



REPORT
of
EXPERT GROUP
on
STREAMLINING
PROSECUTION MECHANISM
under
THE COMPANIES ACT, 1956

October 2005

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TERMS OF REFERENCE

The Ministry of Company Affairs (“MCA”), Government of India vide Order No. 3/39/2005/CLII dated 4th May, 2005 constituted an Expert Group (the “Group”) to examine issues relating to the streamlining of the prosecution mechanism under the Companies Act, 1956 (the “Act”) to make it more effective and to advise on the following:

- i) Identification of broad categories of offences for which cases filed for violations of the Companies Act, 1956 are pending and the period of pendency thereof;
- ii) Investigating reasons for excessive pendency, where relevant;
- iii) Review of steps taken in the past to expedite disposal of these cases, their outcome and limitations;
- iv) Suggesting ways and means of expeditious disposal of these cases;
- v) Outlining a workable mechanism for expeditious disposal of cases of purely technical nature within a reasonable time frame.

MEMBERS OF THE EXPERT GROUP

- | | | |
|----|--|---------------------------|
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PREFACE

The Companies Act, 1956 provides the legal framework for corporate governance norms that are considered essential for corporate operations and to protect the rights of the stakeholders. Under the present Act, all lapses and defaults by the companies and their directors/officers have to be proceeded against, by filing of complaints in the trial Courts. Most defaults are of technical or procedural nature. There is, however, no legal framework provided in the Act, which may enable the Departmental authorities to levy penalties and enforce compliance.

The filing of complaint in the trial Court is irksome and time consuming. Understandably, the authorities are not able to cope with the requirement. In the Courts, the complainant and the defaulter are treated alike and the Departmental officers have to be wasting time in repeated adjournments. It is, therefore, not without reason that almost 50% of the companies on the registers of the Registrars of Companies (“ROCs”) do not comply with the requirements of the law relating to filing of documents. The Department of Company Affairs (the “Department”) is able to initiate action only against a random few amongst the defaulters. The prolonged process of prosecution in the trial Courts results in dilution of the deterrent effect of the penal provisions.

The Expert Committee on Company Law under the Chairmanship of Dr. J J Irani has in Chapter XII of its report recommended in-house mechanism for the levy of penalties for defaults for which under the present Act the prescribed punishment is only monetary fine.

According to the information made available, approximately 45,000 cases of prosecution are pending in various trial Courts in the country. On account of the gap between the number of prosecutions filed and the cases disposed of, every year the pendency has been growing by nearly 2,000 cases. As per the available statistics, a very large number of pending cases for several years are such in which even initial service of summons has not been possible with the result that launching of prosecution in such cases has been infructuous.

In the aforesaid background, the Expert Group set up by the Ministry of Company Affairs, Government of India, makes its recommendations in the chapters that follow.

EXECUTIVE SUMMARY

At present, all offences committed under the Companies Act, 1956 (the “Act”), are required to be prosecuted in trial Courts as criminal offences, even in respect of insignificant and trivial matters. In the absence of an in-house mechanism dealing with such matters, we have reached a situation where approx. 45,000 cases are pending in various Courts and about 2,000 cases are added to the list every year. The average period of disposal of cases takes about 5 years and the average cost per case awarded to the Government comes to Rs.573/- (Rupees Five Hundred and Seventy Three only) and the average amount of fine imposed per case comes to Rs.2,247/- (Rupees Two Thousand, Two Hundred and Forty Seven only). As a result, the disposal of the cases involving serious breaches of law, which adversely impacted the interests of investors and other stakeholders, is delayed considerably. The Group is of the view that the cases where no worthwhile public interest is involved should either be withdrawn or allowed to be liberally compounded. This approach can result into a situation where the Ministry of Company Affairs (“MCA”) and the Courts will be able to concentrate their attention to the disposal of the cases relating to frauds, scams and embezzlement of funds, etc. The pendency of cases as on 31.3.2004 is as under:

Particulars	Financial Year 2003-04
Prosecutions pending As at the beginning of the year	43,573
Prosecutions started during the year	6,552
Prosecutions disposed off during the year	4,563
Prosecutions pending at the end of the year	45,562

The Group has broadly classified all the prosecution cases pending before the Courts in the following 5 categories, namely –A, B, C, D & E and made the recommendations indicated below:

Category-A

Compoundable Cases filed up to 31.12.2002 in which there has been no service of summons till date.

Recommendation:

Cases falling under this category (excluding Category-D cases) should be withdrawn and thereafter the names of such companies should be struck off in accordance with the prescribed procedure.

Category-B

Compoundable cases filed up to 31.12.2002 in which summons have been served and the cases are in progress.

Recommendation:

Cases falling under this category (excluding Category-D cases) may be allowed to take advantage of proposed Company Law Simplified Settlement Scheme 2005 (“CLSSS-2005”). The cases (excluding Category-D cases) where the advantage of the proposed CLSSS-2005 has been taken, may be withdrawn from the Courts. The draft of the proposed Scheme has been enclosed as Appendix-VI to this Report.

Category-C

Compoundable cases filed on or after 01.01.2003 (to be treated as current cases).

Recommendation:

The recommendations with respect to cases falling in this category may be summarized as under:

- (a) Where summons have been served, the concerned defaulters can avail of proposed CLSSS-2005;*
- (b) Where summons have not been served, the cases may be actively pursued in Courts and all possible efforts should be made to serve summons in such cases.*

Category-D

Compoundable cases relating to NBFCs, chit funds companies, plantation companies, serious fraud investigation cases, vanishing companies, listed companies, cases involving securities scam(s) and other cases of similar nature which involve public interest

Recommendation:

These cases should neither be withdrawn nor allowed to take the benefit of proposed CLSSS-2005.

Category-E

Non-compoundable cases in which prescribed punishment under the Act is imprisonment, with or without fine.

Recommendation:

The compounding of such cases is not permissible under the Act.

The Expert Group had also studied the recommendations of Dr. J.J. Irani Committee and is in agreement that in-house structure should be created under MCA for dealing with cases, which are not punishable with imprisonment under the provisions of the Act.

CHAPTER-1

BROAD CATEGORIES OF OFFENCES UNDER THE COMPANIES ACT, 1956

- 1.1 The offences under the Act may be broadly classified as under:
- i) Offences punishable with fine only
 - ii) Offences punishable with fine or imprisonment or both
 - iii) Offences punishable with imprisonment only
 - iv) Offences punishable with fine and imprisonment
- 1.2 Offences falling under category (i) and (ii) are compoundable offences under the provisions of section 621A of the Act. Almost 80% of the total number of prosecution cases filed have, over the years, been on account of non-filing of Annual Return(s) by the companies having share capital or non-filing of Balance Sheet(s) etc. with the ROCs. The other cases too, under category (i) above are relatively of minor or technical nature. Depending upon the quantum of penalty attracted by an offence, the compounding may be done either by the Regional Director or by the Company Law Board ("CLB"). The application for compounding may be filed by the company and/or the officer(s)-in-default after coming to know that the offence has been committed. If a case has been filed for non-compliance and the offence is thereafter compounded, the ROC informs the concerned Court that the offence has been compounded. The ROC also prefers an application for withdrawal of the complaint. If, however, a company on receipt of show cause notice fails to respond or does not opt for compounding, the ROC has no choice except to file a complaint against the company and the officer(s)-in-default. The only way out for the ROC is to file a complaint in the Court.

1.3 An offence under category (iii) and (iv) being non-compoundable, can be taken cognizance of only by way of filing a complaint in the trial Court.

1.4 As per 48th Annual Report of MCA on the Working and Administration of the Companies Act, 1956 for the year ended 31st March, 2004, the summarized status of prosecutions filed under various sections of the Act in financial years ended 2003 and 2004 has been as per the Table below.

TABLE-I

Section	Nature of default	Financial year ended 31/03/2003		Financial year ended 31/03/2004		Compoundable/ Non-Compoundable
		No of cases	% to total	No of cases	% to total	
159/162	Non filing of Annual Return	3657	40	2626	40%	Compoundable
220	Non filing of Balance Sheet	3709	40.5	2531	39%	Compoundable
	Non- compliance with other sections of the Act	1610	17.6	1244	19 %	Compoundable
		178	1.9	151	2%	Non-Compoundable
	Total	9154	100%	6552	100%	

[Source: 47th/ 48th Annual Report of MCA]

1.5 Section-wise list of offences punishable with fine only is given in **Appendix-I**. The list of offences punishable with fine or imprisonment is given in **Appendix-II**. Lists of non-compoundable offences punishable with imprisonment only or with imprisonment and fine are given in **Appendix-III** and **Appendix-IV** respectively.

1.6 Even though a large majority of cases filed are for non-compliance of provisions in respect of which only monetary fine is provided in the Act, all such cases have to be proceeded against only through filing complaint in the trial Courts.

1.7 Procedure for filing complaint in the Court is complicated and time consuming, as follows:

- ✓ The ROC issues a show cause notice to the concerned company and/or its officer(s)-in-default.
- ✓ If the company neither complies on receiving the show-cause notice nor gets the offence compounded, the ROC files complaint against the company and the officer(s)-in-default in the jurisdictional trial Court.
- ✓ The jurisdictional trial Court issues summons and ROC/local police authorities arrange for the service of summons.
- ✓ If the summon gets served, the case proceeds in the trial Court. There is recording of evidence, examination of witnesses, etc. In between there are frequent adjournments due to non-appearance of parties, witnesses or other matters in the Court.
- ✓ If the summon is not served and the accused is not traceable, or does not appear, aailable/ non-ailable warrant is issued. Despite non-service of summons and failure to bring the accused to the Court, cases continue to be listed. The erring company though not traceable continues to be on the Register of ROC.

1.8 The relatively small number of cases that do get concluded in the Court after several years of filing result in imposition of fine and awarding of costs. The average fine or cost awarded per case is almost nominal relative to the time and costs incurred by the Department in pursuing the cases in the Court.

1.9 The statistics of fine imposed and costs awarded in the cases disposed off during financial years 2000-01 to 2003-04 are as per table below:

TABLE - II

Particulars	F. Y. 2000-01	F. Y. 2001-02	F. Y. 2002-03	F. Y. 2003-04
No. of companies prosecuted during the year	1385	1964	2133	1954
No of prosecutions started during the year	9817	8334	9154	6552
No. of prosecutions disposed off during the year	9615	5658	5467	4563
Convictions	2119	2430	2804	2665
Acquittals	3757	356	441	370
No. of prosecutions withdrawn or otherwise disposed of (including condonation)	3739	1629	866	990
Total fine imposed (in Rs.)	44,06,205	42,67,676	59,53,475	59,88,662
Total Amount awarded as cost to Registrar (in Rs.)	9,92,774	7,61,072	10,51,490	15,26,107
Percentage of conviction to total cases decided	39.1%	43%	51%	58%
Average number of prosecutions per company prosecuted	7	5	5	3
Average fine imposed per case ending in conviction (in Rs.)	2079.4	1756.2	2123.2	2247.2
Average Cost awarded per Case (in Rs.)	468.5	313.2	374.9	572.6

[Source: 48th Annual Report of the MCA]

1.10 It is pertinent to note that non-filing of Annual Return and Balance Sheet by one company leads to filing of almost six prosecution cases against a company and its officers-in-default.

The cases in which punishment by way of imprisonment has been awarded reported to be negligible.

CHAPTER-2

STATUS OF PENDENCY OF CASES IN THE COURTS

2.1 As per the 48th Annual Report of the MCA, the statistics of prosecutions pending at the beginning of the year, filed during the year, disposed off during the year and pending at the end of the year has been as per the table below:

TABLE-III

Particulars	F.Y. 2000-01	F.Y. 2001-02	F.Y. 2002-03	F.Y. 2003-04
Prosecutions pending As at the beginning of the year	37651	37223	39899	43573
Prosecutions started during the year	9817	8334	9154	6552
Prosecutions disposed off during the year	9615	5658	5467	4563
Prosecutions pending at the end of the year	37223	39899	43580	45562

[Source: 48th Annual Report of MCA, page 46]

2.2 It is seen that the number of cases pending at the end of the year has been going up year after year. The reasons broadly are:

- There are no designated Courts for dealing with complaints filed under the Act. The trial Courts are already over burdened with all kinds of complaints against economic offences. The daily list of cases coming up before the Courts and the number of adjournments are mind-boggling. On being adjourned, the next date normally is not fixed before 4-6 months, because the calendar of the Court is overcrowded.

- The Court procedures are too formal and rigid viz., relating to examination of witnesses, recording of evidence, etc. It does not make any difference whether the matter is of relatively trivial or technical nature. No priority is accorded to adjudication of offences of serious nature.

- Since there seems no way out for expediting the disposal of cases in the Courts, one may explore whether the filing of complaints could reduce. That too is not possible for the reason –(i) with the law as it is at present, there is no Departmental mechanism to deal with defaults. The Expert Committee on Company Law headed by Dr J. J. Irani has also recommended creation of an in-house structure for dealing with cases of technical defaults involving imposition of monetary penalties; (ii) As per the Annual Report of MCA for financial year 2004-05, there were 6,61,371 companies at work in the country as on 31.10.2004. The companies at work as on 31.3.2002, 2003 and 2004 are given in the 48th Annual Report of MCA on the administration and working of the Companies Act, 1956. As per the reply to an unstarred question no.126 of 26.7.2005, the Rajya Sabha was informed that the number of companies at work which had not filed statutory returns with the ROCs during the years ended 2002, 2003 and 2004 are as follows:

TABLE-IV

Financial Year ended>	2002	2003	2004
Number of companies at work	589246	612155	641512
Number of companies which had not filed statutory returns with ROCs	243680	274164	303107
Percentage of defaulting companies	41.35 %	44.79 %	47.25 %

Number of companies against which prosecutions were launched	1964	2133	1954
Percentage of prosecutions launched as ratio of defaulting companies	0.81 %	0.78 %	0.64 %
Number of prosecutions started during the year	8334	9154	6552

2.3 It can be seen from the table above that almost half the number of companies at work failed in complying with the provisions of the Act, specifically for non-filing of Annual Return and the Balance Sheet. As it is, the Department is able to launch prosecutions against less than one percent of the defaulting companies. There has to be, therefore, multi-pronged attack on the pendency of cases in the Courts, including weeding out of infructuous cases as discussed later.

CHAPTER-3

REVIEW OF STEPS TAKEN IN THE PAST

- 3.1 The Department has rightly in the past followed the path of encouraging voluntary compliance through schemes like Company Law Settlement Scheme 2000 (“CLSS-2000”) and Fast Track/Simplified Exit Scheme (“SES”) launched in 2000, 2003 and 2005.
- 3.2 CLSS-2000 provided for filing of pending documents on payment of lump sum amount based on the number of documents and period of delay. It is noticed that out of 4,95,741 companies that existed as on 30.11.1998; 2,54,553 companies were in default. Out of the defaulting companies, approx. 50 per cent of them (1,27,083 companies) availed of CLSS-2000. Government of India collected Rs.1,36,83,50,745 by way of filing fee. Statistics is not available for the number of cases in which pending prosecutions were withdrawn consequent upon the response of defaulting companies to the aforesaid Schemes. The text of CLSS-2000 is placed in **Appendix -V**.
- 3.3 SESs serve the purpose of quick and effective closure of dormant/defunct companies with minimum formalities. SESs enable weeding out of such companies from the Registers maintained by the ROCs. Such companies, being non-functional do not file the required documents. They do not respond to notices issued to them for enforcing compliance with the provisions of the Act.
- 3.4 SESs provided for payment of specified amount together with minimum documentation requirements, such as last Audited

Accounts, Affidavit, Indemnity Bond, etc. The recent SES-2005, introduced on 1st February 2005 had been in force till 31st August 2005. The response to SES 2003 and 2005 is informed to be as under:

TABLE-V

Name of Roc	Simplified Exist Scheme - 2003		
	No. of Applications Received under the Scheme	Approved	Rejected
North Region	6861	6848	13
Delhi			
Kanpur	728	405	323
Jalandhar	1044	1008	36
Jamu & Kashmir	143	143	-
Jaipur	1269	1120	149
Southern Region	2598	1161	1437
Chennai			
Hyderabad	1719	1548	171
Coimbatore	726	710	16
Frnakulam	1737	1626	111
Pondicheerry	75	69	6
Bangalore	1588	1421	167
Western Region			
Mumbai	5398	5398	-
Ahmedabad	2308	2098	210
Pune	842	555	287
Goa	259	252	7
Gwalior	465	366	99
Eastern Region			
Kolkata	2092	1266	826
Patna	243	238	5
Shillong	210	208	2
Cuttack	277	274	3
Total	30582	26714	3868

Simplified Exist Scheme - 2005			
Name of ROC	No. of Applications Received under the Scheme	Disposed off	In process (as on 06.10.2005)
Northern Region			
Delhi	3260	282	2978
Kanpur	692	166	526
Jalandhar	845	-	845
Jamu & Kashmir	80	-	80
Jaipur	554	261	293
Southern Region			
Chennai	3765	1624	2141
Hydrabad	1615	60	1555
Coimbatore	483	-	483
Ernakulam	793	404	389
Pondicheerry	50	19	31
Bangalore	2451	205	2246
Western Region			
Mumbai	3496	-	3496
Ahmedabad	2391	94	2297
Pune	566	-	566
Goa	116	-	116
Gwalior	2484	960	1524
Eastern Region			
Kolkata	2055	-	2055
Patna	257	-	257
Shillong	216	-	216
Cuttack	314	151	163
Total	26,483	4,226	22,257

Taking into account the estimated number of defunct companies (over 1,50,000) and the response to SES-2003 and SES-2005, the Group recommends that the Department needs to seriously pursue the powers to strike off the names of defunct companies from the records of ROCs under section 560 of the Act to deprive such companies of the privileges of limited liability and owning of assets in their names, if they at all exist. The striking of the names of such companies should be widely publicized so that persons who may have interest in the continuance of some of these companies on the records of ROCs, may apply for restoration of the names of such companies under sub-section (6) of section 560 of the Act and after paying such fines and fees as may be due from them.

CHAPTER-4

WAYS AND MEANS FOR EXPEDITIOUS DISPOSAL OF CASES

- 4.1 The pendency of cases in the trial Courts has been continuously rising, *inter alia*, because under the present Act, the Departmental authorities cannot take any action against defaulting companies except to send them a show cause notice for the default and in the event of companies not coming forward to compound the offence, to file prosecution in the trial Courts. The ROCs pursue the proceedings diligently in the trial Courts but they and the company prosecutors are not able to make much headway. The disposal of cases in the Courts is very slow and very little can be done to improve the situation.
- 4.2 A sample study of randomly picked up 63-files of defaulter companies involving about 140 pending cases was conducted with the cooperation of the ROC, NCT of Delhi & Haryana at New Delhi.
- 4.3 It was noticed that in approx. 30% cases summons have not been served for more than five years since launching of prosecution.
- 4.4 In a case filed in 1977, the alleged offence is on account of failure to pass special resolution for reduction of share capital. The offence is compoundable. Approx. 100 hearings have been recorded. The appearance of the accused was procured in 2001. The stalemate, however, continues.
- 4.5 In another case filed in 1985, more than 100 hearings are recorded. The appearance of the accused was procured in 2001. At 13 hearings there has been some movement. Some of the accused have since died. The alleged offence is on account of failure to prepare Balance

Sheet and Profit & Loss Account as per the requirements of Schedule VI to the Act and for a director acting without holding the qualification shares, etc. The alleged offence is compoundable.

- 4.6 ROC Mumbai also carried out a sample study of cases involving compoundable offences of technical nature like non-filing of documents, etc., which have been pending for 10 years or more. It was noticed that 60 companies were involved in 306 cases in which even initial service of summons has not taken place. In the case of 28 companies there has been no filing of documents at all and in respect of 11 companies, the last filing was in 2003.
- 4.7 Following the aforesaid sample study with the help of the ROC and the company prosecutor at New Delhi and the ROC at Mumbai, the ROCs throughout the country were requested to survey the cases pending in the trial Courts in their respective jurisdictions and categorize them on the following basis:

Category: Type of Cases

- A. Compoundable Cases filed up to 31.12.2002 in which there has been no service of summons on parties till date.
- B. Compoundable cases filed up to 31.12.2002 in which summons have been served and the cases are in progress.
- C. Compoundable cases filed on or after 1.01.2003 (to be treated as current cases).
- D. Compoundable cases relating to NBFCs, chit funds companies, plantation companies, serious fraud investigation cases, vanishing companies, listed companies, cases involving securities scam(s) and other cases of similar nature which involves public interest.

- E. Non-compoundable cases in which prescribed punishment under the Act is imprisonment, with or without fine.

4.8 The table below gives information relating to category-wise prosecution cases pending in the jurisdiction of the ROCs (as compiled by ROCs):

TABLE-VI

Category-wise number of prosecution cases pending in the jurisdiction of the ROCs

S. No.	ROC	A	B	C	D	E	TOTAL
1.	Ahmedabad	2716	855	1183	414	221	5389
2.	Bangalore	0	19	528	101	14	662
3.	Chennai	31	338	562	0	94	1025
4.	Coimbatore	66	736	0	229	5	1036
5.	Cuttack	1476	132	590	291	5	2494
6.	Delhi	600	150	1185	254	112	2301
7.	Ernakulam	395	184	336	262	15	1192
8.	Goa	716	251	261	104	1	1333
9.	Gwalior	1136	0	236	55	10	1437
10.	Hydrabad	0	0	0	230	0	230
11.	Jaipur	1	15	135	0	28	179
12.	Jalandhar	2757	313	1696	141	46	4953
13.	Jammu & Kashmir	289	25	48	2	6	370
14.	Kanpur	0	781	515	4	3	1303
15.	Kolkata	1069	2785	114	1751	106	5825
16.	Mumbai	2158	24	1237	1100	382	4901
17.	Patna	958	160	585	18	0	1721
18.	Pondicherry	38	12	14	4	0	68
19.	Pune	63	99	804	25	12	1003
20.	Shillong	2255	267	2001	122	12	4657
	TOTAL	16724	7146	12030	5107	1072	42079

- 4.9 The Group deliberated extensively on the steps that can possibly be taken for expeditious disposal of cases pending in the trial Courts. There are inherent limitations on any action(s) in matters pending before the trial Courts. The ROCs and the company prosecutors are diligently pursuing matters in the Courts. Despite the same, the fact of the matter is that in approx. 40% of the cases pending in the Courts which are of technical nature like non-filing of documents, etc., there has not been even initial service of summons for nearly 3 years or more, and in large number of them for 5-10 years or even more. These cases representing Category-A aggregate to 16,724 out of the total pendency of 42,079. In the opinion of the Group, these cases have virtually turned garbage. They apparently relate to companies, which have ceased to exist or what should be likely that they continue to be operating for years successfully evading the eye of the regulators. At present, however, they are a burden on the MCA as well as the trial Courts with no possibility whatsoever of being concluded.
- 4.10 The Group, after very careful consideration, recommends the withdrawal of these cases from the Courts with simultaneous action to strike off the names of companies involved in these cases from the Registers maintained by ROCs.
- 4.11 The Group realizes that a recommendation to withdraw case(s) is made in unusual or exceptional circumstances and that the cases can be withdrawn for sufficiently valid reasons only. The offenses in respect of which withdrawal has been recommended are purely technical in nature and do not involve any appreciable public interest. These cases mainly relate to technical and minor procedural breaches of the Act. The costs involved in pursuing such cases in the Courts are not commensurate with the expected outcome.

Withdrawal of such cases will serve the laudable objective of accelerating disposal of cases relating to serious offences.

4.12 Hitherto, the Group believes that the Department has been hesitant in taking steps to strike off the names of the companies, which are evading service of notices and even Court summons. The ROCs must be encouraged to invoke their power under section 560 of the Act to initiate action to strike off the names of such companies from their Registers. This action should be highlighted in the media. The names of the companies proposed to be struck off should be given wider publicity and the public should be encouraged to bring to the notice of the ROCs the existence and functioning of such companies for stringent action.

4.13 It may be noted that by the action of striking off names, no interest would be adversely affected in view of sub-section (6) of Section 560, according to which on an application by the company or a shareholder or a creditor before the expiry of 20 years from the publication of the name of the company in the official gazette for striking off, the name of such company may be restored.

Withdrawal of Cases in Category-A and striking off the names of the companies from the Register

4.14 Section 321 of the Code of Criminal Procedure provides that an application for withdrawal of a case can be made before the Court by a Public Prosecutor or Assistant Public Prosecutor, who is in charge of the case concerned, at any time before the judgement is pronounced. In other words, it means that the application for withdrawal of prosecution may be made at any time ranging between the Court taking cognizance of the offence till such time the Court actually pronounces judgement. In withdrawing the prosecution, the

Prosecutor has to lead evidence to show that the object of administration of justice would not be advanced or furthered by continuing with the prosecution.

4.15 The Group believes that non-service of summons for nearly 3 years and more and inability to trace the company and officer(s)-in-default for so long, and the alleged offences being of technical nature involving imposition of fine only are good reasons for seeking withdrawal of these cases. It may further be pleaded that the objective of administration of justice would not be advanced or furthered by continuing with such prosecution cases and that it would be further wastage of time, efforts and public money if these cases are continued to be listed.

4.16 The Group recommends that each prosecution case for withdrawal be individually verified to satisfy that the case falls within the purview of the parameters fixed for the case being in Category-A.

4.17 It is noted that such withdrawal of cases is provided for in section 257 of the Code of Criminal Procedure, which reads as follows:

“If a complainant, at any time before the final order is passed in any case under this Chapter satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall there upon acquit the accused against whom the complaint is so withdrawn.”

4.18 However, withdrawal of cases must simultaneously be followed by action to strike off the names of such involved companies from the Registers maintained by ROCs. The relevant section 560 of the Act is reproduced as follows:

“Section 560: Power of Registrar to strike defunct company off Register

- (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.*
- (2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.*
- (3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.*
- (4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3).*
- (5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:*

Provided that -

- (a) the liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company,*

shall continue and may be enforced as if the company had not been dissolved; and

- (b) nothing in this subsection shall affect the power of the Tribunal to wind up a company the name of which has been struck off the register.*
- (6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register ; and the Tribunal may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.*
- (7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.*
- (8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, manager or other officer of the company, or if there is no director, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.*
- (9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.”*

4.19 It is observed that the procedure prescribed in section 560 of the Act for striking off the name of companies from the Registers of ROCs is too cumbersome and time consuming. MCA may examine whether in law the procedure can suitably be modified for expeditious action.

4.20 The Group believes that with the reduction of pendency by nearly 40% after the withdrawal of cases in Category-A, the disposal of

remaining cases under Categories B to E will receive better attention of MCA as well as the Courts.

4.21 For overseeing the implementation of aforesaid recommendations, the Group suggests that MCA may establish separate Cell so that focused attention can be given to the disposal of cases. Sizable number of companies had earlier taken advantage of the CLSS-2000. Under the said CLSS-2000, it was specified that on payment of the prescribed amount on filing of documents, the ROCs concerned would withdraw prosecutions launched by him in respect of the non-filing of the said documents. This Cell will ensure that the concerned ROC withdraws the cases in which compliance has been obtained through the earlier settlement scheme.

4.22 The Group's recommendation regarding cases in Categories B to E are as follows:

(i) **Category-B**

Compoundable cases filed up to 31.12.2002 in which summons have been served and the cases are in progress.

The Group is recommending introduction of the Company Law Simplified Settlement Scheme 2005 ("CLSSS-2005") which, when implemented, should result in significant reduction in cases in Category-B. The figure of year-wise pendency of Category-B cases is, however, not readily available.

Cases falling under this category (excluding Category-D cases) may be allowed to take advantage of proposed CLSSS-2005. The cases (excluding Category-D cases) where the advantage of the proposed CLSSS-2005 has been taken, may be withdrawn from the Courts. The draft of the proposed Scheme is enclosed as Appendix-VI to this Report.

(ii) **Category-C**

Compoundable cases filed on or after 01.01.2003 (to be treated as current cases).

Under this category,

(a) Where summons have been served, the concerned defaulters can avail of proposed CLSSS-2005. A good number of companies from this category will hopefully take advantage of the proposed CLSSS-2005.

(b) Where summons have not been served, the cases may be actively pursued in Courts and all possible efforts should be made to serve summons in such cases.

(iii) As mentioned elsewhere in this Report, MCA had also introduced a scheme in past known as Company Law Settlement Scheme 2000 ("CLSS-2000"). The scheme has received encouraging response and approx. 50% of the defaulting companies at that time had availed of this scheme. Moreover, the Government was able to collect more than Rs.136-crores by way of filing fees. The Group is of the view that the Government should again introduce a new scheme on the similar lines because a period of 5 years has elapsed since then. Therefore, the Group strongly recommends introduction of a similar scheme called Company Law Simplified Settlement Scheme 2005. Draft text of the proposed scheme is provided in **Appendix-VI**.

(iv) A liberal fee structure is being proposed under the scheme with a view to encourage a large number of defaulting companies to file the documents. The Group also noticed that in the case of CLSS-2000, the lump sum fee amount was linked to the number of documents being filed and to the period of delay. These restrictions may have

discouraged a number of small private limited companies from availing of the said scheme. Moreover, the calculation of period of delay and also the fee payable by such companies involved complex calculations.

- (v) It is expected that the CLSSS-2005 will be more attractive and will lead to better response from the defaulting companies. The proposed CLSSS-2005 is not a revenue generating exercise but is rather intended to clear the backlog of heavy accumulation of petty cases in the Courts; and, therefore, a lower fee structure is preferable.
- (vi) Companies and/or their officers-in-default may be afforded an opportunity to file the documents on payment of specified amount per document, besides normal applicable filing fees. On payment of the specified amount, the concerned ROC shall withdraw the complaint in respect of the said offence from the Court. The Group is of the view that this suggestion would enable Government to reduce pendency of cases.
- (vii) **Category-D** comprises of –
 - a) Cases against NBFCs/ Chit Fund companies/ Plantation companies;
 - b) Cases referred to Serious Frauds Investigation Office;
 - c) Cases against Vanishing Companies which have adversely affected the interest of investors and other stakeholders;
 - d) Cases against Listed Companies;
 - e) Cases against companies involved in the securities scams;
 - f) Such other cases which the Government considers as not fit for withdrawal.

Since the cases in this category involve public interest, these cases should neither be withdrawn nor allowed to take the benefit of proposed CLSSS-2005. The Group hopes that these cases would be pursued vigorously by MCA.

(viii) **Category-E**

Non-compoundable cases in which prescribed punishment under the Act is imprisonment, with or without fine.

This category comprises of cases relating to offences, which are not compoundable under the Act. It is suggested that the cases in this category must receive greater attention in MCA and all effort should be made to secure exemplary punishment by way of imprisonment in cases involving serious offences.

4.23 The Group further recommends serious consideration of the implications of the name of a company being on the Register maintained by the ROC. The company, being a distinct juridical person is endowed with special rights and privileges. This characteristic has far reaching consequences, and offers to a company and its directors/shareholders many advantages and privileges. For instance, a company may hold property in its corporate name, it has capacity to enter into contracts in its name, carry on business with the privilege of limited liability and last but not the least, enjoys the benefits of stamp duty on transfer of immovable property. For these reasons, it is imperative on the part of the Government to keep track of all such artificial juridical persons.

4.24 It is on record that as on date almost 50% of the companies are in default in the matter of filing documents or keeping the ROCs informed of their movement or even demise. It is important that

ROCs have an accurate and updated record of the companies actually in existence to ensure that such companies are within the reach of the Department. MCA may consider outsourcing the work of verifying the existence of companies on the Registers of ROCs.

4.25 With the computerization, a centralized record is becoming available on the Ministry's web site. The same is, however, going through a transitory phase. The Group feels that with the implementation of Project MCA-21, the situation would considerably improve.

Sd/-

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(Member)

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APPENDIX-I

List of Offences punishable with fine only compoundable by the Company Law Board (proposed to be with Central Government)

Part-A

[vide sub-section (1) of section of Section 621-A]

Section	Nature of offence	Penalty
11(5)	Being a member of a company, association or partnership consisting more than specified numbers	Fine upto Rs. 10,000
22(2)	Failure to comply with any direction given by Central Government to change the name of an existing company	Fine upto Rs. 1,000 for every day during which default continues
25(10)	Failure to remove name of Chambers of Commerce consequent upon revocation of license	Fine upto Rs. 5,000 for every day during which default continues
39(2)	Failure to send copies of memorandum, Articles or agreement to members on demand	Fine upto Rs. 500 for each offence
40(2)	Failure to issue of altered copy of memorandum, articles, resolutions or agreements	Fine upto Rs. 100 for each copy
44(3)	Failure to file the prospectus or statement in lieu of prospectus by a private company on ceasing to be private company	Fine upto Rs. 5,000 per day
49(9)	Failure to comply with the provisions of sub-sections (1) to (8) relating to investments by a company	Fine upto Rs. 50,000
56(3)	Issue of application form without salient features of prospectus or non-supply of copy of prospectus on demand	Fine upto Rs. 50,000

<i>Section</i>	<i>Nature of offence</i>	<i>Penalty</i>
59(1)	Issue of prospectus in contravention of section 57 or 58	Fine upto Rs. 50,000
60(5)	Issue of prospectus without the copy thereof being filed with the Registrar	Fine upto Rs. 50,000
69(4)	Failure to keep application moneys in Scheduled Bank	Fine upto Rs. 50,000
70(4)	Failure to file statement in lieu of prospectus before allotment of shares	Fine upto Rs. 10,000
72(3)	Prohibition for allotment of shares unless the conditions as specified in the section are fulfilled	Fine upto Rs. 50,000
73(2B)	Default in repayment of application moneys and interest	Fine upto Rs. 50,000
73(3)	Failure to keep application moneys in Scheduled Bank	Fine upto Rs. 50,000
75(4)	Failure to comply with the provisions of section 75 relating to return of allotment	Fine upto Rs. 5,000 per day
75(4), proviso	Showing in return shares allotted for cash while in actual no cash received for such allotment	Fine upto Rs. 50,000
76(5)	Failure to comply with the provision relating to commission and discount	Fine upto Rs. 5,000
77(4)	Contravening provisions on purchase by company or loans by company for purchase of its own or its holding company's shares	Fine upto Rs. 10,000
79(4)	Omitting to include in prospectus certain particulars relating to the issue of shares at a discount	Fine upto Rs. 500
80(6)	Non-compliance with the provisions of the section relating to issue of redeemable preference shares	Fine upto Rs. 10,000
89(3)	Non-compliance with the provisions of the sub-section relating to termination of disproportionately excessive voting rights in existing companies	Fine upto Rs. 10,000

Section	Nature of offence	Penalty
95(3)	Failure to give to the Registrar notice of consolidation, etc., of share capital in accordance with section 95(1)	Fine upto Rs. 500 per day
97(3)	Failure to file with the Registrar notice of increase of capital or of members within thirty days of passing of resolution	Fine upto Rs. 500 per day
107(5)	Failing to forward to the Registrar a copy of order of the court in regard to variation of shareholders' rights	Fine upto Rs. 500
111(9)	Non-compliance with the order of CLB/Tribunal relating to registration of transfer/transmission of share/debenture	Fine upto Rs. 10,000 & further fine of Rs. 1,000 per day
111(12)	Default in complying with the provisions of section 111	Fine upto Rs. 500 per day
111 read with 111(9)	Failure to give effect to orders of CLB/Tribunal	Fine upto Rs. 10,000 & further fine of Rs. 1,000 per day
111A read with 111(12)	Failure in complying with any of the provisions of section 111A	Fine upto Rs. 500 per day
113(2)	Failure to complete and having ready for delivery share or debenture certificate within two months of allotment, etc.	Fine upto Rs. 5,000 per day
115(6)	Non-compliance with the requirements of section 115 relating to entries in the register in respect of share warrants	Fine upto Rs. 500 per day
117A(3)	Copy of the trust deed not made available for inspection	Fine upto Rs. 500 per day
118(2)	Failure to forward a copy of debenture trust deed to members or debenture- holders within seven days at their request	Fine upto Rs. 500 and further fine upto Rs. 200 per day
127(2)	Failure to deliver to the Registrar for registration particulars of charges on company acquiring property subject to charge	Fine upto Rs. 5,000
133(2)	Delivering debentures or certificate of debenture stock without endorsing on its certificates of registration	Fine upto Rs. 10,000

Section	Nature of offence	Penalty
137(3)	Default in complying with the provisions of section 137 regarding appointment of receiver or manager	Fine upto Rs. 500 per day
142(1)	Failure to file with the Registrar for registration particulars of any charge, etc.	Fine upto Rs. 5,000 per day
142(2)	Not complying with any of the requirements of the Act as to registration with the Registrar of any charge, etc.	Fine upto Rs. 10,000
143(2)	Failure to make entry in register of charges	Fine upto Rs. 5,000
144(3)	Refusing to allow inspection of copies of instruments creating charges and company's register of charges	Fine upto Rs. 500 and further fine upto Rs. 200 per day
146(4)	Non-compliance with the requirements of section 146 in regard to registered office	Fine upto Rs. 500 per day
147(2)	Non-compliance with the provisions of section 147(1)(a) or in regard to painting or affixing its name and address of registered office outside office or place of business	Fine upto Rs. 500 per day
147(3)	Non-compliance with the provisions of section 147(1)(b) or (c) in regard to engraving name on seal and mentioning name and registered office in business letters, etc.	Fine upto Rs. 5,000
147(4)	Misuse of seal, letterhead, etc. by an Officer	Fine upto Rs.5,000
148(2)	Non-compliance with the requirements of section 148(1) regarding publication of authorized as well as subscribed and paid-up capital	Fine upto Rs.10,000
149(2 A)	Commencement of any new business in contravention of this sub-section	Fine upto Rs.5,000 per day
149(6)	Commencement of business or exercising borrowing powers in contravention of section 149	Fine upto Rs.5,000 per day
150(2)	Failure to maintain register of members	Fine upto Rs. 500 per day

Section	Nature of offence	Penalty
151(4)	Committing default in complying with the provisions of sub-sections (1) to (3) relating to index of members	Fine upto Rs. 500
152(3)	Committing default in complying with the requirements of sub-sections (1) and (2) regarding register and index of debenture-holders	Fine upto Rs. 500
153B(3)(a)	Failure to make a declaration by the trustee	Fine upto 5,000 and further fine upto Rs. 100 per day
154(2)	Closing register of members or debenture holders otherwise than in compliance with the provisions of section 154(1)	Fine upto Rs. 5,000 per day
157(3)	Failure to file with the Registrar notice of situation of office where foreign register is kept	Fine upto Rs. 500 per day
158(9)	Not transmitting to registered office in India copies of entries in foreign register and not keeping at registered office in India duplicate of foreign register	Fine upto Rs. 500
162(1)	Non-compliance with the provisions of section 150, 160 or 161 regarding annual return	Fine upto Rs. 500 per day
163(5)	Refusing inspection, making of any extract or sending any copy within specified time, of registers, returns, etc.	Fine upto Rs. 500 per day
165(9)	Non-compliance with the provisions relating	Fine upto Rs. 5,000
168	Failure to hold annual general meeting in accordance with section 166 or to comply with any directions of Central Government under section 167(1)	Fine upto Rs. 50,000 and further fine upto Rs. 2,500 per day
176(2)	Omitting to state in notice of meeting that a member is entitled to appoint proxy and that proxy need not be a member	Fine upto Rs. 5,000
176(4)	Invitation to appoint proxy specified in the invitation issued at Company's expense	Fine upto Rs. 10,000
187C(5)(a)	Failure to file declaration not holding beneficial interest in any	Fine upto Rs 1000 per day

Section	Nature of offence	Penalty
	share	
187C(5)(b)	Failure to file return by the company	Fine upto Rs 100 per day
188(8)	Non-compliance with the provisions of section 188 regarding circulation of members' resolutions	Fine upto Rs. 50,000
192(5)	Failure to file with the Registrar certain resolutions or agreements in accordance with section 192(1)	Fine upto Rs. 200 per day
192(6)	Failure to annex copies of certain resolutions or agreements to articles or not forwarding to members on request copy of certain resolutions or agreements	Fine upto Rs. 100 for each copy in respect of which default is made
192 A (6)	Failure to comply with sections 192A(1) to(4)	Fine upto Rs. 50,000
193(6)	Non-compliance with the provisions of section 193 regarding minutes of proceedings of general meetings and of board and other meetings	Fine upto Rs. 500
196(3)	Refusing inspection of minutes book of general meetings or not furnishing to member on request a copy of minutes within specified time	Fine upto Rs. 5,000 for each default
197(2)	Circulating or advertising proceedings of general meetings without including certain particulars	Fine upto Rs. 5,000
205A(8)	Failure to transfer the amount of accumulated profits to unpaid dividend account and other provisions of section 205A	Fine upto Rs. 5,000 per day
218	Improper issue, circulation or publication of balance sheet or profit and loss account	Fine upto Rs. 5,000
219(3)	Failure to send to members, etc., copies of balance-sheet, auditors report, etc., twenty-one days before date of Meeting	Fine upto Rs. 5,000
219(4)	Default in complying with demands for copies of balance sheet, etc., within seven days of such demand	Fine upto Rs. 5,000

Section	Nature of offence	Penalty
220(3)	Failure to file with the Registrar copies of balance sheet, etc.	Fine upto Rs. 500 per day
223(4)	Non-compliance by certain companies with the provisions of section 223 regarding publication of half-yearly statement in the specified form	Fine upto Rs. 500 per day
224(4)	Failure to give notice to the Central Government within seven days where no auditors are appointed at an annual general meeting	Fine upto Rs. 5,000
232	Failure of company to comply with the provisions of sections 225 to 231 with regard to auditors	Fine upto Rs. 5,000
233	Failure of auditor to comply with sections 227 and 229	Fine upto Rs. 10,000
233A(5)	Failure to provide information to special auditor	Fine upto Rs. 5,000
234(4)	Failure to furnish information or explanation or production of books and papers	Fine upto Rs. 5,000 and further fine of Rs. 500 per day
250(10)	Otherwise contravening the restrictions imposed by the Central Government / CLB during investigation of ownership of shares and debentures	Fine upto Rs. 50,000
269(6)	Failure to vacate office where not approved by Central Government	Fine upto Rs. 5,000 per day on officer in default
269(10)	Order of Tribunal/CLB declaring that contravention of requirement of Schedule XIII has taken place	Fine upto Rs. 50,000 against the company and fine of Rs. 1,00,000 on the officers in default and fine of Rs. 1,00,000 on the person appointed
272	Acting as director without holding qualification shares	Fine upto Rs. 500 per day
279	Acting as a director of more than 15 companies	Fine upto Rs. 50,000
283(2A)	Functioning as a director after vacation of office on account of any disqualification	Fine upto Rs. 5,000 per day
286(2)	Default in giving notice of Board meetings	Fine upto Rs. 1,000

Section	Nature of offence	Penalty
294(8)	Neglecting or refusing to furnish information required by Central Government or to produce any books and papers, etc.	Fine upto Rs. 50,000 and further fine not less than Rs. 500 per day
299(4)	Failure to disclose interest in a contract by the Director	Fine upto Rs. 50,000
300(4)	Participation in Board meeting by interested director	Fine upto Rs. 50,000
301(4)	Non-compliance with the provisions of sections 301(1), (2) and (3) in regard to register of contracts, companies and firms in which directors are interested	Fine upto Rs. 5,000
301(5)/ 163 (5)	Failure to maintain register of contracts	Fine upto Rs. 500 per day
302(5)	Failure to disclose the members director's interest in contract appointing manager/ managing director	Fine upto Rs. 10,000
303(3)	Failure to keep register of directors or to file with the Registrar return of directors, managing director, manager and secretary	Fine upto Rs. 500 per day
304(2)	Refusing inspection to any member of register kept under section 303	Fine upto Rs. 500
305(1)	Failure by a director to inform change of his particulars	Fine upto Rs. 5,000
307(7)	Failure to produce at annual general meeting register of directors' shareholdings	Fine upto Rs. 5,000
307(8)	Failure to comply with the provisions of sections 307(1) and (2) in regard to register of directors' shareholdings	Fine upto Rs. 50,000 and further fine upto Rs. 200 per day
320(3)	Failure to secure particulars regarding payment to directors stipulated in sub-section (1)	Fine upto Rs. 2,500
322(3)	Default in giving notice under this section	Fine upto Rs. 10,000 and damages
372A(10)	Failure to maintain the Register of intercorporate loans, investments and guarantees	Fine upto Rs.5000 and further fine upto Rs. 500 for every day during which default continues

Section	Nature of offence	Penalty
374	Contravening section 372 (excluding sub-sections (6) and (7)) or 373 in regard to investments made in shares and debentures of companies in the same group	Fine upto Rs. 50,000
383A(1A)	Failure to appoint whole-time secretary	Fine upto Rs. 500 per day
391(5)	Failing to annex to the copy of memorandum certified copy of court's order sanctioning any compromise or arrangement with creditors and members	Fine upto Rs. 100 for each copy
393(4)	Failure to comply with the requirements of section 393 in regard to compromises or arrangements with creditors and members	Fine upto Rs. 50,000
393(5)	Failure to give information by directors relating to compromise or arrangement with creditors or members	Fine upto Rs. 5,000
394(3)	Failure to file with the Registrar a certified copy of the order of the court on application for sanctioning of a compromise or arrangement	Fine upto Rs. 500
395(4A)(6)	Issue of circular containing or recommending acceptance of offer for transfer of shares which has not been registered	Fine upto Rs. 5,000
404(4)	Failure to file with the Registrar a certified copy of the altered memorandum of articles	Fine upto Rs. 50,000
416(3)(b)	Non-compliance with the requirements of section 416 in regard to contract by agents of company in which company is undisclosed principal	Fine upto Rs. 2,000
423	Non-compliance with the requirements of sections 421 and 422 in regard to receivers	Fine upto Rs. 2,000
441F	Non-payment of cess payable under section 441A	Upto ten times the amount in arrears
445(1)	Default by petitioner and the company to file with the Registrar, a certified copy of the order on the making of a winding up order	Fine upto Rs. 1,000 for each day of default

Section	Nature of offence	Penalty
481 (3)	Default in forwarding to the Registrar a copy of the Court/Tribunal's order dissolving the company within fourteen days of the order	Fine upto Rs. 500 for each day of default
485(2)	Default in giving notice of the resolution for voluntary winding up in the Official Gazette, within 14 days and also in some newspaper, circulating in the district where the registered office of the company is situate	Fine upto Rs. 500 for each day of default
493(3)	Default in giving notice to the Registrar, of the appointment of liquidator or liquidators under section 490, of every vacancy occurring in the office of liquidator and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 492 within 10 days of the event to which it relates	Fine upto Rs. 1,000 for each day of default
495(2)	Failure to summon a meeting of the creditors in case of insolvency and to lay before the meeting a statement of the assets and liabilities of the company	Fine upto Rs. 5,000
496(2)	Failure to call a general meeting of the company at the end of the first year from the commencement of the winding up and at the end of each succeeding year or as soon thereafter but within 3 months from the end of the year or such longer period as the Central Government may allow; and to lay before the meeting an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding year together with the statement containing the requisite particulars relating to the proceedings and the position of the liquidation	Fine upto Rs. 1,000 in respect of each failure
497(3)	Default in sending to the Registrar a copy of the accounts and return within one week of the holding of the meeting	Fine upto Rs. 500 for each day of default
497(7)	Failure to call a general meeting of the company as required by section 497	Fine upto Rs. 5,000

Section	Nature of offence	Penalty
500(6)	Default in complying with the provisions relating to the calling of meeting of creditors, etc., and advertising the notice of the meeting of the creditors in the Official Gazette and at least in two newspapers	Fine upto Rs. 10,000
501(2)	Default by company in giving notice to the Registrar of any resolution passed at a creditors' meeting under section 500	Fine upto Rs. 500 for each day of default
508(2)	Default by liquidator in calling a general meeting of the company and a meeting at the end of the first year from the commencement of winding up and at the end of each succeeding year, and failure to lay before the meeting an account of his acts and dealings with respect to the proceedings and position of the winding up	Fine upto Rs. 1,000
509(3)	Default by liquidator in sending to the Registrar a copy of the accounts and returns of the holding of the meetings and of the date or dates on which they were held	Fine upto Rs. 500 for each day of default
509(7)	Failure of the liquidator to call a final general meeting of the company or creditors	Fine upto Rs. 5,000
513(3)	Appointment of a body corporate as liquidator	Fine upto Rs. 10,000
514	Giving, agreeing, or offering to give, to any member or creditor of company any gratification with a view to securing his own appointment or nomination as the company's liquidator, or securing or preventing the appointment or nomination of some person other than himself	Fine upto Rs. 10,000
516(2)	Failure by liquidator to publish in the Official Gazette and deliver to the Registrar for registration a notice of his appointment in the prescribed Form	Fine upto Rs. 500 for each day of default
547(2)	Default by a company which is being wound up, whether by the Court/Tribunal or voluntarily, to	Fine upto Rs. 5,000

Section	Nature of offence	Penalty
	make a mention of the fact that the company is being wound up in every invoice, order for goods or business letter, issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company in which the name of the company appears	
551(5)	Default by liquidator to comply with any of the requirements of the section relating to information as to pending liquidations	Rs. 5,000 for each day of default
559(2)	Default by any person, on whose application the Court/ Tribunal passes an order declaring the dissolution to be void, to file within 21 days after making of the order or such further time as the Court/ Tribunal may allow a certified copy of the order with the Registrar	Fine upto Rs. 500 for each day of default
581ZM(1)	Any person, other than a Producer Company registered under this Part, carries on business under any name which contains the words "Producer Company Limited"	Fine upto Rs. 10,000 for every day during which such name has been used by him
581ZM(3)(a)	A director or officer of producer company defaults in handing over the custody of books of account and other documents or property in his custody to the producer company	Fine upto Rs. 1 lakh and if the default continues an additional fine of Rs. 10,000 for everyday during which such default continues
581ZM(3)(b)	A director or officer of producer company fails in convening AGM or other general meeting	Fine upto Rs. 1 lakh and if the default continues an additional fine of Rs. 10,000 for everyday during which such default continues
598	Failure by any foreign company to comply with sections 591 to 597	Fine upto Rs. 10,000 and further fine up to Rs. 1,000 for each day of default
630(1)	Wrongfully withholding or wrongfully taking possession of property of the company by an officer	Fine upto Rs. 10,000

APPENDIX-II

List of Offences punishable with imprisonment or with fine or both, Compoundable with the permission of the Court under section 621A(6)(a) of the Act

Section	Nature of offence	Penalty
44(4)	Filing with the Registrar prospectus or statement in lieu of prospectus containing any untrue statement	Imprisonment upto two years or fine upto Rs. 50,000 or both
63(1)	Issuing a prospectus which includes any untrue statement	Imprisonment upto two years or fine upto Rs. 50,000 or both
68	Fraudulently inducing persons to invest money	Imprisonment upto five years or fine upto Rs. 1,00,000 or both
70(5)	Delivery to the Registrar statement in lieu of prospectus which includes any untrue statement	Imprisonment upto two years or fine upto Rs. 50,000 or both
77A(11)	Default in complying with the buy-back provisions contained in section 77A	Imprisonment upto two years or fine upto Rs.50000 or both
84(3)	Fraudulently renewing or issuing of duplicate share certificates	Company liable to fine upto Rs.10,000 and officer in default liable to imprisonment upto six months or fine up to Rs.1,00,000 or both
108-I(2)	Failure to comply with section 108B	Fine upto Rs.50,000 in case of body corporate and imprisonment upto three years or fine upto Rs.50,000 or both against officer in default
108-I(3)	Failure to comply with section 108C	Fine upto Rs.50000 in case of body corporate and imprisonment upto three years or fine upto Rs. 50,000 or both against officer in Default
108-I(4)(b)	Contravention of section 108B or 108D	Fine upto Rs.50,000 on company and officer in default punishable with imprisonment for a term upto three years and with fine upto 50,000 or both.
192A(5)	Defacing or destroying postal ballot or declaration of identity of shareholder	Imprisonment upto 6 months or fine or both

Section	Nature of offence	Penalty
202(1)	Discharging functions of a director by an undischarged insolvent	Imprisonment upto two years or with fine upto Rs. 50,000 or with both
203(7)	Acting as a director in contravention of an order of the Court or the Tribunal	Imprisonment upto two years or fine upto Rs. 50,000 or both
209(5)/(7)	Failure to keep proper books of accounts, etc.	Imprisonment upto six months or fine upto Rs. 10,000 or both
210(5)	Failure to lay balance sheet and profit and loss account at the AGM	Imprisonment upto six months or fine upto Rs. 10,000 or both
210(6)	Person charged with to comply with section 210	Imprisonment upto 6 months or fine upto Rs. 10,000 or both for each offence
211(7)/(8)	Failure to prepare balance sheet and profit and loss account showing a true and fair view	Imprisonment upto six months or fine upto Rs. 10,000 or both
212(9)/(10)	Failure to attach the accounts of subsidiary company, etc.	Imprisonment upto six months or fine upto Rs. 10,000 or both
217(5)/(6)	Failure to take reasonable step relating to Board's report	Imprisonment up to six months or fine upto Rs. 20,000 or both
221(4)	Failure to disclose certain payments, to the company	Imprisonment up to six months or fine upto Rs. 50,000 or both
233B(11)	Failure to comply with the provisions of section 233B regarding audit of cost accounts	Fine upto Rs.5,000 on company and imprisonment upto three years; or fine upto Rs.50,000 or both to officer in default
240(3)	Disobedience to the order of court directing production of books before inspector	Imprisonment upto six months or fine up to Rs.20,000 or both and further fine upto Rs.2,000 per day
250(9)	Exercise of right in respect of shares and debentures in violation of restrictions imposed by CLB/Tribunal	Imprisonment upto six months or fine upto Rs. 50,000 or both
292A (11)	Failure to comply with section	Imprisonment upto one year or fine upto Rs. 50,000 or both
295(4)	Loans to directors, etc. without approval of Central Government	Fine upto Rs. 50,000 or imprisonment upto six months
308(3)	Failure to make disclosure of share-holdings by a director	Imprisonment upto two years or fine upto Rs. 50,000 or both

Section	Nature of offence	Penalty
371(1)	Contravention of the provisions of section 369, 370 or 370A in regard to loans to companies	Fine upto Rs. 50,000 or imprisonment upto six months
372A(9)	Default in complying with sub-sections (1) to (4) and (6) to (8) of section 372 A	Imprisonment upto two years or fine upto Rs.50,000
407(2)	Acting as a director in contravention of section 407(1)	Imprisonment upto one year or fine upto Rs. 50,000 or both
420	Failure to collect provident fund and payment of contribution to the trust	Imprisonment upto six months or fine upto Rs. 10,000
424L	Violation of provisions of Part VI relating to revival and rehabilitation of sick industrial companies or any scheme or any order of the Tribunal/Appellate Tribunal or making a false statement or giving false evidence to the Tribunal/Appellate Tribunal and attempting to tamper the records of reference or appeal filed under the Act.	Simple imprisonment upto three years or fine upto Rs.10,00,000
454(5)	Default in complying with the provisions of section 454	Imprisonment upto two years or fine upto Rs. 1,000 per day or both
454(7)	Untruthfully stating himself to be a member or a creditor of a company	Penalty as provided under section 182 of Indian Penal Code (IPC). Section 182 of IPC imposes imprisonment of either description for a term which may extend to 6 months or fine which may extend to Rs.1000 or both
488(3)	Making of a declaration of solvency under section 488 without having reasonable grounds for the opinion that the company will be able to pay its debts in full, within the period specified in the declaration	Imprisonment up to six months or fine up to Rs. 50,000, or both
538(1)	Committing any offences mentioned in sub-section (1) of section 538 except those stated in clauses (m),(n),(o) thereof within 12 months before the commencement of the winding up or at any time thereafter	Imprisonment upto two years or fine, or both

Section	Nature of offence	Penalty
538 (1)(m) (n) and (o)	Obtaining on credit, for and on behalf of the company, by any false representation or other fraud, any property which the company does not subsequently pay for; or obtaining on credit, for or on behalf of the company under the false pretence that the company is carrying on its business, any property which the company does not subsequently pay for; or pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for unless such pawning, pledging or disposing is in the ordinary course of the business of the company, within 12 months before the commencement of the winding up or at any time thereafter	Imprisonment upto five years or fine or both
538(2)	Taking in pawn or pledge or otherwise receiving the property, within 12 months before the commencement of the winding up or at any time thereafter, knowing it to be pawned, pledged or disposed of in circumstances which amount to an offence under clause (o) of sub-section (1)(c)	Imprisonment up to three years or fine, or both
539	Destroying, mutilating, altering, falsifying or secreting any books, papers or securities or being a privy to the commission of such offences or being a privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud any officer or contributory of a company or other person when the company is being wound up	Imprisonment upto seven years and fine
542(3)	Knowingly being a party to the carrying on of any business of a company, when it is being wound up with intent to defraud creditors of the company or any other persons or for any fraudulent purpose	Imprisonment up to two years or fine up to Rs. 50,000, or both

Section	Nature of offence	Penalty
550(4)	Acting in contravention of any rule or of any direction of the Central Government under sub-section (1) concerning the disposal of books and papers of a company	Imprisonment up to six months or fine up to Rs. 50,000, or both
551(4)	Any person untruthfully stating himself to be a creditor or a contributory for the purpose of the section	Penalty as provided under section 182 of Indian Penal Code (IPC). Section 182 of IPC imposes imprisonment of either description for a term which may extend to 6 months or fine which may extend to Rs.1000 or both
551(5)	Willful default by liquidator in causing statement to be audited	Imprisonment upto six months or fine upto Rs. 10,000 or both
606	Contravention of the provisions of sections 603, 604 and 605 relating to prospectus of foreign companies	Imprisonment upto six months or fine upto Rs.50,000 or both
614A(2)	Failure to file document with the Registrar as directed by the Court	Imprisonment upto six months or fine or both
615(6)	Failure to furnish information or statistics, etc., required by the Central Government	Imprisonment upto three months or fine upto Rs. 10,000 or both
621 A (5)	Failure to comply with order of Central Government for filing any document, return, etc.	Imprisonment upto six months or with fine upto Rs. 50,000 or both

APPENDIX-III

List of Non-Compoundable Offences punishable with imprisonment only

Section	Offence	Prescribed penalty
68A(1)	Personation for acquisition, etc., of shares	Imprisonment up to 5 years
541(1)	Failure to maintain proper books of account by a company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter	Imprisonment upto one year.
625(4)	Failure on the part of a shareholder to pay compensation	Imprisonment upto 2 months
630(2)	Default in delivering or refunding within a time fixed by Court, any property wrongfully withheld or knowingly misapplied by an officer or employee upon trial under this section	Imprisonment upto 2 years

APPENDIX-IV

List of Non-Compoundable Offences, i.e. offences punishable with imprisonment and fine under section 621A(7)(b) of the Act

Section	Offence	Prescribed penalty
58A(5)	Omission to make repayment of deposit or acceptance of deposit in contravention of rules	Company liable to fine not less than twice the amount of deposit not repaid and officer in default liable for imprisonment up to 5 years and also fine
58A(6) (a)(i)	Acceptance of deposit in excess of prescribed limits or in contravention of manner of condition prescribed under sub-section (1) or in contravention of sub-section (2)	Company liable to fine not less than the amount of deposit and officer in default liable for imprisonment up to 5 years and also fine
58A(6)(a)(ii)	Invitation of deposits in excess of prescribed limits and contrary to rules	Company liable to fine upto Rs.10,00,000 but not less than Rs.50,000 and officer in default liable for imprisonment up to 5 years and also fine.
58A(10)	Failure to comply with the order of CLB/Tribunal	Imprisonment up to 3 years and also fine not less than Rs.500 per day
58AA(9)	Failure to comply with provisions of section 58AA	Imprisonment up to 3 years and fine not less than Rs. 500 per day
73(2B)	Failure to make repayment of application money within six months from the expiry of the eighth day	Fine up to Rs. 50,000 and also imprisonment up to one year
80A(3)(a) & (b)	Failure to comply with section 80A	Company shall be liable to fine upto Rs.10,000 per day and officer in default liable to imprisonment up to 3 years and fine
108-l(4)(a)	Contravention of section 108B or 108D	Imprisonment up to five years and fine
116	Personation of shareholder	Imprisonment up to 3 years and also fine
117C(5)	Default in complying with order of Tribunal/CLB	Imprisonment up to three years and also fine not less than Rs. 500 per day
153B(3)(b))	Declaration by a trustee as stated in section 153(3)(o)	Imprisonment up to 2 years and also fine
207	Not distributing dividend within thirty days	Imprisonment upto 3 years and also fine upto Rs.1000 per day

Section	Offence	Prescribed penalty
209A(8)	Failure to comply with section 209A	Fine not less than Rs. 50,000 and also imprisonment up to one year
269(11)	Contravention of section 269(10)	Imprisonment up to 3 years and also fine up to 500 rupees per day
293A(5)	Political contribution made contrary to section 293A	Company liable to fine upto three times the amount contributed and officer in default liable to imprisonment up to 3 years and also fine
446A	Failure of directors and other officers to complete the books of account and get them audited up to date of winding up order made by Court/Tribunal and submitted to the Court/Tribunal	Imprisonment upto one year and fine not exceeding one lakh rupees
540	Being an officer of a company which is subsequently ordered to be wound up by the Court/Tribunal or which later passes a resolution for voluntary winding up by false pretences or by means of any other fraud, inducing any person to give credit to the company, or with intent to defraud creditors of the company, making or causing to be made any gift or transfer of or charges on or causing or conniving at the levying of any execution against the property of the company, or (c) with intent to defraud creditors of the company, concealing or removing any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, within two months before that date	Imprisonment upto two years and also fine

Section	Offence	Prescribed penalty
541(1)	Failure to maintain proper books of account by a company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter	Imprisonment upto one year.
581ZM(2)	A director or an officer of producer company willfully failing to furnish any information relating to the affairs of the Producer Company required by Member or a person duly authorized in this behalf	Imprisonment upto six months and fine equivalent to 5 per cent of the turnover of producer company during preceding financial year
628	False statements as mentioned in section 628	Save as otherwise provided in the Act, imprisonment up to 2 years and also fine
629	False evidence given as stated in section 629	Imprisonment up to 7 years and also fine

APPENDIX-V

Company Law Settlement Scheme, 2000

PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY PART II - SECTION 3
- SUB-SECTION (ii) DATED 31ST MAY, 2000

**GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
DEPARTMENT OF COMPANY AFFAIRS**

New Delhi, the 31ST May, 2000

NOTIFICATION

S.O. 529 (E) – Whereas the Central Government has decided to make a Scheme namely, the Company Law Settlement Scheme, 2000 for granting immunity from prosecution and compounding the period of delay involving in filing certain documents under the Companies Act, 1956 (1 of 1956);

Now, therefore, in exercise of the powers conferred by clause (b) of section 637B read with section 637 of the said Act, the Central Government hereby notifies the following Scheme, namely:-

1. Short title and commencement.

- (1) This Scheme may be called the Company Law Settlement Scheme, 2000.
- (2) It shall come into force on the 1st day of June, 2000.

2. Definitions

In this Scheme, unless the context otherwise requires, –

- (a) “Act” means the Companies Act, 1956 ;
- (b) “company” means all companies registered under the Act and includes Government companies and companies incorporated outside India to the extent to which the Act is applicable;
- (c) “declarant” means the company making the declaration under this Scheme and includes an officer of such company as defined in clause 30 of section 2 of the Act in relation to the offence mentioned in the declaration filed under this Scheme;
- (d) “designated authority” means the Registrar of Companies having jurisdiction over the registered office of the company on the date of notification;

- (e) “offence” means the non-compliance with the provisions of the Act in relation to the filing of any documents specified in the Act in respect of non-compliance of which a fine or imprisonment or both has been prescribed but shall not include any non-compliance referred to in clause 8 of this scheme.
- (f) All other words and expressions used and not defined under this Scheme, but defined in the Act, shall have the meanings respectively assigned to them in the Act;

3. Settlement of offences.

Subject to the provisions of this Scheme, any company may make a declaration along with proof of payment of prescribed fee under acknowledgement on or after the 1st June,2000 but on or before 5.00 PM of 31st August,2000 to the designated authority in respect of any offence committed under the Act and seek settlement of the offence so committed.

4. Declaration to be filed by the applicant with the Registrar

The declaration under the Scheme shall be made to the designated authority, having the jurisdiction, in Form A.

5. Time and manner of payment of fees for seeking immunity under the Scheme.

The declarant shall pay lump sum amount based on the period of delay and the nominal filing fees as per Schedule X to the Act, apart from the lump sum amount as stated in the table given below:-

Sl. No:	Number of documents	Amount payable for delay less than 3 years	Amount payable for delay for period more than 3 years
(a)	Upto 2	Rs.2,500	Rs.3,000
(b)	Upto 5	Rs.5,000	Rs.6,000
(c)	Upto 10	Rs.7,500	Rs.9,000
(d)	More than 10	Rs.10,000	Rs.15,000

The amount payable shall be deposited along with a challan Form in any of the designated Branches of Punjab National Bank or by way of Pay Order/Demand Draft payable to the Registrar of Companies. Any sum paid for seeking immunity under the Scheme shall not be refundable under any circumstances.

6. Withdrawal of appeal against prosecution launched for the offences

If the company has filed any appeal against any notice issued for violation of the provisions under the Act in respect of which declaration is made under this Scheme, the declarant shall withdraw the appeal and furnish the proof of such withdrawal along with the declaration.

7. Order by designated authority granting immunity from the penalty and prosecution.

The designated authority shall consider the declaration and upon being satisfied shall pass an order in writing inter-alia stating the reasons for granting the immunity.

8. Scheme not to apply to certain offences.

(1) This Scheme shall not apply to the filing of Form Number 5 relating to increase in authorized capital of the company for which specific interest has to be paid for filing the intimation for the delay and such other provisions of the Act where specific approval of the Company Law Board or Central Government is to be obtained:

Provided that the Scheme shall apply to such intimations which are to be submitted to Registrar of Companies along with a prescribed fees but for which no specific form has been specified.

(2) This Scheme shall also not apply for non-compliance of the provisions of the Act where the penalty of imprisonment only has been prescribed.

9. After passing the appropriate order, Registrar of Companies shall inform the concerned Court or Regional Director or Company Law Board before whom the matter for prosecution or compounding application is pending in appropriate cases.

(A. Ramaswamy)
Joint Secretary
File No. 1/5/2000-CL-V

FORM - 'A'
DECLARATION UNDER
COMPANY LAW SETTLEMENT SCHEME 2000

Form of Declaration

To

The Registrar of Companies,

Sir/Madam,

I/We herewith make a declaration under the Company Law Settlement Scheme, 2000 and give below the following particulars, namely:-

1. Name of the declarant and Address:
(in Block letters)
2. Name of the Company:
3. Registration No. of company:
4. Date of incorporation of the company:
5. Address of the Company:
6. Status of the company: whether public/private

If public Listed/Non-listed

7. Business/objects of the company:
(Tick in appropriate column)

- Manufacturing
- Trading
- Finance
- Service
- Others (please specify)

8. Statement of Declaration of non-compliance

Sl. No	Nature of return to be filed	Section under which to be filed	Status of offence (whether still Continuing)

9.

Sl.No	Nature of document	Due date of filing	Period of delay	Amount payable under Company Law Settlement Scheme 2000 (Rs.)	Details of payment a) Demand Draft No. b) Date c) Name of Bank d) Amount (Rs)

Company Registration No.
Time

Signature of the Managing Director / Whole
Director/Director/Manager/Company Secretary

10. Whether declarant on behalf of the company would like to be granted immunity for non-compliance ?

11. Submission:

In light of the circumstances herein mentioned above and keeping in mind the admission of the offence by the applicant/company and taking into consideration the nature, scope, extent, seriousness, gravity of the offence, the applicant/company, himself requests for the grant of immunity in the form of relief for non-compliance.

12 List of enclosures.

Designation/Signature of the applicant

Place:

Date:

(SEAL OF DECLARANT)

VERIFICATION

I.....son/daughter /wife of Shri.....in my capacity as.....in the company, solemnly declare that -

- (a) (a) the information given in this declaration is true to the best of my knowledge and belief.
- (b) (b) The company had failed to comply with the provisions of the Companies Act, 1956 as mentioned above.
- (c) (c) I have withdrawn the appeals pending before Court/Company Law Board /Regional Director or other adjudicating authority.

I further declare that this declaration is in my capacity as the Managing Director/Director and that I am competent to make this declaration and verify it.

Designation/Signature of the applicant

Date:

Place:

(SEAL OF DECLARANT)

CERTIFICATE GRANTING IMMUNITY FROM PENALTY AND PROSECUTION
UNDER THE COMPANY LAW SETTLEMENT SCHEME, 2000

Whereas _____ (hereinafter referred to as the company) had made a declaration under the Company Law Settlement Scheme, 2000, and had filed the documents mentioned below along with the declaration and also paid the compounding fee of Rs. _____ payable as per the said declaration:

Sl.No.	Nature of return to be filed	Section under which to be filed

And whereas the applicant had also declared that no petition or appeal before any Court/Company Law Board/ Regional Director against any notice or order in respect of the fine payable has been filed by such applicant / had withdrawn such appeal / writ petition from the Court/Company Law Board/Regional Director.

Now, therefore, in exercise of the powers conferred under this scheme, the Undersigned hereby issues this certificate to the said company to:

- (a) certify receipt of payment from the declarant towards full and final settlement of the compounded fee payable under this scheme;
- (b) grant immunity subject to the provisions contained in the scheme from instituting and proceeding for prosecution for any offence under the Companies Act, 1956 or from the imposition of penalty under the said enactment for the time being in force in respect of matters covered in the aforesaid declaration made by the declarant.

Date:

Place:

Designated Authority

NOTES ON CLAUSES EXPLAINING THE PROVISIONS OF THE COMPANY LAW SETTLEMENT SCHEME, 2000

Clause 1 relates to short title and commencement of the scheme for early settlement of fines payable under the Company Law Settlement Scheme, 2000. This clause also contains the date of notification prescribed by the Central Government for the scheme to come into force.

Clause 2 contains the definition of certain terms and expressions used in the scheme.

Clause 3 seeks to provide for settlement of offences and the manner in which the settlement shall be made.

Clause 4 provides that a declaration under the Scheme will be made to the designated authority in a particular Form.

Clause 5 provides the time and manner of payment of fees for seeking immunity under the Scheme. It also provides that in no event the sum paid for seeking immunity in pursuance of a declaration made under Clause 4 will be refunded.

Clause 6 seeks to provide about the withdrawal of appeal against prosecution launched for the offences.

Clause 7 specifies that designated authority shall consider the declaration and upon consideration shall pass an order in writing, inter-alia, stating the reasons for granting the immunity.

Clause 8 seeks to specify the circumstances under which provisions of the scheme will not be applicable.

Clause 9 specifies that after passing the appropriate order, Registrar of Companies shall inform the concerned Court or Regional Director or Company Law Board before whom the matter for prosecution or compounding application is pending in appropriate cases.

APPENDIX-VI

COMPANY LAW SIMPLIFIED SETTLEMENT SCHEME, 2005 (PROPOSED)

Whereas the Central Government has decided to introduce a Scheme namely, the Company Law Simplified Settlement Scheme, 2005 for granting immunity from payment of additional fees and prosecution and compounding the period of delay involved in filing certain documents under the Companies Act, 1956 (1 of 1956);

Now, therefore, in exercise of the powers conferred by clause (b) of section 637B read with section 637 and other applicable provisions of the said Act, the Central Government hereby notifies the following Scheme, namely: -

1. Short title and commencement

- (1) This Scheme may be called the Company Law Simplified Settlement Scheme, 2005.
- (2) It shall come into force on the day of, 2005 and shall be operative upto.....

2. Definitions

In this Scheme, unless the context otherwise requires, -

- i. "Act" means the Companies Act, 1956 ;
- ii. "company" means all companies registered under the Act and includes Government companies and companies incorporated outside India to the extent to which the Act is applicable;
- iii. "declarant" means the company making the declaration under this Scheme and includes an officer of a company as defined in clause (30) of section 2 of the Act;

- iv. “offence” means the non-compliance with the provisions of the Act in relation to the filing of any documents specified in the Act in respect of non-compliance of which a fine or imprisonment or both has been prescribed but shall not include any non-compliance referred to in clause 8 of this Scheme;
- v. All other words and expressions used and not defined under this Scheme, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Settlement of offences

Subject to the provisions of this Scheme, any company may make a declaration along with proof of payment of prescribed fee under acknowledgement on or after the but on or before 5.00 PM of to the Registrar of Companies having jurisdiction over the Registered Office of the company as on the date of this notification in respect of any offence committed under the Act and seek settlement of the offence so committed.

4. Declaration to be filed by the Company with the Registrar

The declaration under the Scheme shall be made to the Registrar of Companies having jurisdiction in Form A.

5. Time and manner of payment of fees for seeking immunity under the scheme.

The company shall pay

- a) the filing fees* as prescribed in the Act and reproduced below:

	Fee (in Rupees)
In respect of a company having a nominal share capital of Rs.1,00,000 and less than Rs. 5,00,000	200

In respect of a company having a nominal share capital of Rs.5,00,000 and less than Rs. 25,00,000	300
In respect of a company having a nominal share capital of Rs.25,00,000 or more	500
In respect of a foreign company having established its place of business in India ¹	5000

b) token additional fees* irrespective of number of documents and period of delay as per table given below:-

In respect of a company having a nominal share capital of Rs.1,00,000 and less than Rs. 5,00,000	Rs. 200 per document subject to maximum of Rs.2,000
In respect of a company having a nominal share capital of Rs.5,00,000 and less than Rs. 25,00,000	Rs. 300 per document subject to maximum of Rs.3,000
In case of company whose nominal capital exceeds Rs. 25,00,000	Rs. 500 per document subject to maximum of Rs.5,000
In respect of a foreign company having established its place of business in India	Rs. 5000 per document subject to maximum of Rs.50,000

**For the purposes of calculation of filing fees and additional fees nominal capital shall be capital as on the date of filing the documents under the Scheme.*

¹ Higher fee structure has been proposed for foreign companies since the normal filing fee has been increased for them vide Notification No. GSR 330(E) dated 7-5-2002 w.e.f. 15-5-2002.

The amount payable shall be deposited along with a Challan Form in any of the designated Branches of Punjab National Bank or by way of Pay Order/Demand Draft payable to the Registrar of Companies. Any sum paid for seeking immunity under the Scheme shall not be refundable under any circumstances.

6. Withdrawal of appeal against prosecution launched for the offences

If the company and/ or its officers has filed any appeal against any notice issued for violation of the provisions under the Act in respect of which declaration is made under this Scheme, the declarant shall withdraw the appeal and furnish the proof of such withdrawal along with the declaration.

7. Immunity from Prosecution

Upon filing of documents together with declaration, in Form 'A' the cash receipt issued by the office of the Registrar shall be the conclusive evidence of granting immunity to the declarant in respect of the documents filed under the Scheme and matters incidental thereto.

Consequent thereupon the show-cause notice(s), if any issued by the Registrar shall stand withdrawn. The Registrar shall also withdraw the prosecutions, if any, filed in respect of non-filing of documents filed under the Scheme and/or the matters incidental thereto under the Act. The Registrar shall also not file any prosecution in respect of matters covered under the said documents and declaration.

8. Scheme not to apply to certain offences

This Scheme shall not apply to the filing of Form Number 2,3,4A,5,8,10,13,17,20, 21, 29,32 and 61 as prescribed under the Companies (Central Government) General Rules & Forms,1956.

FORM - 'A'

**FORM OF DECLARATION UNDER
COMPANY LAW SIMPLIFIED SETTLEMENT SCHEME 2005**

To

The Registrar of Companies,

Sir/Madam,

I/ We herewith file the documents and make a declaration under the Company Law Simplified Settlement Scheme, 2005 and give below the following particulars, namely:-

1. Name of the Company and Address
of Registered Office :
2. Registration No. of company :
3. Date of incorporation of the company :
4. (i) Authorized Capital :
- (ii) Paid Up Capital :
5. Statement of Declaration of non-compliance :

Form No. dated Annual Return made upto/ Balance Sheet as at	
A. Filing fees as per Schedule X	

(Total No. of Documents X Fees per Document)	
B. Token fees payable under Company Law Simplified Settlement Scheme 2005 (Rs.)	
Total fees (A+B)	
Particulars of payment (a) Demand Draft No. (b) Date (c) Name of Bank (d) Amount (Rs)	
Particulars of prosecution pending, if any	
Particulars of cases to be withdrawn	Case No.
	Court

Submission:

In light of the circumstances herein mentioned above and in view of this declaration, we hereby request to take on record the documents filed herewith and grant of immunity in terms of this scheme.

DECLARATION

I.....son/daughter /wife of Shri.....in my capacity asin the company, do hereby on behalf of the company solemnly declare that –

- a) The company had defaulted to file the aforementioned forms/returns with the Registrar under the provisions of the Companies Act, 1956, which are being filed herewith.
- b) The declarant has withdrawn the appeal.
- c) The information given hereinabove is true to the best of my knowledge and belief.

I further declare that this declaration is in my capacity as the Managing Director/Director/Whole time Director/Secretary and that I am competent to make this declaration and verify it.

For Messrs.....
Signature of the Managing Director/Whole
Time Director/Director /Manager/Company Secretary

Name:

Date:

Place:

List of enclosures.