 and 13 respectively.	• The proposed Clause 34 does not provide for the maintenance of the Register of Charges by the Registrar of Companies as is provided under section 131 of the Companies Act, 1956. • In the absence of such a provision, lenders will not be able to conduct search of the company's documents.

22		Clause 34(10) Certain charges to be void against liquidator for creditors unless registered	In Clause 34(10) the words 'and the chargeholder' after the words 'the Company' be deleted.	• In case of satisfaction of charges, it is proposed that the forms will have to be filed by the Company as well as by the charge holder. It is suggested that the Company only be required to file the forms with the Registrar as the Company would suffer incase of non-filing of satisfaction of the charge by the charge holder.
23	Chapter VI	Clause 43 Circulation of Members' Resolutions	In sub-clause 1 of Clause 43, the words ' at the expense of the requisitionists' be inserted after the word 'give'.	• The provision be inserted in Clause 43 to provide that the Resolution of members would be circulated by the Company at the expense of the requisitionists on the lines of section 188 of the Companies Act, 1956, otherwise, this could be used by the members to harass management for vested interest.
24	Chapter VII	Clause 48 Declaration and Payment of Dividend	In Clause 48(2) the words 'subject to final approval by the general meeting after the end of the financial year' be deleted.	• The declaration and payment of Interim Dividend is the prerogative of the Board of Directors of the Company. Having declared and paid the interim dividend, if the members disapprove the interim dividend then what would be the position? • Further, as per the provisions of Clause 48(3), dividend once declared cannot be revoked or modified. In the event, if the members disapprove the payment of the interim dividend, then such interim dividend would have to be revoked. The provisions of Clause 48(2) and 48(3) are contradictory.

25	Chapter VII	Clause 48(6) Declaration and Payment of Dividend	In sub-clause 6 the words 'where the company has defaulted in repayment of the loan or interest thereon for three consecutive quarters' be inserted after the words 'loans to the company'.	• The Clause provides for the prior approval of the financial institutions, which have made term loans to the Company. • It is suggested that the approval of the financial institutions is required only in the event of default by the Company to repay the principal or interest thereon and such default continues for three consecutive quarters.
26	Chapter VIII	Clause 53 Form and content of Balance Sheet and Profit & Loss Account	Clause needs to be elaborated on preparation of consolidated financial statements	• Clause 52 allows companies to file consolidated accounts and in case, a company files consolidated accounts; separate accounts are not required to be filed. The change does not stipulate continuing compliance. Thus clause gives an option to the company, in alternate year, to file different type of documents, i.e. either consolidated or separate account. The provisions should be included that once the Company has opted for consolidated accounts it should continue to file the same. • There is a contradiction in clause 52 and clause 53 of the concept paper regarding consolidation of Balance Sheet and Profit and Loss account, in clause 52 an option can be exercised by holding company for consolidation of all its subsidiaries without preparing separate Balance sheet, Profit and Loss account, whereas clause 53 makes it mandatory on the directors to prepare consolidated Balance Sheet, Profit and Loss account.

27		Clause 58(2) Qualifications and Disqualifications of Auditors	Clauses 58(2)(f) be modified and (g) be deleted.	• The concept paper has prescribed, certain additional disqualifications for auditors, in particular, for a person whose relative, is in the employment with the company. It is pointed out that guidelines given by ICAI permits such appointment and such provisions would create hardship on the companies to remove and appoint auditors, merely because a relative has joined the company. • A residuary clause is added in Clause 58(2)(g) to prescribe any other disqualification for auditors. This clause needs to be deleted, as these powers are already vested with Institute of Chartered Accountants of India. • It is suggested that all the disqualification should be mentioned in the Act itself. • In view of above, Clauses 58(2)(f) be modified and (g) be deleted.
28	Chapter IX	Clause 59(2) Powers and Duties of Auditors	Clause 59(2)(b) be deleted.	• Clause 59(2)(b) states that the auditor may have to report on such matters as may be prescribed. It is suggested that the detailed guidelines be incorporated in the Act itself.
29	Chapter IX	Clause 59(6) Providing any additional services	The clause needs to be deleted.	• The provisions require auditor not to provide additional services other that the services, which will be prescribed by rules. • It is suggested that The Institute of Chartered Accountants of India, the regulating body, is already responsible for monitoring the independence of auditors, hence the provision should be deleted.

30	Chapter IX	Clause 61 Cost Audit	Clause 61(3) be substituted by the following as sub-clause (3): (3) The auditor under this section shall be appointed by the Board of directors of the company with the previous approval of the Central Government.	• The proposed Clause 61 provides for the appointment of the Cost Auditors by the members, which would report to the Central Government. It is suggested that the provisions similar to section 233B of the Companies Act, 1956, be incorporated. There is no need for the members of the company to approve appointment of the Cost Auditor.
31	Chapter IX	Clause 62 Audit Committee	In Clause 62, the term 'Independent Director' wherever appearing in Clause 62 be substituted by the term 'Non-executive Director'.	• The requirement of independent director should apply only to listed companies and to the closely held limited companies. The same view has been adopted by existing Section 292 A of the Companies Act, 1956.In view of this, it is suggested that in Clause 62, the term 'Independent Director' wherever appearing in Clause 62 be substituted by the term 'Non-executive Director'. • For listed companies clause 49 will continue to apply. Companies cannot have two separate sets of rules for determining independent directors.
32	Chapter X	Clause 63 Number of Directors	The first Proviso to Clause 63(1) be substituted by the following:- Provided that every company whose securities are listed with stock exchange and having paid up capital or turnover of such amount as may be prescribed shall have a minimum of seven directors and	• As discussed above, the requirement of independent director should apply to listed companies.

			not less than such number of independent directors as may be prescribed.	
33	Chapter X	Clause 64(7) Appointment of Directors	Clause 64(7) be deleted.	• The clause empowers the Board of Directors of a company to refuse to accept the resignation tendered by any Director, if such resignation is likely to result in a situation where the number of directors and additional directors together, might fall below the statutory minimum of 2/3 or 7 as the case may be. • This is unfair as the appointment of a person as Director is an act of volition and, therefore, he should be in a position to relinquish the office of Director at his will. In view of this, a person may not accept the position of a Director, if he is not given an option to exit.
34	Chapter XI	Clause 72 (1)(a) Meetings of Directors	Clause should be redrafted to provide relaxation for holding board meetings.	• Earlier, companies were allowed, to have board meetings once in every quarter. There was no provision to have a maximum difference of three months between two board meetings. Clause 72(1A), instead of relaxation in the proposed amendment, has made it mandatory for all the companies to have maximum three months difference between the board meetings. • It is suggested that the existing Section should be continued.
35	Chapter XI	Clause 72 Meetings of Directors	In Clause 72(2)(a), the word 'independent' appearing before the word 'director' be	• In case of an emergency meeting, it would be enough if the majority of the Directors (independent or otherwise)

			deleted.	give their consent.
36	Chapter XI	Clause 73(1) Quorum of Meeting	<u>Clause 73(1)(b) be substituted by the following:-</u> If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place. <u>The following be inserted as 73(1)(c) after Clause 73(1)(b):-</u> The provisions of section 72 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of this section could not be held for want of a quorum.	• It is also suggested that the exclusion as appearing in section 288 of the Companies Act, 1956 be reproduced to take care of a situation where adjourned meeting may take place beyond the time prescribed under Clause 72 i.e. elapse of minimum three months.
37	Chapter XI	Clause No 74 Powers of the Board	Powers of The Board Second proviso to read as under: "Provided further that the provisions of this section shall <u>not</u> apply to the acceptance, by a banking company in the ordinary course of its business, deposits of money …"	• The term "not" has been inadvertently omitted. Seems to be a drafting error.

38	Chapter XI	Clause 76 Inter-corporate Loans & Investments	In Clause 76(7) the following be inserted as (v) after (iv):- 'Private company'.	• Section 372A of the Companies Act, 1956 does not apply to a private company. Similar provisions be inserted in Clause 76.
39	Chapter XI	Clause 79 Related Party Transactions	<u>Clause 79(1)(a) be substituted by the following</u> <u>sale, purchase, supply of any goods or materials.</u> <u>Clause 79(1)(c) pertaining to 'leasing of any property, moveable or immovable' be deleted.</u> <u>Clause 79(1)(f) be substituted by the following</u> Appointment of sole selling agents for purchase or sale of goods, materials, services or property.	• The proposed Clause corresponds to sections 294, 294AA, 295, 297 and 314 of the Companies Act, 1956 and has enlarged the scope by including property, immovable and moveable and leasing of property. • Further, the Clause does not provide for the exemptions given under the aforesaid sections of the Act.
40		Clause 79	In Clause 79 the following be inserted as sub-clause 3 and 4 after sub-clause (2):- '(3) sub-section (1) shall not apply to (a) any loan made, guarantee given or security provided (i) by a private company unless it is a subsidiary of a public	• The exemption given earlier should continue. • Earlier, in 1956, the amount or Rs. 5000 was exemption and hence it is proposed that transactions upto a nominal value of Rs. 500,000, should be exempted.

			company, or (ii) by a banking company; (b) any loan made by a holding company to its subsidiary company; (c) any guarantee given or security provided by a holding company in respect of a loan made to its subsidiary company; (d) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or (e) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or	

			private company, as the case may be, regularly trades or does business. Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five hundred thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or (f) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.' '4. Nothing in this section apply to the appointment of a person as Managing Director, Whole-time Director or Manager, banker or trustee for the holders of the debentures of the Company:- (i) under the Company (ii) under any subsidiary of the Company, unless the	

			remuneration received from such subsidiary in respect of such office or place of profit is paid over to the Company or its holding company.' And, consequently, sub-clause 3 be renumbered as 5.	
41	Chapter XII	Clause 83 Remuneration of Directors	Guidelines for paying remuneration in case of loss making companies or where profits are not sufficient should be prescribed	• The concept paper does not deal with the provisions relating to remuneration of directors in case the profits of the company are not sufficient or it is a loss making company. It is suggested that the adequate provisions should be incorporated in the Act.
42	Chapter XII	Clause 87(11) Appointment of Company Secretary	In Clause 87(11) Explanation be renamed as Explanation I and thereafter the following Explanation II be inserted:- 'Where a company has employed a whole time secretary then the documents, returns, forms to be filed with the Registrar or any statutory authority can be pre-certified by such secretary'.	• Where a company has employed a whole time secretary, it would be only rational for such a secretary to sign the required documents and, certification in such cases is not required.
43	Chapter XII	Clause 88 Appointment of Chief Accounts Officer	In Clause 88(1) the word 'financial' be inserted after the word 'required'.	• Since the Chief Accounts Officer is responsible for the financial information, therefore the word 'financial' be inserted in Clause 88(1).
44	Chapter XIV	Clause 93	In Clause 93(1)(b) in the definition of the term 'Arrangement' the words 'but excludes reduction of share capital' after the word 'methods' be	• In the present era of merger and amalgamations, scheme of arrangement invariably involves the reduction of capital.

			deleted.	• Therefore, the definition of the term 'Arrangement' be modified to include the reduction of share capital.
45	Chapter XVIII	Clause 140	Levy and collection of cess	• The same should be deleted because any revenue raising exercise should be part of the Finance Bill and hence should not be included in the Companies Act.
46	Chapter XVIII	Clause 156 Powers of Liquidator	The term 'Court' be replaced with 'Tribunal'.	• Drafting error.

47.Other Suggestions

a. The main provisions of the Act contain reference to Rules, in order to condense and simplify the Act by reducing the number of sections. This is in accordance with the objective of concept paper to de-link the procedural aspects with the substantive law. However, in respect of certain important matters, we feel matters should be incorporated in the Act itself. These matters are given hereunder:

Sl.	Items	Clause Numbers
1	Further issue of Securities.	25
2	Purchase of its own securities by the Company.	26
3	Application of Security Premium.	23
4	Important provisions like Issue of Shares at a discount, sweat equity.	24
5	Matters relating to Directors Report.	54
6	Form of the Balance sheet & Profit & Loss Account.	53
7	Appointment and removal of auditors, audit reports etc.	56
8	Retirement by rotation or otherwise of Directors, Limits on the power of Board of Directors.	65,67 & 75

It is suggested that all the requirements related to these matters should be laid down in the act itself.

b. The entire CARO order should be revisited to ensure that the reporting is not extended to onerous and inexplicable areas, for example, it is not possible for auditors to verify if any fraud has been committed by the company on others. Similarly reporting if short-term funds are used for long- term purposes and vice-versa is a very subjective area.

c. The Concept Paper refers to “Profit and Loss account and Balance Sheet”, wherein it should refer it as “Financial Statements”, which would include Profit and Loss account, Balance Sheet, Cash Flow statements and Notes to account.

d. Depreciation rates should not be prescribed under the Companies Act; rather they should be based on management estimate of the economic useful life of the asset concerned. The ICAI should provide appropriate guidance on the determination of useful lives of assets.

e. The prohibition relating to providing employees tax -free salary should be removed. This is quite unnecessary in today's times and does not serve any useful purpose.

f. Penalties should be reviewed and we suggest that the maximum penalty amount so levied should not exceed Rs 50,000.

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