E.C. No. 372

ESTIMATES COMMITTEE
(1963-64)

FIFTY-THIRD REPORT

(THIRD LOK SABHA)

MINISTRY OF FINANCE—DEPARTMENT OF REVENUE AND COMPANY LAW (COMPANY LAW DIVISION)

LOK SABHA SECRETARIAT
NEW DELHI

March, 1964

Chaitra, 1886 (Saka)

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CORRIGENDA

FIFTY-THIRD REPORT OF THE ESTIMATES COMMITTEE ON THE MINISTRY OF FINANCE—DEPARTMENT OF REVENUE AND COMPANY LAW (COMPANY LAW DIVISION)

Page 4, para 4 marginal heading, line 1, *for* 'O..ects' *read* 'Objects'.

Page 6, para 7(a), line 6, *for* 'insuranct', *read* 'insurance'.

Page 12, para 15(i), line 2, *for* 'Registers', *read* 'Registrars'.

Page 26, marginal heading against para 30, *read* 'Steep Increase in Income'.

Page 31, para 37, line 6, *for* 'transfere' *read* 'transferee'.

Page 37, line 9, *for* 'exercise' *read* 'exercised'.

Page 59, para 64 line 7, *for* 'lod' *read* 'for'.

Page 60, para 65, lines 2-3, *for* '1960, 1961, 1962 and 1963' *read* '1959, 1960, 1961 and 1962'.

Page 60, para 65, line 23 from bottom, *for* '1963' *read* '1962'.

Page 64 para 68, line 1 of para under quotation marks, *for* 'Repacement' *read* 'Replacement'.

Page 72, para 81 line 1, *for* 'profession', *read* 'profession'.

P.T.O.

Page 76, line 9, *for* enterprice *read* enterprise

Page 105, S.No. 31, line 2, *for* four *read* five

Page 106, S.No. 32, lines 3 4, *for* 1960 *read* 1959 *for* 1962 *read* 1961 and *for* 1963 *read* 1962

Page 107, S.No. 38, line 1, *for* 'qpestion', *read* 'question'

Page 107, S.No 39, last line, *insert* 'amalgamated' *between* 'simplified' and 'or'.

Page 108, S.No. 42, line 1, *for* 'tat' *read* 'that'.

Page 110 in section II, S.No. 4, line 2, *for* 'four' *read* 'five'.

230-LSRP-9.464/1,130

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(1963-64)

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*Elected w.e.f. 16th August, 1963 *vice* Dr. K. L. Rao ceased to be a Member of the Committee on his appointment as a Minister.

INTRODUCTION

I, the Chairman, Estimates Committee, having been authorised by the Committee to submit the Report on their behalf, present this Fifty-third Report on the Ministry of Finance-Department of Revenue (Company Law Division).

2. The Committee took the evidence of the representatives of the Ministry of Finance-Department of Revenue (Company Law Division) on the 16th, 17th, 18th and 19th December, 1963. The Committee wish to express their thanks to the Secretary, Joint Secretary and other officers of the Ministry for placing before them the material and information they wanted in connection with the examination of the estimates.

3. They also wish to extend their thanks to the representatives of the Federation of Indian Chambers of Commerce and Industry, New Delhi, the Associated Chambers of Commerce of India, Calcutta, and the All India Manufacturers' Organisation, Bombay for giving evidence and making valuable suggestions to the Committee.

4. The Report was considered and adopted by the Committee on the 30th March, 1964.

5. A statement showing the analysis of recommendations contained in the Report is also appended to the Report (Appendix XI).

NEW DELHI;
Dated the 6th April, 1964.
Chaitra 17, 1886 (*Saka*).

ARUN CHANDRA GUHA,
Chairman,
Estimates Committee.

I

INTRODUCTORY

A. *Companies Act*, 1956

Company legislation in India started with the Joint Stock Companies Act, 1850 (Act XLIII of 1850). The Indian Company Law has been largely based on the prevailing English Law. The predecessor of the Companies Act, 1956 was Act VII of 1913 which underwent several amendments, including the major amendments of 1936 and 1951 when Acts XXII of 1936 and LII of 1951 were passed. The period of the Second World War and the post-war years witnessed an upsurge of industrial and commercial activity on an unprecedented scale in India and large profits were made by businessmen through incorporated companies. During these years, several developments took place in the organisation and management of joint stock companies which attracted public attention. At the end of the Second World War, the Company Law Amendment Committee (1943-45) in the United Kingdom, popularly known as the Cohen Committee, after an enquiry spread over two years, submitted its report recommending far-reaching changes in the English Companies Act, 1929. In India, too, there was a general feeling that in view of the experience gained during the war years, the time was ripe for fresh legislation so as to ensure efficient and honest management of the business of companies and to check unfair business methods and anti-social practices resorted to by some persons engaged in the management of companies. On the 28th October, 1950, the Government of India appointed a Committee of 12 members, representing various interests under the chairmanship of Shri C. H. Bhabha to go into the entire question of the revision of the Companies Act with particular reference to its bearing on the development of trade and industry in the country. The Company Law Committee submitted its report in March, 1952 recommending comprehensive changes in the Companies Act of 1913. The Bill, which eventually emerged as the Companies Act, 1956 was introduced in Parliament on the 2nd September, 1953. It was a comprehensive and consolidating as well as amending piece of legislation. The Bill was referred to a Joint Committee of both Houses of Parliament in May, 1954. The Joint Committee submitted its report in May, 1955, making some material amendments to the Bill. The Bill, as amended by the Joint Committee, underwent some further amendments in Parliament and was passed in November, 1955. The new Companies Act (I of 1956) came into force from 1st April, 1956.

Historical Background.

B. *Companies (Amendment) Act, 1960*

Companies Act Amendment Committee, 1957.

2. The Companies Act, 1956 was in force for about a year only when Government decided that the defects and deficiencies in its working should be examined. The Government accordingly constituted a committee on the 15th May, 1957 with Shri A. V. Visvanatha Sastri, a former Judge of the Madras High Court as the Chairman with the following terms of reference:—

> "Having regard to the aims and objects of the Companies Act, 1956 and in the light of its working—
>
> (1) to consider what amendments in the Act are necessary—
>
> (a) to overcome such practical difficulties in its working as may have been encountered since it came into force;
>
> (b) to remove such drafting defects and obscurities as may have interfered with the working of the Act;
>
> (c) to ensure the better fulfilment of purposes underlying the Act;
>
> (2) to consider what changes in the form or structure of the Act, if any, are necessary or desirable to simplify it."

Commenting on the scheme of the Act, the Committee has observed as follows:—

> "The Act, with its 658 sections and 12 schedules, no doubt appears, on the face of it, to be far too elaborate and detailed. The increase in the number of sections in the Companies Act of 1956, compared with 462 sections of the English Act of 1948, is due mainly to the following reasons:—
>
> (1) The inclusion of several provisions which do not find a parallel in the English Act, but which are peculiarly appropriate to Indian conditions (*e.g.* section 324 to 377 relating to managing agents);
>
> (2) the inclusion of matters which formed part of the model regulations for company management contained in Table 'A' of the First Schedule of the English Act in the body of the new Act as substantive provisions (*e.g.* sections 285-289);
>
> (3) splitting of matter comprised in one section of the previous Act and of the English Act into a number of sections; and

(4) repetition of certain common statutory provisions with reference to each of the different classes of officers of a company or different modes of winding up of a company.

Though the number of sections in the Indian Act exceeds those of its English counterpart, still it will be found that the volume of printed matter of both the Acts is approximately the same, the English Act having relegated to the schedules several provisions found in the body of the Indian Act."

The Sastri Committee submitted its report to Government in November, 1957. The Report was examined by the Government and the Companies (Amendment) Bill, 1959, based mainly on the recommendations of the Committee was introduced in the Lok Sabha on the 1st May, 1959. The Bill was referred to a Joint Committee and finally passed by Parliament in December, 1960 and was brought into force from the 28th December, 1960.

The Third Five Year Plan *inter alia* states:—

"With the passing of the Companies Act, 1956 and the amendments recently undertaken developments in company management such as inter-corporate investment, interlocking directorships, use of internal resources and the remuneration of directors and other top management personnel can be watched more closely and steps taken to ensure that the legislative provisions concerning them are administered effectively."

C. *Commission of Inquiry into the affairs of the Dalmia Jain Group of Companies*

Reports of Vivian Bose Commission and the Daphtary-Sastri Committee.

3. A Commission of Inquiry was appointed in December, 1956 by the Central Government under the Commission of Inquiry Act (No. LX) of 1952 to inquire into and report on the administration of nine companies, the nature and extent of the control direct and indirect exercised over such companies and firms or any of them by Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Shriyans Prasad Jain, their relatives, employees and persons concerned with them and other matters mentioned in clause 1 of the notification.

The names of the nine companies are as follows:—

(1) Dalmia Jain Airways Limited.

(2) Dalmia Jain Aviation Limited (known as Asia Udyog Limited).

(3) Lahore Electric Supply Company Limited (known as South Asia Industries Limited).

(4) Shapurji Broacha Mills Limited.

(5) Madhowji Dharamsi Manufacturing Company Limited.

(6) Allenberry & Company Limited.

(7) Bharat Union Agencies Limited.

(8) Dalmia Cement and Paper Marketing Company Limited (Now known as Delhi Glass Works Limited).

(9) Vastra Vyavasaya Limited.

The Commission was also empowered to add other Companies under clause 1(2) of the notification. The Commission in exercise of this power included Dalmia Dadri Cement Limited in the enquiry.

The Commission submitted its Report in two parts. The printed report was laid on the Table of the two Houses at the end of January, 1963. Government appointed a two-man Committee consisting of Sarvashri Daphtary and Sastri, to examine the recommendations contained in the Report of the Commission and to suggest suitable remedial measures. The Report of Sarvashri Daphtary and Sastri was placed on the Table of both the Houses of Parliament on the 29th April, 1963 (Part II) and Part I on the 6th May, 1963. The two-man Committee has suggested certain amendments to the Act in the light of the observations made by the Commission. These suggestions are under the consideration of the Government. The Committee have been informed that "it is proposed to introduce a Bill in Parliament shortly for the amendment of the Act".

D. *Companies (Amendment) Act*, 1963

Objects of the Amending Act.

4. On the 26th November, 1963, Government introduced the Companies (Amendment) Bill, 1963 in the Lok Sabha. The Bill has sought to amend the Companies Act.

The Minister of Finance (Shri T. T. Krishnamachari), while moving the motion for consideration of the Bill enumerated the objects of the Bill as follows*:—

> "It contains four important provisions. The first provision is for setting up of the Tribunal for the removal of persons in management of companies on the basis of findings of the Tribunal. The second provision is for the creation of a Board for the administration of the Company Law. The third set of provisions relate to conversion of loans and debentures into equities. The fourth provision is for the purpose of ensuring that investment by trusts in equities is not misused by the people who operate the trusts."

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*L.S. Debates, Vol. XXII, No. 9, col. 1996.

The Companies (Amendment) Act, 1963, except the provisions of Section 8, has come into force with effect from the 1st January, 1964. The coming into force of section 8 of the Amendment Act, which provides for the exercise of voting rights by the Public Trustee in respect of shares held in trust in excess of the limits specified in the new Section 153B, has yet to be notified.

E. *Simplification of the Act*

Need for Simplification of Company Law

5. The Companies Act Amendment Committee (1957) has referred in its Report to the criticism made by businessmen, company managements, shareholders, accountants and auditors, lawyers and judges, about the Companies Act, 1956, particularly, regarding "its inordinate length, complexity of its structure, its involved language, the vagueness and obscurity of many of its material provisions, the inter-position of Government control even in apparently minor matters, the plethora of returns and forms required to be furnished by the management without any corresponding utility, the loopholes it has left, and many other features which make the enactment cumbersome or defective and difficult of application".

It has been represented to the Committee by a leading non-official organisation that "the Companies Act has already a doubtful distinction of being amongst the most voluminous in the world...." This point, was also urged by the representatives of the chambers of commerce and industry who appeared before the Committee to give evidence.

The Committee note that the Finance Minister has stated in the Lok Sabha on the 28th November, 1963* that:

> "Members may want to know why this Bill does not seek to implement the recommendations of the Vivian Bose Committee or the Daphtari-Sastri Committee for amendment of the Companies Act.
>
> * * * * *
>
> Those recommendations will be duly incorporated in a comprehensive document and an amendment will be placed before this House, I presume in the next Session. In that Bill, we will endeavour not only to block the existing loopholes but to satisfy the desire to simplify the law relating to joint stock companies and make it more comprehensive."

The Committee hope that early action would be taken in pursuance of the above assurance to simplify the existing law as much as possible.

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*L.S. Debates, Vol. XXII, No. 9, col. 2005.

II

ADMINISTRATION OF COMPANIES ACT

A. *Introduction*

Position prior to 1951

6. Till the publication of the Draft Outline of the First Five Year Plan in 1951, the fundamental importance of a sound system of regulatory laws relating to the corporate sector and, in particular, of the Companies Act to the management and conduct of trade and industry on healthy and efficient lines was not adequately recognized either in administrative policy or practice. The Companies Act was viewed mainly as a punitive measure; and its scope and purpose were conceived, primarily, to be the "holding of the ring", leaving joint stock companies the fullest measure of freedom to carry on their activities as best as they could, as long as they did not contravene the formal provisions of the Act. In the context of this *laissez faire* view of the company law, the machinery for the administration of the Companies Act was, necessarily, of the most tenuous kind. The administration of the Act was left to the care of the State Governments which, in their turn, delegated their responsibility to some part-time employees, except in Bombay and Calcutta, where there were whole-time Registrars of Joint Stock Companies, with little or no supervision over their work.

Justification for a Central Organisation.

7. It was in pursuance of a positive and purposive view of the role of the Companies Act that the Company Law Committee, 1952 recommended a thorough overhaul of the existing machinery for the administration of the Companies Act, both at the Centre and in the States. Describing the Companies Act of 1913, which was then in force, as the most under-administered of all the Central Acts dealing with trade and industry, the Committee pointed out that the many abuses and malpractices in company management, which had occurred during the last twenty years, could have been prevented by timely vigorous action, if there was an effective administrative machinery for this purpose, and urged the centralisation of the administration of this Act and all other related measures in one integrated central organisation. The Committee considered two alternative types of organisation:—

(a) a central department of Government, similar to the Board of Trade in the United Kingdom, dealing with joint stock companies, and with other related institutions *e.g.* banks, insurance companies, stock exchanges, etc. which are closely correlated institutions *e.g.* banks, insuranct companies in the corporate sector, with suitable regional

and local organisations working directly under its policy control and guidance; and

(b) a central statutory authority on the lines of the Securities and Exchange Commission of U.S.A. with regional offices and local registrars under its control and guidance.

After comparing the relative advantages and disadvantages of these two possible types of organisations, the Committee expressed itself in favour of a statutory authority. The Report of the Company Law Committee, 1952 was considered immediately after it was submitted to Government. As neither the Finance Ministry, as then constituted, nor any other Ministry in the Government of India had any cells which could provide sufficiently competent knowledge of the form, structure or working of corporate bodies or their specialized financial methods and practices, it was considered necessary that before Government were called upon to implement the far-reaching recommendations of the Company Law Committee, 1952, both in respect of the Companies Act and the administrative organisation which it had proposed, an on-the-spot study should be undertaken in the U.K. and the U.S.A. Accordingly, a Special Officer was deputed to the U.K. and the U.S.A. in the summer of 1952. After taking into consideration the recommendations of the Company Law Committee, 1952, Government prepared a comprehensive Companies Bill which was introduced in Parliament in September, 1953. The Bill was referred to a Joint Select Committee of the two Houses in April, 1954 and was under the consideration of the Committee till the beginning of May, 1955. The question of an appropriate form of organisation for the administration of a complicated and comprehensive measure like the new Companies Act engaged the close attention of the Joint Select Committee. Two different views on this subject emerged. While a few favoured a central statutory authority on the lines of the Securities and Exchange Commission of the U.S.A., the majority of the members expressed themselves in favour of a full-fledged Secretariat Department functioning directly under the Minister concerned. They were also of the view that this Department should administer not only the Companies Act, but should be entrusted also with the other related functions in respect of those subjects relating to corporate sector of the country's economy which were mentioned in the Company Law Committee's recommendations in this regard. The majority recommendation of the Joint Select Committee was endorsed by Parliament.

Setting up of a Central Department

8. Following the recommendation of the Joint Select Committee, a full-fledged secretariat department in the Ministry of Finance was set up on the 1st August, 1955. The following subjects were placed under the Department of

Company Law Administration:—

(1) Administration of the Companies Act;
(2) Administration of Capital Issue Control;
(3) Profession of Accountancy;
(4) Stock Exchanges;
(5) Finance Corporations, including:
  (a) Industrial Finance Corporation,
  (b) State Finance Corporations,
  (c) The Industrial Credit and Investment Corporation, and
  (d) The Rehabilitation Finance Administration.

On the 5th September, 1956, all the subjects except the Administration of the Companies Act and the Profession of Accountancy were transferred back from the Department of Company Law Administration to the Department of Economic Affairs.

On the 7th February, 1958 the Department of Company Law Administration was transferred from the Ministry of Finance to the erstwhile Ministry of Commerce and Industry.

Views of Vivian Bose Commission.

9. The Report of the Commission of Inquiry on the Administration of Dalmia-Jain Companies contains the following recommendation:

> "....the Department of Company Law Administration deals generally with the working of the Companies Act, ensures its compliance, and is the regulating authority where Central Government sanction is necessary under the various sections of the Act; but there are other departments which deal with different aspects of the matter, such as, the control over the capital issues, stock exchange regulation etc. These Departments come under a Ministry different from the Ministry under which the Department of Company Law Administration functions, and the Commission feels, as the Bhabha Committee did, that there is the need for integrated administration of the Companies Act as well as other matters connected with the corporate sector".

While the above recommendation is stated to be under consideration of the Government, the Committee have come across an article entitled, "The History of the Department of Company Law Administration", which is published in the official journal "Company News and Notes", dated the 2nd September, 1963. It states:

> " ..the original purpose for which the Department was constituted in 1955 in pursuance of the recommendations of the Joint Select Committee of

Parliament, received a set-back in September, 1956, when the administration of such closely related subjects such as Capital Issue Control, Stock Exchange and the other financial institutions, operating in the capital market and closely connected with the working of joint stock companies was taken away from the Department. The diminution of the administrative control has had two bad effects, one—it has weakened the administrative effectiveness of the Companies Act and thereby the policy of the purposive regulation of the corporate sector in conformity with the accepted social and economic policy of the country has suffered. Secondly, the integrated policy of regulation of corporate sector which had started to emerge in 1956-57 received a set-back"

The Committee note that on the 20th October, 1963, the Department of Company Law Administration was transferred as a Division to the Department of Revenue in the Ministry of Finance.

During the course of evidence before the Committee in December, 1963, the representative of the Company Law Division stated that:—

"Despite separation, we did not lose coordination. We achieved coordination in various ways. There are various discussions, meetings of the Licensing Committees, Foreign Agreements Committee, Capital Goods Committee etc.

I am unable to assess precisely the way it has affected the implementation of policies except that I think that new arrangement under which it will be possible once again to put connected matters under the same roof, will probably make for improvement."

The Committee note that other subjects intimately connected with the Company Law Division e.g. Administration of Capital Issue, Stock Exchanges and Financial Corporations have all along remained under the Department of Economic Affairs.

The Committee would have thought it natural if in implementing the decision about the transfer back of the Department of Company Law Administration to the Ministry of Finance, it had been placed under the Department of Economic Affairs along with which it was functioning originally and which has continued to be in charge of other related subjects. The Committee, therefore, cannot resist the conclusion that the position needs to be reviewed.

B. *Functions and Organisation*

(a) *Functions*

Functions of Company Law Division.

10. The functions of the Company Law Division are as follows:—

(i) Administration of the Companies Act;

(ii) Profession of Accountancy (Chartered Accountants Act). Profession of Costs and Works Accountancy and Company Secretaryship;

(iii) Collection of statistics relating to companies;

(iv) Legislation of Indian Partnership Act and the exercise of certain functions under Chapter VII of the Act in the centrally administered areas (The administration of the Act vests in the State Governments);

(v) Commission of Inquiry;

(vi) The responsibility of the Centre relating to matters concerning centrally administered areas in respect of first four items.

(b) *Organisation*

Administrative Set-up.

11. The administrative set-up of the Company Law Division consists of four tiers of organisation:—

(i) Headquarters with Secretariat Branches at New Delhi;

(ii) Four Regional Offices in charge of Regional Directors at Bombay, Madras, Calcutta and Kanpur, each looking after a group of offices in the States;

(iii) Offices under the control of full-time Registrars of Joint Stock Companies in all the States in the Indian Union; and

(iv) Offices under the control of Official Liquidators.

The working of the Offices of the Official Liquidators has been dealt with in Chapter VII.

(i) *Headquarters*

Secretariat.

12. The Secretariat consists of the usual house-keeping branches and several policy and operative branches dealing with matters relating to the working of rules, the giving of advice on interpretations of the Act, investigations, prosecutions, liquidations, licences, inter-company finance and investment and miscellaneous matters in which the Advisory Commission constituted under Section 410 of the Companies Act, 1956 is required to be consulted by the Central Government. There is also a small Research and

Statistics Division to collate, tabulate and analyse data relating to joint stock companies received from the field offices.

13. According to a series of Notifications issued by Government on the 1st February, 1964 (Appendix I) under Section 10E of the Companies Act, 1956, as amended by the Companies (Amendment) Act, 1963, a Company Law Board, consisting of a Chairman and a Member, has been constituted with effect from the same date. Company Law Board.

14. The Government have delegated to the Company Law Board most of the powers and functions at present vested in Government under the provisions of the Companies Act. The powers and functions previously delegated to the four Regional Directors of the Company Law Administration at Bombay, Calcutta, Kanpur and Madras would continue to be exercised or discharged by the Regional Directors concerned. All the powers and functions under the Companies Act would be exercised or discharged either by the Company Law Board or by the four Regional Directors of the Company Law Administration, except the power to make rules, the power to appoint a person as public trustee under Section 153A and the powers and functions relating to the following matters:— Powers and functions of Company Law Board.

(a) Constitution of the Tribunal for enquiring into cases against managerial personnel, and issue of notification conferring on the Tribunal certain powers and functions at present conferred on the court;

(b) Conversion of debentures issued to or loans obtained from the Government by a company into shares of the company;

(c) Companies engaged in specified classes of business and industry shall not have managing agents;

(d) Appointment of the Advisory Commission;

(e) Laying of annual reports on Government companies before both Houses of Parliament;

(f) Modification of the provisions of the Act in its application to Government companies and to *Nidhis* and mutual benefit societies;

(g) Delegation of the powers or functions of Government to such authority or such officer other than the Company Law Board;

(h) Submission of annual report on the working and administration of the Act of Parliament.

All approvals, sanctions, consents etc. to be accorded by the Central Government under various provisions of the

Companies Act would be accorded by the Company Law Board. The Registrars of Companies at various places would also function under the control of the Board.

(ii) *Regional Offices*

Functions.

15. The Committee are informed that for purposes of better administration of the Act and supervision of the Offices of the Registrars of Companies and also for purposes of maintaining liaison between the Secretariat in New Delhi and various sections of society concerned with the working of companies, it was considered necessary to establish Regional Offices. These offices are headed by Regional Directors, who are senior officers of the status of a Deputy Secretary to the Government of India. A Regional Director supervises the work of Registrars of Companies in 3 or 4 States and is himself assisted by a Solicitor and Accounts Officers, who are well-qualified in Law and Accounts. Some of the important duties of Regional Directors are as follows:—

(i) to maintain close contact with the offices of the Registers of Companies in the Region and to exercise supervision and control over them on behalf of the Department;

(ii) to advise and guide the Registrars on technical and administrative matters;

(iii) to report to Government important events and trends in the Region in the sphere of trade and commerce in general, and particularly, on the activities and operations of companies and developments in the capital market;

(iv) to look after the progress of investigations started by the Department and to pursue prosecutions arising out of investigations and other breaches of the provisions of the Act;

(v) to function as a link between the Central Government and the State Governments in the Region; and

(vi) to discharge functions of public relation officers and attend to complaints or difficulties put forward by joint stock companies, particularly, the smaller ones having meagre resources to obtain expert advice or guidance.

The Regional Directors function as local representatives of the Department in the various regions. Adequate administrative and financial powers have been delegated to them to enable them to discharge their functions adequately.

16. To begin with, there were five Regional Offices at Bombay, Madras, Delhi, Kanpur and Calcutta looking after the Western, Southern, Northern, Central and Eastern Regions respectively. In December, 1956 as a measure of economy, the Central and Northern Regions were merged, and the jurisdiction of the Southern and Western Regions was readjusted. The following table shows the existing jurisdiction of the four Regions: Jurisdiction of Regional Offices.

Region	Headquarters	Jurisdiction
Western	Bombay	Maharashtra, Gujarat, Madhya Pradesh and Goa.
Southern	Madras	Madras, Andhra Pradesh, Mysore and Kerala.
Eastern	Calcutta	West Bengal, Bihar, Orissa, Assam and the territories of Manipur and Tripura.
Northern	Kanpur	Punjab & Himachal Pradesh, Uttar Pradesh, Rajasthan and Delhi.

The number of companies situated in different Regions during 1961-62 was as follows:—

Region	No. of Companies 1962-63 (provisional)
Western	6374
Southern	5110
Eastern	9694
Northern	4346
TOTAL	25524

The representative of the Company Law Division stated during evidence that they had no absolute yardstick of measuring the workload. The number of companies was, however, a rough index. He added that the largest concentration of companies, about two-fifths of the total number, was in the Calcutta area.

The Committee note that there is heavy concentration of companies in Eastern Region. They would, therefore,

suggest that a suitable yardstick for assessing the work-load in the Regional Offices may be evolved so that Regional Offices are adequately staffed.

(iii) *Offices of Registrars of Companies*

Location and Role of Registrars' Offices

17. Soon after the setting up of the Department of Company Law Administration in August, 1955, the Central Government took steps to appoint permanent full-time Registrars of Companies. When the Companies Act came into force on the 1st April, 1956, permanent Registrars of Companies duly assisted by suitable technical and ministerial staff had been put in position in almost all the States. The following are the 15 offices of the Registrars of Companies functioning at present:—

State	Location of Office
Andhra Pradesh	Hyderabad
Assam, Manipur & Tripura	Shillong
Bihar	Patna
Maharashtra	Bombay
Delhi	Delhi
Gujarat	Ahmedabad
Kerala	Ernakulam
Madras	Madras
Madhya Pradesh	Gwalior
Mysore	Bangalore
Orissa	Cuttack
Punjab and Himachal Pradesh	Jullundur
Rajasthan	Jaipur
Uttar Pradesh	Lucknow
West Bengal	Calcutta

In their new phase of role, the Registrars are "important tools in the hands of Government for executing its economic, fiscal and other policies and also for bringing about an improvement in corporate practices, particularly, those of management, financial and accounting".

C. *Staff Matters*

Training of Staff.

18. The need for internal training of staff of the Company Law Administration arises from the fact that it is concerned with the highly specialised field of law, finance and accounts dealing with trade and industry. The Committee are informed that immediately after the enforcement of the Companies Act, 1956 on the 1st of April, 1956, as part of a training programme for the staff recruited

to the Department, a decision was taken to require all officers newly appointed to the Department from the level of Under Secretary upwards to undergo an orientation course for about four to five weeks before they assumed *de facto* charge of their offices. After the establishment of the offices of the Regional Directors another series of lectures was arranged by the Regional Directors themselves for the benefit of the staff employed under them as well as in the offices of the Registrars of Companies in their regions. A training programme applicable to all the staff in the offices of the Regional Directors and the Registrars of Companies as also in the offices of the Official Liquidators, now under the administrative control of the Central Government was devised in the year 1962. The total expenditure incurred in the above scheme was of the order of Rs. 10,500 by way of the payment or honorarium to the officers who prepared the synopsis of the lectures and of those who delivered them.

During the course of evidence before the Committee, the representative of the Company Law Division stated that the training of staff had been undertaken mostly in the field offices of the Registrars of Companies and Regional Directors. He added that the training had not been undertaken in the Offices of Official Liquidators and in the Headquarters.

The Committee feel that a suitable training programme for the staff in the Offices of the Official Liquidators, which is badly in arrears, should be devised and implemented early.

They would suggest that in the light of experience gained so far, a suitable training programme for the staff of the headquarters of the Company Law Division, may also be arranged.

D. *Disposal of Applications*

19. The following table indicates the particulars of applications relating to managerial remuneration and appointments received and disposed of by the Company Law Division during each of the years after the commencement of the Companies Act:— Applications for Managerial Appointments.

Year	No. of applications considered	No. of applications disposed of	Balance
1956-57	2,116	1,753	363
1957-58	1,899	1,670	229
1958-59	1,474	1,132	342
1959-60	2,409	1,343	1,066
1960-61	2,512	1,895	617
1961-62	2,722	2,174	548
1962-63	2,662	2,207	455

The break-up of 455 applications pending as on 31st March, 1963, is as follows:—

Reasons	No. of pending applications
(*a*) Further information from companies awaited .	182
(*b*) Advice of the Advisory Commission awaited .	30
(*c*) New applications, and old applications on which further information was received during the last fortnight of March, 1963; cases referred to other governmental departments and cases from Advisory Commission received during the last week of March, 1963	243
TOTAL . .	455

20. The Committee have been informed that the Company Law Division are constantly reviewing various procedures followed by their offices in handling applications and have also prescribed time targets for their disposal. A copy of the latest time targets for disposal of applications is given in Appendix II.

Though there is some improvement as seen from the table above, the Committee feel that the number of applications pending at the end of the year is still very high. The Committee would stress that action may be taken not only to ensure that the applications are disposed of within the target time fixed by the Department, but also to revise the time schedule itself in the light of experience gained so that applications which are received complete in all respects are finally disposed of within six weeks.

E. *Public Relations*

Need for closer liaison with Chambers of Commerce and Professional Bodies.

21. It has been represented to the Committee by a leading non-official organisation that offices of the Regional Directors should have close liaison with various Chambers of Commerce and Industry and other industrial and commercial organisations.

The Committee are informed that with a view to encourage study and exchange of ideas on company law matters and better understanding of the objectives of the various provisions of the Companies Act in the country's economy as a whole, study circles have been set up at Bombay, Calcutta, Madras, Kanpur and Delhi. Membership of these study circles is open to persons who are in-

terested in the basic problems connected with the working of the corporate sector. Apart from the normal discussions which the members of the study circles hold amongst themselves, some eminent people in the industry, law or accountancy profession are often invited to take part in the deliberations. The meetings are held once or twice a month.

The joint stock companies cover a very wide area of the industrial and commercial field of the country's economy. The mechanics of their operations and their activities have assumed great importance not only for such sections of the society which come in their direct contact but also for the general public as the consumer of the goods and services produced by companies.

The Sixth Annual Report on the working and administration of the Companies Act states *inter alia* that "the traditional role of company law as an instrument for the maintenance of law and order in trade and industry, and as a regulator of the rights and duties of different interests which combine to organise and operate a joint stock company is now, by and large, fairly well-recognised in the business world, but the new role of company law, which stems from the emergence of the joint stock company as the dominant social and economic institution of our times, has yet to produce its impact on the normal thinking of the average company management in this country."

During the course of evidence before the Committee, the representative of the Company Law Division stated that the Regional Directors spent a considerable amount of time in meeting representatives of companies and that problems were also discussed in Study Circles.

In this connection the Committee would like to quote the following extract from the assurance given on the floor of the Lok Sabha on the 12th September, 1955 by the then Finance Minister*:—

> "I am very happy to give the assurance that has been demanded in regard to the administration; first that it should be competent, that red tape should be reduced to a minimum and that, finally, we should have a new concept of positive helpfulness; that is to say, our aim should not be to trip up the unwary but to assist actively those who seem anxious to observe the law but find themselves somewhat helpless in this welter of legislation, which I am sure will be further complicated when the rules come up almost inevitably. Therefore, we have undertaken these duties with a full sense of responsibility and almost with trepidation".

*L.S. Debates, Vol. VII, No. 37 Cols. 13276-277.

The Committee hope that no efforts would be spared by Government to fulfil in letter and spirit the assurance of "positive helpfulness" given by the then Finance Minister at the time of piloting the Companies Bill, 1953.

The Committee are of the view that close contact should be maintained by the Regional Directors and Registrars of Companies with representative chambers of commerce, trade organisations and other professional bodies connected with trade and industry so as to enlist enlightened opinion for adoption of sound standards in company formation and company management. The Company Law Division may also keep a watch from the Centre so as to ensure a coordinated approach.

The Committee feel that in the interest of promoting closer liaison, it may be worthwhile to constitute an Advisory Committee consisting of representatives of chambers of commerce and industry and other leading bodies of the corporate sector to advise the Regional Directors on such matters as public relations, sound company practices, timely filing of returns etc.

Setting up of Advisory Cells in Chambers of Commerce etc.

22. The Committee take note of the following observation in the Annual Report of the erstwhile Ministry of Commerce and Industry for 1962-63 relating to the Department of Company Law Administration:—

> ".....It was also felt that it would be useful for the Chambers of Commerce to set up 'advisory cells', and accordingly, the Registrars were asked to initiate suitable action in the matter to assist and encourage the setting up of such agencies which should be helpful to the commercial public."

In this connection, the Committee have been informed that the following Chambers of Commerce have set up Advisory Cells:—

(1) The Punjab & Delhi Chamber of Commerce,
(2) The Orissa Chamber of Commerce and Industry,
(3) The Cuttack Productivity Council, and
(4) The Malabar Chamber of Commerce.

The Committee observe that the progress made in setting up of Advisory Cells by the chambers of commerce so far, at the instance of the Registrars of Companies, is not satisfactory. They would like to suggest that all efforts should be made by the Registrars of Companies to assist and encourage the setting up of such agencies by all important chambers of commerce in the country.

23. A leading chamber of commerce has represented to the Committee as follows:— Accommodation in Registrars' Offices for Visiting Public.

> "The provision of sitting accommodation in the offices of the Registrars to visitors who go to see the officers needs immediate attention. The reception office in the Registrars' Offices should be manned by Public Relations Officers or other members of the staff who could guide the visitors in meeting the dealing officers."

The Committee have been informed by the Company Law Division that there are some physical limitations in places like Delhi where in spite of the Department's best efforts, satisfactory accommodation has not been made available for the Registrar's Office.

The representative of the Company Law Division stated during evidence that they have to make the best use of whatever accommodation is available, including the visitors' rooms.

The Committee consider that provision of adequate and proper amenities in the Registrars' Offices for the visiting public is absolutely essential. The waiting rooms should not only be properly furnished but good reading material and company literature should be placed there so that the visitors can usefully spend their time while waiting for interview etc.

F. *Advisory Bodies*

(a) *Technical Advisory Committee*

24. The Committee are informed that a Technical Advisory Committee has been set up to advise the Company Law Division on all major issues of policy in regard to legal and accounting matters arising out of the administration of the Companies Act and in respect of which the Government may consider it necessary to seek expert advice. It is composed of the Secretary of the Company Law Division as Chairman and seven other non-official members A copy of the notification setting up the Committee is given in Appendix III. Composition and Functions.

The first Technical Advisory Committee was constituted towards the end of 1958 for a period of two years during which six meetings were held. The second Committee was constituted in early 1961 and held five meetings during its tenure. The third Committee was constituted in February, 1963 and has held one sitting only so far.

(b) *Advisory Commission*

25. Consequent upon the coming into force of the Companies Act, 1956 from 1st April, 1956, and in terms of sec- Composition.

tion 410 thereof, an Advisory Commission was first constituted on the 1st April, 1956, with Shri Tenneti Viswanatham as Chairman and Shri J. D. Choksi, Shri B. N. Chaturvedi, Shri C. S. Sastri and Shri G. D. Ambekar as Members. On the expiry of their tenure of office, the Commission was reconstituted from 1st April, 1959 with entirely new personnel consisting of Shri K. K. Sharma, as Chairman and Dr. G. S. Melkote, M.P., Shri G. Basu, Shri D. C. Kothari and Dr. R. Balakrishna as Members. The tenure of the second Commission expired on the 31st March, 1962 and the third Commission was reconstituted for three years from 1st April, 1962 with Shri K. K. Sharma (retired High Court Judge) as Chairman and Shri V. L. D' Souza (Retired Vice-Chancellor, Mysore University), Shri C. C. Choksi (former President of the Institute of Chartered Accountants), Shri H. L. Khanna (former President of the Upper India Chamber of Commerce, Kanpur) and Shri Kali Mukherjee working President of I.N.T.U.C. West Bengal as Members.

Functions.

26. The functions of the Advisory Commission are prescribed in section 411 of the Act. The forms and procedure for purposes of making references to the Commission have been prescribed in section 412 of the Act. Section 413 of the Act prescribes the powers of the Commission. The Commission is, primarily, required to inquire into and advise Government Company Law Board on such matters as are referred to it by the Government under the following sections of the Companies Act, 1956:—

Section 259—Increase in number of directors.

Section 268—Amendment of provision relating to managing whole-time or non-rotational directors.

Section 269—Appointment of managing or whole-time directors.

Section 310—Provision for increase in remuneration of directors.

Section 311—Increase in remuneration of managing director or wholetime director on re-appointment.

Section 326—Appointment or re-appointment of managing agent.

Section 328—Term of office of managing agent.

Section 329—Variation of managing agency agreement.

Section 332—No person to be managing agent of more than ten companies after 15th August, 1960.

Section 343—Transfer of office by managing agent.

Section 345—Succession to managing agency by inheritance or devise under agreement before commencement of the Act.

Section 346—Change in constitution of managing agency firm or corporation.

Section 352—Payment of additional remuneration to Managing agents.

Section 388—Appointment, reappointment and increase in remuneration of Manager.

Section 408—Powers of Central Government to prevent oppression or mis-management.

Section 409—Power of Central Government to prevent change in Board of directors likely to affect the company prejudicially.

The various regulatory provisions which come within the ambit of the Advisory Commission are designed to ensure that the management of companies is not vested in the hands of persons who are not fit and proper to manage them; that the managerial remuneration payable by companies is not out of proportion to the financial resources of the companies concerned; that the companies do not indulge in unfair business practices and that the persons in charge of management do not exercise their powers either to the detriment of the interest of the company itself or that of any group of its shareholders.

Procedure of Work.

27. The Committee have been informed that keeping in view the legislative background and the general policy accepted by the Government, the Commission has been evolving certain working principles for disposal of the various applications referred to it by Government Company Law Board. These principles have from time to time been embodied in its annual reports which form part of the general Annual Report on the working and administration of the Companies Act, 1956 which is laid before both Houses of Parliament in pursuance of the provisions of Section 638 of the Act. Besides broadly adhering to the practice of considering individual cases in the light of these general principles and criteria evolved over a period of time, the Commission has continued to consider each case on its merits. Where the circumstances of the case deserve any special consideration, deviations from the general principles have been made. In arriving at a decision on the individual applications, the Commission usually relies on the information and documents made available to it by Government but in suitable cases where it is considered necessary to do so, the Commission calls for and obtains the additional information or documents from the company concerned. The Commission also asks the companies concerned to send

their representatives to appear before the Commission to explain their cases. In some cases, the companies themselves solicit an opportunity to represent their case by sending their representatives to appear before the Commission. In a few cases where the company's proposals have been objected to by some shareholder or shareholders, the objecting shareholders are also given an opportunity to appear before the Commission to explain their point of view.

Workload.

28. The following table gives the number of proposals under different sections of the Companies Act received and disposed of by the Advisory Commission during the years 1956-57 to 1962-63:—

Year	No. of Applications				
	Opening Balance	Received during the year	Total	Disposed of	Balance
1956-57 .	..	1760	1760	1753	7
1957-58 .	7	1517	1524	1492	32
1958-59 .	32	974	1006	998	8
1959-60 .	8	1449	1557	1443	14
1960-61 .	14	1693	1707	1683	24
1961-62 .	24	1551	1575	1573	2
1962-63 .	2	1248	1250	1220	30

A leading organisation of chambers of commerce has represented to the Committee as follows:—

> "The Company Law Advisory Commission meets twelve times in a year and deal with about 1,500 applications. As a result—(i) there is delay in handling applications; and (ii) it cannot be possible for the Company Law Advisory Commission to examine fully each application which is referred to it."

Number and Venue of Meetings.

29. During each of the years 1961-62 and 1962-63, the Advisory Commission held 11 meetings.

The representative of the Company Law Division stated during evidence that a meeting of the Commission is generally spread over two to three days lasting about 15 hours.

The Committee have been further informed by Government that from April, 1962 when the present Commission was reconstituted, 65 cases have been disposed of on an average during a sitting held in a month, excluding the cases disposed of by the Chairman. Ordinarily, the time taken by the Commission to dispose of cases varies from ten days to one month and ten days, depending upon the date of receipt of the proposal from Government. In

regard to the cases disposed of by the Chairman under the powers delegated to him, it normally takes three to seven days from the date of receipt of the proposal from Government. After the receipt of the Commission's advice, Government ordinarily take about a week to ten days for issuing the necessary orders.

It has been represented to the Committee that the Commission should hold meetings by rotation in Calcutta, Bombay, Delhi, Madras, etc.

The Committee note that in 1961-62 the Advisory Commission held 11 meetings out of which 9 were held in Delhi and one each at Ahmedabad and Hyderabad. In 1962-63, 10 meetings were held in Delhi and one at Calcutta.

The Committee consider that as the country is divided into four regions for the purpose of administration of the Companies Act, it would be better if a sitting of the Advisory Commission is held at least once during the course of the year in each of these regions.

G. *Receipts and Expenditure*

30. The amounts realised as fees from the companies and the total expenditure incurred on the late Department of Company Law Administration from 1956-57 to 1962-63, are indicated below:— Step increase in Income.

Year	Annual Expenditure (Rs. in lakhs)	Total fees realised from the Companies (Rs. in lakhs)
1956-57	27·81	10·50
1957-58	27·56	24·10
1958-59	29·97	25·00
1959-60	35·81	25·78
1960-61	37·77	42·47
1961-62	40·93	1,04·88
1962-63	43·45	76·80

The Committee have been informed that during the earlier years, the expenditure of the Department was substantially in excess of the amounts realised by way of fees from companies. In 1961-62, there was a big windfall because of comparatively large income by way of additional fees under Section 611 of the Act and a substantial amount as registration fees from one or two big government companies. Giving justification for the large excess of receipts over the total amount of expenditure during each of the last three years, the Government have stated as follows:—

"The Department's expenditure also would have gone up but was kept low in view of the Emer-

gency. It, however, appears that the expenditure will increase with the intended reorganisation of the offices of the official liquidators and also because of the establishment of the Tribunal and additional staff that may have to be employed because of reorganisation that may take place in the near future."

While the representative of the Company Law Division stated before the Committee during evidence that the criteria for levying fees were (a) the cost of service; and (b) the paying capacity of the company concerned, the Fifth Annual Report on the working and administration of the Companies Act contains the following statement:—

"The Department is, therefore, not only self-sufficient but will also be able to contribute to the general revenues to the extent of Rs. 30 to 35 lakhs in future years."

Since the amount of fees realised from the joint stock companies during each of the last three years has far exceeded the amount of expenditure on the Company Law Administration, the Committee suggest that the question of crediting the extra revenue to a special fund for the purpose of undertaking research in corporate matters and in imparting training to accountants, company secretaries etc. may be examined.

While there may not be any objection to levy of fees commensurate with the services rendered, the Committee are doubtful whether such a levy should be treated as an additional source for raising General Revenues. The Committee, therefore, suggest that the entire question of rationalisation of fees may be carefully examined by an expert committee.

Rationalising levy of Fees.

31. The Committee find that the Company Law Committee (U.K.—1962) have made some important recommendations on the question of rationalisation of fees*:—

"We suggest that the minimum initial registration fee should be of the order of £ 25 (in place of the present minimum of £ 2) and that the Twelfth Schedule should be correspondingly adopted. We suggest that the annual fee (in replacement of the various fees charged for registering documents etc.) should be of the order of £ 5. We think that fees of this magnitude are necessary to achieve the objectives mentioned above. If they produce more than the cost of administering the Companies Registration Office, we nonetheless regard them as the minimum necessary. If, on the other hand, they produce less than the cost of such administration (after taking into account receipts for searches

*Para 28, p. 8

by the public) an increase sufficient to meet the deficiency should be made."

The representative of the Company Law Division stated during evidence that Government had received some suggestions for levying a single annual registration fee in place of separate fees prescribed at present for each return, on the analogy of the recommendations made by the Jenkins Committee (U.K.).

The expert committee recommended in earlier para may inter alia *examine the question of prescribing a minimum initial registration fee and a single annual registration fee in place of the diverse fees which are being levied at present.*

H. *Role of Company Law Administration*

32. A number of leading non-official organisations have represented to the Committee that the interpretations of the provisions of the Companies Act by the Company Law Division, were sometimes at variance with the spirit and letter of the law. Some of the instances furnished to the Committee are given in Appendix IV. Interpretation of Companies Act.

The Committee have been given to understand that after the passing of the Companies Bill in December, 1955, the Department of Company Law Administration had issued detailed instructions in a circular letter issued to the Registrars of Companies which contained *inter alia* the following instruction:—

> "While the general practice that Government should not attempt to interpret the provisions of the Act for the public and they should get advice from their legal advisers should be ordinarily adhered to."

As regards the Income Tax Act, the report of the Direct Taxes Administration Enquiry Committee also contains the following recommendation* which is of some interest:—

> "Opinions and rulings should be given on full consideration of all the relevant facts and circumstances of the case, only by the Central Board of Revenue or the Commissioners and not by any junior authority. These opinions and rulings should be binding on the Department so long as the facts and circumstances are the same and there is no judicial pronouncement to the contrary."

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*Para 9.31, p. 250.

The Committee note that the Sixth Annual Report on the working and administration of the Companies Act contains the following statement:—

> ". . . . the efforts of the Department of Company Law Administration during the last five years were concentrated on interpreting and enforcing the provisions of the law not in any legalistic manner, but as an instrument of policy."

During the course of evidence, the representative of the Company Law Division stated that—

> "We are not a legal department and we are not bound to supply them interpretation. We did it in a spirit of helpfulness. . . .
>
> * * * * *
>
> Whatever interpretation we gave we always added a clause saying that this was the view of the department that it did not amount to an authoritative interpretation. We always make it clear that this is our view, and that it does not amount to an authoritative interpretation of the Act which can be given only by a court of law."

The Committee agree with the instructions issued by the Ministry of Finance in para 5 of their circular letter No. 2/1/56-PR(CLA), dated the 20th January, 1956 addressed to the Registrars of Companies that "Government should not attempt to interpret the provisions of the Act for the public and they should get advice from their legal advisers."

The Committee need hardly say that legal interpretation of the provisions of the Act should be left to the Courts of Law. It has, however, to be recognised that the Companies Act is a complex piece of legislation and it may not be possible to deny elucidation of its provisions to companies which may seek clarification from the Company Law Division.

Procedure for declaring some practices and New Trends as "unsound".

33. The Sixth Annual Report on the working and administration of the Companies Act contains the following observation:—

> "Direct evasions of the provisions of the Companies Act which are more or less easy to detect, have over the years considerably diminished, as a result of sustained efforts made by the Department. The indirect or tortuous evasions based on undesirable and unsound company practices,

which do not contravene the letter of the law, although they may be repugnant to its spirit, however, still continue to be committed on an appreciably large scale. The field officers of this Department have instructions to be on the look out for such practices, and to report them to Headquarters for such action as it is possible to take in respect of them under the law."

Instances of such unsound company practices and new trends in company management are published in a separate chapter in the Annual Reports which are laid on the Table of both the Houses of Parliament in pursuance of the provisions of Section 638 of the Companies Act.

A leading non-official organisation of chambers of commerce and industry has expressed before the Committee its apprehension that such observations are likely to injure the credit of Indian entrepreneurs and react in the development of the private sector and deter the foreign investors from coming to the Indian market.

During the course of evidence before the Committee, the representative of the Company Law Division stated that such practices were reported, even if there were only isolated cases, as it was thought that it would serve some useful purpose. Asked if any of such practices had come before the courts, he stated that those instances would not be fit subject matters for courts.

As the object of publishing the unsound practices in the Annual Report is to forewarn others so that they may refrain from resorting to such practices, there is obvious advantage in discussing such matters with the representative bodies of the corporate sector.

A duty is also cast upon such representative bodies of the corporate sector to advise their constituent units to refrain from resorting to such unsound practices. The Committee would suggest that only important and serious instances of unsound practices may be included in the Annual Report. They would further suggest that the number of companies found to be resorting to an unsound practice, may be specified in the Annual Report so as to avoid any erroneous impression that the practice is widespread in the corporate sector.

III

SHARES AND SHARE CAPITAL

A. *Introduction*

Growth of companies, Share Capital and Share-holders.

34. At the end of 1962-63, there were 25,524 companies having a total paid-up capital of Rs. 2,185 crores as against 26,897 companies with a total paid-up capital of Rs. 1619 crores, at work during 1959-60. Reasons for a fall of about 5 per cent in the number of companies from 1959-60 to 1962-63 are stated to be as follows*:—

> "The fall in the number of companies at work was the result of the continued efforts by the Company Law Administration to weed out inactive or moribund companies from the registers of the live companies and does not indicate any decline in the growth of the corporate sector."

The continued strength of the corporate sector is proved by the fact that the paid-up capital of companies at work recorded an impressive increase by Rs. 566 crores or about 35 per cent in three years. The following table gives the number and paid-up capital of Government and non-Government companies during 1955-56 to 1962-63:—

(Paid-up Capital in crores of Rupees)

Year ended the 31st March	Government Companies		Non-Government Companies		Total	
	No.	Paid-up capital	No.	Paid-up capital	No.	Paid-up capital
1956	61	66·0	29,813	958·2	29,874	1,024·2
1957	74	72·6	29,283	1,005·0	29,357	1,077·6
1958	91	256·8	28,189	1,049·5	28,280	1,306·3
1959	104	428·9	27,299	1,086·7	27,403	1,515·6
1960	125	477·2	26,772	1,141·5	26,897	1,618·7
1961	142	546·4	26,077	1,268·5	26,149	1,814·9
1962	154	627·7	24,698	1,346·2	24,852	1,973·9
1963	160	786·0	25,364	1,399·2	25,524	2,185·2

* "Corporate Sector at work in India—II" by Dr. Raj K. Nigam and Shri N. C. Chaudhuri as published in Company News and Notes, Vol. II, No. 8 dated 16-1-1964

It will be seen from the table that the number of Government companies has progressively risen from year to year from 61 in 1955-56 to 160 in 1962-63. The paid-up capital of these companies has also registered an increase from Rs. 66 crores in 1955-56 to Rs. 786 crores in 1962-63.

As regards the numerical strength of shareholders in the country, the Committee understand, "there are as yet no statistical data available in our country about the overall number of shareholders and their overall size pattern."† The number of shareholders in joint stock companies which was estimated at 4.5 to 5 lakhs in 1957 is estimated to have increased to 6·7 lakhs in 1961. According to the survey of ownership of shares in joint stock companies as at the end of December, 1959 conducted by the Reserve Bank of India and published in the Reserve Bank Bulletin for May, 1962, it was revealed that 70 giant-sized companies having a paid-up capital of Rs. 1 crore and above had 2·07 lakhs of shareholders.

As the last survey of ownership of shares was conducted in December 1959, the Committee would suggest that survey may again be undertaken towards the end of this year. In fact it would be useful if such a survey is undertaken at intervals of five years so that Government have timely and reliable information of trends of ownership of shares.

B. *Issue of Capital*

Refusal of Admission of Shares by a Stock Exchange.

35. In accordance with the provisions contained in Section 73 of the Companies Act, where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on a recognised stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void, if the permission has not been applied for before the tenth day after the first issue of the prospectus or, if the perimission has not been granted before the expiry of four weeks from the date of the closing of the subscription lists or such longer period not exceeding seven weeks as may, within the said four weeks be notified to the applicant for permission by or on behalf of the stock exchange.

Where the permission has not been applied for or has not been granted, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at

†"The Present Future Role of Shareholders' Associations in India" by Dr. Raj K. Nigam, p. 14.

the rate of five per cent per annum from the expiry of the eighth day. This is subject to the provision that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

A leading Stock Exchange has represented to the Committee as follows:—

> "If one recognised Stock Exchange lists the shares of the company, the refund clause should be inoperative unless it be that the Stock Exchange refusing admission to the shares of the company is able to prove to the satisfaction of the Government that the shares do not warrant an official quotation on any Stock Exchange."

During the course of evidence before the Committee, the representative of the Company Law Division stated that various suggestions were under consideration in connection with amendments to the Act.

The Committee feel that the above suggestion of the Stock Exchange Association about the operation of Section 73 merits detailed consideration by Government so that an equitable policy, can be followed for admission of shares of companies by a Stock Exchange.

C. *Cornering of Shares*

Observations of Vivian Bose Commission.

36. The Commission of Inquiry on the Administration of Dalmia-Jain Companies has narrated some instances in which cornering of shares was done in fictitious names and through firms, individuals and private companies or by spreading investment among a number of controlled companies so as to keep well within the limits of investment laid down in the Companies Act. In one instance, the shares of a public company to the extent of Rs. 16 lakhs were applied for on behalf of 114 non-existing shareholders. In a number of other instances, individuals or limited companies resorted to the practice of holding shares on 'blank transfers' registered in third party's names. The practice was adopted with a view to—

(a) facilitate window-dressing of Balance Sheets of companies by reshuffling of shares held on 'blank transfers' between associated companies with the object of substituting inter-company loans and advances at the time of the closing of the accounts by investments, and

(b) bring into existence fictitious or ante-dated transactions in the books of companies in order to create fictitious losses in investments for the purpose of reducing the taxable profits.

In a number of other cases, investments were made by a company in another, even though such investments were

clearly not in the interests of the investing company, but were made from a variety of motives.

Referring to Section 395 of the Companies Act which deals with the power and obligation to acquire shares of minority shareholders dissenting from a scheme or contract approved by the majority, the Commission has come across an instance where in a scheme under Section 395 of the Act, shares of a flourishing company worth lakhs of rupees were acquired by a newly floated private company with insufficient means (paid-up capital Rs. 50,000 only) to acquire the shares. This was done by issuing what were called 'deposit receipts' or its own shares as the consideration representing the price of the shares acquired. In the words of the Commission, 'it was a case of a take-over bid where the bidding company, despite non-availability of necessary resources of/or cash, engineered the deal.' The Commission further noticed that the transferee company which had been incorporated only a day before the date of the offer stipulated in its offer that it had adequate resources to arrange funds for cash payment to all the shareholders of the transferor company, if they so desired. According to th Commission, 'this stipulation was obviously made with the ulterior motive of misguiding the shareholders of the transfer or company'.

Observations of Jenkins Committee (U. K.).

37. The Report of the Company Law Committee (1962) in the U.K. has also dealt with the question of providing adequate information to the shareholders of the transferor company in order that they may be able to judge for themselves whether or not they should accept the offer of the transfere company and recommended for the disclosure by the transferee company of the following matters:—

(a) the particulars of its identity;

(b) the extent of its interest in the shares of the transferor company;

(c) the interest of the directors of the transferor company in the transferee company;

(d) details of special treatment, if any, to be accorded to the directors of the transferor company;

(e) where cash has been offered a statement, binding on the transferee company, indicating the steps taken to ensure the availability of the necessary cash for payment of consideration for the shares to be acquired.

The Committee desired to know from the Company Law Division about the manner in which Government have exercised power under the Companies Act, 1956 to regulate the inter-corporate investment in the same management group etc. to meet the problem of cornering of shares. The Company Law Division have stated in reply *inter alia* that "Prior Government approval to investments in excess

of statutory limits prescribed in Section 372 of investee companies is necessary and in according its approval to such investment the Department is guided by certain principles and criteria. One of the criteria adopted is to ensure that the investments are not made with a view to gaining control for *mala fide* or undesirable purposes, over the management of other companies. The present procedure has thus ensured that the mechanism of inter-corporate investments is not applied for the purposes of 'cornering'. But the provisions of Section 372 by themselves can tackle the problems of cornering only in an incidental manner since, when such cornering is done in 'Benami' names and through firms, individuals and private companies or by spreading investment among a number of controlled companies so as to keep well within the limits of investment laid down in this Section, its provisions will not have any application."

The Committee desired to know whether Government have exercised the power conferred on it under Section 250, but have been informed that the Government have not exercised these powers in any case.

The Committee would suggest that the problem of "cornering" of shares should be investigated in all its aspects so that Government, under the powers available to it, may take action to prevent "cornering" of shares by unscruplous elements.

D. *Diversification of Investment*

Guiding Principles for permitting Diversification.

38. Section 372 read with Section 370 imposes certain restrictions on inter-company investments designed to check the evils which have followed from such improper investments. In this connection, the Fifth Annual Report on the working and administration of the Companies Act contains the following observation:—

> "... the experience gained of the working of Section 372 of the Act showed that instances were not lacking where a company had invested in the shares of another company, even though such investments were clearly not in the interest of the investing company. Such investments are often made from a variety of motives, one of the most important of which is to gain control over the affairs of companies whose shares are acquired. These investments, not infrequently financed from bank or other borrowings, do not usually subserve any useful purpose, indeed they often give rise to undesirable concentration of wealth and economic power in few hands."

In considering the applications received under those Sections of the Act, the Company Law Division has formulated guiding principles which are given in Appendix V.

39. A leading non-official organisation has represented to the Committee as follows:— Views of Chambers of Commerce and Industry.

"The restrictions in regard to the investment of surplus funds of companies in new ventures whether by way of diversification or by way of floating of new companies is not conducive to rapid industrialisation of the country."

A representative of the Federation of Indian Chamber of Commerce and Industry stated before the Committee during evidence that in the context of the development needs of the country, it was absolutely essential that diversification should be allowed to take place because of the shortage of entrepreneurs and capital.

He added that if one looked at the development of the industry in the country, one would find that many industries would never have come up if the people who were in one industry had not gone into another industry. Whoever was in a position to raise funds should be allowed to go ahead provided the Government was satisfied that the management could run its affairs properly. He added that experience indicated that licences which were given to people who were not in a position to do things, had ultimately to be revoked.

He felt that until and unless there was flexibility in thinking regarding the question of diversification, the industrial development of the country was likely to be slow because of the dearth of entrepreneurs.

The Third Five Year Plan has also discussed at some length the problem of concentration of power. The Plan states*—

"The growth of the corporate private sector over the past decade has brought to the fore the question of the means by which economic growth will be secured without concentration of economic power and the emergence of monopolistic tendencies. As a rule, the process of rapid economic development tends to enlarge opportunities for well-established firms to expand their size and enter new fields of enterprise. As compared to new undertakings or to smaller enterprises, they enjoy advantages in organisation and expertise, in access to the capital market and ability to secure foreign collaboration and, generally, in the resources which they are in a position to deploy. The fact that a significant proportion of the resources available for investment in industry arises within the corporate sector itself is another factor which makes it easier for an existing unit to expand than for a

*Para 26, p. 13

new one to come into being and take firm root. In several industries technological considerations favour the setting up of large scale units with resultant savings in capital cost and in the cost of production. Consequently, certain difficult problems arise. On the one hand, to the extent to which large existing enterprises undertake development in accordance with the priorities set in the Five Year Plans and avail of essential economies of scale, they assist the growth of the economy. On the other, excessive economic power in relatively few hands and the uses to which it may be put, disturb the balance of power in a democracy, expose the social structure to new strains and tensions, and come in the way of diffusion of economic opportunities.

The object briefly, must be not merely to prevent concentration of economic power and the growth of monopolistic tendencies, but also to promote a pattern of industrial organisation which will lead to high levels of productivity and give full scope, within the framework of national planning, to new entrepreneurs, to medium and small scale enterprises and to cooperative organisations."

During the course of evidence before the Committee, the representative of the Company Law Division stated that it was a matter in which each case of investment had to be considered on its own merits. It has also to be considered from the point of view of the availability of resources of the investing company. He added that diversification was undesirable in a way but it was not as if it could always be prevented.

The Committee note that the Minister of Finance in his speech while introducing the Budget for 1964-65 has dealt at some length with the problem of concentration of economic power and growth of monopolies.

The Committee would stress that the Commission proposed to be set up under the Commission of Enquiries Act to enquire into monopolies and the concentration of economic power in the Indian economy should be constituted and instructed to submit its report at an early date.

E. *Organisations of Shareholders*

Shareholders Unorganised.

40. A leading non-official organisation of company secretaries and executives has represented to the Committee as follows:

"The shareholders in the country are mostly unorganised. The establishment of shareholders'

associations in big cities should be encouraged and sufficient literature on the subject should be published by Department in this regard."

The Committee consider it somewhat paradoxical that while other elements connected with the working of corporate enterprises, viz. the workers and the company managements possess well-organised unions or associations, the shareholders who are the kingpin of the corporate system, cannot be said to be even loosely organised.

Assurance given by Government.

41. The Committee would like to recall that during the debate on the Companies Bill in the Rajya Sabha on the 28th September, 1955, when the question of protection of the shareholders' associations in the country was raised by Dr. H. N. Kunzru, the Minister of Revenue and Civil Expenditure, in the Ministry of Finance (Shri M. C. Shah), gave the following assurance*:

> "My friend Dr. Kunzru suggested some steps about encouraging shareholders' associations. We have that in view, and I can assure my hon. friend that all possible steps would be taken to see that the existing shareholders' associations are strengthened and the new ones are formed."

During the course of evidence before the Committee, the representative of the Company Law Division has stated that as far as the Department is concerned, they cannot set up or even sponsor any shareholders' associations. They have, however, encouraged the shareholders' associations by holding discussions and by giving due consideration to their suggestions and memoranda. Besides the Directorate of Research and Statistics has brought out a brochure entitled "The Present and Future Role of Shareholders' Associations in India".

A list of Shareholders' Associations registered in different States and their membership during the years 1961 to 1963 is given in Appendix VI. The Committee observe that the total membership of the eight Shareholders' Associations in 1963 was 1,300 only as against the total estimated number of 6 to 7 lakhs of shareholders in the country. Out of the eight associations, five associations have less than 100 members each.

The Committee are constrained to observe that the important issue of organising shareholders into effective organisation has not yet received the attention it deserves in spite of the assurance given by the Minister of Revenue and Civil Expenditure on the floor of the Rajya Sabha at the time of piloting of the Company Law Bill, 1953.

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*R.S. Debates Vol, X, No. 32
Col. 5182

The Committee are of the view that Government should undertake suitable studies of the practice obtaining in other countries and facilitate the formation of shareholders' associations by drawing the attention of the public to the useful and wholesome role which can be played by such organisations.

Since the shareholders' associations can be developed into useful agencies for resolving conflicts and misunderstandings between the investors and the company managements, the Committee are of the view that Government may give due importance and recognition to such associations by actively associating their representatives in various Advisory Committees. The prerequisite condition should, however, be that the shareholders' associations are truly representative bodies and are well organised to serve the larger interests of the shareholders.

IV

MANAGEMENT OF COMPANIES

A. *Introduction*

Directors to act as Trustees for shareholders.

42. Under the Company Law in this country, the directors are not only the agents, but in some respects and in some sense also the trustees of the company. As a company cannot act in its own person, its activities must be carried on by its agents, *viz.*, the directors, who are given such powers by the memorandum and the articles of association. Within these limits they are competent to exercise all the powers of the company under the Indian Companies Act, except such as must be exercise by the company itself. According to George Goyder*, "the directors are trustees for the interests of shareholders, including potential shareholders, and are bound to act with integrity and reasonable diligence towards them in carrying out their duties, or suffer the legal penalties reserved for breach of trust." Another important ingredient of the basic economic and social objectives underlying the new Companies Act was the anxiety of its authors to democratise company management to the maximum extent possible.

B. *Appointment of Directors*

System of Proportional Representation.

43. Section 265 of the Companies Act lays down that the articles of a Company may provide for the appointment of not less than two thirds of the total number of the directors of a public company or of a private company according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting.

During the debate in the Lok Sabha on the Companies Bill, the then Finance Minister (Shri C. D. Deshmukh) made the following observation†:

> "Generally speaking, the studies made confirm that majority stockholders in the closely held corporation and the management and board of the widely owned corporations occupy an extremely strong position in relation to minority stockholders. That, I think is what one might ex-

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*'The Future of Private Enterprise', Chapter IX, P. 61.

†L. S. Gebates Vol. VI, No. 29
Col. 11956

pect. No system of cumulative voting or proportional representation is going to turn a majority into a minority. All that it will do is, to prevent it from swamping every other form of opinion."

The Committee have been informed that the system of appointment of Directors according to the principle of proportional representation is not very popular among the companies. There was only one case in 1960-61 where Government considered it desirable to issue a direction to the Company to amend its Articles so as to provide for the appointment of directors on the basis of proportional representation. As stated in the Fifth Annual Report of the working and administration of the Companies Act, "Government's action attracted considerable attention in business circles and by and large, the reaction of the business community was favourable". It further states "the system of proportional representation for the election of directors of Joint stock companies is mandatory in some of the relevant State enactments in the U.S.A. and the system appears to have worked quite satisfactorily in these States."

The Committee are of the view that the Company Law Division should make an assessment of the number of companies which have provided for the appointment of not less than two-thirds of the total number of directors according to the principle of proportional representation. This would enable Government to judge to what extent this wholesome provision has been made use of by the shareholders and what further educative measures are necessary to bring this provision specifically to their notice.

C. *Managing Agents*

Background of Managing Agency System.

44. In the 1913 Act, there was no regulatory provision whatsoever in regard to the system of Managing Agents. In practice, a firm or limited company called 'Managing Agents' used to take large powers under the articles and performed the functions of the managing director or manager or secretary. In 1936, some restrictions were placed on managing agents for the first time. In 1951, and again in 1955, some more restrictions were placed on the system. Under Section 330 of the Companies Act, all managing agents holding office on 1st April, 1956 were liable automatically to vacate their office on the 15th August, 1960 unless before that date they were reappointed for a fresh term in accordance with the provisions of the Act. Consequently, applications from the Companies concerned seeking the Central Government's approval to the reappointment of the managing agents started coming in from August, 1958.

45. The table below shows the form of management proposed to be adopted by companies formed during the years 1958-59 to 1962-63: Management-Pattern of new Companies.

Form of Management	Year				
	1958-59	1959-60	1960-61	1961-62	1962-63
Board of Directors	830	924	1062	1063	1072
Managing Directors	250	508	596	515	388
Managing Agents	7	14	21	29	34
Managers	1	3	3	4	1
Secretaries and Treasurers	7	3	1	3	2
TOTAL	1095	1452	1683	1614	1497

The Committee observe that during the years 1958-59 to 1962-63, there has been a marked preference for the 'Board of Directors' form of management.

The position has been summed up thus in the latest Annual Report on the working and administration of the Companies Act, 1956:

> "..... during the seven-year period from the date of the commencement of the Companies Act, 1956 to the 31st March, 1963, new managing agencies were approved in only 236 cases (some of which related to companies incorporated prior to 1st April, 1956) as against 9,150 new companies registered over the same period. Again, the total number of companies managed by managing agents at the end of the year was not more than 1,450 out of a total of about 26,000. This works out to about 5·5 per cent of the total number. It was estimated that in 1954-55, there were about 5,000 companies under the management of managing agents. The figures given above, therefore, show that 75 per cent of them have changed over to other forms of management."

The Committee note that out of the total number of 29,874 companies at work on 31st March, 1956 and 25,524 on 31st March, 1963 the number of companies having managing agents was 5,055 and 1,450 respectively.

It is claimed in the latest Report on the working and administration of the Companies Act, 1956 that "the restrictive provisions of the Companies Act have produced the desired effect on the Company managements." *The*

term of office of a majority of the managing agents who were appointed before 15th August, 1960 would expire on the 15th August, 1965. Before renewals of these managing agency contracts come up for consideration before the Advisory Commission and Government, the Committee would suggest that a careful assessment should be made of the impact of the various measures taken by Government to give effect to the regulatory measures introduced by the Companies (Amendment) Act, 1960 and evaluate services rendered by the managing agency system as compared with other forms of management.

Term for Appointment as Managing Agents.

46. Section 328 of the Companies Act, 1956 provides that in the case of new appointment, a managing agent may be appointed for a maximum period of 15 years and in the case of reappointment, the tenure may be for a maximum period of 10 years. During the course of his reply to the debate on the Demands for Grants on the 16th April, 1959, the then Minister for Commerce and Industry announced *inter alia* that the periods of appointment and reappointment of the managing agents as laid down in the Companies Act, were expressly ceilings which could not be exceeded. The Minister further added that subject to the limits laid down in the Act, it was necessary to relate the terms of appointment and reappointment of managing agents more closely to the size and nature of the managed companies and that the period of reappointment of the managing agents should not ordinarily exceed five years at a time. In the light of this policy statement, the entire question of the term of appointment and reappointment of the managing agents was gone into in detail by the Advisory Commission who recommended that except in special cases, the reappointment of the managing agents should ordinarily be for a period of 5 years only, and where the managing agents were appointed for the first time, the tenure might be for any period not exceeding 10 years. The afore-mentioned recommendations of the Commission were accepted by Government. The Committee have been informed by Government that:

> "It has now become an established practice usually to allow a tenure of 10 years in the case of first appointment and 5 years in the case of reappointment."

The guiding principles adopted by the Government in regard to the reappointment of the managing agents for a longer tenure than five years are given in Appendix VII.

A leading non-official organisation of chambers of commerce and industry has represented to the Committee as follows:

> "Normally, the Company Law Administration does not give permission for appointment of managing agents for a period of more than five years

and by the time a company starts making profits and the managing agents expect to get anything for the services rendered in the past, their term of office comes to an end. In the circumstances, the managing agents should be entitled to adequate remuneration during the early years of a company's business. The minimum fixed is not sufficient to compensate for the services rendered during that period."

During the course of evidence before the Committee, a representative of another leading non-official organisation of chambers of commerce stated that in the mining and jute industries, the managing agents had to work out a long term programme of expansion and modernisation which required them to plan 5 to 10 years ahead. He was of the opinion that jute, coal mining, other mining and some big engineering industries, where expansion and modernisation were going on, should be included in the list of such industries.

The Committee are generally in agreement with the policy laid down by Government for determining the term of office of a Managing Agent under Section 328 of the Companies Act. The Committee have no doubt that in deciding the term of appointment as Managing Agents, Government would keep in mind the inherent nature of the enterprise so that those requiring heavy capital investment or long-term planning can be allowed a longer tenure within the ceiling limits laid down in Section 328 of the Companies Act.

Services to be rendered by Managing Agents.

47. The Committee understand that one of the problems posed before the Technical Advisory Committee was that some of the managing agents were not rendering sufficient services or incurring any expenditure for the managed company out of the commission which they received in return for the remuneration received by them from the managed companies as they were resorting to the device of employing highly paid personnel at the expense of the managed companies for rendering services which would ordinarily be rendered by them.

During the course of evidence before the Committee, the representative of the Company Law Division stated that a questionnaire was issued to about 65 companies out of which replies were received from 32 only. Even these replies did not give full information. He admitted that Government had punitive powers to collect the information but they had not thought it necessary to resort to them.

As stated in the Seventh Annual Report on the working and administration of the Companies Act, the study revealed that the nature of services rendered by managing agents to companies managed by them varied very widely. While

some managing agents provided guidance on policy matters and the benefit of common expert services to their managed companies by employing whole-time paid directors and senior technical personnel, others gave only the benefit of their personal advice and guidance to the managed companies. In some cases, the cost of the common expert services was borne by the managing agents while in others the entire cost of the services was distributed equitably over companies benefiting from them. The study also disclosed that it was difficult to find any reasonable common measure of services rendered by all or most of the managing agency houses in India.

While the Report admits that "it was not easy to distinguish between purely managerial and executive services," Company Law Division have nevertheless come to the following conclusions:

> "....by and large, an illustrative list of services, which could ordinarily be regarded as falling within the scope of the direct responsibilities of the managing agents would include (a) overall supervision and control of the various operations subject to the general policy laid down by the Board of the managed company, (b) coordination and integration of the departmental or divisional activities, (c) dissemination of useful information, (d) advice and guidance regarding sale of the company's products, (e) undertaking of research, (f) purchase of 'raw materials, import of capital goods and replacements, etc. (g) selection training and placement of personnel, (h) planning and development etc.
>
> In the Department's view in respect of all these services, where senior executives or managers are employed to whom any of their powers, rights or functions are sub-delegated by the Managing Agents by a power of attorney or otherwise, the remuneration of such personnel should be paid by the Managing Agents out of the commission received by them.
>
> Apart from the services enumerated above, the Managing Agents are also expected to render promotional and financial services and to maintain a central organisation for providing legal, accounting, taxation, technical, secretarial and other such administrative and routine services. The expenditure incurred by them for rendering non-managerial services can be reimbursed to the extent permissible under the law."

The Committee feel that as the Company Law Administration had admittedly not received replies from majority of the companies addressed and full information had also

not been received from the remaining companies, it would be worthwhile to review the list of services, which should ordinarily be regarded as falling within the scope of direct responsibility of the Managing Agents, in the light of experience and in the light of full information to be obtained from a representative number of companies.

The Committee would also stress that some effective check should be exercised by Government to ensure that the Managing Agents are in fact rendering services for which they receive remuneration as a percentage of net profits, with the approval of Government.

Restrictions on Managing Companies as Managing Agents Secretaries and Treasurers.

48. The Committee have been informed that during the year under review, some of the big Managing Agency houses which were already managing more than 10 companies as Managing Agents/Secretaries and Treasurers had sought appointment as Secretaries and Treasurers of some newly floated companies. In this connection, the Advisory Commission have made the following observations in their report for the year ended March, 1963:

> "The Commission noted that while the Companies Act imposed restrictions on the number of companies which could be managed by a managing agent, there were no such restrictions on a firm or body corporate acting as Secretaries and Treasurers. Whatever may have been the original expectations in regard to this system, the Commission found that in actual practice, there was no material difference between this system and the system of managing agents. The lack of any restriction on the number of companies which a firm or body corporate could manage as Secretaries and Treasurers was, therefore, being taken advantage of by some business houses, with the result that the policy of the Government of discouraging concentration of economic power, was being bye-passed. The Commission, therefore, recommended to the Government that it may consider laying suitable restrictions on the number of companies which Secretaries and Treasurers could manage."

During the course of evidence before the Committee, the representative of the Company Law Division has stated that they have not yet taken any formal decision in the matter.

The Committee hope that an early decision would be taken on the question of imposing restrictions on the number of companies which a firm or body corporate acting as managing agents/secretaries and treasurers can manage in either capacity so that the ambiguity existing at present in this behalf is removed.

D. *Remuneration of Managerial Personnel*

Provision in the Act and Administrative Policy.

49. The ceilings on the remuneration of the managing/whole-time directors are expressed in the Act in terms of a percentage on net profits only *viz.*, 5% in the case of an individual holding such position in a company and when there is more than one such director, 10% for all of them together. These limits can be exceeded with the approval of the Central Government.

The Committee have been informed that Government have on the advice of the Advisory Commission imposed 'administrative ceiling' of Rs. 1,20,000 (excluding perquisites) per annum in respect of the salary and/or commission of every individual out of the managerial personnel. This 'administrative ceiling' of Rs. 1,20,000 per annum in respect of salary and/or commission on net profits payable to a managing/whole-time director or Manager is rigidly applied in all cases of appointments or reappointments except in the following broad categories of cases:

(a) in cases, *e.g.* of oil companies, where remuneration paid to personnel working in India for the time being has to bear parity with the remuneration paid to similar personnel working in other units in other countries.

(b) in cases where the director concerned had already been working under the same company on a remuneration in excess of the ceiling and he is to be reappointed to the same post.

(c) in cases where on the appointment of an existing director to another directorship involving additional or higher responsibilities, it is proposed to allow a reasonable increase on the remuneration he had been drawing.

(d) in cases where on the appointment of a senior executive to the office of director it is proposed to allow a reasonable increase on the remuneration he had been drawing as an executive.

The Committee have been informed that during 1961-62 and 1962-63, in 19 cases the amount of remuneration sanctioned to managerial personnel under Sections 269, 310 and 311 of the Companies Act, 1956 had exceeded Rs. 1,20,000 per annum and ranged from Rs. 1,35,000 to Rs. 3,70,000 per annum.

The Committee suggest that the question of suitably including the details of managerial personnel, who are sanctioned remuneration exceeding Rs. 1,20,000 *per annum, in the Annual Report on the working and administration of the Companies Act, may be examined.*

50. The Commission of Inquiry on the administration of Dalmia-Jain companies has disclosed the malpractice of charging to the company's revenue accounts of the personal expenses of one individual having controlling influence over the directors of the company who were merely dummies. The Note of Daphtary-Sastri has described it as a matter of common occurrence and has observed as follows: Perquisites of Managin g Personnel.

> "Some of the richest industrialists have no house or motor car of their own. They pay nominal rents to the companies which own the houses and use the cars of managed companies freely. Under the guise of entertainment expenses they entertain themselves and their dependents and relatives. This improper utilisation of the funds of the company for the individual benefit of persons directly or indirectly in control of the affairs of the company can be checked by making such acts punishable and the persons who derive the benefit, as well as the persons who were directors at the relevant time, responsible for such acts."

The Seventh Annual Report on the working and administration of the Companies Act has also taken notice of such malpractices and made the following observation:

> "Some cases came to the notice of the Department where the Managing or whole-time directors etc. were proposed to be reimbursed by the companies in respect of their club bills. These, it was contended were for entertainment on behalf of the company. It was stated that it was necessary (for the companies to develop social contacts by becoming members of different clubs with a view to promote their business but that the membership had to be in the names of individuals since companies could not be admitted as members. The Department on a careful consideration felt that the practice was open to considerable abuse by the individual Managing Director etc. and the better course, would be that if the directors of a company considered it necessary to continue this privilege or practice in the interests of the company, they might fix reasonable entertainment allowance for the directors concerned, having regard to the size and business of the company."

In this connection, a leading Stock Exchange has represented to the Committee that:

> "We consider that the statutory auditors of the company should be required to examine the general expenses, in particular, the expenses relating to the management personnel by way of travelling allowance, cost of entertainments, provision of

motor car and similar matters and to make their comments as to whether they are in the opinion of the auditors necessary for the purpose of business of the company. It should not be open to the auditor to exercise any control over the discretion of the management in incurring such expenses. They should be required to give particulars in their audit report of such expenses. We consider that this would be a salutary check on the tendency of any management in incurring such expenses. We further consider that the auditors should be required to verify which of the items of such expenses have been disallowed as deductions by the Income-tax Department in arriving at the taxable profits of the company and full particulars thereof and all pending appeals with regard to the same should be set out in the directors' report. We consider that this two-fold publicity will be a most effective method of checking malpractices without interfering with the proper administration of companies.

The Committee understand that the question whether it would be desirable to keep the shareholders informed about payments of excess remuneration by disclosing such payments in the published accounts of companies, was considered by the Technical Advisory Committee of the Company Law Division on the 6th April, 1963.

In the opinion of the Technical Advisory Committee, "..... the disclosure of such information in the published accounts of companies might tend to create friction between low paid employees and the management, and from the point of view of public relations, the Committee would advise against such disclosures."

The representative of the Ministry of Finance—Department of Revenue and Expenditure stated during evidence as follows:—

> "I have gone into it in some detail with the Committee of Chartered Accountants' Council. They have pointed out that they cannot go beyond the duties which have been put. That is to verify expenditure according to the necessary provision therein. That does not go into what might be called social audit."

The Committee find that the Finance Minister has taken note of the problem of payment of perquisites to employees by Companies in his Budget Speech, 1964-65. He has *inter alia* mentioned "it is, however, proposed to introduce a new provision in the Income-tax Act limiting the amount of deduction admissible to companies for ex-

penditure incurred by them in providing perquisites to their employees, whether of Indian or foreign nationality, to an amount of 20 per cent of the salary of each employee. Any expenditure in excess of that limit would not be deducted in computing the assessable income of the company. This will have the healthy effect of putting a curb on excessive expenditure on perquisites for companies' employees."

The Committee welcome the measure introduced by the Finance Minister.

The Committee also note that some of the leading companies are already including information about the perquisites given to their Directors in the Profit and Loss Accounts which are enclosed with their Annual Reports. There should, therefore, be no objection by other companies to the inclusion of information about the perquisites given to Directors in their Profits and Loss Accounts. As this matter has been engaging considerable public attention, the Committee would suggest that the position may be reviewed by Government in consultation with the representative bodies of chambers of Commerce and Industry.*

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*Annual Reports 1962 of

(i) The Hindustan Lever Ltd., and

(ii) The Indian Aluminium Co. Ltd.

V

ACCOUNTS AND AUDIT

A. *Institutes of the Chartered Accountants and the Cost and Works Accountants*

Setting up Institutes of Chartered Accountants and the Cost and Works Accountants.

51. The Institutes of Chartered Accountants and the Cost and Works Accountants were established under the Chartered Accountants Act, 1949, and the Cost and Works Accountants Act, 1959 respectively. Under the Acts, the management of the affairs of the Institutes and the discharge of the functions assigned to them are vested in their respective Councils. Government is represented on these Councils through its nominees, six in the case of the Institute of Chartered Accountants and four in the case of the other Institute. In addition to this representation on the two Councils, Government have powers under the Acts to direct the Councils to make regulations for the purpose of carrying out the objects of the Acts or to amend or revoke regulations already made by the Councils. Further, regulations framed by the Councils under the Acts are subject to previous approval of Government.

Institute of Chartered Accountants of India.

52. The Institute of Chartered Accountants of India was established under the Chartered Accountants Act, 1949, with effect from 1st July, 1949, to regulate the profession of Chartered Accountants in India. Under the Act, the management of the affairs of the Institute and discharge of the functions assigned to it are vested in the Council which is composed of not more than 24 persons elected by the members of the Institute from among its fellows and six persons nominated by the Central Government. The duration of the Council is for 3 years from the date of its first meeting on the expiry of which it stands dissolved and a new Council is constituted. The duties of the Council *inter alia* are—

(a) the holding of examinations of candidates for enrolment as Chartered Accountants and the prescribing of fees therefor;

(b) the regulation of the engagement and training of articled/audit clerks;

(c) the recognition of foreign qualifications;

(d) the regulation and maintenance of the status and standard of the professional qualifications of the members of the Institute; and

(e) the exercise of disciplinary powers conferred by the Act.

The funds of the Institute built up mainly of examination fees and fees realised from members of the Institute are also under the management and control of the Council.

Besides the representation of Government on the Council, the Act empowers the Government—

(i) to recognise foreign qualifications and training concurrently with the power vested in the Council in this regard;

(ii) to withhold approval to any proposal of the Council to amend the regulations framed under the Act; (Any amendment to the regulations is subject to approval of Government);

(iii) to direct the Council to frame any regulations or to amend or revoke any regulations; and

(iv) in the event of the Council failing to comply with the direction, to frame the regulations itself or to amend or revoke regulations made by the Council.

Institute of Cost and Works Accountants of India.

53. The Institute which had already been in existence in Calcutta since 1944 as a company registered under the Companies Act was dissolved and all the assets and liabilities of the company were transferred and vested in the Institute set up under the Act with effect from the 28th May, 1959, to regulate the profession of cost accountants in the country. As in the case of the Institute of Chartered Accountants, the management of the affairs of the Institute is vested in its Council. The Council is composed of not more than 12 elected members and not more than four nominated by the Central Government. The Cost and Works Accountants Act also empowers the Government to dissolve the Council by any order passed in this behalf.

Review of the Institutes.

54. During the course of evidence before the Committee, the representative of the Company Law Division stated that as far as the question of undertaking an assessment of the specific functions laid down in the Acts was concerned, it was not a pressing problem. He added that they were routine functions which any Institute might be called upon to perform.

The Committee consider that as the Institutes have now been functioning for a number of years, it is time that their work is reviewed by a Committee, consisting of leading non-officials and experts in the field. They should in particular, assess the exent which the Councils

have discharged their functions of regulating the engagement and training of articled/audit clerks, holding examinations, exercising disciplinary powers against members etc.

B. *Management Accountancy*

Introduction of Management Accountancy in Industrial Undertakings.

55. A seminar on Management Accounting and Management was organised by the Department of Company Law Administration in New Delhi from 19th to 21st August, 1960. The then Minister of Commerce and Industry while addressing the Seminar had expressed the hope that it would help in spreading the knowledge about the new techniques and encourage managements to adopt the system. He observed that public sector undertakings should give a lead in the matter.

The Committee are informed that "the Department of Company Law Administration intended to follow up the Seminar with further measures for disseminating knowledge of the subjects for its adoption by industrial undertakings. Consultations are in progress between the Department through the Honorary Adviser and certain selected Government undertakings in regard to the introduction of management accounting in these undertakings. It was intended to arrange another Seminar, but in view of the emergency and the need for economy in Government expenditure, the idea for the time being, has been postponed."

The Committee would like Government to pursue the question of introduction of Management Acoountancy in public undertakings vigorously so that it can be used as an instrument for effecting economy and improving efficiency.

C. *Appointment of Auditors*

Appointment of near Relations of Directors as Auditors of Companies not desirable.

56. The Seventh Annual Report on the working and administration of Companies Act states:—

> "During the course of examination of applications submitted by companies under Section 360 and the resolutions passed under Section 314 of the Act, quite a few cases of appointment of associates of managing agents or relatives of directors as statutory auditors of the company managed by such managing agents or directors have come to the notice of the Department. It is conceded that there is no legal bar to such appointments and as long as the provisions of the relevant Sections in the Companies Act, *e.g.*, 314 and 360 and those relating to appointment of auditors are complied with, the appointments are to be regarded as legally valid. It is, however, felt that it would be in the larger interests

of the profession if the auditors were to avoid any conflict between their duties as statutory auditors of companies and their personal interest in the management of such companies. Accordingly, this matter was placed before the Technical Advisory Committee attached to the Department for consideration. The Committee generally agreed with the views of the Department and felt that, as a matter of general principle, a Chartered Accountant, who was a near relation of a Director of a company or a partner of a firm acting as managing agents/ secretaries and treasurers of a company, should refrain from accepting the appointment as auditor of that company. As regards other categories of relatives of Directors or associates of managing agents, the Committee were of the view that a healthy convention should be established by which such persons should not audit or sign the balance sheets of companies managed by their relatives or associates, even though the firms of which they were partners happened to be the auditors of these companies."

The Committee are inclined to agree with the above views expressed in the Report of Company Law Administration that a Chartered Accountant who is a near relation of a Director of a company or of a partner of a firm acting as a managing agent/secretary and a treasurer of a company should refrain from accepting appointment as auditor of that company and hope that some effective action should be taken by Government in the matter.

D. *Powers and Duties of Auditors*

Powers.

57. Section 227 of the Companies Act deals with powers and duties of auditors. Every auditor of a company has a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and entitled to require from the officers of the company such information and explanations as the auditor may think it necessary for the performance of his duties as auditor.

Duties.

58. The auditor is required to make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared to be a part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report should state whether, in his opinion and to the best of his information and according to the explanations given to him, the accounts

give the information required by the Act in the manner so required and give a true and fair view—

(i) in the case of the balance sheet, of the state of company's affairs as at the end of its financial year; and

(ii) in the case of the profit and loss account of the profit or loss for its financial year.

The auditor's report should also state—

(a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the report on the accounts of any branch office audited under Section 228 by a person other than the company's auditor has been forwarded to him as required by clause (c)* of Sub-Section (3) of that section and how he has dealt with the same in preparing the auditor's report;

(d) whether the company's balance sheet and profit and loss account dealt with by the report, are in agreement with the books of accounts and returns.

The Fifth Annual Report on the working and administration of the Companies Act, 1956 contains the following observation:

"It was noticed during the year under report that, in conformity with the best professional traditions, many auditors brought out in their reports material contraventions of the law and departures from sound company practices in respect of the accounts which they were called upon to audit.

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*Section 228 (3)(c) reads :

"The branch auditors shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary".

It is to be hoped that this trend betokens a steady advance in professional standards and in increasing awareness of the responsibilities of auditors to the shareholders and investors."

The latest report on the working and administration of the Companies Act observers, "In contest to the legalistic view of the duties and responsibilities in regard to their statutory functions generally taken by the auditors, some auditors have taken a broader view and commented upon all such material violations of law or departure from sound company practice as were likely to affect the financial interests of the investors in the companies whose accounts were audited by them."

The Report, however, goes on to observe that during the year (1962-63), a number of cases came to the notice of Company Law Department "wherein the auditors did not discharge their statutory duties very properly or satisfactorily."

The Report adds:

"The Department's policy is to take up only serious cases of failure of auditors to do their duty with the Institute of Chartered Accountants of India. In pursuance of this policy, only warnings were given to the auditors. In one serious case, however, the matter was brought to the notice of the Institute by way of 'information'. This arose out of the observation contained in the report of the Commission of Inquiry on the administration of Dalmia-Jain group of companies on the conduct of the Chartered Accountant concerned as the auditor of some Dalmia-Jain concern."

In this connection the Committee would like to refer to the note of Daphtary-Sastri on the Report of the Commission of Inquiry on the administration of Dalmia-Jain Companies, which contains the following observations:—

"It is of the highest importance that auditors of companies whose shareholders are dependent chiefly on their skill and vigilance should perform their duties with scrupulous care. They are bound to make a reasonable examination of the accounts to see that the dealings are not in any way illegal or improper, and it is their duty to uncover such activities. They must, therefore, assert independence and not bring loss to the members of the public by their complicity with the directors or persons in control of the company's affairs in illegal or irregular transactions. It is, there-

fore, necessary that in addition to prescribing specifically the duties which have been suggested above, the Council of the Institute of Chartered Accountants should be called upon to formulate a code in regard to the audit of the accounts of public companies with special reference to safeguarding the interests of members of the public who have put their faith in the Board of Directors and contributed to the share-capital."

The Committee have been informed that apart from recourse to punitive action against a Chartered Accountant, in terms of Chapter V of the Chartered Accountants Act, 1949; the Council of the Institute has also recently published a booklet entitled "Code of Conduct". The booklet which has been supplied free by the Institute to all its members, gives guidance to them on the observance of a healthy code of professional ethics in the practice of their profession.

The Committee note that in pursuance of the suggestion of the Daphtary-Sastri Committee that "the Council of Institute should be called upon to formulate a code in regard to audit of accounts of public companies with special reference to the safeguarding of interests of shareholders", the Council is preparing a "statement of Auditing Practices".

The Committee hope that not only the Statement of Auditing Practices would be brought out early, but that the Council would exercise continuous vigilance to see that both the "Code of Conduct" and "Statement of Auditing Practices" are followed in letter and spirit by the members of the profession.

VI

INVESTIGATIONS AND PROSECUTIONS

A. *Introduction*

Machinery for Investigation.

59. The provisions with regard to investigation into the affairs of companies are embodied in Sections 235 to 249 of the Companies Act, 1956. For the judicious and effective exercise of the powers under these provisions, the Company Law Division have organised investigation cells at the headquarters and at the principal field office at Bombay, Calcutta, Madras and Kanpur. Apart from the build-up of necessary expertise inside the Company Law Division for this work, the relevant provisions of the Companies Act have also been strengthened by the conferment of additional powers on Registrars of Companies and Inspectors in the Companies Amendment Act, 1960. As a result of these new provisions, the Registrar is now empowered, in certain circumstances, to call upon a company to produce before him for his inspection, such books and papers as he considers necessary within such time as he may specify. Further, where the Registrar has reasonable grounds to apprehend that the books and papers of any company or body corporate or managing agents etc., are likely to be destroyed, mutilated, altered, falsified or secreted, he can move the First Class Magistrate for issue of an order for the seizure of such books and papers. The difficulty in obtaining old books of accounts of a company experienced by the Inspectors in the past has been removed to some extent by the Statutory stipulation laid down by sub-section 4(A) of Section 209 of the Companies Act that the company should keep its books of accounts for 8 years preceding the current year, in good and proper order. The obligation which the original Companies Act placed on the directors of the Company, its managing agents etc., and its officers and agents in producing the books and documents before the Inspector has by the Amendment Act of 1960 been extended to the employees also. Under the provisions of the Act, the Court has been empowered to make an order directing a person to appear personally and to produce the books and papers before the Inspector on an application made by him. Further, powers have been conferred on the Inspector to make an application to the First Class Magistrate or the Presidency Magistrate, as the case may be, for an order for the seizure of books and papers of any company if the Inspector has reasonable grounds to believe that such books and papers might be destroyed, secreted etc.

Criteria for Ordering Investigation.

60. The Fifth Annual Report on the working and administration of the Companies Act states, "....it has been the endeavour of the Department of Company Law Administration to exercise its powers relating to investigation into the affairs of companies in a judicious and purposeful manner." The object has been to create and develop a sense of respect for law in those sections of the business community which are not very scrupulous about methods and practices but not to cause needless worry to well-managed companies and law-abiding managements by ordering investigations merely on the basis of light hearted complaints unsupported by facts capable of verification and *prima facie* calling for explanation. Thus a decision to order an investigation is taken only when there is a *prima facie* basis tending to sustain any allegation of fraud, misfeasance, misconduct or oppression on the part of the management.

B. *Progress of Investigations*

Large number of Cases Outstanding for more than 5 years.

61. A number of Committees appointed in the past have dwelt at length on the delaying tactics adopted by the companies to thwart investigation into their affairs by Inspectors. The Companies Act Amendment Committee, 1957 has pointed out that "the moment an investigation starts or the management gets to know that steps are being taken for the appointment of an Inspector to investigate affairs of the Company, books and papers of an incriminating nature are speedily destroyed or secreted." The Commission of Inquiry on the Administration of Dalmia-Jain companies has noticed in many cases that where liquidated companies were amalgamated with other companies, the amalgamating company took charge of the properties, including the books of the liquidated company, and within a short time destroyed the books as being redundant for its purpose. The note of Daphtary-Sastri on the Report of the Commission of Inquiry on the administration of Dalmia-Jain companies has pointed out that "One of the methods by which investigation was sought to be delayed was by raising technical objections to the investigation on the ground of the voluntary liquidation of the company or of the pendency before the court of certain applications for relief against mismanagement and oppression." The Seventh Annual Report on the Working and Administration of the Companies Act for the year ended March 31, 1963 also states,

> "During the year under review, the inspectors continued to experience difficulties in some cases in obtaining the relevant books of account of the companies. In one case, the concerned officer declined to appear before the Inspector to give evidence on certain points which required clarification. While necessary steps were taken to

surmount these difficulties, the progress of investigation in some cases could not be as expeditious and satisfactory as desired, because either the alleged offences were committed several years ago or the type of evidence required to establish criminal liability in some cases could not be fully secured."

The following table shows the progress of investigation work during 1956-57 to 1962-63:—

	56-57	57-58	58-59	59-60	60-61	61-62	62-63
1. No. of cases in which Inspectors were carrying on investigation during the year.	26	23	12	7	10	9	10
2. No. of cases in which inspectors' reports were received.	5	13	7	2	2	—	4
3. No. of cases in which investigation was subsequently dropped.	—	1	—	1	1	—	—
4 No. of cases in which inspectors' reports were due for submission.	21	9	5	4	7	9	6

The Committee have been informed that the number of investigations ordered during the period 1956-57 to 1962-63 was 25. The Committee observe that out of 25 cases of investigations instituted during the period 1956-57 to 1962-63 inspectors' reports were received in 16 cases, while investigations were dropped in 3 cases.

The Committee are further informed that out of 6 cases pending investigation, 1 has been outstanding for more than 8 years, 3 for more than 3 years, 1 for more than 2 years, and 1 for more than one year.

The Committee are perturbed to note that inordinate delays are taking place in investigations ordered by Government under Sections 234 to 251 of the Companies Act. They are of the view that a concerted drive is necessary to expedite disposal of these long pending cases. Steps should

also be taken to see that investigation in a case is completed, as far as possible, within one year.

They would like to lay stress on the desirability of appointing departmental officers, preferably, a team of inspectors consisting of an Accounts Officer and a Solicitor who may be in a position to cover both the accounting and legal aspects of an investigation.

Investigation into Companies of Sahu Jain Group.

62. The investigation into the affairs of the following five companies of Sahu Jain Group is being conducted by Shri S. Prakash Chopra, Chartered Accountant, Delhi:—

(i) Rohtas Industries Ltd.,
(ii) New Central Jute Mills Ltd.
(iii) Sahu Jain Ltd., and
(iv) Ashoka Marketing Co., Ltd.
(v) Bennett Coleman & Co. Ltd.

Shri S. Prakash Chopra, who has been appointed as Inspector to investigate into the affairs of the companies, is a senior partner in the firm of M/s. S. P. Chopra & Co., Chartered Accounts, New Delhi.

The Committee have been informed that as Inspector, he will be paid a fee of Rs. 3,500/- p.m. exclusive of travelling and daily allowances. In case, he is required to undertake any journey in connection with the investigation, the Inspector will be entitled to travelling allowance, on the basis of actual air/rail fare, excluding any incidentals other than actual taxi fare to and from airports or railway station. While on tour, he will be entitled to room rent on actual basis, inclusive of any service charge, subject to a ceiling of Rs. 150/- per diem for Bombay and Calcutta and Rs. 100/- for any other places plus Rs. 30/- to cover all other charges (including lodging and boarding expenses, tips, etc.). He will also be entitled for reimbursement of actual taxi charges incurred by him for visiting the premises of companies concerned while on tour. The fees payable to him are exclusive of the emoluments of the officers of the Department whose services have been placed at the disposal of the Inspector during the pendency of the investigations.

The expenses of investigations are recoverable under Section 245 of the Companies Act.

During the course of the evidence on the 18th December, 1963 the representative of the Company Law Division stated:—

> "We were hoping that the report would be available within about six months and we got only a progress report at the end of October. His appointment was made in April 1963."

As regards the time required for completion of the investigation, the representative of the Ministry stated:—

> "....it is difficult to say at this stage because the attitude adopted by the company has not been very helpful. Mr. Chopra, felt it necessary to take up the matter to the Bombay High Court. The Bombay High Court gave a ruling which would be of considerable help to the investigation which is not as far-reaching as to make it difficult for the company to non-cooperate, and for the last few months, the attitude has been one of non-cooperation. So, we have got fairly good legal powers but we shall have to keep on resorting to them. The investigation may take quite some time."

The Committee are concerned at the delay in the investigation which is being conducted by a Chartered Accountant, who has been engaged by Government at a very high rate of remuneration and allowances.

The Committee would stress the need for completing the investigation at an early date.

C. *Prosecutions*

Prosecution Machinery.

63. The Committee have been informed that in the absence of an independent prosecution machinery of its own, the Company Law Division have to rely on the prosecution machinery of the State Governments for the conduct of prosecution cases under the Companies Act. Prosecution at places where the Offices of Registrars of Companies are situated are mostly conducted by Legal Officers of the Company Law Division attached to the field offices. In the remaining places the actual conduct of prosecutions is entrusted to the State Law Officers. Apart from the State Law Officers, taking into account the gravity of an offence and/or whether it involves any substantial question of interpretation of law or of policy, in the cities of Calcutta and Bombay, counsels are engaged to conduct prosecutions. Such counsels are selected from a panel of counsels approved by the Ministry of Law for engagement in Central Government cases.

Watch over Statutory Compliance by Companies.

64. To ensure proper compliance with the statutory requirements by the companies, a systematic record is maintained by the offices of the Registrars of Companies. In all cases of routine defaults for failure to file returns and documents and for submitting defective documents, powers have been vested in the Registrars of Companies and the Regional Directors fod initiating prosecutions against the defaulting companies and their officers. In cases of serious offences, the Company Law Division has retained with itself the power to sanction prosecutions. As stated in the

Seventh Annual Report on the Working and Administration of the Companies Act, "prosecutions for defaults are resorted to only when the process of advice, persuasion and warning has failed to correct the statutory defaults. "The Company Law Division have continued the practice of issuing two defaults notices before prosecutions are actually launched.

Number of Prosecutions.

65. The following table shows the number of prosecution cases pending as on the 1st April, of 1960, 1961, 1962 and 1963:—

As on 1st April of	New cases started during the financial year	No. of prosecution cases pending
1959	5252	3699
1960	6272	2941
1961	3990	1506
1962	3687	2204

The Committee observe that the number of pending prosecution cases which had gone down from 3699 *in* 1959 *to* 1506 *in* 1961 *has risen again to* 2204 *in* 1962.

As regards the reasons for a large number of cases pending on the 1st April, 1963 the Company Law Division have informed the Committee that the Regional Directors and Registrars concerned have been taking all possible steps to prevent delays occurring on their account by ensuring that the law officers in charge of prosecutions are fully briefed and put in their appearance on the dates fixed for hearing. As and when opportunity occurs, they have also been trying to persuade the authorities concerned to take suitable measures for speedy disposal of company law cases. For instance, the District Magistrate, Delhi was approached recently for assigning to a single Magistrate the work relating to all company law cases in Delhi, instead of the practice of such cases being heard by the respective Magistrates having jurisdiction over the registered offices of the concerned companies. It has since been agreed to and the work has been assigned to the Magistrate having jurisdiction over the office of the Registrar of Companies, Delhi.

The Committee note that the assignment of jurisdiction over the Office of the Registrar of Companies, Delhi to a Magistrate is expected by the Company Law Division to "facilitate expeditious disposal of cases through the maximum of utilisation of the services of the Assistant Company prosecutor in the office of the Registrar of Companies who

will no longer be required to attend different courts on the same day; but will be in a position to conduct all prosecutions in a more effective manner without having to seek adjournments because of his inability to remain present in more than one court at the same time". They also note that the maximum number of prosecution cases was filed in 1962-63 in West Bengal and that as many as 918, out of 1628, were outstanding at the end of the year. Similarly, in Maharashtra out of 674 prosecution cases filed, as many as 303 were outstanding at the end of the year.

The Committee cannot help remarking that legislation can be effective only if the parties at fault are brought to book and put in the dock without avoidable delay. The Committee would, therefore, suggest that the Company Law Division should review the position and take such action as is necessary to streamline the prosecution machinery to secure expeditious filing and disposul of cases.

VII

WINDING UP OF COMPANIES

A. *Introduction*

Historical background.

66. Sections 425 to 560 of the Companies Act relate to liquidation and winding up of companies and account for nearly one-fifth of the volume of the Act. Under the old law, the proceedings for the winding up of companies were conducted—(i) in the case of compulsory winding up, under the direction, supervision and control of the Court, and (ii) in the case of voluntary winding up, under the direction, supervision and control of the creditors and/or contributories of the companies. Liquidators were appointed by the courts on an *ad hoc basis* for carrying out the winding up proceedings of individual companies. As they were mostly part-time men, they found very little time to pay much attention to their work as liquidators. The position was still worse in the case of voluntary winding up, because once the company went into liquidation, the creditors or the contributories ceased to take any active interest in the affairs of the company concerned and the liquidators took little interest in the winding up proceedings. The result was that these proceedings were unduly protracted for years in many cases. This state of affairs did considerable long term damage to investment psychology, and brought about slow erosion of confidence on the part of the non-professional investors in the future of joint stock companies. Adequate control and supervision over winding up proceedings was, therefore, considered to be a matter of urgent social and economic importance and accordingly provisions for exercising control and supervision over liquidation proceedings by the Central Government were made for the first time in the Companies Act, 1956.

One of the major changes in law introduced by the Companies (Amendment) Act, 1960 was to confer powers on the Central Government to exercise control over the Official Liquidators appointed under the Indian Companies Act, 1913, and to move the Courts for the appointment of Official Liquidators in respect of companies which went into liquidation under that Act. The Registrars of Companies were also empowered to move the Courts for the removal of Liquidators in charge of voluntary liquidations and for the appointment of Official Liquidators in their places.

The following statement shows the number of Companies in liquidation :

Period	*No. of Companies*
For less than 5 years	1171
Between 5 to 10 years	964
Between 10 to 15 years	470
Over 15 years	150
TOTAL	2755

The Committee observe that out of the total number of 2755 Companies in liquidation as on March 31, 1963, as may as 1584 (57·5 per cent.) companies were in liquidation for more than five years.

B. *Voluntary Liquidation*

Need for keeping close watch over progress of volunlary liquidation proceedings.

67. The Seventh Annual Report on the Working and Administration of the Companies Act points out that at the end of the year 1962-63, there were 1,718 companies under voluntary winding up as compared to 1,626 companies at the end of 1961-62. Of these 1,192 were under members' voluntary winding up and 526 under creditors' voluntary winding up. The Report further states: "The slow progress of winding up in the voluntary winding up cases could be attributed mainly to the absence of direct control of the Central Government over the voluntary liquidations and the lack of interest shown by creditors and contributories alike in the affairs of the companies after they are taken into liquidation."

The Committee have been informed that Government have no control over Voluntary Liquidators, except through appropriate action in case of their failing to file the statutory returns under Section 551 or other provisions of the Act. The Company Law Division have been instructing the Registrars of Companies to keep a strict watch over compliance by the Voluntary Liquidators with these provisions when the Company resolutions taking the company into liquidation are filed with them. The statements of Account filed by the Voluntary Liquidators under Section 551, are also scrutinised and in case of failure to comply with the requirements of Section 555, i.e. to remit the unclaimed dividends into the Companies Liquidation Account at the end of the prescribed period after the declaration of dividends, action is taken against the Liquidator concerned as provided for in the Act. The Company Law Division have further stated before the Committee that—

"The question whether the Act should be amended in order to enable voluntary liquidations also to be

completed expeditiously and without prejudicing the interests of the shareholders, is being examined."

The Committee suggest that suitable measures such as close scrutiny of returns filed under Section 551 by liquidators may be taken to see that voluntary liquidations are completed expeditiously and without prejudice to the interests of the shareholders concerned.

Information relating to liquidation of Companies where voluntary liquidators replaced by official liquidators to be centrally available.

68. The number of cases in which the Registrar of Companies have moved the courts under Section 515 for the removal of voluntary liquidators and for the appointment of Official Liquidators in their place during 1961-62 and 1962-63 is as follows:

Year	Number of cases
1961-62	16
1962-63	8

As regards the progress made in finalising the liquidation proceedings after the appointment of Official Liquidators, the Company Law Division have stated as follows:

"Repacement of the voluntary liquidator by the Official Liquidator or by any other person under Section 515 does not change the nature of the liquidation i.e. the liquidation continues to be a voluntary one. The only check, therefore, that the Registrars can have on the progress of these liquidations can be from the statements of accounts, filed by the liquidators with the Registrars under Section 551(1) of the Act. The information relating to the progress of these particular liquidations is not readily available as the Registrars have not been asked to report on them to the Department specifically."

The Committee are surprised to note that the information about the progress made in winding up of the companies after the replacement of Voluntary Liquidators by Official Liquidators is not available centrally in the Company Law Division.

The Committee would stress that a close watch may be kept by the Company Law Division on the progress made after the appointment of Official Liquidators so that the purpose underlying such appointments is fulfilled.

Realisation of Assets of Companies under Voluntary Liquidation.

69. Asked to indicate the extent to which the voluntary liquidators have been able to realise during the last five years, the assets of the companies and distribute them to the creditors, the Company Law Division have stated as follows:

"The assets realised and disbursements made by the voluntary liquidators will have to be culled out

from the statements of accounts filed by them with the Registrars of Companies in the various States under Section 551 of the Act. The information required cannot be collated in time for the use of the Committee and without a great deal of labour and difficulty and most of the Registrars of Companies do not at present have sufficient staff to be utilised in collecting this information."

The Committee would suggest that statistics relating to assets realised and disbursements made by voluntary liquidators may be suitably mentioned in the Annual Reports of Company Law Division.

C. *Compulsory Liquidations*

70. The Central Government have appointed Official Liquidators and attached one with each High Court. The Official Liquidators at Madras, Bombay and Calcutta are whole-time officers. Due to the heavy pressure of work at the offices of the Official Liquidators, West Bengal and Maharashtra, two Assistant Official Liquidators at Calcutta and one at Bombay have been appointed so as to assist the Official Liquidators in the expeditious completion of the proceedings. At other places, only part-time Official Liquidators have been appointed. The part-time Official Liquidators are, generally, whole-time officers of the High Courts and receive honorarium varying between Rs. 100 to Rs. 200 per month. The Official Liquidators have been given such other staff as is required for the efficient discharge of their duties. The Committee are informed that as a result of the gradual transfer of the liquidation cases under the 1913 Act, which were previously handled by the Court Liquidators, to the Official Liquidators, the volume of work in the offices of official liquidators has recently gone up considerably necessitating the augmentation of the staff to cope with the increased volume of work. Official Liquidators.

71. The Company Law Division have furnished the following statistics relating to companies under Compulsory winding up: Companies under compulsory liquidation.

For less than 5 years	261
Between 5—10 years	398
Between 10—15 years	253
For over 15 years	71
TOTAL	983

The Committee are constrained to observe that the number of companies in liquidation for a period of 5 years or more constitutes 73.4 per cent of the total number of cases and that there are as many as 71 companies in respect of whom liquidation proceedings have been pending for more than 15 years.

The Committee note that the Department have lately taken some action to expedite the winding up of companies under liquidation. The Special Re-organisation Unit of the Ministry of Finance carried out in 1962-63 a work study of the offices of the Official Liquidators at Bombay and Calcutta with a view to rationalise and standardise the procedure of work of those offices. Appropriate instructions are understood to have been issued on the basis of the work study to improve working pattern of the offices and expedite the liquidation proceedings.

It is also understood that the Company Law Division have worked out, in consultation with the various High Courts, a scheme of periodical inspection of these offices by their Regional Directors.

The Committee have been informed that the Official Liquidators are also required to furnish to the Company Law Division, history sheets of every company in liquidation so as to indicate the progress of liquidation proceedings. Though the liquidators work under the directions of the Court, advice is given by Government to them on scrutiny of such History sheets as to how to proceed further in case any difficulty is experienced by them either in realising the assets or in tracing the directors and other office bearers of the companies concerned. The history sheets of more than two-thirds of the companies in liquidation for more than 5 years have been received by the Company Law Division and the remaining Official Liquidators have been reminded to expedite the submission of the history sheets.

The Committee would stress that continuous efforts should be made to rationalise and simplify the winding up of the Companies having due regard to the need for safeguarding the interests of the shareholders.

The Committee are glad to note that the Company Law Division have thought of getting compiled the history of companies under liquidation. The progress made in compiling the history sheets has, however, been somewhat halting.

The Committee would suggest that priority should be given to the preparation of history sheets of companies which have been under liquidation for 5 years or more so that the history sheets can be studied centrally by the Company Law Division to provide guidance for expediting the winding up proceedings.

VIII

MISCELLANEOUS

A. *Non-Profit Making Companies*

Exemptions under Section 25 to Chamber of Commerce and Trade Associations.

72. Sub-Section (6) of Section 25 empowers the Central Government to exempt such associations wholly or partly from the operation of any of the provisions of the Act as may be considered reasonable by the Central Government.

The Committee note from para 67 of the Sixth Annual Report of Company Law Administration that chambers and trade associations have been exempted by Government from some of the provisions of the Act *vide* a notification issued in July, 1961.

A leading federation of chamber of commerce and industry has represented to the Committee as follows:

> "..... there are still many other provisions such as Section 281 regarding age limit of the directors, Section 193 regarding minutes of proceedings of general meetings and of Board and other meetings etc. from which exemption should be granted."

Since the exemptions were last granted nearly three years ago, the Committee would suggest that Government may review the position in the light of experience and decide what further exemptions could be given to chambers of commerce, trade associations etc. to facilitate their functioning.

B. *Company Meetings*

Presence of Government Observers at Company Meetings.

73. It has been represented to the Committee by a leading non-official organisation that:

> "Registrars of Companies should receive the notices of all general meetings of public companies and they should also be empowered to send some authorised person to attend general meetings as visitors with no power of speaking and voting."

During the course of evidence before the Committee, the representative of the Company Law Division has stated that if there is an enabling provision of that nature, it may possibly exercise some restraining influence over the management and may enable Government to ensure a more authentic record of the proceedings etc. He added that such a thing could be made feasible only if the right was exercised in very few cases where there were special reasons to do so.

The Committee suggest that the question whether the Registrars of Companies should receive notices of all general meetings of public companies and whether they should also be empowered to send some authorised person to attend general meetings as a visitor without any power of speaking or voting, may be examined.

C. *Forms and Returns*

Multiplicity of Forms and Returns.

74. A number of leading non-official organisations have made representations to the Committee about "unnecessary information and details" required to be furnished to the Company Law Administration which results in obscuring genuinely important information.

A representative of a leading non-official organisation, during his evidence before the Committee, produced a photograph of copies of applications and enclosures submitted to Government for approval in respect of appointment of a party as Secretaries and Treasurers of six companies which weighed 90 lbs.

During the course of evidence before the Committee, the representative of the Company Law Division stated that a review had been undertaken in 1961 in consultation with the O. & M. Directorate when considerable simplification was achieved. Another review was undertaken in 1962 but no drastic changes were considered necessary. On a specific question relating to the number of forms required to be filed in respect of the appointment of Directors of Companies, he stated that there might be scope for combining one or two of them.

The representative of the Ministry of Finance—Department of Revenue added that he was looking forward to more simplification of the forms.

In view of the representations made before the Committee by a number of leading non-official organisations, the Committee would like the Company Law Division to examine the practical utility of various forms and returns which are at present required to be filed with the Registars of Companies so as to see if any of these could be dropped, simplified, amalgamated or abridged.

Corections to Forms and Returns.

75. A leading chamber of commerce has represented to the Committee that:

> "Ordinarily, the signatories of the returns filed with the Registrars are required to attend office personally to carry out any corrections in the returns. This should not be insisted upon as we find from experience that it results in waste of time and inconvenience to the signatories. An authorised representative of the signatory of the returns should be permitted to carry out the corrections on the returns which the Registrar considers necessary."

During the course of evidence before the Committee, the representative of the Company Law Division has stated that it is done only for the sake of convenience and is not compulsory. He added that the Registrars felt that the parties concerned would find it much better to come to the office and make the necessary corrections as in their experience, correspondence does not lead to very satisfactory results.

The Committee suggest that Government may examine the feasibility of permitting an authorised representative of the signatory of the forms and returns to carry out the corrections which the Registrars consider necessary.

Publication of Quarterly Production Reports.

76. It has been represented to the Committee by a leading Stock Exchange that companies engaged in production should be required to furnish quarterly progress reports setting out their targets and achievements to Stock Exchanges and shareholders. Another leading Stock Exchange Association has represented to the Committee that:—

> "At present companies in this country generally publish their working results once in a year. Such a big lap of time interval between two reports naturally help rumour-mongers to manipulate the Stock Market. When such rumours overwhelm the market, if the companies were prompt enough to contradict the rumours, then the position would have been otherwise. But as such practice on the part of companies is rare in this country, it is suggested that the companies should issue at least quarterly statements relating to working, earnings and important developments in their affairs. Such a quarterly statement need not be a full-fledged balance sheet or profit and loss account, but a simple informative statement of interest to the shareholders. Though the issue of a more elaborate statement is in vogue in the U. S., yet we believe that in this country the companies should make a modest beginning by issue of a statement containing *inter alia* the following information:
>
> (a) General survey of business development;
>
> (b) Comparative figures relating to production and sales; and
>
> (c) Current and future prospects.
>
> A statement of this kind should be issued at the end of every quarter to the Stock Exchange, newspapers and also on request to the shareholders."

With a view to enabling shareholders to take intelligent interest in the affairs of the companies engaged in production, Government may consider the feasibility of persuading such companies to furnish to the Stock Exchanges and to

shareholders, if possible, quarterly statements containing inter alia *the following informations—*

(i) *General Survey of Business development;*

(ii) *Comparative figures relating to production and sales; and*

(iii) *Current and future prospects.*

D. *Foreign Companies*

Provisions in the Act.

78. All companies incorporated outside India which established a place of business in India after the commencement of the Companies Act, 1956, or established a place of business before the commencement of the Act and continue to have a place of business, are required to comply with the requirements of Part XI comprising Section 592 to 608 of the Companies Act. According to Section 592 of the Companies Act, 1956, foreign companies establishing a place of business in India after the commencement of the Act are required within one month of the establishment of such place of business to file with the Registrar of Companies form 44 with the following information:

(i) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not in the English language, a certified translation thereof;

(ii) the full address of the registered or principal office of the company;

(iii) a list of the directors and secretary of the company and other relevant details;

(iv) the names and addresses of one or more persons resident in India, authorised to accept service of process and any notices or other documents required to be served on the company; and

(v) the full address of the office of the company in India, which is to be deemed its principal place of business in India.

The various documents and returns are required to be filed simultaneously with the Registrar of the State in which the principal place of business of the company is situated and the Registrar having jurisdiction over New Delhi. The Registrar of Companies, Delhi, under section 597(1) of the Companies Act, 1956, is the Registrar for all foreign companies irrespective of the fact whether the principal place of business of the company is situated in the State of Delhi or outside.

79. After the merger of Goa, Daman and Diu with India the question of extending to those territories the companies Act, 1956, the Chartered Accountants Act, 1949 and the Cost and Works Accountants Act, 1959 was taken up for consideration in consultation with other Ministries and the Goa Government. Extension of the Companies Act, 1956 to Goa, Daman and Diu.

By a Presidential Regulation issued on the 22nd Nov-November, 1962 under article 240 of the Constitution, certain Acts including the Companies Act, 1956, were made applicable to Goa, Daman and Diu. The Companies Act was brought into actual operation in those territories with effect from the 26th January, 1963 by a notification issued by the Goa Government.

The Portugese laws by which companies in Goa, Daman and Diu had hitherto been regulated were entirely different from the corresponding Indian laws. A Presidential Regulation was issued on 19th December, 1963 to provide that the operation of some of the provisions of the Companies Act in those territories shall, in relation to companies already functioning, be capable of being suspended for a specified period of time from the date of its enforcement, and that in relation to companies to be registered in future, it shalll be permissible to grant exemption from selected provisions of the Act for a specified period. Three other Acts, namely, the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Indian Partnership Act, 1932 have also been extended by the same Presidential Regulation.

The Regional Director, Bombay and the Registrar of Companies, Bombay, made an on-the-spot study of the practical problems connected with the enforcement and administration of the Companies Act in Goa. Their recommendations are under examination. Meanwhile the Registrar of Companies, Bombay, has been notified as the *ex-officio* Registrar of Companies of Goa, Daman and Diu.

80. Under Section 592(1) (d) of the Companies Act, the foreign companies are required to deliver to the Registrar for registration: Service of Notices on Foreign Companies.

> "the name and address or the names and addresses of someone or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company."

A leading association of chambers of commerce has represented to the Committee as follows:

> "For many years, it has been the practice of most foreign companies to nominate their agents in India, who are generally Indian companies, as

the person authorised for the purposes of this Section, but recently the Department of Company Law Administration has stated that as a matter of good company practice, it is desirable for a natural person or persons to be nominated. In correspondence with the Department, the Bengal Chamber of Commerce and Industry has pointed out that in fact, the nomination of a corporate body is preferable for reasons of continuity, since individuals may often not be available because of sickness or for other reasons. The Department has, however, replied that while these views have been noted, it is nevertheless desirable from an administrative point of view for natural persons to be nominated and that steps will be taken to amend Section 592 of the Act to make it clear that only natural persons should be nominated."

During the course of evidence before the Committee, the representative of the Company Law Division has stated that unless there is a natural person as opposed to the juridical concept of a person, there would be no means of ensuring that the documents reached the persons concerned. He added that Government may consider the question of introducing an amendment to the Act to put the matter beyond the pale of doubt.

The Committee would suggest that legal interpretation of Section 592(1)(d) of the Companies Act may be obtained from the Ministry of Law so that the position in this behalf becomes clear.

E. *Company Secretaries*

Need for Autonomous Organisation for Regulating Training and conducting Examinations.

81. With a view to organising the profression on sound and healthy basis, an Institute of Secretaries was established in 1956 on the initiative of the then Department of Company Law Administration as a non-profit making body under the Companies Act, 1956. The Committee have been informed that "the Institute unfortunately failed to fulfil the expectations of its sponsors and had to be wound up."

In view of the long-felt need for a professional body of company secretaries and with a view to meeting the situation arising out of the winding up of the Institute, an Advisory Board was set up by Government in April, 1960 to assist the Department in standardising the basic qualifications needed for manning the posts of Company Secretaries and to hold qualifying examinations for the purpose. The Board consists of the Additional Secretary of the Company Law Division as Chairman and ten other Members representing some of the Union Ministries, intimately connected with the corporate sector, the Associated

Chamber of Commerce, the Federation of Indian Chambers of Commerce and Industry and the profession of the Company Secretaries.

With the assistance of the Advisory Board, a scheme for holding qualifying examination was drawn up and in accordance with that scheme, examinations were held for the first time in March, 1961 and thereafter in October, 1961, April, 1962, October, 1962 and April, 1963. A statement showing the results of the examinations held during these years is given in Appendix VIII.

During the course of evidence before the Committee the representative of the Company Law Division has stated that they have not again considered the question of setting up the Institute which needs preparaion and ground work and persons who are interested in organising it as an autonomous body.

The Committee would suggest that the question of setting up of an autonomous body composed of representatives drawn from the Central Ministries concerned and from leading non-official organisations of commerce and industry, for the purpose of regulating training of the profession of company secretaries and conducting examination of Company Secretaries.

Coaching facilities to students preparing for examination of Company Secretaries.

82. It has been represented to the Committee by a leading non-official organisation of Company Secretaries as follows:

> "We feel that ample coaching facilities should be made available to students appearing for the examinations. The Department should also grant recognition to institutions which provide such facilities."

During the course of evidence, the representative of the Company Law Division has stated that much as they would like to provide instructions as well as coaching to students, Government have not got at present the organisation or wherewithal.

He added "there are a few institutions in the country which lay claim to imparting such instructions. There are a few others which we would like to impart these instructions. But we have not reached a stage where we can clearly say that these institutes are good or completely satisfactory for imparting instructions to deserve recognition. We have got a list of eight institutions, the names of which we have circulated and published. But we have not reached a stage of giving them any formal recognition."

With a view to providing adequate coaching facilities to students preparing for examination of the Company Secretaries, the Committee suggest that Government should lay

down criteria and accord formal recognition, to institutions providing such facilities in the country after carrying out proper inspection. In this connection, they would also like to refer to the recommendation made in para 30.

F. *Research*

Research Programme Committee.

83. An informal Committee called the Research Programme Committee was formed during the year 1958 to advise the Department of Company Law Administration on suitable research programmes relating to company finance and management and to assist the Department in making the best use of the statistical data collected from the company records.

The Research Programme Committee was first constituted in September, 1958 for a period of two years. After the expiry of its tenure, the Committee was reconstituted twice,—once in January, 1961 and for the second time in February, 1963 for a period of two years each time. The Committee have been informed that the non-official members of the Committee are drawn from experts in corporate finance and management matters. These experts have been invited by the Company Law Division to serve on the Committee "in their personal capacity and not as representatives of any profession or institution". The composition of the Committee is given in Appendix IX.

The Committee find that the composition and functions of the Research Programme Committee are being notified each time such a Committee is constituted. As the Research Programme Committee has now been functioning for more than five years, it is suggested that the constitution, functions and terms of appointment of the members of the Committee may be laid down in general terms. This would endow the Research Programme Committee with the attributes of a Standing Advisory Committee.

Coordination with Universities.

84. The Director of Research and Statistics have stated before the Committee during evidence that the list of subjects for research is initially compiled or suggested by the Department. It is then placed before the Committee for their advice as to which of the subjects would be best to be picked up for research. Their comments, suggestions and ideas are also invited. After that, a regular research project is undertaken. When the paper is produced, it is circulated again among the members of the Committee and their comments are again sought.

It is noted that the Third Research Programme Committee at its meeting held on the 17th April, 1963, "recommended that there should be greater liaison between the Research Division and the Universities so that the research on corporate matters might get a fillip."

The Committee agree with the recommendation made by the Third Research Programme Committee that there should be greater liaison between the Research Division and the Universities so that research on corporate matters might get a fillip.

85. In the "Brochure on Promotion of Research on matters relating to the corporate sector in India", it is stated as follows:

> "Apart from offering facilities to research workers, as a part of the scheme to promote and direct research work on subjects relating to company management and finance, the Department of Company Law Administration, on the advice of the Research Programme Committee attached to it, has finalised a scheme for co-ordination of research projects in progress in the various Universities and Research institutions. The Department proposes to publish every year in the month of December a list of research projects in progress, together with the names of the research workers, institutions at which research is being carried on and short descriptions of the projects, on the basis of reports obtained from the universities and other research institutions."

The Department has published the information in respect of the year 1961 in a detailed statement consisting of eight columns.

The list of research projects in progress during the calendar year 1962 was published in the issue of "Company News and Notes" dated July 16, 1963. The statement did not give the following details:

1. Name of the research worker.
2. Name of supervisor.
3. Name of sponsoring or aiding institution, if any.

The list of research projects in progress during 1963 has been published in 'Company News and Notes' dated the 16th March, 1964.

The Committee would like to emphasise the need for timely publication of details of research work in progress in Universities, including the names of the research workers and supervisors and the names of the sponsoring or aiding institutions so that it may help all those who are interested in the subject to get in touch with the research workers, supervisors etc. concerned.

G. *Conclusion*

86. Before concluding, the Committee would like to draw the attention of the Government to the following

observations made by the Company Law Committee (Bhabha Committee) in 1952:—

> "It (Company Law) attempts to provide a legal framework for the corporate form of business management in which organisation, capital and labour are brought together in a particular form of relationship which constitutes the essence of private enterprise. The operation of private enterprice under modern conditions must, however, be subject to the acceptance of broad social objectives and of some recognised standards of behaviour."

In this connection, the Committee would like to stress that the Company Law is not an end in itself but a means; it is an instrument of policy for implementing the economic policy of the Government as laid down by Parliament and the success of the Company Law Administration would depend on its effectiveness in giving shape to this economic policy, particularly, the effective and proper guidance of the private sector and prevention of any unhealthy practices in that sector, leading to concentration of wealth.

NEW DELHI;

Dated the 6th April, 1964
Chaitra 17, 1886 (Saka).

ARUN CHANDRA GUHA,
Chairman,
Estimates Committee.

APPENDIX I

(Vide para 13)

Notification issued by the Government of India in regard to the setting up of the Company Law Board.

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

NOTIFICATIONS

New Delhi, the 1st February, 1964

G.S.R. 176—In exercise of the powers conferred by Sub-section (1) of Section 10E of the Companies Act, 1956 (1 of 1956), the Central Government hereby constitutes the Board of Company Law Administration.

[No. 8(11)-Admn.I/63].

G.S.R. 177—In exercise of the powers conferred by Sub-sections (2) and (3) of Section 10E of the Companies Act, 1956 (1 of 1956), the Central Government hereby appoints—

(a) the following persons to be the members of the Company Law Board, namely:—

(1) Shri R. C. Dutt,

(2) Shri B. S. Manchanda; and

(b) Shri R. C Dutta, to be the Chairman of the Company Law Board.

[No. 8(11)-Admn.I/63].

G.S.R. 178—In exercise of the powers conferred by clause (a) of sub-section (1) of section 637, read with sub-section (1) of section 10E, of the Companies Act, 1956 (1 of 1956), the Central Government hereby delegates to the Company Law Board the powers and functions of the Central Government under the said Act other than—

(i) those under the following provisions of the said Act, namely:—

Section 10A

Sub-section (3) of section 10B

Sub-sections (4), (5) and (6) of section 81

Section 324

Section 410

Sub-section (1) of section 619A

Section 620

Section 620A

Clause (b) of sub-section (1) of section 637

Section 638; and

(ii) those under the following provisions of the aforesaid Act, namely:—

Section 21

Section 167

Sub-sections (3), (4) and clause (a) of sub-section (8) of section 224

Second proviso to sub-section (5) of section 439 and sub-section (6) of the said section.

Section 496, where the period referred to in clause (a) of sub-section (1) thereof does not exceed six months.

Section 508, where the period referred to in clause (a) of sub-section (1) thereof does not exceed six months.

Clause (b) of sub-section (7) of section 555, where the claim does not exceed Rs. 1,000.

Proviso to sub-section (1) of section 610 Section 627 which have been delegated to the Regional Directors of the Department of Company Law Administration at Bombay, Calcutta, Madras and Kanpur by the notification of the Government of India in the late Ministry of Commerce and Industry (Department of Company Law Administration) No. G.S.R. 556 dated the 25th June, 1958.

[No. F5/1/64-PR].

APPENDIX II

(*Vide* para 20)

Time prescribed by the Company Law Administration for the disposal of applications received under different Sections of the Companies Act, 1956.

Sl. No.	Nature of applications	Section of the Act	Time prescribed by the Department
1	2	3	4
1.	*COMPANY LAW—I*		
	1. Request for investigation . . .	235(c)	8 Weeks
	2. Request for investigation . . .	237(b)(iii)	8 Weeks
	3. Request for authorisation . . .	399(4)	8 Weeks
2.	*COMPANY LAW—III*		
	1. Applications for payment of unclaimed dividends etc., from the Companies Liquidation Account of the Companies in Liquidation.	555(7)(b)	8 Weeks
3.	*COMPANY LAW—IV*		
	1. Grant of Licence . . .	25(1)	12 Weeks
	2. Exemption	25(6)	4 Weeks
4.	*COMPANY LAW—VI*		
	1. Powers of Central Government to declare an establishment not to be a branch office.	8	6 Weeks
	2. Dividend to be paid only out of profits to authorise payment of dividend without providing for depreciation	205(1)(c) 205(2)(c) 205(2)(d)	4 weeks
	3. Powers of company to pay interest out of capital in certain cases.	208	4 Weeks
	4. Modification of Balance Sheets & Profit & Loss Accounts.	211(4)	3 Weeks

1	2	3	4
5.	Change of Financial year of the Subsidiary Company.	212(8)	3 Weeks
6.	Financial year of holding Company and Subsidiary.	213	3 Weeks
7.	Audit of Accounts and branch of office of Company.	228	4 Weeks
8.	Appointment of sole selling agents to require approval of Company in Geneal Meeting.	294(4)(b)	6 Weeks
9.	Grant of Loans to Directors etc.	295	4 Weeks
10.	Inter Company Loans and Investments	372 (3)	4 Weeks
11.	Request for exemption from filling Indian Business Accounts.	594	6 Weeks
5.	*COMMISSION—I, II & III*		
1.	Approval for payment of managerial remuneration in case of absence or inadequacy of profits.	198(4)	4 Weeks
2.	Approval to exceed the limit of minimum managerial remuneration of Rs. 50,000 in case of absence or inadequacy of profits.	198(4) Proviso	
3.	Increase in number of Directors	259	10 Weeks
4.	Amendment in the Article of Associations.	268	6 Weeks
5.	Appointment of Managing Directors, Whole-time Directors.	269	10 Weeks
6.	Increase in the remuneration of Directors, Managing Directors, Whole-time Directors.	310	10 Weeks
7.	Approval to exceed the limit of 5% of net profits as remuneration to managing Directors, or a Director in Whole-time employment of the company.	309(3)	4 Weeks
8.	Increase in the remuneration of Directors on re-appointment.	311	10 Weeks
9.	Appointment or re-appointment of Managing Agents.	326	10 Weeks
10.	Variation of Managing Agency Agreement.	329	8 Weeks
11.	Transfer of Office by Managing Agent	343	10 Weeks
12.	Change in the constitution of managing agency firm or corporation.	346	8 Weeks

1	2	3	4
13.	Payment of additional remuneration.	352	10 Weeks
14.	Contracts between managing agent or associate and company for the sale or purchase of goods or the supply of Services, etc.	360	8 Weeks
15.	Remuneration received in contravention of foregoing sections to be held in trust for company.	363	8 Weeks
16.	Appointment or re-appointment of Secretaries and Treasurers.	379	10 Weeks
17.	Increase in remuneration appointment of Managers	388	10 Weeks
18.	Approval to exceed the limit of 5% of net profits as remuneration to Managers.	387	4 Weeks
19.	Powers of Company Law Board to prevent oppression or mismanagement.	408	12 Weeks
20.	Powers of Company Law Board to prevent change in Board of Directors likely to affect company prejudicially.	409	12 Weeks

Time prescribed by the Department for disposal of applications by the Regional Directors under different Sections of the Companies Act.

S. No.	Nature of application	Section of the Act	Time prescribed by the Department	Remarks
(1)	(2)	(3)	(4)	(5)
1.	Change of name-availability of name-Broad Sheets/Balance Sheets to see.	21	4 Weeks	
2.	Application for issue of directions for calling of Annual General Meeting.	167	8 Weeks	
3.	Application for appointment of Auditors	224	4 Weeks	
4.	Application for winding up	439	8 Weeks	
5.	Application for extention of time to call for a general meeting by Liquidators in Member's voluntary winding up.	496(1)(a)	2 Weeks	
6.	Application for extension of time to call for a general meeting by liquidators in Creditors voluntary winding up.	508	2 Weeks	

7.	Application for unclaimed dividents.	555	6 Weeks
8.	Application for Inspection of documents etc.	610	3 Weeks
9.	Requests from the Registrars for sanction of prosecutions under various sections of the Act.	..	1 Week
10.	Requests from the Companies and Chambers for clarification of provisions under various sections.	..	1 Week
11.	Complaints received from the public against the management of companies.	..	2 to 8 weeks depending upon the nature of the inquiries that have to be made.

Time prescribed by the Department for disposal of applications by Registrars of Companies under different sections of the Companies Act.

S. No.	Nature of application	Section of the Act	Time prescribed by the Department	Remarks
(1)	(2)	(3)	(4)	(5)
1.	Alteration in Memorandum.	18	1 Week	
2.	Registration of Memorandum & Articles of Association of Form No.1	33-34	1 Week	
3.	Return & Allotment	75	1 Week	
4.	Notice of increase of share capital, consolidation etc. . . .	95	1 Week	
5.	Notice of increase in share capital and increase in number of members	97	1 Week	
6.	Notice of reduction of capital	103	1 Week	
7.	Particulars of charge created by Company Registered in India .	125	1 Week	
8.	Particular of modification of a charge and Memorandum of complete satisfaction of charge.	132	1 Week	
9.	Restriction of commencement of business	149	1 Week	
10.	Annual Return	159	1 Week	
11.	Extension of time for holding Annual General Meeting . . .	166	1 Week	
12.	Special Resolution	192	1 Week	
13.	Change of Financial year	210	1 Week	
14.	Balance Sheet	220	10 days	
15.	Declaration of Solvency	448	1 Week	
16.	Issue of Certified Copies	610	1 Week	
17.	Application for availability of Names	620	8 days	

APPENDIX III

(*Vide* para 24)

Notification Setting Up the Technical Advisory Committee in the Company Law Division

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No. 8/1/63-Admn.

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE AND INDUSTRY

DEPARTMENT OF COMPANY LAW ADMINISTRATION RESERVE BANK BUILDING, PARLIAMENT STEET

New Delhi, the 19th February, 1963.

From

Shri P. B. Saharya,

Under Secretary to the Govt. of India.

To

The Director of Audit,

F. R. S. C. S. & M.,

New Delhi.

SUB:—*Reconstitution of Technical Advisory Committee in the Department of Company Law Administration.*

Sir,

I am directed to refer to this Department letter No. 8(3)-Admn. I/60 dated the 30th January, 1961, and to convey the sanction of the President to the re-constitution of the Technical Advisory Committee in the Department of Company Law Administration for a period of two years from the 2nd January, 1963 to help it in a consultative and advisory capacity on all major issues of policy in regard to legal and accounting matters arising out of the administration of the Companies Act, 1956 and in respect of which the Department itself may consider it necessary to seek expert advice and guidance. The Committee will work generally on the lines of the consulta-

tive and technical advisory committee associated with the Insurance and Companies Department of the Board of Trade in the United Kingdom and will consist of the following members:—

Secretary, Department of Company Law Administration—*Chairman.*	
Shri P. L. Tandon, C.A., Hindustan lever Limited, Bombay	*Member*
Shri N. R. Mody, Chartered Accountant, New Delhi.	"
Shri S. P. Chopra, Chartered Accountant, New Delhi.	"
Shri G. Basu, Chartered Accountant, Calcutta.	"
Shri C. C. Chokshi, Chartered Accountant, Bombay.	"
Shri A. K. Sen, Indian Oxygen Ltd., Calcutta.	"

The headquarters of the Committee will be at New Delhi.

2. The non-official members of the Committee will work in an honorary capacity. They will, however, be allowed to draw travelling allowance and daily allowance in respect of the journeys performed in connection with the work of the Committee at the following rates:—

Travelling Allowance:

(a) *Journey by Air.*—1-1/5 of the standard air fare each way. They will be entitled to travel by 1st Class while travelling between Bombay—Delhi by Indian Airlines Boeing Service. The Amount of incidental expenses will be limited to a mixmum of Rs. 30 for each journey. Permission for air travel will be granted by the competent authority when such mode of travel is considered urgent and necessary in public interest. Return tickets whenever and wherever they are available should be purchased when it is expected that the return journey can be performed before the expiry of the period for which the return ticket is available.

(b) *Journey by rail.*—A single berth in 1st Class air-conditioned coach plus 35 nP. per 10 Kilo meters or part thereof, if it exceeds 5 Kilo meters.

(c) *Journey by road.*—Rate of mileage allowance as admissible to Govt. servants of the first grade.

II. *Daily Allowance*:

Rs. 20 per day. Half daily allowance will be admissible if they arrive in the afternoon of the day preceding the day of the meeting and also for the day following the meeting if they leave in the forenoon of that day. When they arrive in the forenoon or earlier than the forenoon of the day preceding the day of the meeting and/or when they leave in the afternoon or later than the afternoon of the day following the meeting they will be entitled to full daily allowance for the day preceding and for the day following the meeting. In case the meetings of the Committee are held at a place where they are resident, only the actual cost of conveyance hire subject to a maximum of Rs. 10 per day will be admissible.

This will also be payable if they use their own cars.

3. The expenditure involved in this sanction will be met from the sanctioned budget grant of the Department of Company Law Administration under the head "25/19—General Administration—Ministry of Commerce and Industry A.2-Department of Company Law Administration" for the year 1962-63.

4. This sanction has been issued in exercise of the powers delegated to all the Ministries *vide* Ministry of Finance, Deptt. of Expenditure Office Memorandum No. F.6(26)-E.IV/59 dated the 5th September, 1960.

Yours faithfully,
Sd/- P. B. SAHARYA,
Under Secretary to the Govt. of India.

APPENDIX IV

(*Vide* para 32)

Some instances furnished by the leading non-official organisations regarding the interpretation of the provisions of the Companies Act.

1. (a) It has been represented to the Department that contracts between a company and its managing agent or associates of its managing agents for the supply of finance to the managed company, do not fall within the scope of Section 360(1) of the Act and do not require the approval of the company in a General Meeting by a special resolution, and also the approval of the Central Government. This opinion has support of eminent lawyers and also of the Maharashtra High Court. The Department, however, continues to take the contrary view.

(b) Section 372(2) specifies certain limits within which the Board of Directors of a company may invest funds in the shares/debentures of other bodies corporate. Investments beyond these limits can be made if sanctioned by ordinary resolution of the company and approved by Government. Sub-section 14 of the section grants total exemption to investments made by a holding company in its subsidiary. For the purpose of making investments in other bodies corporate, such investments in subsidiaries are not, therefore, to be considered for determining the limits specified in sub-section (2). The Department, however, has taken a different view, namely, that for the purpose of making investments in other bodies corporate, the investments of the holding company in its subsidiary are to be included.

(c) The Department does not agree that a partnership consisting of private limited companies may be appointed as a managing agent. The Companies Act does not, however, contain any restrictions on the appointment of such partnerships as managing agents.

(d) Section 348 provides that the remuneration of a managing agent shall not exceed 10 per cent of the net profits of the company. Sub-section (2) of the Section further provides that any remuneration paid by a managed company to a director (and also to a member in the case of a private limited managing agency company) of the managing agency company shall be deemed to be included in the remuneration of the managing agent for the purpose of section 348. It is clear that the remuneration of a person who has been nominated by the managing agent on the Board of the managed company unless he be a director or a member of the managing agency company is not to be included in the managing agent's

remuneration for applying the ceiling. The Company Law Administration has, however, taken the view that remuneration including sitting fees paid to such a nominee director, even though he may not be a director or a member of the managing agency company, should be included in the remuneration of the managing agent.

(e) Under section 17 of the Companies Act, 1956 a company may, by special resolution and confirmation by Court, alter the provisions of its Memorandum with respect to the objects of the company. In a recent case a special resolution was passed by a company in order to alter the object clauses of the Momorandum. When the company applied to the Court for confirmation of the proposed alteration in the Memorandum, the Department of Company Law Administration issued directive to the Registrar of Companies to oppose the alteration of the object clauses on the ground that such alteration will amount to diversification of the activity of the company. It is surprising that after the resolution was passed in the general meeting by three-fourths majority, the Department thought it fit to oppose the resolution before the Court. If the diversification is beneficial to the company and is in the interest of the shareholders, there is no reason why the Department should come in the way of the company's expansion by way of diversification.

2. A further problem with which foreign companies have recently been presented relates to the application of Section 592(1)(d) of the Companies Act, which requires that foreign companies with a place of business in India must register the name and address of one or more persons, resident in India, authorised to accept on behalf of the company service of process and any notice or other documents required to be served on the company. For many years it has been the practice of most foreign companies to nominate their agents in India, who are generally Indian companies, as the person authorised for the purposes of this Section, but recently the Department of Company Law Administration has stated that, as a matter of good company practice, it is desirable for a natural person or persons to be nominated. It has been pointed out that in fact the nomination of a corporate body is preferable for reasons of continuity, since individuals may often not be available because of sickness or for other reasons. The Department has, however, replied that, while these views have been noted, it is nevertheless, desirable from an administrative point of view for natural persons to be nominated and that steps will be taken to amend Section 592 of the Act to make it clear that only natural persons should be nominated. The Chambers would submit that practical convenience has here been ignored on the very inadequate grounds of "the administrative point of view"; that foreign companies will almost certainly be put to additional expense because, while Indian agent companies which are at present nominated under Section 592 provide these services as part of their ordinary duties without additional charge, individuals who are nominated will quite reasonably expect a fee for their work; that indeed an individual might be reluctant to accept an appointment as the person authorised

under Section 592 if he thinks there are responsibilities attaching to the appointment over which he would have no control, such as the actions of the Agents od Managing Agents; and that, as there has been no suggestion that an Indian company must appoint natural persons for the purpose of accepting service of notices in respect of its own affairs, it is not understood what difficulties there are which prevent an Indian company from accepting service of notices in respect of a foreign company.

APPENDIX V

(*vide* para 38)

The Guiding Principles formulated by the Company Law Division regarding Applications for Inter-Company Investments.

The following guiding principles have been formulated by the Department of Company Law Administration:—

(a) although industrial and trading companies are not investment corporations and it is not their primary business to give financial accommodation to, or make investments in the shares and debentures of other companies, they should be allowed to make trade investments in other companies *viz.*, investments which are likely to create conditions conducive to the interest of the investing company, as well as to other companies' more economic working and betterment of production. An example in point would be an investment by a sugar company in a company which produces sugarcane with a view to supply sugarcane to the sugar company;

(b) a company should be allowed to make the investment only if it has adequate liquid resources for making the investments and if the depletion of the working capital which would result from the blocking up of the funds of the company in the form of investments would not adversely affect the company's own working;

(c) a company that has resorted to borrowing for its own requirements or intends to finance its investment by borrowing, should not be permitted to do so, except in the case of trade investments if the terms of borrowing are commensurate with the return expected both directly in terms of dividend and indirectly through creation of conditions conducive to the interests of the investing company;

(d) inter-company investments should not be permitted where there is a reasonable suspicion that they are prompted by a desire to gain control over the management of companies or are for speculative or for other *mala fide* purposes. Where, however, the proposed investment would make the company a subsidiary of the investing company, the investment should be permitted subject to the existence of a reasonable functional relationship between the proposed subsidiary and its holding company or between it and the other subsidiaries of the holding company; and

(e) whether having regard to the considerations set out below the proposed investment may be regarded as found:—

(i) the company in which the investment is proposed to be made should be in a sound financial position and in particular, the depreciation provision made should be adequate;

(ii) the financial structure of the company in which the investment is proposed to be made after taking into account the proposed investment, should be a balanced one as otherwise idle capital or heavy interest charges would as act as an economic drag in the working of the company;

(iii) the company in which investment is proposed should have earned profits and declared dividends in the past or should at least clearly be capable of making profits and declaring dividends within a reasonable period of time;

(iv) the purchase price should be reasonable and neither too high nor too low, taking into account the net worth, prevailing market prices and future expectations of profit-ability;

(v) the proposed investment should provide an expected return on capital at least equal to the return on gilt-edged securities; and

(vi) except in the case of trade investments, the shares or debentures proposed to be acquired should preferably be readily marketable.

APPENDIX VI

(*Vide* para 41)

List of Shareholders Associations Registered in Different States and their Member-ship during the Years 1961 *to* 1963

Sl. No.	Name and address of the Shareholders Association	State	Number of members			Remarks
			1961	1962	1963	
1	2	3	4	5	6	7
1.	Northern India Shareholders Association, XVI/192, Faiz Road, New Delhi . . .	Delhi . .	N.A.	N.A.	50	Registered under Societies Registration Act.
2.	Delhi Shareholders Association, 45, Delhi Stock Exchange Building. Asaf Ali Road, New Delhi.	Delhi . .	N.A.	N.A.	50	
3.	Shareholders' Association of Rajasthan, Sharda-Bhawan, Swai Man Singh Highway, Jaipur .	Rajasthan .	N.A.	N.A.	200	
4.	India United Shareholders Association, 228, Mahatma Gandhi Road, Calcutta . . .	West Bengal	12	10	20	

1	2	3	4	5	6	7
5.	All India Investors' Association 7, Lyons Range, Calcutta	West Bengal	94	93	95	Registered under Societies Registration Act.
6.	Bombay Shareholders Association, Agakhan Building, Dalal Street, Fort, Bombay-1 . .	Maharashtra	738	718	726	
7.	Madras Shareholders Association, 337, Thamber Chetty Street, Madras-1.	Madras	N.A.	N.A.	139	
8.	Hyderabad Deccan Shareholders Association .	Andhra Pradesh	N.A.	N.A.	20	

APPENDIX VII

(*vide* para 46)

Guiding Principles adopted by the Government in regard to the re-appointment of the Managing Agents for a longer tenure than five years.

(i) Where companies are engaged in basic or heavy industries or industries of national importance, such as iron and steel, heavy engineering, deep mining, heavy chemicals, overseas shipping etc.—the planned development or expansion of which is of great importance to the national economy and which involve a long period of gestation before they can yield full results;

(ii) Where companies are engaged in industries other than those falling within category (i) above, if approved expansion programmes on a large scale and spread over a period of years are being undertaken and for whose speedy and timely implementation the managing agents are directly responsible by reason of any substantial investment by themselves in the capital outlay and/or of their special suitability for the particular field of technology and their ability to render the requisite tchnical and other ancillary services;

(iii) Where the managing agents are themselves primarily responsible for the promotion of a new industry in the country, as a pioneering venture (provided it is of importance to the national economy), or where they come forward to set up a new industry on a large scale in an undeveloped and backward region; and

(iv) Where the managing agents have voluntarily foregone their remuneration for a considerable period in the past and have only recently started earning some remuneration.

APPENDIX VIII

(*vide* para 81)

Statement showing the results of examinations held during 1961, 1962 *and* 1963

Examination	Preliminary			Intermediate						Final					
				Group I			Group II			Group I			Group II		
	App.	Passed	%	App.	Passed	%	App.	Passed	%	App.	Passed	%	App.	Passed	%
(a) March, 61	37	7	19%	130	15	13%	135	52	38%	..	..	..	..	..	..
(b) October, 61	30	9	30%	166	45	27%	141	11	7%	..	..	..	..	..	..
(c) April, 62	29	4	13%	225	86	38%	244	54	22%	10	1	10%	14	4	28%
(d) October, 62	40	11	30%	171	22	13%	213	42	19%	17	8	41%	16	7	43%
(e) April, 63	28	3	11%	358	116	33%	361	9	2½%	35	5	14%	36	16	44%
(f) October, 63	44	7	16%	318	76	24%	375	34	9%	57	11	21%	50	33	66%

APPENDIX IX

(*Vide* para 83)

Composition of the Research Programme Committee of the Company Law Division

MEMBERS

1st Committee (1958-60)	*2nd Committee* (1961-62)	*3rd Committee* (1963-64)
Official Members	*Official Members*	*Official Members*
1. Secretary, Company Law Administration.	1. Secretary, Company Law Administration.	1. Secretary, Company Law Administration.
2. Deputy Secretary, Company, Law Administration.	2. Director of Re-Research and Statistics.	2. Director of Research and Statistics.
3. Director of Research and Statistics.		
4. Senior Reserach Officer, Company Law Administration.		
Non-Official Members	*Non-Official Members*	*Non-Official Members*
5. Sh. S. P. Chopra	3. Sh. C. P. Mukherjee	3. Sh. H. T. Parekh
6. Sh. S. N. Desai	4. Mr. J. S. F. Gibbs	4. Dr. R. C. Cooper
7. Sh. C. C. Chokshi	5 Dr. R. C. Cooper	5. Dr. R. K. Hazari
8, Dr R. C. Cooper	6. Dr. R. K. Hazari	6. Sh. H. K. Paranjpe
	7. Sh. S. N. Desai.	

APPENDIX X

Statement showing summary of Recommendations/Conclusions

Sl. No.	Reference to Para No. of the Report	Summary of recommendations/ conclusion
(1)	(2)	(3)
1	5	The Committee hope that early action would be taken in pursuance of the assurance given by the Finance Minister in the Lok Sabha on the 28th November, 1963 to simplify the existing law relating to joint stock companies as much as possible.
2	9	The Committee would have thought it natural if in implementing the decision about the transfer back of the Department of Company Law Administration to the Ministry of Finance, it had been placed under the Department of Economic Affairs along with which it was functioning originally and which has continued to be in charge of other related subjects. The Committee, therefore, cannot resist the conclusion that the position needs to be reviewed.
3	16	The Committee note that there is heavy concentration of companies in Eastern Region. They would, therefore, suggest that a suitable yardstick for assessing the workload in the Regional Offices may be evolved so that the Regional Offices are adequately staffed.
4	18	The Committee feel that a suitable training programme for the staff in the Offices of the Official Liquidators, which is badly in arrears, should be devised and implemented early. They would suggest that in the light of experience gained so far, a suitable training programme for the staff of the headquarters of the Company Law Division, may also be arranged.
5	20	Though there is some improvement as seen from the table given in para 20, the Committee feel that

(1)	(2)	(3)
		the number of applications pending at the end of the year is still very high. The Committee would stress that action may be taken not only to ensure that the applications are disposed of within the target time fixed by the Department, but also to revise the time schedule itself in the light of experience gained so that applications which are received complete in all respects are finally disposed of within six weeks.
6	21	The Committee hope that no efforts would be spared by Government to fulfil in letter and spirit the assurance of "positive helpfulness" given by the then Finance Minister on the floor of the Lok Sabha on the 12th September, 1955 at the time of piloting the Companies Bill, 1953. The Committee are of the view that close contact should be maintained by the Regional Directors and Registrars of Companies with representative chambers of commerce, trade organisations and other professional bodies connected with trade and industry so as to enlist enlightened opinion for adoption of sound standards in company formation and company management. The Company Law Division may also keep a watch from the Centre so as to ensure a coordinated approach. The Committee feel that in the interest of promoting closer liaison it may be worthwhile to constitute an Advisory Committee consisting of representatives of chambers of commerce and industry and other leading bodies of the corporate sector to advise the Regional Directors on such matters as public relations, sound company practices, timely filing of returns etc.
7	22	The Committee observe that the progress made in setting up of Advisory Cells by the chambers of commerce so far, at the instance of the Registrars of Companies, is not satisfactory. They would like to suggest that all efforts should be made by the Registrars of Companies to assist and encourage the setting up of such agencies by all important chambers of commerce in the country.
8	23	The Committee consider that provision of adequate and proper amenities in the Registrars' Offices for the visiting public is absolutely essential. The waiting rooms should not only be properly

(1)	(2)	(3)
		furnished but good reading material and company literature should be placed there so that the visitors can usefully spend their time while waiting for interview etc.
9	29	The Committee consider that as the country is divided into four regions for the purposes of administration of the Companies Act, it would be better if a sitting of the Advisory Commission is held at least once during the course of the year in each of these regions.
10	30	Since the amount of fees realised from the joint stock companies during each of the last three years has far exceeded the amount of expenditure on the Company Law Administration, the Committee suggest that the question of crediting the extra revenue to a special fund for the purpose of undertaking research in corporate matters and in imparting training to accountants, company secretaries etc. may be examined. While there may not be any objection to levy of fees commensurate with the services rendered, the Committee are doubtful whether such a levy should be treated as an additional source for raising General Revenues. The Committee, therefore, suggest that the entire question of rationalisation of fees may be carefully examined by an expert committee.
11	31	The expert committee recommended by the Estimates Committee in para 30 may *inter alia* examine the question of prescribing a minimum initial registration fee and a single annual registration fee in place of the diverse fees which are being levied at present.
12	32	The Committee agree with the instructions issued by the Ministry of Finance in para 5 of their circular letter No. 2/1/56-PR(CLA), dated the 20th January, 1956 addressed to the Registrars of Companies that "Government should not attempt to interpret the provisions of the Act for the public and they should get advice from their legal advisers." The Committee need hardly say that legal interpretation of the provisions of the Act should

(1)	(2)	(3)
		be left to the Courts of Law. It has, however, to be recognised that the Companies Act is a complex piece of legislation and it may not be possible to deny elucidation of its provisions to companies which may seek clarification from the Company Law Division.
13	33	As the object of publishing the unsound practices in the Annual Report is to forewarn others so that they may refrain from resorting to such practices, there is obvious advantage in discussing such matters with the representative bodies of the corporate sector. A duty is also cast upon such representative bodies of the corporate sector to advise their constituent units to refrain from resorting to such unsound practices. The Committee would suggest that only important and serious instances of unsound practices may be included in the Annual Report. They would further suggest that the number of companies found to be resorting to an unsound practice, may be specified in the Annual Report so as to avoid any erroneous impression that the practice is widespread in the corporate sector.
14	34	As the last survey of ownership of shares was conducted in December 1959, the Committee would suggest that survey may again be undertaken towards the end of this year. In fact, it would be useful if such a survey is undertaken at intervals of five years so that Government have timely and reliable information of trends of ownership of shares.
15	35	The Committee feel that the suggestion of the Stock Exchange Association about the operation of Section 73 referred to in para 35 merits detailed consideration by Government so that an equitable policy, can be followed for admission of shares of companies by a Stock Exchange.
16	37	The Committee would suggest that the problem of "cornering" of shares should be investigated in all its aspects so that Government under the powers available to it may take action to prevent "cornering" of shares by unscrupulous elements.

(1)	(2)	(3)
17	39	The Committee would stress that the Commission proposed to be set up under the Commission of Enquiries Act to enquire into monopolies and the concentration of economic power in the Indian economy should be constituted and instructed to submit its report at an early date.
18	40-41	The Committee consider it somewhat paradoxical that while other elements connected with the working of corporate enterprises, *viz.* the workers and the company managements possess well-organised unions or associations, the shareholders who are the kingpin of the corporate system, cannot be said to be even loosely organised. The Committee are constrained to observe that the important issue of organising shareholders into effective organisation has not yet received the attention it deserves in spite of the assurance given by the Minister of Revenue and Civil Expenditure on the floor of the Rajya Sabha at the time of piloting of the Company Law Bill, 1953. The Committee are of the view that Government should undertake suitable studies of the practice obtaining in other countries and facilitate the formation of shareholders' associations by drawing the attention of public to the useful and wholesome role which can be played by such organisations. Since the shareholders' associations can be developed into useful agencies for resolving conflicts and misunderstandings between the investors and the company managements, the Committee are of the view that Government may give due importance and recognition to such associations by actively associating their representatives in various Advisory Committees. The prerequisite condition should, however, be that the shareholders' associations are truly representative bodies and are well organised to serve the larger interests of the shareholders.
19	43	The Committee are of the view that the Company Law Division should make an assessment of the number of companies which have provided for the appointment of not less than two-thirds of the total number of directors according to the principle of proportional representation. This would

(1)	(2)	(3)
		enable Government to judge to what extent this wholesome provision has been made use of by the shareholders and what further educative measures are necessary to bring this provision specifically to their notice.
20	45	The term of office of a majority of the managing agents who were appointed before 15th August, 1960 would expire on the 15th August, 1965. Before renewals of these managing agency contracts come up for consideration before the Advisory Commission and Government, the Committee would suggest that a careful assessment should be made of the impact of the various measures taken by Government to give effect to the regulatory measures introduced by the Companies (Amendment) Act, 1960 and evaluate services rendered by the managing agency system as compared with other forms of management.
21	46	The Committee are generally in agreement with the policy laid down by Government for determining the term of office of a Managing Agent under Section 328 of the Companies Act. The Committee have no doubt that in deciding the term of appointment as Managing Agents, Government would keep in mind the inherent nature of the enterprise so that those requiring heavy capital investment or long-term planning can be allowed a longer tenure within the ceiling limits laid down in Section 328 of the Companies Act.
22	47	The Committee feel that as the Company Law Administration had admittedly not received replies from majority of the companies addressed and full information had also not been received from the remaining companies, it would be worthwhile to review the list of services, which should ordinarily be regarded as falling within the scope of direct responsibility of the Managing Agents, in the light of experience and in the light of full information to be obtained from a representative number of companies. The Committee would also stress that some effective check should be exercised by Government to ensure that the Managing Agents are in fact rendering services for which they receive remuneration as a percentage of net profits, with the approval of Government.

(1)	(2)	(3)
23	48	The Committee hope that an early decision would be taken on the question of imposing restrictions on the number of companies which a firm or body corporate acting as managing agents/secretaries and treasurers can manage in either capacity so that the ambiguity existing at present in this behalf is removed.
24	49	The Committee suggest that the question of suitably including the details of managerial personnel, who are sanctioned remuneration exceeding Rs. 1,20,000 per annum, in the Annual Report on the working and administration of the Companies Act, may be examined.
25	50	The Committee welcome the measure introduced by the Finance Minister in his Budget Speech 1964-65 limiting the amount of deduction admissible to companies for expenditure incurred by them in providing perquisites to their employees for the purpose of the Income-tax Act. The Committee also note that some of the leading companies are already including information about the perquisites given to their Directors in the Profit and Loss Accounts which are enclosed with their Annual Reports. There should, therefore, be no objection by other companies to the inclusion of information about the perquisites given to Directors in their Profit and Loss Accounts. As this matter has been engaging considerable public attention, the Committee would suggest that the position may be reviewed by Government in consultation with the representative bodies of chambers of commerce and industry.
26	54	The Committee consider that as the Institutes of the Chartered Accountants and the Cost and Works Accountants have now been functioning for a number of years, it is time that their work is reviewed by a Committee, consisting of leading non-officials and experts in the field. They should, in particular, assess the extent to which the Councils have discharged their functions of regulating the engagement and training of articled/audit clerks, holding examinations, exercising disciplinary powers against members etc.
27	55	The Committee would like Government to pursue the question of introduction of Management Accountancy in public undertakings vigorously so that it can be used as an instrument for effecting economy and improving efficiency.

(1)	(2)	(3)
28	56	The Committee are inclined to agree with the views expressed in the Seventh Annual Report of Company Law Administration that a Chartered Accountant who is a near relation of a Director of a company or of a partner of a firm acting as a managing agent/secretary and a treasurer of a company should refrain from accepting appointment as auditor of that company, and hope that some effective action would be taken by Government in the matter.
29	58	The Committee hope that not only the "Statement of Auditing Practices" would be brought out early, but that the Council of the Institute of Chartered Accountants of India would exercise continuous vigilance to see that both the "Code of Conduct" and "Statement of Auditing Practices" are followed in letter and spirit by the members of the profession.
30	61	The Committee have been informed that the number of investigations ordered during the period 1956-57 to 1962-63 was 25. The Committee observe that out of 25 cases of investigations instituted during the period 1956-57 to 1962-63, Inspectors' reports were received in 16 cases, while investigations were dropped in 3 cases. The Committee are further informed that out of 6 cases pending investigation, 1 has been outstanding for more than 8 years, 3 for more than 3 years, 1 for more than 2 years, and 1 for more than 1 year. The Committee are perturbed to note that inordinate delays are taking place in investigations ordered by Government under Sections 234 to 251 of the Companies Act. They are of the view that a concerted drive is necessary to expedite disposal of these long pending cases. Steps should also be taken to see that investigation in a case is completed, as far as possible, within one year. They would like to lay stress on the desirability of appointing departmental officers, preferably, a team of inspectors consisting of an Accounts Officer and Solicitor who may be in a position to cover both the accounting and legal aspects of an investigation.
31	62	The Committee are concerned at the delay in the investigation into the affairs of the four companies of the Sahu-Jain Group which is being conducted by a Chartered Accountant, who has been

(1)	(2)	(3)
		engaged by Government at a very high rate of remuneration and allowances. The Committee would stress the need for completing the investigation at an early date.
32	65	The Committee observe that the number of pending prosecution cases which had gone down from 3699 in 1960 to 1506 in 1962 has risen again to 2204 in 1963. The Committee cannot help remarking that legislation can be effective only if the parties at fault are brought to book and put in the dock without avoidable delay. The Committee would, therefore, suggest that the Company Law Division should review the position and take such action as is necessary to streamline the prosecution machinery to secure expeditious filing and disposal of cases.
33	67	The Committee suggest that suitable measures such as close scrutiny of returns filed under Section 551 by liquidators may be taken to see that voluntary liquidations are completed expeditiously and without prejudice to the interests of the shareholders concerned.
34	68	The Committee are surprised to note that the information about the progress made in winding up of the companies after the replacement of Voluntary Liquidators by Official Liquidators is not available centrally in the Company Law Division. The Committee would stress that a close watch may be kept by the Company Law Division on the progress made after the appointment of Official Liquidators so that the purpose underlying such appointments is fulfilled.
35	69	The Committee would suggest that statistics relating to assets realised and disbursements made by voluntary liquidators may be suitably mentioned in the Annual Reports of the Company Law Division.
36	71	The Committtee are constrained to observe that the number of companies in liquidation for a period of 5 years or more constitutes 73·4 per cent of the total number of cases and that there are as many as 71 companies in respect of whom liquidation proceedings have been pending for more than 15 years.

(1)	(2)	(3)
		The Committee would stress that continuous efforts should be made to rationalise and simplify the winding up of the Companies having due regard to the need for safeguarding the interests of the shareholders.
		The Committee are glad to note that the Company Law Division have thought of getting compiled the history of companies under liquidation. The progress made in compiling the history sheets has, however, been somewhat halting.
		The Committee would suggest that priority should be given to the preparation of history sheets of companies which have been under liquidation for 5 years or more so that the history sheets can be studied centrally by the Company Law Division to provide guidance for expediting the winding up proceedings.
37	72	Since the exemptions under Sub-section (6) of Section 25 of the Companies Act, 1956 were last granted nearly three years ago, the Committee would suggest that Government may review the position in the light of experience and decide what further exemptions could be given to chambers of commerce, trade associations etc. to facilitate their functioning.
38	73	The Committee suggest that the qpestion whether the Registrars of Companies should receive notices of all general meetings of public companies and whether they should also be empowered to send some authorised persons to attend general meetings as visitors without any power of speaking or voting, may be examined.
39	74	In view of the representations made before the Committee by a number of leading non-official organisations, the Committee would like the Company Law Division to examine the practical utility of various forms and returns which are at present required to be filed with the Registrars of Companies so as to see if any these could be dropped, simplified or abridged.
40	75	The Committee suggest that Government may examine the feasibility of permitting an authorised representative of the signatory of the forms and

(1)	(2)	(3)
		returns to carry out the corrections which the Registrars consider necessary.
41	76	With a view to enabling shareholders to take intelligent interest in the affairs of the companies engaged in production, Government may consider the feasibility of persuading such companies to furnish to the Stock Exchanges and to shareholders, if possible, quarterly statements containing *inter alia* the following information:— (i) General Survey of Business development; (ii) Comparative figures relating to production and sales; and (iii) Current and future prospects.
42	80	The Committee would suggest tat legal interpretation of Section 592(1)(d) of the Companies Act may be obtained from the Ministry of Law so that the position in this behalf becomes clear.
43	81	The Committee would suggest that the question of setting up of an autonomous body composed of representatives drawn from the Central Ministries concerned and from leading non-official crganisations of commerce and industry, for the purpose of regulating training of the profession of company secretaries and conducting examinations may be examined.
44	82	With a view to providing adequate coaching facilities to students preparing for examination of the Company Secretaries, the Committee suggest that Government should lay down criteria and accord formal recognition to institutions providing such facilities in the country after carrying out proper inspection. In this connection, they would also like to refer to the recommendation made in para 30.
45	83	The Committee find that the composition and functions of the Research Programme Committee are being notified each time such a Committee is constituted. As the Research Programme Committee has now been functioning for more than five years, it is suggested that the constitution,

(1)	(2)	(3)
		functions and terms of appointment of the members of the Committee may be laid down in general terms. This would endow the Research Programme Committee with the attributes of a Standing Advisory Committee.
46	84	The Committee agree with the recommendation made by the Third Research Programme Committee that there should be greater liaison between the Research Division and the Universities so that research on corporate matters might get a fillip.
47	85	The Committee would like to emphasise the need for timely publication of details of research work in progress in Universities, including the names of the research workers and supervisors and the names of the sponsoring or aiding institutions so that it may help all those who are interested in the subject to get in touch with the research workers, supervisors etc. concerned.
48	86	The Committee would like to stress that the Company Law is not an end in itself but a means; it is an instrument of policy for implementing the economic policy of the Government as laid down by Parliament and the success of the Company Law Administration would depend on its effectiveness in giving shape to this economic policy, particularly, the effective and proper guidance of the private sector and prevention of any unhealthy practices in that sector, leading to concentration of wealth.

APPENDIX XI

Analysis of Recommendations in the Report

I. Classification of recommendations:

A. Recommendations for improving organisation and working:
S. Nos. 2—4, 6, 8—13, 16, 18—23, 26, 28, 29, 33, 34, 36, 38, 43—48.

B. Recommendations for effecting economy:
S. Nos. 5, 27, 30, 31, 32, 39.

C. Miscellaneous:
S. Nos. 1, 7, 14, 17, 24, 25, 35, 37, 40, 41, 42.

II. Analysis of more important recommendations directed towards economy:

S. No.	S. No. as per summary of recommendations (Appendix X)	Particulars
1.	5	Revision of the time schedule laid down for disposal of applications so as to further reduce the time of disposal of applications.
2.	27	Introduction of Management Accountancy in public undertakings so as to effect economy and improve efficiency.
3.	30	Expediting disposal of the large number of investigation cases pending with the Inspectors by launching a concerted drive.
4.	31	Early completion of investigations into the affairs of four companies of the Sahu-Jain Group.
5.	32	Streamlining the prosecution machinery so as to secure expeditious filing and disposal of casses.
6	39	Examining practical utility of various forms and returns so as to see if any of these could be dropped simplified, amalgamated or abridged.

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