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**STANDING COMMITTEE ON FINANCE
(2014-15)**

SIXTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

**DEMANDS FOR GRANTS
(2015-16)**

THIRTEENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2015 / Vaisakha, 1937 (Saka)

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(2014-2015)**

(SIXTEENTH LOK SABHA)

MINISTRY OF CORPORATE AFFAIRS

**DEMANDS FOR GRANTS
(2015-16)**

Presented to Lok Sabha on 24 April, 2015

Laid in Rajya Sabha on 24 April, 2015



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2015 / Vaisakha, 1937 (Saka)

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ANNEXURE

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16 April, 2015

COMPOSITION OF COMMITTEE ON FINANCE – 2014-15

Dr. M. Veerappa Moily - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Sudip Bandyopadhyay
5. Shri Nishikant Dubey
6. Shri P.C. Gaddigoudar
7. Dr. Gopalakrishnan C.
8. Shri Shyama Charan Gupta
9. Shri Prataprao Jadhav
10. Shri Rattan Lal Kataria
11. Shri Bhartruhari Mahtab
12. Shri Prem Das Rai
13. Shri Rayapati Sambasiva Rao
14. Prof. Saugata Roy
15. Shri Jyotiraditya M. Scindia
16. Shri Gajendra Singh Sekhawat
17. Shri Gopal Shetty
18. Shri Anil Shirole
19. Shri Shivkumar Udasi*
20. Dr. Kiritbhai Solanki
21. Dr. Kirit Somaiya

RAJYA SABHA

22. Shri Naresh Agrawal
23. Shri Naresh Gujral
24. Shri A. Navaneethakrishnan
25. Shri Satish Chandra Misra**
26. Dr. Mahendra Prasad
27. Shri P. Rajeeve
28. Shri C.M. Ramesh
29. Shri Ajay Sancheti
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|----------------------|
| 1. | Shri P. K. Misra, | - | Additional Secretary |
| 2. | Shri P. C. Tripathy | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Ujjwal Pant | - | Committee Assistant |

* Nominated w.e.f. 24.02.2015 vide Bulletin Part - II dated 24.02.2015 against the vacancy caused due to induction of Shri Jayant Sinha, MP to the Union Council of Ministers w.e.f 09.11.2014.

** Nominated w.e.f. 08.01.2015 vide Bulletin Part - II dated 12.01.2015 against the vacancy caused by retirement of Shri Brajesh Pathak, MP from Rajya Sabha.

INTRODUCTION

I, the Chairperson of the Committee on Finance, having been authorised by the Committee, present this Thirteenth Report (Sixteenth Lok Sabha) on 'Demands for Grants (2015-16)' of the Ministry of Corporate Affairs.

2. The Demands for Grants (2015-16) of the Ministry of Corporate Affairs were laid on the Table of the House on 20 March, 2015 under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took oral evidence of the representatives of the Ministry of Corporate Affairs on 31 March, 2015. The Committee wish to express their thanks to the representatives of the Ministry of Corporate Affairs for appearing before the Committee and furnishing the material and information which the Committee desired in connection with the examination of the Demands for Grants (2015-16).

4. The Committee considered and adopted this Report at their Sitting held on 16 April, 2015.

5. For facility of reference, the Observations / Recommendations of the Committee have been printed in bold at the end of the Report.

**New Delhi;
16 April, 2015
26 Chaitra, 1937 (Saka)**

**DR. M. VEERAPPA MOILY,
Chairperson,
Committee on Finance.**

REPORT

INTRODUCTORY

1. The mandate of the Ministry, inter alia, includes the administration of a wide range of statutes for the regulation of the corporate sector including the following Acts:

- (i) The Companies Act, 2013 and those provisions of Companies Act, 1956 which are still in force
- (ii) The Competition Act, 2002
- (iii) The Limited Liability Partnership (LLP) Act, 2008
- (iv) The Chartered Accountants Act, 1949 (v) The Cost and Works Accountants Act, 1959
- (vi) The Company Secretaries Act, 1980
- (vii) The Partnership Act, 1932
- (viii) The Societies Registration Act, 1860
- (ix) The Companies (Donations to National Funds) Act, 1951

2. Demand No. 19 pertaining to the Ministry of Corporate Affairs for the year 2015-16 amounts to Rs. 271.88 crore, out of which Rs. 242.78 crore is under the Revenue Expenditure and Rs. 29.10 crore is under the Capital Expenditure. The entire allocation is voted.

Statement of Budget Allocation and Expenditure

(Rs. in crore)

Year	Budget Estimates			Revised Estimates			Actual Expenditure			(-)Savings (+) Excess		
	Plan	Non-Plan	Total	Plan	Non-Plan	Total	Plan	Non-Plan	Total	Plan	Non-Plan	Total
2012-13	32.00	213.50	245.50	28.00	201.22	229.22	24.43	181.52	205.95	- 7.57	- 31.98	- 39.55
2013-14	34.00	221.28	255.28	21.00	212.36	233.36	20.38	208.83	229.21	- 13.62	- 12.45	- 26.07
2014-15	24.00	231.25	255.25	23.00	228.92	251.92	16.61	193.39	210.00*			

* Expenditure as on 28.02.2015.

3. The grants of the Ministry of Corporate Affairs in Demand No.19 provides for expenditure on the Secretariat of the Ministry of Corporate Affairs, This includes Office of the Director General of Corporate Affairs, seven offices of Regional Directors, fifteen offices of Registrar of Companies (ROCs), nine offices of Registrar of Companies-cum-Official Liquidators (ROC-cum-OLs), fourteen offices of Official Liquidators (OLs), three attached offices viz. Company Law Board, Serious Fraud Investigation Office and

Competition Appellate Tribunal, Grants-in-aid-General/Grants-in-aid-Salaries for the Competition Commission of India (CCI) and Indian Institute of Corporate Affairs. New institutional structures consisting of the National Company Law Tribunal (NCLT), the National Company Law Appellate Tribunal (NCLAT)(both the foregoing are under order of stay of the Hon'ble Supreme Court at present), National Financial Reporting Authority (NFRA), the National Financial Reporting Appellate Authority (NFRAA), the Special Courts and the Investor Education & Protection Fund (IEPF) Authority have to be set up in pursuance of the Companies Act, 2013.

4. The detailed item-wise position giving budgetary estimates, revised estimates, actual expenditure under Non-Plan, achievements vis-à-vis targets along with the reasons for not achieving the targets in respect of various activities/schemes of this Ministry during the last three years is as follows:-

Salaries:

(₹ in crore)				
Year	Budget Estimates	Revised Estimates	Actual Expenditure	(-) Savings (+) Excess
2012-13	71.52	73.43	73.78	(+) 2.26
2013-14	79.30	79.36	78.76	(-) 0.54
2014-15	87.00	85.09	83.93*	

* Expenditure as on 28.02.2015.

5. The savings of expenditure under Salaries of the Ministry have been on account of non-filling of various categories of vacant posts in the field and attached offices under the administrative control of this Ministry during the fiscal years 2013-14 and 2014-15. However, the excess expenditure was incurred on salaries during the year 2012-13 due to payment of arrears on promotion of the ICLS Officers in different field offices of the Ministry including outstanding bills of leave encashment, LTC etc.

Office Expenses:

(₹ in crore)				
Years	Budget Estimates	Revised Estimates	Actual Expenditure	(-) Savings (+) Excess
2012-13	16.39	16.48	16.75	(+) 0.36
2013-14	12.96	15.44	15.89	(+) 2.93
2014-15	17.10	17.60	13.59*	

* Expenditure as on 28.02.2015.

6. The savings under Office Expenses have been on account of the Ministry strictly enforcing the austerity measures of the Ministry of Finance and following the prescribed ceilings on expenditure in the year 2014-15 upto 31.01.2015. However, during the year 2012-13 and 2013-14, the funds were re-appropriated under the Object Head "Office

Expenses” for meeting the committed liabilities during the said years in the offices i.e. Headquarters, Regional Directorates, Registrar of Companies and Official Liquidators of this Ministry at different locations in the country for smooth functioning of the organizations. In addition, funds were also re-appropriated to the office of the SFIO to meet the committed liabilities during the year 2012-13 and 2013-14.

Rents, Rates & Taxes:

(₹ in crore)				
Year	Budget Estimates	Revised Estimates	Actual Expenditure	(-) Savings (+) Excess
2012-13	6.87	6.69	5.48	(-) 1.39
2013-14	5.46	4.54	3.90	(-) 1.56
2014-15	5.12	5.50	3.68*	

* Expenditure as on 28.02.2015.

7. The savings provided under Rent, Rates & Taxes during the years 2012-13 and 2013-14 were due to the fact that the some of the field offices of this Ministry which were functioning from rented buildings at various stations like Chandigarh, Jaipur, Bangalore and Chennai shifted to the Ministry's own office complexes. The funds provided for National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT) could not be utilized as these offices could not be made operational during the said years on account of a stay in Hon'ble Supreme Court. During the year 2014-15, the savings are also available due to the fact that the funds provided for National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT) are not being utilized as these offices are not being made operational during the current year too. The office of the Regional Director, Hyderabad as well as office of SFIO will also be shifted from rented premises to the newly constructed “Corporate Bhawan Hyderabad during the current financial year 2014-15.

MCA 21 e-Governance Project:

(₹ in crore)				
Year	Budget Estimates	Revised Estimates	Actual expenditure	(-) Savings (+) Excess
2012-13	45.14	39.73	26.93	(-) 18.21
2013-14	41.00	36.80	36.78	(-) 4.22
2014-15	39.66	38.50	22.19*	

* Expenditure as on 28.02.2015.

FY 2012-13

8. For the Financial Year 2012-13 the BE was Rs. 45.14 crore but after 10% cut (in January, 2013) the allocated RE was Rs.39.73 crore.

9. A new Plan Scheme under the Revenue Section i.e. Improving the Functioning of Official Liquidators and Application of e-Governance of Liquidation and Winding up of Companies” was sanctioned with the budgetary provision of Rs.4.00 crore for the year

2012-13. The expenditure was not incurred from this grant because the Ministry had decided to implement the OL e-Governance project as a part of MCA21 extension project instead of implementing it as a separate plan scheme.

10. The payment of Rs.8.99 crore to TCS for the quarter ending on 16.01.2013 (24th Quarter) was not made in FY 2012-13 as this was the last quarter for the outgoing Operator and various deliverables in the project as well as bank payments/receipts required reconciliation.

FY 2013-14

11. For the Financial Year 2013-14 the BE was Rs. 41.0 crore. After 10% cut the allocated RE was Rs. 36.80crore. Thus the saving of Rs. 4.22 crore had been indicated against BE for 2013-14 which was on account of retention @15% per quarter for non-implementation of Phase I and Phase II to deliverables by M/s Infosys Ltd.

12. However, the actual expenditure booked under the head 'Modernization, Computerization and Networking' has been Rs. 36.78 crore as against the BE of Rs. 41.00 crore and RE of Rs. 36.80 crore.

Investor Education and Protection Fund (IEPF):

13. The yearly allocation for undertaking the activities under IEPF and utilization of the yearly grant during the last three years is given below:-

(Rs in crore)

Year	Budget Estimates	Revised Estimates	Actual Expenditure	(-) Savings (+) Excess
2012-13	5.00	5.00	4.23	(-) 0.77
2013-14	5.00	4.50	4.38	(-) 0.62
2014-15	3.00	3.00	2.25*	

* Expenditure as on 28.02.2014.

14. The Companies Act, 1956 provides for establishment of the Investor Education and Protection Fund (IEPF) under Section 205C for promoting investor awareness and protecting their interests.

15. The Ministry has been organizing Investor Awareness Programmes (IAPs) in association with the three Professional Institutes (PIs) – Institute of Chartered Accountants of India, Institute of Company Secretaries of India and Institute of Cost Accountants of India to improve the quality of such programmes. The guidelines have been formulated for organizing investor awareness programmes through Regional Directors. The approved scale of allocation of such programme in Mumbai, Delhi,

Kolkata, Chennai, Bangalore and Hyderabad and satellite towns of these cities with minimum 100 participants and programme being organized through PI is ₹35,000/-. The allocation for such programme organized through PIs in other capital cities and District Headquarters (other than NE states) with minimum 100 participants is ₹25,000/-. The allocation is ₹5,000/- per programme for the programmes being organized through Resource Persons (RPs) appointed by the PIs. Seeing the difficulties in organizing the IAPs in North-East Region and to bring awareness among the investors of that region, the allocation has been enhanced to ₹30,000/- for capital cities through PIs and ₹7,000/- per programme for the programmes conducted through RPs.

16. The number of programmes conducted by the Ministry through Professional Institutes in the last three years is as follows:-

Year(s)	No. of Programmes
2012-2013	2074
2013-2014	2897
2014-2015*	1491

*(Upto 28.02.2015)

17. The Ministry has set up a website for the companies to file details of unpaid and unclaimed amounts of investors, which have not yet been transferred to IEPF (Consolidated Fund of India). This website is enabling the investors to search and locate the relevant information of such amounts.

18. The Companies Act, 2013 provides for establishment of an IEPF Authority with the responsibility of refunding the unpaid amounts to investors in addition to existing activities of this Ministry. Ministry is in the process of making rules for establishment and working of the IEPF Authority.

19. For meeting the expenditure incurred on activities relating to investors' awareness, an amount of Rs. 3.00 crore has been allocated during the current financial year. There are no constraints/difficulties and the Ministry expects 100% utilization of funds during the current financial year.

Corporate Data Management (CDM)

20. The Corporate Data Management (CDM) has been introduced as a new Central Sector Plan Scheme of the Ministry with an outlay of Rs. 32.16 crore over two years period (2015-17) in the 12th Five Year Plan. An amount of Rs. 5.00 crore has been allocated to CDM for the financial year 2015-16.

21. The scheme of Corporate Data Management seeks to create an in-house data mining and analytics facility in the Ministry to effectively utilise the vast repository of information filed in its corporate Registry. In addition to providing authentic and clean data to all stakeholders in a more accessible manner, the facility aims at making available the information in an organised and structured manner to the Ministry and to other policy and decision making agencies.

22. The four specific objectives of the Plan Scheme are as under:-

- (i) Disseminate shareable information, after cleaning of data, in processed/tabular forms, for use by stakeholders.
- (ii) Sharing of corporate information, after cleaning of data, in customised forms, for use by the Government Departments and agencies for policy making purposes.
- (iii) Enhance and institutionalise Ministry's in-house capabilities for corporate Data Mining and Information Management so as to serve as the most authentic and updated 'knowledge-hub' for Indian corporate sector official data.

23. The year 2014-15 is the first year of implementation of most of the provisions of Companies Act, 2013, which was enacted on August 2013. As on 31.12.2014, 283 Sections of the Companies Act, 2013 have come into force out of a total of 470 Sections. The Ministry also notified 22 set of rules for the relevant Sections of the Companies Act. Other provisions of the Companies Act, 2013 could not be notified because of a subjudice case in Supreme Court relating to NCLT and NCLAT. Till then, the relevant provisions of Companies Act, 1956 continue to remain on the statute book.

24. In a written reply to a query as to why is the Ministry hesitant to bring necessary amendments in the Companies Act, 2013 so as to incorporate the changes in the design of NCLT as suggested by the Supreme Court in its judgment dated 11 May, 2010 and end this stalemate over the full implementation of the Companies Act, the Ministry replied as follows:

The Companies Act, 2013 vide Sections 407 to 434 provides *inter-alia* for setting up of (a) the National Company Law Tribunal (NCLT) and (b) the National Company Law Appellate Tribunal (NCLAT). The provisions related to constitution of NCLAT were earlier introduced by Companies Amendment Act, 2002. These provisions were initially challenged in the Madras High Court and then finally the matter was decided by Supreme Court vide its judgment dated 11th May, 2010. These observations of the apex court were incorporated in the Companies Act, 2013 barring a few exceptions where modifications were made, keeping in view practical and implementation aspects and without losing sight of the spirit behind the judgment.

The provisions of the Act have been challenged by the Madras Bar Association (MBA) mainly on the grounds that constitution of NCLT / NCLAT does not conform with the judgment of the apex court. In addition, after the judgment dated 25.09.2014 of the Supreme Court in the matter of National Tax Tribunal wherein the Constitution Bench of Hon'ble Supreme Court has struck down various provisions of National Tax Tribunal Act, 2005 the MBA has raised some more grounds also. The following salient issues have been raised in the writ petition:

- (1) The Indian Corporate Law Service (ICLS) and Indian Legal Service (ILS) officers of the rank of Secretary or Additional Secretary and not as prescribed u/section 409(3)(a) of the Act should be qualified to be Technical Members of NCLT.
- (2) Selection Committee for Members of NCLT and Technical Members of NCLAT should provide for a casting vote for Chairman and not include Secretary, Department of Financial Services in the Ministry of Finance as a Member.
- (3) Common administrative support for all tribunals, including NCLT/NCLAT should be from Ministry of Law and Justice and not from respective departments.
- (4) NCLAT will be hearing matters involving substantial questions of law, which is a judicial function and should not be entrusted to quasi-judicial body like NCLAT.
- (5) Power to punish for contempt should not be conferred on quasi-judicial tribunals.
- (6) Composition of benches in the appellate tribunal should be specified in the Act.
- (7) Provision for re-appointment of chairperson, president and members of NCLT/NCLAT would impact judicial independence.
- (8) Removal of members should be with 'concurrence' and not in 'consultation' with the Chief Justice of India.
- (9) Location of benches/circuit benches should be co-terminus with that of the jurisdictional seat of High Court and not be specified by Central Government.
- (10) The saving clause prescribing that a vacancy in NCLT/NCLAT will not invalidate its acts or proceedings is invalid.

As the matter is before the Constitution Bench, Ministry is actively pursuing the case in court."

25. During examination of the Demand for Grants (2015-16), the Ministry was enquired about the decline in registration of companies under the new Company Law regime. The Ministry in its written reply stated as under:

"The subordinate legislative framework under the Companies Act, 2013 was prescribed after following a detailed consultative process. The draft rules were placed on the Ministry's website for comments from all interested stakeholders. A large number of comments were received. These were examined by a committee set up by the Government on the basis of which the rules were finalized. Further, the Companies Act, 2013 has recognized certain new concepts and disclosure

requirements. The subordinate legislative framework/rules reflect details with reference to such provisions.

The number of Public Limited Companies, Private Limited Companies and Limited Liability Partnerships (LLPs) registered with MCA for the years 2012-13, 2013-14 and 2014-15 (up to February 2015) is given in the table below:-

Table: Number of new companies registered and Prospectus for IPO filed

Financial Year	Public Limited Companies	Private Limited Companies	Total No. of Companies Limited by Shares	Limited Liability Partnerships (LLPs)
(1)	(2)	(3)	(4) = (2) + (3)	(5)
2012-13	3,385	88,998	92,383	5,167
2013-14	3,101	94,924	98,025	7,982
2014-15 (till 28.02.2015)	1,160	55,948	57,108	12,348

Out of the Public Limited companies registered during the said years, the number of companies who filed their prospectus with MCA before issuing an Initial Public Offer (IPO) are 101, 158 and 'Nil' for the years 2012-13, 2013-14 and 2014-15 respectively.

There is no evidence or feedback suggesting that the decline in number of registration is in any way attributable to "cumbersome subordinate legislative framework". However, it is a fact that the provisions of Companies Act, 2013 have restrictions for floating "shell companies". Further, the decline may also be attributable to introduction of new e-forms and time taken by professionals to become familiar with such forms."

ADMINISTRATIVE STRUCTURE OF THE MINISTRY

26. The Ministry of Corporate Affairs has a three tier set-up, namely, the Headquarters at New Delhi, office of the Director General of Corporate Affairs (DGCA) at Noida, seven Regional Directors, fifteen offices of Registrar of Companies (ROCs), nine offices of Registrar of Companies-cum-official Liquidators (ROC-cum-OLs) and fourteen offices of Official Liquidators (OLs) in States and Union Territories. A new Office of the ROC-cum-OL, Bilaspur was established on 01.04.2014 for promoting registry functions and liquidation proceeding in the State of Chattisgarh.

27. The 24 offices of the Registrar of Companies (including nine offices of RoC-cum-OL) are located throughout the country. They perform registry functions as envisaged under the Companies Act starting with the incorporation of companies, acceptance of statutory annual filings and event based return/applications etc. and to accord approvals wherever required. Registrars are also responsible for compliance of statutory provisions of the Companies jurisdiction. The regulatory functions include scrutiny of the Annual Returns, Balance sheets and other documents filed by the companies under the provisions of the Companies Act, taking necessary action on the irregularities and non-

compliance noticed as a result of such scrutiny, and initiating legal action against defaulting companies for contravention of the provisions of the Companies Act. In addition to above, 9 ROC-cum-OL offices perform the duties of Official Liquidator also.

28. The Regional Directors supervise the working of the offices of the Registrars of Companies and Official Liquidators located in different locations in the country. They also maintain liaison between the respective State Governments and the Central Government on matters relating to the administration of the Companies Act/LLP Act. At present there are seven Regional Directors with their offices at Noida, Chennai, Kolkata, Mumbai, Ahmedabad, Hyderabad and Shillong representing the seven regions of the country North, South, East, West, North Western Region (NWR), South Eastern Region (SER) and North Eastern Region (NER) respectively. The Regional Directors serve as an intermediate Administrative level between the Ministry and the field offices for the ROCs, ROC-cum-OLs and OLs. The main function of these offices is to advise and guide the ROCs & OLs on technical and administrative matters, to report to the Government particularly on the activities and operations of companies and to function as a link between the Central Government and the States Government in their respective regions. Similarly, they are responsible for administrative supervision of the ROCs, ROC-cum-OLs, in their day-to-day functioning. Additionally, the Regional Directors have also been delegated powers to directly take up work and dispose off certain business under the provisions of the Companies Act.

Registrars of Companies (RoCs)

29. The Ministry is taking necessary steps for filling up vacant posts in the Indian Corporate Law Service (ICLS) – Group-A, Company Prosecutor (Group-B), Senior Technical Assistant (Group-B) and Junior Technical Assistant (Group-B). The status of sanctioned strength and present strength in these posts is indicated below:-

Sr. No.	Name of Post	Sanctioned Strength	Present strength
1.	Indian Corporate Law Service (ICLS) (Group-A)	292	216
2.	Company Prosecutor (Group-B)	30	25
3.	Senior Technical Assistant (Group-B)	128	115
4.	Junior Technical Assistant (Group-B)	231	117*

* In addition (i) Requisition sent to SSC – 66
(ii) Offer of appointment issued - 21

30. The function of RoCs are periodically reviewed by the concerned Regional Directors. An institutional mechanism for taking periodic review at the Ministry level is being set up.

31. During examination of the Demand for Grants (2015-16), it was enquired from the Ministry as to what is the mandate of the office of DGCA and why has the Ministry followed a process of erratic fund allocation to this offices over the past few years. The Ministry in its reply stated as following:

"The post of Director General Corporate Affairs (DGCA) in the Indian Company Law Service cadre was created in 2008. The post could not filled till now because of litigation. The officer recommended for appointment in November, 2013, to fill up this post, took voluntary retirement and hence, the post remained vacant. A fresh proposal for filling this post has been sent to UPSC and it is expected that a meeting of the promotion committee will be held shortly. It is in this background that the budgetary grant for the office of DGCA was reduced in RE (2014-15). It is expected that this post will be filled in the year 2015-16. Accordingly, the BE (2014-16) has been kept at Rs. 12 lakh.

As far as the mandate of the office of DGCA is concerned, it is to function as a link between the Ministry and the field offices and also supervise the functioning of the offices of Registrar of Companies for improved delivery of service and Official Liquidators for efficient completion of the processes of liquidation. It will also be responsible for incorporation, enforcement and other matters relating to implementation of the Companies Act."

32. On being asked that in view of the fact, that office of DGCA has remained vacant except for a brief period in 2013 and there seems to overlapping of mandate between the two offices of Regional Directors and the office of DGCA, why doesn't the Ministry scrap the office of DGCA and take steps to strengthen the existing offices of Regional Directors, the Ministry replied as under:

"The post of Director General, Corporate Affairs (DGCA) in the ICLS Cadre was created in 2008. The post could not be filled till now (since creation) because the matter went under litigation.

The post of DGCA has been created in Higher Administrative Grade (HAG) whereas the post of Regional Director is Senior Administrative Grade (SAG). It was envisaged that DGCA would be assisted by SAG officers in normal functioning and supervise functioning of field officers of the Ministry through Regional Directors, whereas, the Ministry will confine itself to policy formation, strategy, review, monitoring, evaluation and such of the regulatory functions as are assigned to the Central Government under the Law. Thus, O/o DGCA will work as an apex office and all references from the offices of Regional Directorates will be made to this office for clarifications/directions. This office will consult the Ministry only on policy issues and all directions from Ministry to Regional Directors/Registrar of Companies will be given through this office to have a uniform policy all over the country.

In view of the fact stated above, the office of DGCA will have sufficient responsibility and work to discharge after appointment of an officer to this post."

SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)

33. Serious Fraud Investigation Office (SFIO) was set up through a resolution dated 2.7.2003. It is a multi-disciplinary investigation agency, wherein experts from diverse sectors like banking, capital markets regulation, corporate regulation, law, forensic audit, taxation, information technology etc. work together to unravel corporate frauds. Cases requiring investigation under the Companies Act consequent upon preliminary inquiries or inspections, where there are indications of serious breach of law, are assigned to the SFIO. The ambit of investigation by the organisation is not confined to the Companies Act but could cover other statutes including the Indian Penal Code. Under the Companies Act, 2013, SFIO has now been given statutory status. It is headed by a Director, in the rank of Joint Secretary to the Government of India.

34. During 2014-15 (upto 31.12.2014), the Ministry referred 31 cases to SFIO and SFIO has submitted investigation reports in 43 cases. 83 investigation cases are under consideration by SFIO as on 31.12.2014.

35. During 2014-15 (upto 31.12.2014), SFIO has filed 50 complaints before different designated Courts covering various charges. Now SFIO has initiated the process of filing a single complaint per case, wherever possible by clubbing all the related charges for effective control and monitoring of cases.

36. The Ministry informed the Committee that on account of growing menace of corporate frauds impacting the population belonging to the lower strata of society, the Ministry had initiated a process of developing an Early Warning System (EWS) aimed at generating alerts for detecting cases of potential fraud and malfeasance. The Ministry had tested an early warning system, development in-house, during the year 2013-14. This system was dropped on account of unsatisfactory results.

37. The Ministry has also set up a Computer Forensics Lab in SFIO for revamping its Market Research and Analysis Unit (MRAU) through induction of appropriate technology and skilled technical manpower. It is proposed to exercise greater surveillance over corporate frauds through examination and analysis of media reports by MRAU and for recommending to the Ministry in specific cases where inspection and investigation can be ordered into a suspected fraud.

38. The budget allocation of the SFIO has also been enhanced as per details given below:-

Sr. No.	Year	BE (₹ in crore)	RE (₹ in crore)	AE (₹ in crore)	Year on year increase/decrease (%)
	2013-14	7.92	9.19	9.25*	
	2014-15	9.66	10.73		(+)21.96
	2015-16	11.56			(+)19.62

* Additional fund allocated through re-apparition with the approval of Ministry of Finance.

39. The Ministry was enquired about the manpower position and burden of cases in SFIO. The written reply stated as under:

The latest vacancy position in SFIO across all levels is given in the table below:

SANCTIONED AND ACTUAL STRENGTH OF SFIO AS ON 23.03.2015					
Sl.No.	Posts	Group	Sanctioned Strength	Actual Strength	Vacancy
1	Director	A	1	1	0
2	Additional /Joint Director	A	18	4	14
3	Deputy Director	A	8	4	4
4	PPS	A	1	1	0
5	Senior Assistant Directors	B	29	18	11
6	Senior Prosecutors	B	5	0	5
7	Assistant Directors	B	30	23	7
8	Prosecutors	B	5	1	4
9	Office Superintendent	B	2	0	2
10	Private Secretary	B	9	1	8
11	Assistants	B NGO	6	1	5
12	Personal Assistant	B NGO	16	1	15
	TOTAL		130	55	75

40. Continuous efforts are being made to overcome the shortage of manpower in SFIO. Some of the initiatives taken as well as present status of finalization of Recruitment Rules are as under:-

- a) Draft Recruitment Rules (RRs) for various posts have been framed on which approval from DOPT has already been obtained. The draft RRS for the posts of Additional/Joint Directors are in the process of vetting by UPSC. As the proposal is to be vetted by UPSC, followed by consultation with the Ministry of Law before notification, it is not feasible to confirm the date of finalization of RRs at this stage. However, the same is being followed up with UPSC on regular basis.
- b) To enable faster appointment of Consultants/Experts, it has been proposed to create an approved panel of Chartered Accountants, similar to the practice followed in other departments like Income Tax, CBI etc. A scheme for engagement of Consultants in different fields is under consideration with the Department of Expenditure.
- c) The services of four Consultants (Law) who were engaged on contractual basis are being utilized to overcome the difficulties faced due to shortage of Law Officers in SFIO.
- d) Till the time the draft Recruitment Rules are approved by UPSC and notified, filling of existing vacancies in SFIO only through deputation, on the basis of existing notified RRs, through public advertisement, is being explored.

41. During the last three years including the current financial year 194 cases were referred to SFIO for investigation. The year-wise details are given in the table below:-

Financial Year	Number of cases referred
2011-12	13
2012-13	46
2013-14	83
2014-15	52
Total	194

"In 162 cases the investigations have been completed by SFIO. The average time taken to complete the investigations is 542 days.

In most of the cases, the complaints have been filed on time after completing investigations and receipt of prosecution sanction from the MCA. The issue relating to computation of limitation period for filing prosecution is sub-judice before the Hon'ble Supreme Court. In some cases where prosecution could not be filed within the limitation period as interpreted by SFIO for various reasons, the complaints have been filed along with application of condonation of delay citing various justifiable reasons.

48 complaints relating to six investigation reports have been successfully presented by SFIO resulting in conviction. 1028 cases are still pending in various courts/fora at different stages of prosecution."

42. During examination of Demands for SFIO, it was observed that though the Ministry had dropped the EWS on account of unsatisfactory results, the Ministry have made an allocation of Rs. 75 lakh under this sub head. The Ministry in its written reply stated as under:

"Though the Early Warning System has been dropped by the Ministry on account of unsatisfactory results during pilot testing, the Market Research & Analysis Unit (MRAU) of SFIO is being revamped for exercising surveillance. A road map has been prepared for induction of new technology for market surveillance with deployment of skilled manpower to analyze media reports and generate insights through analysis of certain statements and returns filed by the companies and / or complaints received from public and references from other agencies. The physical infrastructure for a Forensic Lab within SFIO has been created during 2013-14 with some basis forensic tools installed.

A token allocation of Rs.1.00 lakh was made during 2014-15 to get a new account head opened. With a road map now in place, SFIO expects to utilize the new allocation of Rs. 75.00 lakh to implement the new institutional mechanism to detect fraud at an early stage through its MRAU. Till date, the expenditure for setting up the Forensic Lab was met out of the sanctioned grant of SFIO under the object head 'Office Expenses'. Going forward, the funds under the new head would be utilized for the Forensic Lab."

COMPETITION COMMISSION OF INDIA

43. The Competition Act, 2002 provides for setting up of the Competition Commission of India (CCI) comprising of a Chairperson, six Members. The Act also provides for establishment of the Competition Appellate Tribunal (COMPAT) to hear and

dispose of appeals against the orders of CCI, and adjudicate upon the claims of compensation that may arise from the findings of the Commission. The Competition Commission of India (CCI) was constituted in March 2009 for the administration, implementation and enforcement of the Act.

44. During examination of Demand for Grants (2015-16), the Ministry in its written reply in respect of the Competition Commission of India stated as under:

- (i) "Efforts have been made to fill up all the vacancies on direct recruitment/ deputation basis. During 2013-14 the Competition Commission of India selected 22 candidates at various levels. In addition, 13 Professionals and 19 Support staff have been appointed on deputation basis in the Commission and the office of the DG-CCI.
- (ii) At present against the sanctioned strength of 91 professionals in CCI, 56 professionals are in place. Similarly, in DG CCI, the sanctioned strength of professionals is 33, against which 13 are presently working.
- (iii) Recently, advertisements were issued to invite applications for 34 posts in the Commission and 21 posts of in the Office of the Director General-CCI (DG, CCI). Scrutiny of applications received is in progress.
- (iv) To further strengthen the research in the competition related issues, 19 Research Associates/ in the field of Law, Economics and Financial Analysis have been engaged, as laid down in the Regulation for a period of one year. An advertisement has been issued to engage 12 more Research Associates/Experts in the field of Law. The applications received in response to this advertisement are being scrutinized and appointments will be made shortly.
- (v) The Commission is conducting in house training programmes to upgrade the skill and knowledge of the officers. Moreover, the officers of the Commission are deputed to attend national and international training/conferences/ workshops so that the developments taking place globally in the competition law and related fields are gained by the officers of CCI.
- (vi) It is also mentioned that Competition Commission of India has identified panel of experts both from India and abroad for carrying out econometric analysis for complex merger cases.
- (vii) As observed by the Committee, CCI being a regulatory body, efforts are made to protect the interest of the consumers against anti-competitive practice."

45. The Ministry also informed that as per advocacy mandate under the Section 49 (3) of the Competition Act, 2002, CCI has been taking advocacy initiatives for creating awareness of competition law and more particularly about the Competition Act 2002 to various stakeholders including business chambers/houses. CCI is organizing/ participating in events for promoting competition law in the markets in association with FICCI, CII, PHDCCI, ASSOCHAM etc. apart from directly interaction with sector specific

industries and Associations all over India. The statistical details of the advocacy initiatives taken in the last five years with various stakeholders are under:-

ADVOCACY MEASURES TAKEN IN LAST FIVE YEARS							
Sl. No.	Stakeholders	2014-15	2013-14	2012-13	2011-12	2010-11	Total
1	Government	8	15	4	12	2	41
	Central Govt/Ministries	10	13	1			24
2	Business						
	With Chambers of Commerce	11	18	22	16	12	79
3	Institutes/Academies	24	24	29	31	6	114
4	Internship	80	75	70	42	26	293

Note: Besides above advocacy initiatives includes publication of various advocacy booklets, quarterly newsletter “Fair Play” which is widely circulated among various stakeholders.

46. With regard to developing interface with sectoral regulators, in addition to CCI's active participation in the activities of Federation of India Regulators (FOIR), CCI has been actively engaging various sectoral regulators through interactive meetings. A meeting was organized by CCI on 19th September, 2014 which was attended by Members/Senior Officers of SEBI, IRDA, AERA, CERC and PNGRBI wherein issues relating to modalities of engagement, pooling of resources, putting in place channels of communication that allow for exchange of information on a regular basis and technical assistance were discussed. As a follow-up to this interactive meeting, initiatives have also been taken to have one-to-one meeting with various sector regulators at the highest level to catalyze the level of cooperation.

47. With regard to the initiatives taken by CCI for capacity building and strengthening of the institution, a separate capacity building division has been set up in 2010 with the objective of devising and implementing capacity building initiatives for training and professional development of CCI officials. The Commission has taken various initiatives for developing a Knowledge Management System and a fully functional library serving as a “National Resource Centre” for Competition Law & Policy. Details are mentioned below. For capacity building initiative, CCI has also entered into Memorandum of Understanding (MOU) with Federal Anti-Monopoly Services (FAS) Russia, United States Federal Trade Commission (USFTC) and Department of Justice (DoJ) USA, Australian Competition and Consumer Commission, Directorate General for Competition of the European Commission and Competition Bureau Canada.

Initiatives taken in the last five years for Capacity Building and strengthening of the CCI

48. Right in the beginning, it was realised that knowledgeable and well trained staff would be the backbone of fulfillment of statutory mandate given to CCI. Therefore, a separate capacity building division was set up in 2010 with the objective of devising and implementing capacity building initiatives for training and professional development of CCI officials. Capacity building is a dynamic exercise and requires constant review and development of new initiatives as per the need of the hour. During the last five years, the outcome of such capacity building initiatives has been very fruitful resulting in steep learning curve for CCI officers. This in turn is reflected in the continuous improvement in the quality of analysis of cases and orders issued by the CCI.

49. In the endeavour to augment the capacity building of its officials, the Commission has taken following important initiatives:

A: Training of officers

- 1) In-house induction training / orientation programme:** It was realised that induction training should be imparted in –house in order to be relevant to CCI's needs and fine-tuned to changing needs of CCI. Based on detailed training needs analysis, a two weeks induction training programme for newly recruited officers of CCI was developed. It is organised to familiarize the officers with the Competition Law, Economics, Finance and various concepts relating to competition and its implementation. Such trainings are imparted using CCI resource persons. In the last five years, ten induction trainings / orientation programmes have been organised.
- 2) Advanced Domestic Trainings:** CCI regularly organizes advanced trainings on competition law using its internal resources as well as jointly with mature competition jurisdictions such as US and EU and multilateral institutions like OECD and UNCTAD. A total of fifty one such trainings have been arranged on various competition related subjects benefiting the officers of the Commission.
- 3) Foreign Trainings / Seminar / Conferences:** Since limited competition enforcement expertise is available at home, CCI endeavours to collaborate with key foreign jurisdictions and multilateral organizations to expose its officers to best international practices and provide exposure of working on actual cases. Memorandum of Understanding with advanced jurisdictions

facilitates such training and exposure. So far, more than fifty officials have benefited by such engagement with other jurisdictions.

4) Distinguished Visitor Knowledge sharing series/Special Knowledge

Sharing Series: CCI organizes lectures to tap knowledge of eminent persons in various fields within India and from abroad. Such lectures are expected to be instrumental in capacity building of CCI officials. A total of fourteen such lectures by distinguished personalities have been arranged on topics relevant to the CCI.

Summary of various above initiatives is given below:-

Capacity Building Initiatives by the CCI during last five years					
Initiatives	2010-11	2011-12	2012-13	2013-14	2014-15
Induction Trainings / Orientation Programmes	2	1	2	2	3
Trainings Within India	8	11	9	9	17
i) Trainings with the help of foreign agencies / resource persons	8	7	5	3	6
ii) Training with the help of Indian institutions / resource persons	0	4	4	6	11
Trainings / Seminar / Conference / Workshops / Roundtable outside India	10	19	20	25	17
Distinguished Visitors Lectures / Special Visitor Lectures	NA	3	3	6	2

B: Developing Knowledge Management System (KMS): As management of tacit and explicit knowledge is vital for augmenting capacity of officers, detailed roadmap for KMS has been prepared with the objective of building CCI as a knowledge driven organisation. KMS has been envisaged as a long term and sustained initiative towards knowledge developing and sharing. Components of KMS are as follows:-

- 1) Peer to Peer Sessions-** To develop knowledge base on the relevant issues as well as to build up capacity of the officers, regular Peer to Peer (P2P) sessions are organized. These sessions provide an opportunity to exchange the experiences and augment the capacity of officials within the CCI.
- 2) Other initiative under CCI-KMS:** CCI has started a discussion forum aimed to help the officers of CCI for exchange of information/messages/documents etc. As a part of knowledge sharing, it also includes library enrichment project wherein officials are encouraged to enrich the published articles / research papers available in public domain in various ways and share them internally with other officials.

- 3) **Papers contributions:** Divisions are encouraged to prepare papers for submission to international conferences as well as domestic forums, taking care that no sensitive information is divulged. Several papers have been contributed to various multilateral forums.
- C: International cooperation:** As nature of economic activity is global, while reach of competition law is national, international cooperation has become very vital to deal with international cartels and multi- jurisdiction merger filings. Further, to fulfil CCI's extra-territorial jurisdiction under Section 32 also, cooperation with other jurisdictions is a must. This cooperation may take various forms such as technical cooperation for capacity building, competition regulation experience sharing and enforcement related cooperation. CCI has engaged in informal as well as formal cooperation as follows:-
- 1) **Informal cooperation:** Cooperation with various jurisdictions and multilateral institutions is done by way of participating in their conferences /meetings as well as meeting them on the side-lines of major conferences. This helps in getting exposure to international experiences as well as developing linkages for organizing trainings etc. for CCI officers.
 - 2) **Formal cooperation through Memorandum of Understanding:** Considering the international trade and investment linkages with many countries, it becomes vital to have some kinds of arrangement such as MOU whereby international cooperation may be sought in case of violation of competition laws by entities of either side. Furthermore, such MOUs also provide learning opportunities for the CCI under the technical cooperation clauses which are mostly related to trainings, information / knowledge sharing and augment the capabilities of the CCI. Finally, they become key instrument of case related cooperation in case of international cartels and multi-jurisdictional merger filings. With these objectives, so far CCI has signed MOUs with competition agencies of Russia, United States, Australia, European Commission, and Canada.

Additional initiatives taken by CCI

50. Fully functional library: Library of the Competition Commission of India(CCI) has been established after the Commission became fully functional, as a “National

Resource Centre” for Competition Law & Policy and is equipped with all the modern infrastructure facilities and literature (either hard or in digital form) available nationally/internationally on Competition. This “National Resource Centre” caters to the information and reference needs of all its Members, Officers and Staff. The Library has a fine collection of Books - 4650 (approx.). Holdings include books (both English/Hindi), reports, governmental publications, other documents, maps and some audio- video collection. The main subjects covered are - Competition Law & Policy, Economics & Legal and general reading books. The “Library” subscribes to-

- 6 Online Databases : Manupatra, Kulwer Competition Law, J-stor,
- e-C Competition & Concurrences, CMIE and West Law India.
- Magazines 26(English) & 11(Hindi)
- Two Online Magazines i.e. EPW and The Economist.

Daily newspaper clipping service is also provided by the library to all the officers with a view to making officers aware of the happenings in the competition field.

As regard to the pendency of cases the Ministry informed in a written reply as under:

Sl. No	Case pending with Competition Commission of India	Case pending with Director General CCI	Total
1	64	72	136

51. As on date, 29 cases more than one year old are under consideration of the CCI and 40 cases more than one year are under investigation in Director General, CCI. There are 140 cases pending before COMPAT as on 1st March, 2015. Out of these, 42 cases are more than one year old. The reasons for pendency given by CAT is as under:

- (i) Reply of the parties in form of Counter/Rejoinders are yet to be filed in a number of cases and in some cases, service has not been effected on the parties concerned. In such cases no time frame can be fixed, as the principle of natural justice has to be followed before the cases are disposed of.
- (ii) Though the cases are being finally disposed of by this Tribunal, in a number of cases Review Applications are being filed. Once the review application is admitted the case is listed for fresh hearing in the matter.

52. In certain matters, the appeals filed against the orders of this Tribunal are allowed by the Hon'ble Supreme Court of India and the matter remanded back to the Tribunal for fresh hearing. Such matters are to be heard again.

53. On being asked as to whether there is any time-frame defined for disposing of cases in CCI and COMPAT as there are about 50% cases pending for more than a year, the Ministry replied as follows:

"In Competition Commission of India (CCI), there is no legal timeframe for completion of anti-trust cases. Once a case is registered, it is examined by the Commission to see if a prima facie case exists. Once a prima facie case is established, the matter is referred to the Director General for investigation.

Past experience shows that generally the investigation takes about a year as the investigation process includes summoning of witnesses, collection of evidence, recording of statements and analysing data.

Similarly, the process of hearings on issues of confidentiality and affording opportunity to parties in consonance with the principle of natural justice leads to cases taking time before the Commission at the time of final hearing.

Often parties get orders of stay from the Courts once investigation is ordered or at the stage of final hearing.

As far as Competition Appellate Tribunal (COMPAT) is concerned, as per provision of the Competition Act, 2002, the appeals filed before the COMPAT under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal within 6 months from the date of receipt of the appeal.

As regards scope for mitigating the issues, COMPAT has stated that the fresh matters are being listed before it within one week from the date of registration of the matter and all the pending matters are being listed as per date given by the COMPAT. However, no time frame can be fixed, as the principle of natural justice has to be followed before the cases are disposed off."

INDIAN INSTITUTE OF CORPORATE AFFAIRS

54. The Indian Institute of Corporate Affairs (IICA) works as a think-tank for capacity building, policy planning and service delivery. This is an on-going Plan Scheme of the Ministry with the outlay of Rs. 110.00 crore over the 12th Five Year Plan. An amount of Rs. 19.00 crore has been allocated to IICA for the financial year 2015-16.

55. The Ministry has informed that in the 12th Five Year Plan, Rs.110.00 crore was approved for Plan Scheme for Indian Institute of Corporate Affairs (IICA). During the financial year 2012-13, Rs.28.00 crore was allocated under the scheme against which Rs.24.43 crore was utilised and the remaining Rs. 3.57 crore was surrendered under the Capital head of the Plan Scheme. In the financial year 2013-14, Rs. 34.00 crore

was provided in the Budget Estimates which was reduced to Rs.21.00 crore by Ministry of Finance at Revised Estimate stage. Taking this into account Rs.18.23 crore was kept under Revenue head and Rs.2.77 crore for capital works. The entire revenue allocation of Rs.18.23 crore was utilised and Rs.2.16 crore was utilised under capital head and the balance Rs.0.61 crore was surrendered.

56. The BE for FY 2014-15 was Rs.24.00 crore. The RE 2014-15 is Rs. 23.00 crore (Rs.22.76 crore under Revenue head and Rs.1.24 crore under capital head) has been approved by Ministry of Finance. Against this, Rs.16.61 crore has been utilised so far (Rs.15.54 crore under Revenue head and Rs.1.07 crore under Capital head) for undertaking the following activities by the IICA:-

- (i) Conducting long term and short term courses in various disciplines of corporate affairs.
- (ii) Conducting of Management Development Programmes (MDPs), Executive Development Programmes (EDPs) and Faculty Development Programmes (FDPs) in various streams of corporate affairs.
- (iii) Establishment of NGO hub and providing other CSR related services to Corporates.
- (iv) Advocacy and dissemination of Companies Act, 2013
- (v) Exploration on the various potential collaborations for interdisciplinary research and information/knowledge exchange with various international and national institutes of repute.
- (vi) Construction of some left over capital works in the IICA campus, Manesar. Imparting 10 month professional induction training to probationary officers of Indian Company Law Service; mid-career training to ICLS officers, JAG officers, STAs and JTAs; mandatory one month training to Sr. STAs and special training programme to officers of Official Liquidators.

57. The Institute has reported that during the financial year 2014-15 it has generated a revenue of Rs.124.90 lakhs (upto December, 2014) against the target of Rs.150 lakh.

58. For the financial year 2015-16 Rs.19.00 crore has been earmarked under the Plan Scheme on IICA (Rs.18.90 crore under Revenue side and Rs. 0.10 crore under Capital works).

NATIONAL FINANCIAL REPORTING AUTHORITY

59. Section 132 of the Companies Act, 2013 provides for constitution of National Financial Reporting Authority (NFRA) to make and monitor accounting and auditing standards. However, this Section of the Act is yet to be notified for commencement.

60. Until this Section is notified, similar functions are to be carried out by the 'National Advisory Committee on Accounting Standards' (NACAS) under Section 210A of the Companies Act, 1956. The Chairperson and twelve other members of the NACAS will hold office for a period of one year, or till the constitution of NFRA, whichever is earlier.

61. The Ministry has informed that a token budget provision of Rs.13.60 lakh has been made for the National Financial Reporting Authority (NFRA) for the year 2015-16. The draft rules w.r.t. creation/functioning of this body as well as its Appellate Body viz. National Financial Reporting Appellate Authority (NFRAA) were prepared and shared with stakeholders for their comments. These rules are yet to be finalized in the light of suggestions made by stakeholders on the draft rules as well as fresh comments received from Institute of Chartered Accountants of India.

62. During oral evidence of the Ministry on the examination of Demands for Grants (2015-16), the Committee enquired from the Ministry to explain whether there is a conflict of jurisdiction particularly with regard to disciplinary matters between the mandate of NFRA and the Act governing the Institute of Chartered Accountants of India? The Ministry gave the following reply :

- (i) "The Companies Act, 2013/1956, being the main legislation for regulation of companies in India, contains provisions on all aspects of functioning of companies (from incorporation to winding up). It also contains specific provisions with regard to maintenance of accounts, their audit, compliance with accounting/auditing standards and appointment of auditors and their rights/duties etc. Through an amendment in the Companies Act, 1956 in 1998, the provisions relating to constitution of National Advisory Committee on Accounting Standards (NACAS) were included in the Companies Act. This Committee has the mandate to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies. The Companies Bill, 2009 had proposed to enhance the scope of this Committee and it was proposed that in addition to accounting standards/policies, the Committee would also advise the Government on auditing standards/policies. The Honourable Parliamentary Standing Committee which examined the Companies Bill, 2009 had in its report of August, 2010 recommended that the scope of the Committee should be expanded not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit undertaken across the corporate sector.
- (ii) The above recommendation made was examined in the Ministry during revision in the Companies Bill, 2009. The matter was discussed with Industries Chambers, Legal Experts and Professional Institutes including ICAI. It was also ascertained that similar bodies existed in other countries, for example, Financial Services Authority (FSA) in United Kingdom and Public Company Accounting Oversight Board (PCAOB) in United States of America. Accordingly, National Financial Reporting Authority (NFRA) and its Appellate Body namely National

Financial Reporting Appellate Authority was included in the Companies Bill, 2009 and was examined by the Standing Committee on Finance during the examination of the Bill. These provisions are contained in section 132 of the Companies Act, 2013 (Act).

- (iii) Section 132 has not yet been brought into force and the Rules with regard to constitution and functioning of these bodies are yet to be finalized.

Section 132 (4) specifically provides that notwithstanding anything contained in any other law for the time being in force, the NFRA shall have the power to investigate the matters of professional or misconduct for prescribed class of body corporate or persons. It further provides that in case NFRA has initiated action no other Institute or Body shall initiate or continue any proceedings in such matters of misconduct. In view of this, there would be no overlap in the functions of NFRA and ICAI".

LEGISLATIVE DEVELOPMENTS

63. For the first time anywhere in the world, Corporate Social Responsibility (CSR) for companies has been mandated through legislation in India. Section 135 of the Companies Act, 2013 contains CSR provisions of the Act, and Schedule VII of the Act enumerates the activities that can be undertaken under CSR. Section 135, amended Schedule VII to the Companies Act 2013, and the Companies (Corporate Social Responsibility Policy) Rules, 2014 were notified on 27th February, 2014, and came into force from 01.04.2014. This is the first year of implementation of CSR by companies under the Act.

Activities covered under Schedule VII of the Act include, *inter alia* the following

- Eradicating hunger, poverty and malnutrition, promoting healthcare including contribution to “Swach Bharat Kosh”;
- Promoting education and employment enhancing vocational skills;
- Promoting gender equality, empowering women;
- Ensuring environmental sustainability including contribution to “Clean Ganga Fund”;
- Protection of national heritage, art and culture;
- Measures for the benefit of armed forces, war widows and their dependents;

64. In terms of Section 135 of the Companies Act 2013, companies above the specified thresholds of turnover or net worth or net profit are required to spend at least two per cent of their average net profits earned during three immediately preceding financial years on Corporate Social Responsibility (CSR) activities. The Board of each such company is required to have the company’s CSR policy formulated and monitor its implementation or specify the reasons for non-implementation.

65. A high Level Committee has been constituted under the Chairmanship Shri Anil Bajjal, former Union Secretary, to suggest measures for monitoring the progress of implementation of Corporate Social Responsibility (CSR) policies by companies at their level and by the Government under the provisions of Section 135 of the Companies Act. The Committee shall submit its report within six month from the date of holding of its first meeting.

66. The Ministry has issued a series of clarifications through General Circulars dated 18th June, 2014 and 17th September, 2014 for effective implementation of CSR Policy Rules and to deal with certain matters not covered under the Act or Rules but which facilitate smooth implementation of their CSR Policies. The circular suggests liberal

interpretation of Schedule VII so as to include a wide range of activities under CSR having implication for inclusive growth.

67. The Ministry of Corporate Affairs along with the Indian Institute of Corporate Affairs has been making efforts to mainstream the adoption of responsible governance practices including CSR by establishing the National Foundation for Corporate Social Responsibility (NFCSR) at the Indian Institute of Corporate Affairs. The role of NFCSR is to unite all stakeholders on CSR in making a significant impact towards goal of inclusive growth and development. It acts as a facilitator and an enabler in taking the CSR agenda forward by providing knowledge support and by creating a database of the implementing agencies.

68. The new Company Law regime has introduced significant changes to the composition of the board of directors. One of the important change is codified in Section 149 of the Companies Act 2013 which provide for a specified class of companies to have atleast one woman director.

Ease Of Doing Business

69. The Ministry implemented a holistic end-to-end e-Governance Project called 'MCA21' for compliance related services carried out in the offices of Registrar of Companies (ROCs), Regional Directorate (RDs) and MCA Headquarter at Delhi. The project has brought a Service Centric Approach in the delivery of public services and administration of the Companies Act, specifically focusing on i) starting a business, ii) doing business. MCA21 is an e-Governance Mission Mode Project implemented with a vision to facilitate Business in India by ensuring service delivery in a user friendly, efficient and economic manner. The system has brought fine balance between stakeholder facilitation and control, through a blend of well-defined goals and performance metrics.

70. The Ministry informed in a written reply that following initiatives have been taken by the Ministry in order to facilitate ease of doing business in India.

- (a) The Ministry has moved amendments to the Companies Act, 2013 to (i) make provisions w.r.t. having a common seal optional and (ii) omit the mandatory requirement of having minimum paid up share capital of Rs.1.00 Lakh or Rs.5.00 lakh by a private company or public company respectively.

- (b) An integrated form to enable a person to apply for DIN, name of a company and for incorporation of company through a single e-forms under development.
- (c) The requirements w.r.t. having statements/verifications on affidavits in certain cases have been modified and allowed to be made in normal document mode.
- (d) Simplification of forms to be filed by the companies/stakeholders in the registry has been taken upto address observed issues.

The measures with regard to minority investor protection introduced in the Companies Act, 2013 have been duly recognized in the World Bank's Doing Business Report and India is ranked 7 on this parameter."

71. On being asked as to what steps/efforts have been taken on Damodaran Committee Report, the response given by MCA was as follows :

"The recommendations of the Committee under the chairmanship of Shri M. Damodaran on "Reforming the regulatory environment for Doing Business in India" were examined in the Ministry and comments/observations of other Ministries were also obtained. It was seen that the major thrust of the recommendations is on reform of regulators and not on steps required to ensure ease of doing business. The recommendations though of significant importance thus relates to various Ministries concerned with regulatory reforms. The report has, therefore, been brought to the notice of regulatory Ministries and the State Governments. Presently, Department of Industrial Policy and Promotion (DIPP) is coordinating on matters relating to the World Bank's 'Doing Business Report' and issues relating to 'ease of doing business' in India".

72. In order to ease the doing of business in India, the Finance Minister in his Budget Speech, 2014, had announced that by the end of this year, all Ministries of the Central Government will integrate their services with the eBiz platform, launched by the Department of Industrial Policy and Promotion (DIPP) in 2013. Taking the first step in this regard, the Ministry of Corporate Affairs has linked four of its services, i.e., (i) incorporation of company; (ii) name application; (iii) commencement of business; and (iv) Directors Identification Number (DIN) with the eBiz platform. The focus of eBiz e-governance project is to improve the business environment in the country by enabling fast and efficient access to Government-to-Business (G2B) services through an online portal.

PART-II

Observations/Recommendations

73. The Committee note that the Budget estimates of the Ministry under the Plan Head and the Non Plan Head were scaled downwards consecutively for the year 2012-13 and 2013-14. Despite the downward revision, the actual expenditure incurred turned out to be even lower than the revised estimates figure. The Budgetary formulation for the year 2014-15 has also followed the trend of previous years. The BE for the year 2014-15 was Rs. 255.25 crore, which was revised to Rs. 251.92 crore at the RE stage. The actual expenditure incurred till 28.02.2015 was Rs. 210 crore only. The Committee thus find that the Ministry's failure in regard to appropriate projection of fund requirement has been quite persistent, just as their capacity to absorb the allotted funds. The Committee would, therefore, recommend that it is high time that the Ministry exercise due diligence in their Budget formulation taking into account objectively their needs, past performance as well as their capabilities to deliver the functions assigned to them. The Committee believe that ambitious budgeting without commensurate ability or capacity to deliver the desired outcomes will remain futile exercise, blocking scarce resources deployable elsewhere.

74. The Committee note that the implementation of Companies Act 2013 has been marked with uncertainty, particularly with regard to the constitution of the National Company Law Tribunal (NCLT). This has not only created confusion amongst the stakeholders but it is proving to be a detriment to the "ease of doing business" sentiment in the country. The Committee observe that the Supreme Court in its judgment dated 11 May, 2010, had suggested some changes to be made in the design of National Company Law Tribunal (NCLT). The Ministry had not taken into account the above Supreme Court order. For example, the Supreme Court had observed that a person below the rank of Secretary or an Additional Secretary should not be appointed as a technical member of the NCLT, which has not been addressed by the Ministry. Further, as regards the composition of the Selection Committee for appointing members of the tribunal, the Supreme Court had said that it must consist of four Members including the

Chief Justice of India or his nominee (as a Chairperson with a casting vote), a senior judge of the Supreme Court or the Chief Justice of a High Court as a Member, Secretary in the Ministry of Finance and Company Affairs / Law and Justice as a Member. However, the Companies Act 2013 provides for five Members including the Chief Justice of India or his nominee (as a Chairperson without a casting vote), a senior judge of the Supreme Court or Chief Justice of a High Court as a Member, Secretary in the Ministry of Corporate Affairs/Law and Justice/Department of Financial Services as a Member. Consequently, the matter is being litigated again in the Supreme Court on similar grounds. The Committee recommend the Ministry to show some pragmatism on this issue and bring out the required amendments in the Companies Act 2013, duly vetted by the Attorney General of India, governing the constitution and composition of NCLT so that the provisions of the Statute are in alignment with the order of Supreme Court dated 11 May, 2010 and the stalemate around this issue is brought to an end.

75. The Committee note that the problem of under staffing runs across various cadres throughout the Ministry including its attached offices. The Committee has been drawing the attention of the Ministry to this entrenched problem time and again. The Committee further note that as of now only 60% of the Companies Act, 2013 has been operationalised. The provisions relating to inspection and investigation, prevention of operation and mis-management, revival and rehabilitation of sick companies, winding up, constitution of NCLT/NCLAT, special courts etc. are yet to be notified. Once the statute is fully notified, the pressure on the field offices of the Ministry is bound to increase manifold. In order to ensure that delivery of its services is not hampered by the increase in workload, the Committee recommend that the Ministry should fast track the process of filling up the vacant posts in the Ministry and its field offices. The Committee further recommend that the Ministry create an in-house panel of professionals, comprising qualified Company Secretaries, Chartered Accountants, Cost Accountants, etc., wherein expert services may be utilized by the Ministry whenever required.

76. The Committee note that the office of Director General of Corporate Affairs (DGCA) is expected to function as an apex body for supervising the functioning

of field offices of the Ministry. The Committee note in this regard that one and a half years have already passed since the last departmental promotional committee was held for appointing DGCA, but the post still lies vacant. The Committee recommend the Ministry to fill up the post of DGCA forthwith with a professional by having in-cadre promotion, if required, from the existing pool of qualified persons.

77. As observed in the introductory para above, the Committee find to their discomfiture another instance of over-allocation of funds, wherein the budget allocation for the investigating arm of the Ministry, namely, the SFIO, has been enhanced by about 20% vis-a-vis the previous year's BE, even as this organisation struggles with a crippled capacity, with as many as 75 vacancies out of a sanctioned strength of 130 personnel. Surprisingly, even after three years of its existence, no Recruitment Rules have been finalised so far. Even now, the Ministry have only been able to submit to the Committee that "it is not feasible to confirm the date of finalisation of Recruitment Rules at this stage." Obviously, such a state of affairs has left its imprint on the functioning and overall performance of SFIO, which has been accorded a statutory status in the Companies Act, 2013. The Committee recommend that recruitment rules of SFIO should be finalised within a period of three months. As per the statement furnished to the Committee, the average time taken to complete the investigations is 542 days and, 1028 cases are still pending in various fora at different stages of prosecution; only six investigation reports have been successfully presented resulting in conviction and; the number of cases referred to the SFIO for investigation has declined from 83 in 2013-14 to 52 in 2014-15.

Taking into account the afore-mentioned facts about the overall functioning of SFIO, which was conceived as a cutting-edge multi-disciplinary investigative body to unravel corporate frauds, the Committee cannot but conclude that its track-record has been far from satisfactory. It is, therefore, necessary that the Ministry of Corporate Affairs does a comprehensive review of the working of SFIO including their budgetary allocations for the current year and their utilisation of funds allotted in previous years. In this regard, the Committee recommend the Ministry to give more functional/professional autonomy to SFIO, while upgrading

the status of Director, SFIO from a Joint Secretary level post to a Secretary level post.

78. The Committee are constrained to observe that SFIO has miserably failed in developing a coherent and efficacious fraud prediction/prevention framework. The Committee observe that the major reason for this failure appears to be the trial and error approach followed by SFIO in formulating modules/ systems for detecting and preventing fraud. Initially, the Early Warning System (EWS) designed by the Ministry/SFIO was projected as an effective tool for detecting cases of potential fraud and malfeasance. However, the Committee now find that this system has been shelved mid-way on account of unsatisfactory results. The SFIO has also failed to explain the outcome of the Fraud Prediction Module, for which a token allocation of Rs. 1 lakh was made last year. The Committee further observe that for this year SFIO has sought an allocation of Rs. 75 lakh to implement the new institutional mechanism to detect fraud at an early stage through its Market Research Analysis Unit (MRAU). The Committee hope that this mechanism brings some sort of certainty and finality in instituting effective fraud prediction/prevention model and utilisation thereof. The Committee would expect that as the SFIO matures into a full-fledged investigating agency, all the systemic tools deployed will be gainfully applied for concrete outcomes by way of investigation and prosecution. The Committee may be apprised of the progress in this regard within three months.

79. The Committee note that the Competition Commission of India (CCI) has completed more than 5 years of its operation. However, the Commission is still grappling with issues of pendency of cases, large number of vacant posts, etc. The Committee would expect the CCI to get its act together so that the results of the capacity building initiatives taken by them over the years show tangible results. The Committee would recommend that the Ministry in consultation with CCI comes out with a National Competition Policy at the earliest so as to have greater clarity and focus with regard to the role and objectives of this anti-trust regulator in India. The Committee would also recommend that CCI should proactively intervene in cases of cartelisation, price parallelism and abuse of dominance, especially when new business models like e-retail, m-commerce etc.

are growing exponentially in the new age economy. Although the CCI has taken on board some professionals to tide over the issue of shortage of skilled manpower, the Committee recommend that it should increase the scale of this engagement.

80. The Indian Institute of Corporate Affairs (IICA) functions as a think-tank and training institution for capacity building, policy planning and service delivery. It has been conceived as an ongoing plan scheme of the Ministry of Corporate Affairs with an outlay of Rs. 110 crore for the 12th Plan. For the FY 2015-16, an amount of Rs. 19 crore has been allotted to IICA. IICA has reported internal generation of revenue to the tune of Rs 124.90 lakh (upto December 2014) against a target of Rs. 150 lakh. While appreciating the efforts made by the IICA to generate its own revenue through management development programmes etc., the Committee would like this Institute to play a pivotal role in not only organising various training programmes for both government officials as well as corporate executives but also maintain database for Independent Directors, Women Directors, Corporate Social Responsibility (CSR) activities etc., while keeping close liaison with industry. Various consultancy services can be provided in this regard. The Ministry may also utilise the services of IICA with regard to not only data-base on CSR activities and its publication, but also monitoring thereof. It would serve the Ministry well if the potential of this Institute is fully tapped and utilised.

81. The Committee note that National Financing Regulatory Authority (NFRA) has been set up as an oversight body having quasi-judicial authority including *suo moto* investigation powers in cases of professional misconduct by a Chartered Accountant/firm of Chartered Accountants, imposition of penalty thereof, debarring members of the Institute of Chartered Accountant of India (ICAI), if proved guilty, etc. The Committee further note that the constitution of NFRA is a result of the recommendation of the Standing Committee on Finance which examined the Companies Bill, 2009 and recommended that the scope of the National Advisory Committee on Accounting Standards (NACAS) as included in the Companies Act, 1956 should be expanded not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit

undertaken across the corporate sector. The Committee further observe that similar oversight bodies also exist in other countries, for example, Financial Services Authority (FSA) in United Kingdom and Public Company Accounting Oversight Board (PCAOB) in United States of America. However, as issues relating to conflict of mandate with regard to disciplinary matters between the NFRA and the Act governing the Institute of Chartered Accountants of India has been raised, the Committee desire that the Ministry may ensure that in the process of constituting NFRA, it does not create two parallel jurisdictions, governing the same issue. The Committee would like the NFRA to function as an oversight body without any jurisdictional conflict or overlap. This aspect may be addressed, when the rules governing NFRA are finalised by the Ministry.

82. The Committee note that since the coming into effect of the Companies Act 2013, there has been a steep increase in the number of private limited companies and Limited Liability Partnerships (LLPs), wherein as many as 12,348 LLPs were registered for incorporation during 2014-15 (upto 28 February 2015). 55,948 private limited companies were registered in 2014-15 (upto 28 February, 2015), as compared to 1,160 public limited companies during this period. According to the Ministry, the above decline may be due to reasons such as restrictions on floating "shell companies", introduction of e-forms etc. The Committee do not find this plea tenable, as there have been media reports on the downward trend of incorporation as public limited companies, in view of the detailed and cumbersome procedures and Rules framed under the Companies Act 2013. The Committee desire that the Ministry of Corporate Affairs should make an enquiry into such negative trends and not merely brush it aside as uncorroborated evidence.

In view of the reply of the Ministry with regard to the implementation of the Damodaran Committee Report, the Committee are of the view that "ease of doing business" in India cannot be facilitated by passing the buck from one Department/regulator to another. The Committee recommend the Ministry to implement the recommendations of the Damodaran Committee Report at the earliest in order to develop an interactive and responsive inter-face with the industry. The Committee also expect the Ministry to usher in high corporate

governance standards in the corporate sector by implementing the recommendations of the Adi Godrej Committee on corporate governance. The Committee further recommend that necessary corrective measures be initiated to simplify the Rules and procedures, which will also contribute to the government's policy of promoting "ease of doing business" in the country.

New Delhi;
16 April, 2015
26 Chaitra, 1937 (Saka)

DR. M. VEERAPPA MOILY,
Chairperson,
Committee on Finance

Minutes of the Twenty - Third Sitting of the Committee on Finance

**The Committee sat on Tuesday, the 31st March, 2015 from 1100 hrs. to 1550 hrs.
in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.**

PRESENT

Dr. M. Veerappa Moily – Chairperson

MEMBERS

LOK SABHA

2. Shri Nishikant Dubey
3. Shri P.C. Gaddigoudar
4. Shri Shyama Charan Gupta
5. Shri Rattan Lal Kataria
6. Shri Bhartruhari Mahtab
7. Shri Prem Das Rai
8. Shri Rayapati Sambasiva Rao
9. Prof. Saugata Roy
10. Shri Jyotiraditya M. Scindia
11. Shri Gajendra Singh Sekhawat
12. Shri Gopal Shetty
13. Shri Anil Shirole
14. Dr. Kirit Somaiya

RAJYA SABHA

15. Shri Naresh Gujral
16. Shri Ajay Sancheti
17. Shri Digvijaya Singh
18. Dr. Manmohan Singh

SECRETARIAT

- | | | |
|--------------------------------|---|---------------------|
| 1. Shri P.C. Koul | - | Director |
| 2. Shri Ramkumar Suryanaryanan | - | Additional Director |

PART- I

(1100 hrs. to 1215 hrs.)

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| 2. | X | X | X | X | X |
| 3. | X | X | X | X | X |

(The Witnesses then withdrew)

PART- II

(1230 hrs. to 1350 hrs.)

MINISTRY OF CORPORATE AFFAIRS

1. Ms. Anjuly Chib Duggal, Secretary
2. Shri Pritam Singh, Additional Secretary
3. Shri Manoj Kumar, Joint Secretary
4. Shri Amardeep Singh Bhatia, Joint Secretary
5. Ms. Sujata Prasad, JS & FA
6. Ms. Sibani Swain, Economic Adviser
7. Shri Suresh Pal, Joint Secretary
8. Shri Navrang Saini, DII
9. Shri Bhaskar Chatterjee, DG & CEO, Indian Institute of Corporate Affairs
10. Ms. Smita Jhingran, Secretary, Competition Commission of India
11. Shri Nilimesh Baruah, Director, Serious Fraud Investigation Office
12. Shri P.K. Malhotra, Secretary, Company Law Board

4. The Committee then took oral evidence of the representatives of the Ministry of Corporate Affairs in connection with examination of Demands for Grants (2015-16) of the Ministry and issues connected therewith. The major issues discussed during evidence included reason for non implementation of the entire Company Act, 2013, provisions in the new statute relating to Corporate Social Responsibility, Women Directors, etc. role of National Financial Reporting Authority vis-a-vis the Institute of Chartered Accountant of India etc., evaluating the performance of Competition Commission of India (CCI) and Serious Fraud Investigation Office (SFIO), issues connected with the operationalisation of the IEPF Authority, steps taken by the Ministry in facilitating ease of doing business, etc. The Chairman then directed the representatives of the Ministry of Corporate Affairs to furnish written replies on the points raised by Members within a week.

(The Witnesses then withdrew)

The Committee then adjourned for lunch.

PART-III
(1415 hrs. to 1550 hrs.)

5.	X	X	X	X	X
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(The Witnesses then withdrew)

A verbatim record of proceedings has been kept.

The Committee then adjourned.

Minutes of the Twenty-Fourth Sitting of the Committee on Finance

**The Committee sat on Thursday, the 16th April, 2015 from 1100 hrs. to 1315 hrs.
in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.**

PRESENT

Dr. M. Veerappa Moily – Chairperson

MEMBERS LOK SABHA

2. Shri S.S. Ahluwalia,
3. Shri Nishikant Dubey
4. Shri P.C. Gaddigoudar
5. Shri Prataprao Jadhav
6. Shri Rattan Lal Kataria
7. Shri Bhartruhari Mahtab
8. Shri Gajendra Singh Sekhawat
9. Shri Gopal Shetty
10. Shri Shivkumar Udasi
11. Dr. Kiritbhai Solanki
12. Dr. Kirit Somaiya

RAJYA SABHA

13. Shri Naresh Gujral
14. Shri A. Navaneethakrishna
15. Dr. Mahendra Prasad
16. Shri P. Rajeeve
17. Dr. Manmohan Singh

SECRETARIAT

- | | | |
|---------------------------------|---|----------------------|
| 1. Shri P.K. Misra | - | Additional Secretary |
| 2. Shri P.C. Tripathy | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. Shri Kulmohan Singh Arora | - | Deputy Secretary |

2. X X X X X

3. Thereafter, the Committee took up the following draft Reports for consideration and adoption :

- (i) Draft Report on Demands for Grants (2015-16) of the Ministry of Finance (Departments of Economic Affairs, Expenditure, Financial Services and Disinvestment);
- (ii) Draft Report on Demands for Grants (2015-16) of the Ministry of Finance (Department of Revenue);
- (iii) Draft Report on Demands for Grants (2015-16) of the Ministry of Planning;
- (iv) Draft Report on Demands for Grants (2015-16) of the Ministry of Corporate Affairs; and
- (v) Draft Report on Demands for Grants (2015-16) of the Ministry of Statistics and Programme Implementation.

4. After some deliberation, the Committee adopted the draft Reports at Sl. Nos. (i) & (v) with minor modifications and Sl. Nos. (ii), (iii) & (iv) above without any modification and authorised the Chairperson to finalise them in the light of factual verification received from the concerned Ministries / Departments and present these Reports to Parliament.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.